

Improving the National Defense Authorization Act for Fiscal Year 2021

Edited by Frederico Bartels

KEY TAKEAWAYS

While the House and Senate's NDAA's have been approved by large margins, many issues remain to be addressed as the vital annual authorization bill goes to conference.

Congressional negotiators should focus on providing a modicum of stability for the Department of Defense in an ever-changing world.

The final 2021 NDAA should include robust and necessary funding to continue rebuilding the military and preparing the U.S. for great-power competition.

The National Defense Authorization Act (NDAA) provides the authorization blueprint for the defense budget and shapes the policies governing the Armed Forces for the coming fiscal year (FY). The current iteration of the bill under consideration in Congress should further assist the Department of Defense (DOD) in meeting the challenges of great-power competition outlined in the 2018 *National Defense Strategy*.¹

The respective bills enjoyed broad bipartisan support in both chambers, passing by 295 votes to 125 votes in the House of Representatives, and by 86 votes to 14 votes in the Senate.² This bipartisan support highlights the commitment of both chambers and parties to a strong national defense and a properly funded Armed Forces. Now in a conference, yet to be scheduled as of this writing, both chambers will reconcile the differences between their bills to develop a single piece of legislation.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3523>

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The two chambers are fairly close to each other on the main issues, and on the surface, Congress appears able to approve the NDAA before the end of the fiscal year on September 30.³ Plenty of issues remain to be addressed, and this *Backgrounder* provides policy prescriptions designed to achieve the strongest possible U.S. national defense within the allocated resources to help the DOD prepare for great-power competition.

The Military Services

The Army. In order to improve the Army sections of the NDAA, the conference should:

- **Not augment unrequired Army programs.** In the current flat-budget environment, Congress should allocate funds to programs requested by the Administration, either in the President’s budget request or in the Service’s unfunded requirements lists, rather than augmenting unrequested programs. Both versions of the NDAA authorize money for systems the Army did not ask to procure: CH-47F Block II aircraft and MQ-1 medium-altitude unmanned aerial vehicles.
- **Drop the requirement for the Army to produce a plan on “interim cruise missile defense capability” that is currently in the Senate version of the bill.** The bill requires the Army to produce a plan to deploy and station “interim cruise missile defense capability,” namely the two Iron Dome systems, which the 2019 NDAA required the Army to procure.⁴ The Army has yet to even receive the systems for evaluation, nor is the Army certain of their ability to integrate the Iron Dome systems into the Army’s larger Integrated Air and Missile Defense (IAMD) architecture.⁵ While cruise missile defense is a high-priority capability gap, requiring the Army to produce a plan to deploy and station systems that they have not evaluated is inappropriate at this time.
- **Authorize a Regular Army end strength of 485,900.** The President’s Budget Request asked for authority to increase the Regular Army from 480,000 to 485,900. The Senate authorized an end strength of 485,000, while the House authorized the full 485,900. The Army is already far short of the size its leaders have said is necessary to execute the *National Defense Strategy*.⁶

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- **Drop the House’s provision to remove the DC National Guard from Presidential authority.** The House version of the NDAA included a provision allowing the mayor of the District of Columbia to prevent the deployment of the District’s National Guard under the authority of the President. This would prevent the President from employing the DC National Guard to protect federal property within the District or to support federal law enforcement activities. The DC National Guard is typically placed by the President under the control of the Secretary of the Army, an arrangement that has worked well in the past.

The Navy. In order to improve the Navy sections of the NDAA, the conference should:

- **Not overburden unmanned Naval prototyping.** While it is understandable that both chambers of Congress require certification of

reliability before procuring unmanned surface vessels, it is likewise important that Congress encourage the effective and rapid prototyping needed to field such capabilities that will figure significantly in any future conflict. Overly burdensome reporting requirements and certifications will hamper the process and risk delaying such crucial capabilities for the future fleet.

- **Fund long-lead-time parts for Naval shipbuilding.** While the immediate implications may be minor, not funding long-lead-time parts for future construction of amphibious ships (the LHA-9, LPD-32, and LPD-33) and *Arleigh Burke*-class destroyers is not without risk. The House should reconsider and match the funding included in the Senate version—\$500 million for long-lead-time material for the LPD-32 and LPD-33; \$260 million for *Arleigh Burke*-class destroyer materials; and \$250 million above request to accelerate construction of the LHA-9. Not funding the long lead times could slow down the construction of urgently need ships.
- **Support additional ship purchases to ensure meeting the 2034 target of a 355-ship Navy.** The House added additional monies, \$2.1 billion over the President's request, to purchase a second *Virginia*-class submarine and an additional expeditionary fast transport (EPF), for a total of nine new ships in FY 2021, which is two more than the Navy's current request, and one less than under the 30-year ship-building plan.⁷ The addition of one submarine is in line with the Navy's unfunded priorities list, and addresses a critical capability needed by the combatant commands, such as the Indo-Pacific Command (INDOPACOM).⁸ On the other hand, the Senate includes monies for long-lead-time construction parts while conforming to the Navy request to purchase seven new ships. Support for these additional ship purchases should be conditioned on the Navy's ability to support delivery, and that increased *Virginia*-class submarine construction not delay delivery of the first-in-class *Columbia* ballistic missile submarine.
- **Support the increase in critical long-range munitions.** The Senate authorized increased production of critical long-range munitions for which INDOPACOM has argued strongly. The House should reconsider funding growth in these critical munitions, including the Long-Range Anti-Ship Missile (LRASM) and Tactical Tomahawk (TACTOM) Block V.

The Marine Corps. In order to improve the Marine Corps sections of the NDAA, the conference should:

- **Support the modernization of the U.S. Marine Corps (USMC).**

In general, both the Senate and House Armed Services Committees fully support USMC efforts to modernize the Service and to begin shifting its focus to new challenges in the Indo–Pacific region. USMC funding requests for continued improvement of legacy systems, such as the amphibious assault vehicle and light armored vehicle, acquisition of the amphibious combat vehicle, and purchase of a range of weapons that include anti-air, anti-armor, and anti-ship missiles are fully funded.⁹ The House went so far as to provide money for items on the USMC’s unfunded priorities list to purchase additional ground-based anti-ship missiles, increasing funding by \$59.65 million, or 34 percent.¹⁰

- **Advance the development of anti-ship missiles.** Both chambers of Congress included monies (\$59.6 million) to support the Marine Corps in developing anti-ship missiles. This support has the potential of enhancing the U.S. Naval presence, especially in the Western Pacific, where it can complicate Chinese and Russian military activities.

The Air Force. In order to improve the Air Force sections of the NDAA, the conference should:

- **Commit to an accelerated acquisition program to expand the Air Force to no fewer than 386 operational squadrons as rapidly as possible.** The Air Force should acquire the most modern and fieldable weapons systems available, to include 100 F-35 aircraft in FY 2021.¹¹ In spite of a 30 percent increase in its budget over the past four years, the Air Force has not developed or executed a plan to accelerate the acquisition of aircraft to meet that requirement. Air Force proposals to retire viable combat and combat-support platforms like the A-10, B-1, KC-10, and KC-135 serve the purpose of diminishing the Air Force’s capabilities before their replacements are available. Those divestments should end until the platforms in the current inventory, coupled with new acquisitions, bring the number of fighter, bomber, and air-refueling squadrons to the totals called for by “The Air Force We Need.”¹²

- **Terminate the acquisition of fourth-generation F-15EX fighters and accelerate the acquisition of fifth-generation F-35A fighters.** The Air Force should acquire the most technologically advanced, cost-effective platforms available to ensure that its capability well exceeds peer competitor forces, since both the Russian and Chinese air forces are numerically superior to the U.S. Air Force. The Air Force's current plan to acquire 140 F-15EX fighters will deliver markedly less capability, reduce the Air Force's deployable combat capability, and cost the government more to operate than buying 183 F-35As using the same level of funding.¹³
- **Direct the Air Force to bring its primary combat-aircraft platforms up to an 80 percent mission capable (MC) rate by the end of 2021.** In 2018, the Secretary of Defense directed the Air Force to increase the MC rates of its F-16, F-22, and F-35 aircraft to 80 percent by the end of September 2019.¹⁴ MC rates measure how much of a certain fleet is "ready to go" at a given time, and the Secretary's direction was to maximize the readiness of an all-too-small fleet of combat aircraft that could deter or defeat a peer adversary. In early 2019, the Air Force Chief of Staff stated that the Service would not meet the 80 percent MC threshold directive until 2020 and, in May 2020, he made it clear that the 80 percent threshold was no longer a focus for the Air Force.¹⁵ Instead of using that historic marker for a peer-fight level of readiness, the Service is choosing to highlight how deployable "lead force elements" within its fleet are within a short period of time.¹⁶ While important in responding to a regional disturbance, the ability to rapidly deploy small packages of combat aircraft is not an effective measure of a Service's ability to meet and defeat a peer competitor. That marker is, and has always been, MC rates—and in 2019, the average MC rates for the three fighters that the Secretary of Defense had directed to reach 80 percent were at an abysmal 66 percent, and 67 percent for the fighter fleet as whole.
- **Fund and direct the Air Force to increase training flying hours and sortie rates to a minimum of 17 hours a month and three sorties a week by the end of FY 2021.** Fighter pilot combat capability is generally measured in the number of flying hours and sorties that its operational fighter pilots receive, and both markers fell between 2018 and 2019. The training time the average combat-mission-ready pilot received fell from 16.1 hours and 8.3 sorties a month in 2018 to just 14.6 hours and 7.4 sorties a month in 2019.¹⁷

Other National Defense Capabilities

Nuclear Enterprise. In order to improve the nuclear sections of the NDAA, the conference should:

- **Maintain strong support for nuclear modernization.** Both the Senate and House versions of the NDAA fully fund the President's budget request for nuclear modernization programs within the DOD and the National Nuclear Security Administration (NNSA). The DOD's strategic delivery platforms like the Minuteman III intercontinental-range ballistic missile and AGM-86B air-launched cruise missile are years past their intended lifetimes, leaving the acquisition of their replacement programs with little room for delay.¹⁸ Similarly, the NNSA requires a funding increase this year as it continues to move forward with a number of programs that would rebuild the tottering nuclear enterprise, such as plutonium pit production, as well as key warhead replacement programs.¹⁹ Fortunately, there is current broad agreement on nuclear modernization funding.
- **Not prohibit nuclear testing.** The House passed an amendment that prohibits the use of funds to conduct, or prepare to conduct, a nuclear test. While the United States operates under a testing moratorium, it maintains nuclear-test readiness should the need arise to conduct a nuclear test. The House's misguided prohibition would impinge on the nation's ability to respond to an emergency requiring a nuclear test to ensure the functionality of the aging nuclear arsenal. The final conference agreement should instead include a Senate provision that adds \$10 million for test readiness activities.²⁰ Today, U.S. test readiness is weak; the NNSA has reported the unlikelihood of its ability to even meet the 24-to-36-month test readiness requirement.²¹ The United States should be improving its nuclear testing capabilities, not further inhibiting them.
- **Not elevate the chairmanship of the Nuclear Weapons Council to the Secretary level.** A House amendment would establish the Secretaries of Defense and Energy as co-chairs of the Nuclear Weapons Council, which is currently chaired by the Undersecretary of Defense for Acquisition of Sustainment and the NNSA Administrator. The Nuclear Weapons Council plays the critical role of endorsing military requirements for NNSA warhead activities, and currently functions

effectively.²² Governance of the nuclear enterprise has challenges, but leadership of the Nuclear Weapons Council is not one of them. The House change would put the Secretary of Energy in a position to veto decisions that relate exclusively to DOD capabilities. As the customer of the NNSA, the DOD should maintain its sole leadership of the council. Advocates of this provision argue that moving this decision-making authority to the Secretary level will elevate the importance of nuclear weapons, an idea that in reality runs contrary to the time-proven principle of divesting authority down the chain of command—in this case to the Undersecretary of Defense for Acquisition of Sustainment, who has the expertise and time to give nuclear weapons the attention they deserve.

Weapons of Mass Destruction (WMDs). In order to improve the NDAA's sections on WMDs, the conference should:

- **Support the reporting requirements on a myriad of challenges with WMDs.** Both the House and the Senate Armed Services Committees appropriately took notice in the NDAA and its report language of the current challenges presented by WMDs. The committees have wisely requested briefings, plans, and reports from the DOD on existing and emerging WMD threats, the DOD's current WMD-related defense programs, and its preparedness for addressing WMD contingencies. In light of Syria's use of chemical weapons, concerns about Russia's compliance with the Chemical Weapons Convention; China's, Iran's, and North Korea's nuclear programs; and the coronavirus pandemic, among other issues, these congressional oversight efforts are justified and should be supported in the NDAA conference.

Missile Defense. In order to improve the missile defense sections of the NDAA, the conference should:

- **Support the development of a tracking layer for the missile defense architecture.** Both the House and Senate agree on the importance of accelerating the Hypersonic and Ballistic Tracking Space Sensor (HBTSS), a program that will enable birth-to-death tracking of all missiles from a proliferated constellation of satellites in low-Earth orbit.²³ The Administration has failed to request adequate funding for this program, placing it on the Missile Defense Agency's (MDA) Unfunded Priorities list in FY 2019 and FY 2020, and

requesting only \$99.6 million for the program in FY 2021, a decrease from last year's appropriation.²⁴ The Senate and House bills correct this budget issue with provisions that express the need to accelerate this program and the addition of \$120 million to the MDA to continue developing the HBTSS.²⁵

- **Maintain close oversight over the development of the homeland missile defense architecture.** The House and Senate bills also include critical oversight of the Administration's plan for future homeland missile defense. After the cancellation of the Redesigned Kill Vehicle in 2019 that would have replaced aging kill vehicles on the ground-based interceptors (GBIs) that defend the homeland, the DOD initiated the Next Generation Interceptor (NGI) program to be fielded not before the late 2020s. Recognizing that the advancing North Korean missile threat will begin to converge with increasing GBI obsolescence issues before then, House sections 1657 and 1658 require reports, assessments, and certifications on both improving the performance of the existing GBIs and ensuring success of the NGI program. The Senate and House bills also both require the DOD to answer critical questions on its plan to use regional systems to develop a layered homeland missile defense.²⁶ An underlay to the current missile defense infrastructure is a worthwhile pursuit, but could be a costly and time-consuming endeavor that Congress is correct to oversee closely.²⁷

Cyber Challenges. In order to improve the NDAA's sections addressing the nation's cyber challenges, the conference should:

- **Create a Senate-confirmed National Cyber Director.** Appointing a Senate-confirmed National Cyber Director as recommended by the Cybersecurity Solarium Commission would help with the coordination of national cybersecurity. This position, based on the model of the U.S. Trade Representative, would serve as the President's chief cyber advisor and coordinate cyber policy and budget requests throughout the government.²⁸ This would enhance cyber policy by providing better coordination and unity of effort. Currently, the responsibility for protecting the cyber domain is spread broadly across a number of departments and agencies throughout the government, and budget requests for cyber programs are not always coordinated.

- **Conduct a force structure assessment of U.S. Cyber Command.** The 133 teams of the Cyber Mission Force for U.S. Cyber Command were originally created and sized in 2013 to meet the needs of seven years ago. Since then, the world has changed and election security has been added as a core mission for U.S. Cyber Command. General Paul Nakasone, the Cyber Command Commander, recently acknowledged that his forces are not large enough for this expanded mission set.²⁹ Conducting a force structure assessment to determine the appropriate force size would help to secure the U.S. in cyberspace by ensuring that the military has the right amount of personnel to conduct vital offensive and defensive missions.³⁰ Once the appropriate size is determined, Congress should work with the executive branch to modify the force accordingly.
- **Strengthen the Cybersecurity and Infrastructure Agency (CISA).** Strengthening the CISA within the Department of Homeland Security would bolster its ability to support government agencies and work with the private sector. Creating a Cyber Threat Information Collaboration Environment and an Integrated Cyber Center within the CISA would help it to better coordinate cybersecurity activity, share threat intelligence, and extend its support to private-sector partners.³¹ Threat intelligence is currently not distributed to the private sector, which could be due to over-classification. Increasing the flow of information on threats to private-sector partners would help them to defend themselves from the threats they face. The CISA is uniquely placed to support both the private sector and government, and these reforms would strengthen its ability to do so.

Internal Pentagon Management. In order to improve the NDAA's sections on internal Pentagon management, the conference should:

- **Not Terminate the Chief Management Officer (CMO).** Both versions of the NDAA terminate the CMO at the DOD, after a mere two and half years of existence.³² The position was created in the NDAA for FY 2017 and has been active since February 1, 2018.³³ The CMO simply has not had enough time to effect any real change in how the Pentagon performs its business functions. It was only in 2020 that the CMO was empowered to be actively involved in the budgeting process of the Pentagon entities outside the Services.³⁴ The CMO has only recently been able to establish the office and settle the authorities around it; terminating the position

now would send the DOD tumbling down in the reform-learning curve. More time is needed to judge the efficacy of this position.³⁵

- **Keep the provision that advances defense budget transparency.** The Senate version of the NDAA includes an amendment that requests the federal government to “develop a methodologically sound set of assumptions to underpin a comparison of the defense spending of the People’s Republic of China, the Russian Federation, and the United States.”³⁶ That is an important initiative that will help both the United States and its allies to better understand and evaluate the defense programs of competitors.³⁷ It will also further the understanding of competitors’ military expenditures and development of methodologies to address the current knowledge gaps in estimates.

Alliances

U.S. Posture in the Indo–Pacific Region. In order to improve the NDAA’s sections on the U.S. posture in the Indo–Pacific, the conference should:

- **Support the creation of an Indo–Pacific Deterrence Initiative.** There are a number of important provisions in both the House and Senate bills that signal the continuing U.S. commitment to the Indo–Pacific region and regional allies. Most prominent by far are those provisions that are related to the proposed Pacific Deterrence Initiative. Both chambers have independent versions of the initiative, based on initial inputs of the regional combatant command, to better allocate the defense resources necessary to meet regional commitments.³⁸ Both versions of the initiative emphasize logistics and improving the physical assets in the region that will enable the United States to work more closely with allies in the region. The initiative highlights the importance of the region and of capabilities that improve the position in the region.
- **Maintain the prohibition on withdrawal of U.S. forces from the Korean Peninsula.** The House bill wisely continues the prohibition on the withdrawal of U.S. forces from the Korean Peninsula until six months after the Secretary of Defense has certified that such a move is in the security interest of the U.S., the reduction is commensurate with the threat, South Korea can continue to deter an attack from the

North, and its allies have been consulted. The conference should adopt the House language.

- **Demonstrate support for Taiwan.** Both bills and the accompanying reports contain multiple statements of support for Taiwan. Both bills reiterate U.S. adherence to the Taiwan Relations Act and President Ronald Reagan's Six Assurances, and highlight the importance of military-to-military interaction with Taiwan. Both bills also voice support for port calls to Taiwan by U.S. Navy medical ships. Regarding China, the bills are replete with reporting requirements designed to give Congress the information it needs to do its job and to let the DOD know what is most useful in that endeavor.

U.S. Posture in Europe. In order to improve the NDAA's sections on the U.S. posture in Europe, the conference should:

- **Reverse the plans for force reductions in Europe.** In July, the DOD detailed a decision to withdraw nearly 12,000 troops from Germany, with 5,600 repositioned elsewhere in Europe and 6,400 returning to the U.S.³⁹ Returning these troops to the U.S. sends an unfortunate message that the U.S. is disengaging from security on the European continent. The decision saddles the U.S. with the significant cost of closing bases in Germany, establishing new facilities in Belgium, Italy, and the U.S., and maintaining regular rotational forces from across the Atlantic, all the while reducing U.S. policymakers' options for responding to contingencies in Europe, the Middle East, and North Africa.⁴⁰
- **Block funding for the removal of U.S. troops from Europe.** Closing bases and removing U.S. troops from Europe will not be cheap when considering the cost of building new infrastructure in the U.S. for any returning units and the up-front cost of closing down facilities in Europe, and the significant financial cost of maintaining rotational deployments from the U.S., alongside the negative impact that such deployments can have on troop morale. Any decision to reduce the number of troops in Europe must be a strategic assessment about the need of forward-deployed forces in Europe and the threats that could emerge if they are withdrawn.⁴¹ Congress should understand and review the decision to remove an additional 5,600 troops from Germany to bases in Belgium and Italy.

- **Push back against pipelines that undermine security in Europe.** The Nord Stream II (NSII) natural gas pipeline would connect Germany with Russia. It is neither economically necessary nor geopolitically prudent. NSII would, however, greatly increase European dependence on Russian gas, magnify Russia's ability to use its European energy dominance as a political trump card, and specifically undermine U.S. allies in Eastern and Central Europe.
- **Keep up the pressure through sanctions.** Current U.S. sanctions have contributed to slowing down construction of the pipeline, and Congress should keep up the pressure. Preventing NSII from being completed must remain a U.S. priority. NSII is a political project, opposed by the majority of U.S. allies in Europe, which would greatly undermine transatlantic security. Congress should do all in its power to ensure that the remaining sections of pipeline are never completed. While NSII may receive significant attention, the Turkish Stream pipelines similarly seek to further entrench Russia's position as Europe's key energy supplier while choking off revenues that Eastern European countries collect via overland transit fees.
- **Show support for Ukraine.** Sections 1232 and 1235 of both versions of the bill express essential support for Ukraine.⁴² For more than six years now, the war has raged on in Ukraine's eastern Donbas region with no end in sight, and Crimea remains annexed by Russia.⁴³ The United States must not waver in its support for Ukraine.
- **Push back against Russian "borderization" in Georgia.** Both the Senate and House should reaffirm the sense of Congress that the United States will maintain its support for Georgia's territorial integrity and sovereignty. Russia continues its unlawful process of "borderization" today in Georgia's regions of Abkhazia and South Ossetia.⁴⁴ Georgia is an important partner of the United States, and the NDAA should include support of Georgia.

U.S. Interests in the Western Hemisphere. In order to improve the NDAA's sections on U.S. interests in the Western Hemisphere, the conference should:

- **Remove two amendments that undermine U.S. interests in Colombia and regional stability.** The House NDAA contains

two restrictive amendments on DOD activities in Colombia.⁴⁵ One amendment prohibits U.S. funding for aerial fumigation to eradicate Colombia's coca crops, and the other would alter ongoing counternarcotics operations that the United States supports. These amendments undermine U.S. interests and would set back Colombia's hard-fought security and stability achievements. The amendments would also contribute to Latin America's drug trafficking crisis and increase U.S. cocaine overdose rates.⁴⁶ The U.S. and Colombia have agreed to halve coca cultivation numbers by 2023, and barring any judicial impediments, Colombia is poised to resume its aerial eradication program in fall 2020.⁴⁷ The NDAA should not undermine the progress.

- **Drop a provision that would require the Department of State, the DOD, and the Director of National Intelligence to assess 16 years of U.S.–Colombian security and intelligence cooperation on human rights violations in only four months.** Current law already prohibits U.S. assistance to known human rights abusers, thus making this burdensome reporting requirement redundant and calling its intention into question. This unreasonable request presents a non-nuanced and ideologically driven view of the U.S.–Colombia relationship.⁴⁸ Colombia plays an important role in containing Venezuela's unstable regime, including hosting more than 2 million Venezuelan refugees and migrants.

Conclusion

The Armed Services Committees, both in the House and the Senate, and the leadership in both chambers of Congress should be commended in passing a National Defense Authorization Act that is bipartisan and mostly on target in meeting the resourcing and policy needs of the Armed Forces. Now the focus needs to be on finishing the job to provide a modicum of stability for the Department of Defense in an ever-changing world.

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