

House Appropriations Defense Bill Fails at Strengthening U.S. National Defense

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KEY TAKEAWAYS

Before the coming continuing resolution expires, Congress will have to come together and appropriate necessary resources for defense for fiscal year 2021.

As the Pentagon shifts its priorities to great-power competition, Congress must provide sufficient resources to modernize necessary military capabilities.

The House defense appropriations bill has substantive shortcomings that the Senate will need to tackle and ensure are corrected in the future conference agreement.

Fiscal year 2021 is set to start on October 1, 2020, under a continuing resolution for the whole government.¹ The Senate Appropriations Committee has not voted out any of the 12 appropriations bills required annually.² The House, on the other hand, has passed its 12 bills out of committee, 10 of which have been approved on the floor of the chamber.³ The House appropriations bills have shortcomings that need to be addressed whenever the Senate takes on appropriations for the coming fiscal year.⁴ This situation is especially acute in the defense appropriations bill, which did not receive a single vote from the minority.⁵

Continuing resolutions are uniquely harmful to the Department of Defense (DOD) since they eliminate the ability to start new programs. This is especially detrimental for an organization engaged in a strategic competition where time is a key resource. They also

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create wasteful repetitive work of redoing contracts for the length of the resolution.⁶ Continuing resolutions can contain provisions called anomalies that alleviate the restrictions they impose. This year, the White House requested three for defense: one regarding Space Force budget accounts, one to start work on a nuclear warhead program, and one on new submarine construction.⁷

At some point, hopefully soon, the Senate and the House will have to agree on appropriations for fiscal year (FY) 2021. When that time comes, Congress should:

Restore \$3.7 Billion of DOD Funding. The Bipartisan Budget Act of 2019 raised the spending caps and marked the end of the Budget Control Act of 2011.⁸ It set the budget caps for FY 2021 for both defense and non-defense discretionary budgets. However, the House Appropriations bill set its budgetary authority at \$3.7 billion below these caps. This would effectively erase the \$2.5 billion increase set by the budgetary agreement.⁹ Further, because of the higher-than-inflation cost growth for defense goods, this lower topline would effectively amount to a dramatic decrease in purchasing power for the DOD.¹⁰ The decrease would hamper the Pentagon's ability to implement the National Defense Strategy and its efforts to prepare for great-power competition, which called for consistent yearly real increases of between 3 percent and 5 percent until 2023.¹¹ Congress needs to restore the defense budget to the level previously agreed upon.

Provide Adequate Transfer Authority. The House Department of Defense Appropriations Act for 2021 would limit general transfer authority to \$1.9 billion.¹² This is a precipitous decrease from the \$6 billion enacted in FY 2020 and even more of a gap from the requested \$9.5 billion.¹³ In an era of great-power competition, where the imperative must be speed of relevance, this overly restrictive transfer authority will hamper how the Pentagon executes its budget, and unnecessarily create wasteful situations and missed opportunities. The appropriations committees should use this appropriations cycle as an opportunity to engage with the executive branch on how to improve the reprogramming process and the use of transfer authority and adapt it to the current reality. While working on improving the process, Congress should raise the transfer authority to at least \$4 billion, which would cover the average of used transfer authority in the past four fiscal years.¹⁴

Ensure that the Nuclear Weapons Council Can Certify the Budget of the National Nuclear Security Administration (NNSA). Section 8138 of the House appropriations bill, prohibiting the use of funds to provide input on budget request funding levels for the Department of Energy

(DOE), would effectively eliminate the coordination needed between the DOD and DOE to develop a budget for nuclear warhead activities.¹⁵ As the NNSA, a semi-autonomous agency within the DOE, and the DOD work on parallel nuclear warhead and delivery system programs, respectively, the two must be in lock step. This coordination is performed through the Nuclear Weapons Council, composed of senior DOD officials plus the NNSA Administrator.¹⁶ The House appropriators' blanket prohibition on DOD involvement (through the Nuclear Weapons Council) in the NNSA budget process defies basic logic and runs completely counter to the intent of Congress when it established the Nuclear Weapons Council for the very purpose of ensuring coordination between the Defense Department and the NNSA. Prohibiting it invites delay, mismanagement, unnecessary costs, and could put at risk the nation's ability to field an effective nuclear deterrent in the future.¹⁷

Not Prohibit Nuclear Testing. Section 8133 would prohibit the use of funds to conduct, or *prepare to conduct*, yield-producing nuclear tests.¹⁸ While the United States operates under a testing moratorium, it maintains nuclear test readiness should the need arise to conduct a nuclear test, a requirement that President Bill Clinton established and every President since has endorsed. For instance, should a flaw be discovered in one or more types of U.S. nuclear weapons that cannot be fixed through the NNSA's Stockpile Stewardship Program, testing might be the only means to verify that the problem has been corrected.¹⁹ While the NNSA has been able to certify a safe, secure, and reliable stockpile without nuclear testing, this does not rule out a future need to do so. The House's misguided prohibition would impinge on the U.S. ability to respond to a contingency requiring nuclear testing to ensure that nuclear warheads will work as intended and provide a credible deterrent.

Fully Fund the President's Budget Request for Nuclear Modernization. The appropriations bill would cut nuclear modernization programs in all three legs of the nuclear triad, including the Long-Range Standoff Missile (LRSO), Ground-Based Strategic Deterrent (GBSD), Trident II Life-Extension Program, B-52 bomber, *Columbia*-class nuclear submarine, and W93 warhead.²⁰ Cuts to these critical programs run counter to the urgency of nuclear modernization. For instance, the \$170 million cut (about 36 percent of the budget request) to LRSO, the air-launched cruise missile replacement, would be "catastrophic" to the scheduled replacement of the current air-launched cruise missile set to retire in 2030, according to Undersecretary of Defense for Acquisition and Sustainment Ellen Lord.²¹ The United States cannot afford a gap in this critical capability needed to

overcome advancing Russian and Chinese air defenses, deter the use of low-yield weapons, and provide an air option with an unpredictable flight path to complicate adversary planning.²² Similarly, the United States cannot afford the proposed \$60 million cut from the GBSD, the replacement for Minuteman III intercontinental ballistic missiles. Given the tight retirement schedule of the current Minuteman III missiles, even this minor cut would prevent the Pentagon from meeting its needed time frame.²³ Any final conference agreement must fully fund the President's budget request for nuclear modernization programs in order to avoid any dangerous gap in U.S. deterrence.

Sufficiently Fund Ballistic Missile Defense Programs to Address the Growing Missile Threat. The House bill includes a number of cuts to Terminal High Altitude Area Defense (THAAD), Aegis, and homeland ballistic missile defense (BMD) programs that do not reflect the gravity of increasing U.S. vulnerability to adversary missile systems.²⁴ Investment in improving and procuring missile defense systems should increase, not decrease, as U.S. adversaries continue to advance and proliferate missile technology. The House cuts to THAAD and Aegis BMD, in particular, would impact the development of a homeland defense “underlay,” which the DOD has proposed could provide a second or third opportunity to shoot down incoming missiles. The bill would also cut \$159 million and rescind \$302 million of previously appropriated funds from the Next Generation Interceptor (NGI) in recognition that a contract has not yet been awarded. However, Congress must be prepared to provide the funding the Missile Defense Agency needs to move forward with the NGI as quickly as possible as soon as the Missile Defense Agency issues a contract award. As existing ground-based interceptors continue to age, and the North Korean missile threat to the homeland advances in both quantity and sophistication, Congress must enable this program to move forward with the utmost urgency.²⁵

Restore Full Funding for the Next Generation Air Dominance (NGAD) Program. The current appropriations bill would reduce the funding for the NGAD program by \$506.5 million.²⁶ This 50 percent cut, which lacks any justification in either the bill or report language, is to a program set to provide the evolution of fighter jets for the country. Further, it is a program that is starting to show results and promises to test new ideas about how to perform acquisition of high-end technology.²⁷ Congress should fully fund the NGAD program so that the Air Force can be in a better position to generate air dominance in the future.

Properly Prioritize the Fighter Jet Inventory of the Future. The appropriations bill increases the resources and the numbers of F-35As

being purchased in the coming fiscal year, adding 12 more stealth fighters for a total of 60 new jets. While a positive addition, there is still productive capacity to further accelerate the procurement.²⁸ The bill also appropriates funding to purchase 12 F-15EX fighters,²⁹ aircraft that will not be survivable in the high threat environment associated with great-power competition, and an overly costly solution for homeland defense.³⁰ Congress should cancel the acquisition of the F-15EX and use those resources to accelerate the acquisition of F-35A, a jet that will be 30 percent less expensive to acquire, cheaper to fly, and provide viable, leading-edge combat power for the joint force for decades to come.³¹

Explore Alternative Uses for the First Four Littoral Combat Ships.

Section 8130 prohibits the decommissioning of any of the Littoral Combat Ships.³² The bill also requires a report on possible uses of the ships in the U.S. Southern Command area of responsibility. Congress needs to go beyond that option. Simply decommissioning these ships lacks imagination and is wasteful of the investment in these ships and the sailors who have been trained to operate them. The Navy and Congress should explore additional resources necessary to repurpose those ships, be it transferring them to the Coast Guard, creating a state maritime militia, or exploring sales options.

Fine-Tune Domestic Manufacturing Provision for Naval Shipbuilding. While there is a need to assure that the United States maintains a robust Naval shipbuilding capacity, requiring that all hull, mechanical, and electrical components be manufactured in the United States as required by Section 8129, has the potential of alienating U.S. allies and partners that compose the broader National Technology and Industrial Base.³³ As the provision is currently written, there are no implementation timelines, nor is there separation between U.S. allies and partners and U.S. competitors. This could lead to an abrupt break of supply chains that, instead of strengthening the U.S. shipbuilding industry, will make it weaker and less efficient. Moreover, such requirements should be informed by a National Maritime Strategy that Congress requested in 2014 but has yet to receive.

Split the Repeals on the Authorizations for the Use of Military Force (AUMF). Currently, the appropriations bill repeals both the 2001 AUMF and the 2002 AUMF.³⁴ Ongoing military operations against al-Qaeda, ISIS, and associated forces rely on the 2001 AUMF as domestic statutory authority. As such, repealing the 2001 AUMF is not prudent at this time. On the other hand, the 2002 AUMF has run its course, as has the 1991 Iraq AUMF. Both should be repealed. As stated by Heritage Foundation Senior Legal Fellow Charles Stimson, the “2002 Iraq AUMF is no longer necessary and merely acts as a belt-and-suspenders approach to war authorizations.”³⁵

Congress should re-engage by holding appropriate hearings with top national security, intelligence, and other relevant witnesses to assess the prudence of repealing or replacing the 2001 AUMF. Section 9027 on the 2001 AUMF should be removed while keeping the repeal of the 2002 AUMF in Section 9028. Additionally, Congress should repeal the 1991 Iraq AUMF.

Remove the Amendment that Prohibits the Implementation of the Current Policy on Conditions of Military Service for Transgender Individuals Suffering from Gender Dysphoria. The amendment would prohibit the expenditures of funds in implementing the DOD's policy.³⁶ The current policy balances the requirements of military readiness with suitability for service.³⁷ The policy distinguishes between transgender individuals without, and transgender individuals suffering from, gender dysphoria. Gender dysphoria is a recognized mental condition that is characterized by increased anxiety and distress, which would likely be worsened by the pressures that come with military service. As stated by the Director of Heritage's Center for National Defense, retired Army Lieutenant General Thomas Spoehr, "[t]he evidence overwhelmingly suggests that individuals experiencing gender dysphoria, if allowed to enlist, would present unacceptable risks to both a prospective military unit and to themselves."³⁸ Congress should remove that amendment from future versions of the Defense Appropriations bill.

Remove Congressionally Directed Medical Research Resources. Congress has consistently directed defense resources for research on how to tackle different types of cancer. While military members could develop cancer at some point during their lives, cancer research is not related to the core competencies of the Department of Defense, nor to its mission. The appropriations bill sets over \$1 billion aside for congressional directed medical research.³⁹ These are resources that should either be better executed by a different part of the federal government, the private sector, or be dedicated to actual military priorities.

Conclusion

Before the inevitable continuing resolution expires, Congress will have to come together and appropriate resources for defense and the rest of the federal government for FY 2021. The Defense appropriations bill passed by the House of Representatives has substantive shortcomings that need to be tackled by the Senate and by the future conference committee harmonizing the two versions of the bill. As the Department wrestles with the implementation of the National Defense Strategy and shaping the force for

the reality of great-power competition, it is imperative that Congress act with the proper urgency in crafting its Defense appropriations bill to fulfill its role in the endeavor.

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