



EXPLAINER

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FY21 National Defense Authorization Act

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For sixty years, the Congress has passed an annual National Defense Authorization Act (NDAA), which authorizes funding and sets policy for the U.S. military and defense programs. Since 2000, the overall NDAA authorization has more than doubled. It has grown during peacetime and conflict, during boom times and recessions.

The FY21 NDAA is being considered as the United States faces staggering public health and economic impacts from the global COVID-19 pandemic and as Americans witness military-grade weapons used against peaceful protestors. Congress faces growing pressure to direct more resources toward urgent domestic and global crises, rather than buying weapons and continuing endless wars. This document provides an overview of progressive priorities and issues that were brought up during House and Senate consideration of this year's NDAA.

The House passed its version of the FY21 NDAA with a 295–125 majority on July 21, 2020. The Senate passed its version by a 86-14 vote on July 23, 2020. President Trump threatened to veto the NDAA over a provision renaming facilities named after Confederate military officers, but both the House and Senate passed bills including this provision with veto-proof margins. The House and Senate must now resolve differences between their bills. The final FY21 NDAA still seems likely to pass Congress by the end of 2021.

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Topline authorization level and proposals for this year's NDAA

Both the House and Senate provided \$740.5 billion in the FY 2021 NDAA, consisting of \$672 billion in base funding plus \$69 billion in Overseas Contingency Operations (OCO) funding. This matches the defense spending levels that Congress approved in the [Bipartisan Budget Act of 2019](#). Since the Budget Control Act of 2011, Congressional Democrats have regularly agreed to increases in defense spending in exchange for increases in nondefense spending. This has meant that as funding for various domestic priorities increased, funding for the military budget increased right alongside them. One consequence of this legislation has been a bipartisan willingness to concede continued increases in defense spending alongside social welfare and other non-defense discretionary (NDD) programs. FY21 is the last year under the Budget Control Act caps, [which analysts have blamed](#) for continued, unjustifiable, increases in military spending.

In terms of scale, \$740.5 billion is more defense spending than that of the next ten countries combined and [more than 100 times the FY21 budget request of the Centers for Disease Control and Prevention](#). To meet this high topline level, spending on individual line items have, at times, had to exceed the Pentagon's own request. For example, the Senate approved a bill with 95 stealth fighter jets for \$9.1 billion (14 more jets than the Air Force request) and \$21.3 billion toward shipbuilding (\$1.5 billion more than the Navy request).

The Overseas Contingency Operations (OCO) allowance has ballooned, but the Pentagon's accounting systems don't currently require it to differentiate between wartime accounts and routine operations, allowing it to serve as an unaudited slush fund for routine [expenditures like military construction](#) of barracks and runways, which are not counted against the routine operational budget. Both the House and Senate versions of the NDAA set OCO funding at [\\$69 billion](#).

The Department of Defense failed its first ever agency-wide audit in November 2018, despite spending nearly \$1 billion in audit-related activities. [Rep. Barbara Lee](#) has specifically raised concerns about the Pentagon's budgetary secrecy and lack of transparency, as well as the cozy relationships between for-profit contractors and the Pentagon leadership.

Progressives tried to but were unsuccessful in broad attempts to reevaluate the balance between defense and nondefense spending in the midst of a pandemic and concerns about excessive militarization:

- Sen. Bernie Sanders (D-VT) and Reps. Barbara Lee (D-CA) and Mark Pocan (D-WI) proposed an amendment to NDAA to [reduce the topline authorization level by 10 percent](#). The cuts would have excluded payroll and health costs, cutting the remaining defense programs by about 14 percent. This measure failed on a 93-324 floor vote, with 92 Democrats and Rep. Justin Amash (I-MI) voting in favor. The [Senate voted 23-77](#) against the Sanders proposal.
- On June 15, Rep. Lee introduced a resolution ([H.Res. 1003](#)) calling for \$350 billion in defense spending cuts “by cutting defense spending on our endless wars and by cutting unnecessary and wasteful defense spending.”
- Reps. Pocan and Lee, joined by 27 other Members, [demanded a cut to the NDAA authorization level](#), with funds redirected to the COVID-19 response: “We need more testing, not more bombs.” Their demand was endorsed by a wide array of progressive and anti-war organizations.

Last year’s NDAA

With a new Democratic majority in the House of Representatives and a record number of progressive Members, the FY20 House-passed NDAA included key progressive priorities (see Key Issues below).

With these priorities included, 220 Democrats, including most members of the Congressional Progressive Caucus, voted for the House version of the [FY20 NDAA](#). However, the provisions above were stripped out in negotiations with the Senate, and 41 House Democrats voted against the final bill. However, it still passed due to strong Republican support.

The final FY20 NDAA conference summary bill totaled \$735.2 billion (\$658.4 billion in base spending plus an additional \$71.5 billion for OCO, and \$5.3 billion for emergency disaster recovery). [Rep. Pocan](#) specifically criticized provisions “to add more than a more than a hundred billion dollars to continue endless and unauthorized wars, ban transgender troops, keep Guantanamo Bay open, allow the unchecked contamination of water supplies with polyfluoroalkyl substances (PFAS), and establish a Space Force.”

Returning issues

Several key issues from the FY20 House NDAA remain relevant this year.

Repealing the 2001 and 2002 Authorizations of Use of Military Force (AUMFs)

The 2001 AUMF passed after the September 11 attacks and the 2002 AUMF for the Iraq War are still in effect, allowing the Executive Branch to carry out warfare without

congressional approval. The House voted to repeal both in the FY 2020 NDAA, but those provisions were removed from the final bill. The House voted again to repeal the 2002 AUMF on January 30, 2020.

During consideration of the FY21 NDAA, the Senate tabled an amendment that would have repealed the 2001 AUMF and removed all troops from Afghanistan by a 60-33 vote. Additionally, in a 45-11 vote, the House Armed Services Committee passed an amendment prohibiting the reduction of troops in Afghanistan under 8,000 until a specific set of conditions are met. On the House floor, an amendment introduced by Rep. Omar that would have required the withdrawal of all remaining troops from Afghanistan by April 29, 2021 failed in a 284-129 vote.

Iran

The U.S. entered 2020 at the brink of war with Iran. [Amendments to the FY20 NDAA](#) by Rep. Ro Khanna, passed by the House but stripped from the final bill, would have prevented funds from being used for war with Iran. A similar provision in the [No War Against Iran Act](#) passed the House on January 30, 2020. In addition, both the House and Senate passed a bipartisan [War Powers Resolution](#) (S.J.Res. 68) to limit the President's ability to use military force in Iran without congressional authorization, but President Trump vetoed it on May 6, 2020.

For the FY21 NDAA, Rep. Jan Schakowsky (D-IL) introduced an amendment to the NDAA to block war with Iran absent Congress' approval, but it was not made in order by the House Rules Committee. The Defense Appropriations bill, however, did include Rep. Barbara Lee's amendment which would require Congressional authorization for war with Iran.

Yemen

Military actions by Saudi Arabia and the United Arab Emirates targeting the Iranian-backed Houthis in Yemen, using American-made military hardware, have caused terrible suffering among civilian populations. Sen. Sanders's Yemen War Powers Resolution (S.J.Res. 7) directed the removal of U.S. forces from Yemen. This passed the House and Senate, and was vetoed by President Trump. An FY20 amendment to end U.S. involvement in Yemen led by Rep. Ro Khanna received 240 votes and the support of [more than 40 groups](#) but was stripped from the final bill.

For FY21, the House Armed Services Committee approved an [amendment from Rep. Khanna](#) that would ban the Trump Administration from use to provide logistical support for the war against the Houthis. This amendment was included in the FY21 NDAA passed by the full House. A further Khanna amendment passed that required an annual report to describe the logistical support, military equipment, military training, and services the US has provided to the Saudi-led coalition.

Nuclear weapons

The FY20 House NDAA would have barred development of the [W76-2 low-yield nuclear warhead](#) for Trident submarines, but this provision was removed in negotiations with the Senate.

In FY21, along with the submarine-based weapons, the Trump Administration proposed the Ground-Based Strategic Deterrent, a land-based intercontinental ballistic missile (ICBMs), which could cost in excess of \$150 billion. Rep. Khanna called [to freeze the new ICBM program](#), and redirect funding to public health and disease prevention. Rep. Khanna's [attempt to cut the Ground-Based Strategic Deterrent](#) by \$1 billion was rejected in the House Armed Services Committee by a vote of 12-44. In a 227-179 vote the House did however pass an amendment that banned any funding for new nuclear testing for FY21.

Border wall

The Trump Administration has proposed allocating billions of dollars in Pentagon spending to build a border wall. The FY20 House NDAA restricted use of Pentagon funds for wall construction, but the final bill punted this decision to appropriators.

The FY21 NDAA passed in the House would create caps on emergency use of military construction funding, of \$100 million for domestic projects and \$500 million for overseas projects. (To date [Trump has taken \\$3.6 billion](#) from military construction funding for the wall, with approval from the 5th U.S. Circuit Court of Appeals.) The Defense Appropriations bill, which the House passed by a 217-197 vote, would bar the use of defense funding being used for border wall construction. By a vote of 5-4, the [Supreme Court ruled](#) on July 31, 2020 that border wall construction would be allowed to continue while the legal challenge remains pending.

Emerging issues

The Black Lives Matter protests have brought some additional elements of U.S. defense policy into the foreground.

Surplus military equipment to police (Section 1033 program)

Under the Section 1033 program, [surplus military equipment](#) can be repurposed by donation or sale to state, municipal, or tribal police forces. Given the surge of concern over anti-Black racism and police brutality, there is great momentum to reverse the militarization of domestic policing and end Section 1033 altogether.

The House-passed [George Floyd Justice in Policing Act](#) includes Rep. Hank Johnson's bill to limit the transfer of military-grade equipment to state and local law enforcement. Rep. Nydia Velázquez introduced a bill to [repeal the program entirely](#). Both Rep. Johnson's bill and Rep. Velázquez's bills were offered as amendments to the House NDAA, but neither was made in order by the House Rules Committee. In

the Senate a vote to end the Section 1033 program failed 51-49 as it did not reach the required 60-vote threshold.

Insurrection Act

President Trump has repeatedly threatened to invoke the Insurrection Act of 1807 in demonstrations over police brutality and the killings of Black Americans. Under the Insurrection Act, the President can call on the military to quell unrest, typically on the invitation of a state governor. The Insurrection Act has been invoked only rarely since its creation, most recently in 1992 following the acquittal of four Los Angeles police officers in the beating of Rodney King.

In June 2020, when National Guard troops were called to the streets of Washington over the objection of elected officials, [House and Senate Democrats introduced legislation](#) to reform the Insurrection Act. In a 215-190 vote, the House approved an amendment which would require the president to consult with Congress before it can be invoked and to certify that states are “unable or unwilling” to act. A similar effort in the Senate was introduced by Sen. Blumenthal (D-CT) and failed in committee, but a separate amendment the use of military force against peaceful protestors from Sen. Kaine (D-VA) [passed in a voice vote](#). President Trump continues to threaten imposing the Insurrection Act in opposition to civil unrest and peaceful protest in cities governed by Democrats, most recently in an [August 28, 2020 campaign speech](#).

Confederate names for military facilities

In the House and Senate, there was bipartisan momentum to rename military facilities named for Confederate leaders. Both the [Senate Armed Services Committee](#) and the [House Armed Services Committee](#) approved amendments requiring renaming of military bases named for Confederate leaders. Despite the bipartisan consensus, [President Trump](#) rejected the removal of the Confederate names on military bases, promising a veto, despite veto-proof House and Senate majorities. Key Republican Senators, including Majority Leader McConnell (R-KY) and Sen. Josh Hawley (R-MO), have urged the President not to veto the bill on these grounds.

Conclusion

The FY21 NDAA is on course to continue high levels of military spending. Progressives also have few other policy priorities in play as the House and Senate prepare to negotiate a final bill. The FY21 House bill did not adequately address issues like the U.S. troop presence in Afghanistan, the status of Guantanamo Bay, funding for the border wall, the transfer of military-grade equipment under Section 1033, the transgender military ban, and potential military conflict with Iran. The House FY21 NDAA does include some progressive priorities, including an amendment that would prevent any funds from being used to provide logistical support for the Saudi-led war in Yemen. Additionally, some of these priorities were addressed in the Defense Appropriations bill instead.

This reflects a change in strategy between FY20 and FY21. In FY20, the House included many progressive priorities and relied on Democratic votes to pass its NDAA. Those priorities were negotiated away in conference, and the final bill needed both Democratic and Republican votes to pass. In FY21, the House NDAA passed with a mix of Republican and Democratic votes before negotiations with the Senate even began. Despite the bipartisan votes in both the House and Senate, there could still be a showdown with the White House over the inclusion of language that would require the renaming of military facilities named for Confederate figures. The fate of that and other provisions depends on the upcoming negotiations over a final bill.