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## FY2022: The National Defense Authorization Act

*Last updated September 15, 2021*

The National Defense Authorization Act (NDAA) is legislation that Congress has enacted every year since 1961. The NDAA authorizes funding and sets policy for U.S. military and defense programs. [Since 2000](#), funds authorized under NDAA have more than doubled. The FY2022 NDAA comes at a time when the U.S. is withdrawing from foreign military operations, making it an opportune moment to redirect money and resources towards pressing global problems, such as the COVID-19 pandemic and climate change, as well as domestic needs, such as access to healthcare, education, child care, and housing.

### Scope of The National Defense Authorization Act

The NDAA [authorizes funding](#) and sets policies for the Department of Defense, nuclear weapons programs at the Department of Energy, parts of the intelligence community, and other defense related activities at various other federal agencies. It is considered a reliable indicator of congressional support for various programs under the defense function.

Unlike an appropriations bill, the NDAA does not provide budget authority for the DOD. Instead it outlines programs, policies, projects, or activities at the DOD and other federal agencies, and [provides guidance](#) on how the appropriated funds are to be spent in carrying out those authorized activities. Given that the NDAA is considered annual “must-pass” legislation, many policymakers and organizers view the legislation as a vehicle for a wide range of policy issues, including domestic policy, as well as foreign policy and national security.

### Previous National Defense Authorization Acts

In FY2021, the House and Senate agreed to a [\\$740.5 billion NDAA](#). This consisted of \$672 billion in base funding plus \$69 billion for the Overseas Contingency Operations (OCO) account, which effectively operates as a [slush fund](#) on top of the Pentagon’s base budget. The FY2021 NDAA authorization topline matches the defense spending levels that Congress approved in the [Bipartisan Budget Act of 2019](#). Due to the [Budget Control Act of 2011](#) (BCA), spending caps on the discretionary budget have been set from FY2012-FY2021. These caps were divided into two categories: defense discretionary spending and non-defense discretionary (NDD) spending. Increases to

one side of the discretionary budget, meant the other had to be increased as well. 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 spending for social needs. FY2021 is the last year under the BCA caps, which [analysts](#) have cited as a key factor for continued increases in military spending.

The FY2021 NDAA passed the House on December 8, 2020 by a vote of 335-78 and passed the Senate on December 11, 2020 by a vote of 84-13. On December 23, 2020, President Donald Trump [vetoed](#) the legislation. President Trump cited [three reasons](#) for his veto: A provision that called for re-naming military bases that were named after confederate generals; [Section 230 of the Communications Decency Act](#), which said that technology companies are exempt from liability for content posted on their platforms by third parties; and his view that it would benefit China.

The House met on December 28, 2020 and voted to override Trump's veto by 322-87 and the Senate overrode the veto on January 1, 2021, by a vote of 81-13. This vote marked the first time Congress overrode a veto by President Trump.

Progressive efforts to rein in excessive Pentagon spending in the FY2021 NDAA included:

- Sen. Bernie Sanders, Rep. Barbara Lee, and Rep. Mark Pocan proposed an amendment to cut the NDAA topline authorization level by [10 percent](#). This measure failed on a 93-324 floor vote, with 92 Democrats and Rep. Justin Amash (Libertarian) voting in favor. The Senate voted [23-77](#) against Sen. Sanders' proposal.
- Rep. Barbara Lee introduced [H.Res. 1003](#), which would express a sense of the House of Representatives in favor of cutting defense spending by \$350 billion and reducing waste at the Pentagon. The legislation called for expanding oversight of the Pentagon and its spending, eliminating OCO, and directing funds towards diplomacy and domestic needs. The measure would continue to address the needs of service men and women and their families.

Key issues in the FY2021 NDAA included:

**The 2001 Authorization for Use of Military Force (AUMF):** Congress passed the 2001 AUMF three days after the September 11 attacks, which gave President George W. Bush the authority to invade Afghanistan as well as target groups that were responsible for the attacks. Almost 20 years later and as the last U.S. troops officially have left Afghanistan, this AUMF is still on the books. During consideration of the

FY2021 NDAA, the Senate tabled an amendment that would have repealed the 2001 AUMF and removed all troops from Afghanistan by a 60-33 vote.

**The 2002 Authorization for Use of Military Force:** Congress passed the [2002 AUMF](#) in October 2002, which gave President Bush the authority to invade Iraq on false claims that Saddam Hussein's regime had "weapons of mass destruction." President Barack Obama ended the Iraq war in December 2011. Despite the war ending more than a decade ago, the 2002 AUMF is still in effect. In the FY2020 NDAA, the House adopted Rep. Barbara Lee's [amendment](#) to repeal the 2002 AUMF. It was stripped out during conference negotiations with the Senate. Rep. Barbara Lee also introduced an amendment to repeal the 2002 AUMF in the [FY2021 DOD Appropriations Bill](#). The bill passed the House by a vote of 217-197, but the 2002 AUMF repeal was stripped out of the bill during negotiations with the Senate.

**Iran:** The U.S. entered 2020 on the brink of war with Iran, following a drone strike ordered by President Trump which killed one of Iran's top commanders, Qasem Soleimani. Amendments to the FY2020 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. Additionally, both the House and Senate passed a bipartisan [War Powers Resolution](#) to limit the President's ability to use military force against Iran without congressional authorization. President Trump vetoed this on May 6, 2020. For the FY2021 NDAA, Rep. Jan Schakowsky introduced an [amendment](#) that would 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 a war with Iran.

**Yemen:** In 2019, Sen. Sanders introduced a [Yemen War Powers Resolution](#) which would remove U.S. forces from Yemen. It passed the House and Senate, and was vetoed by President Trump. An [FY2020 amendment](#) to end U.S. involvement in Yemen led by Rep. Ro Khanna received 240 votes, but was stripped from the final bill. For FY2021, the House Armed Services Committee approved an [amendment by Rep. Khanna](#) that would prevent the Trump Administration from providing logistical support for the war in Yemen. This amendment was included in the FY2021 NDAA passed by the full House but not in the final FY2021 NDAA.

**Nuclear Weapons:** The FY2020 House NDAA would have barred development of the [W76-2 low-yield nuclear warhead](#) for Trident submarines, but this provision was removed during negotiations with the Senate. In FY2021, along with the submarine-based weapons, the Trump Administration proposed the Ground-Based Strategic Deterrent (GBSD), a land-based intercontinental ballistic missile (ICBM),

which could cost in excess of [\\$264 billion](#). Rep. Khanna called to [freeze the new ICBM program](#), and redirect funds towards public health and disease prevention. Rep. Khanna's attempt to [cut the GBSB 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 FY2021.

## **The FY2022 National Defense Authorization Act**

For FY2022, the Senate Armed Services Committee (SASC) proposed a topline of [\\$777.9 billion](#) in their closed-door markup. That includes \$740.3 billion for the Department of Defense and \$27.7 billion for the Department of Energy. The Senate's topline number is \$25 billion more than President Biden's 1.7% increase to an already bloated defense budget and a [\\$37 billion](#) boost from FY2021. The House Armed Services Committee (HASC) held its full committee markup on September 1, 2021 and almost similarly voted to increase the NDAA topline by [\\$23.9 billion](#) for a total of \$776.8 billion. Both the House and Senate proposals are significantly greater than President Biden's proposal and more money than the Pentagon itself said it needed.

Given that Democrats control the House, Senate, and White House and that spending caps are no longer enforced under the BCA, FY2022 creates an opportunity to lower the defense topline and increase spending for domestic social needs. President Biden's [Discretionary Funding Request](#) proposed a \$12.3 billion (1.7 percent) increase for defense spending, for a total defense discretionary budget of \$753 billion, and \$105.7 billion (16 percent) increase for nondefense spending, for a total NDD budget of \$769 billion. President Biden's budget reflects the new reality that funding for NDD programs can be increased, without increasing defense spending by the same amount.

FY2022 will also be an opportunity to abolish OCO, funding for which fell outside the discretionary caps set under the BCA, meaning these funds were afforded less transparency and oversight compared to other components of the budget. Congress initially used the OCO account in the early 2000s to assist with the wars in Afghanistan and Iraq. However, Congress continued to pour [tens of billions](#) of dollars into OCO more than a decade later, most of which was spent on military operations that had nothing to do with these wars. In FY2020, [only 15 percent](#) of the Trump Administration's \$165 billion budget request for OCO was for operations in Afghanistan, Iraq, and Syria. Additionally, President Trump directed \$9.2 billion of OCO funds to a [border wall](#) with Mexico.

A small portion of OCO goes to other agencies, but the Pentagon is overwhelmingly the biggest recipient. From [FY2001 to FY2019](#), Congress appropriated 92 percent of \$2 trillion in OCO funding to the Pentagon, 8 percent to the Department of State and

USAID, and less than 1 percent to the Department of Homeland Security. Because OCO was a way to boost funding for the Pentagon by side-stepping the BCA caps, FY2022 will be an opportunity to eliminate OCO. President Biden has called for the [elimination of OCO](#) in his budget proposal.

## Key Considerations for the FY2022 National Defense Authorization Act

Congress has the opportunity to advance meaningful change in the following areas for the FY2022 NDAA:

### Existing Legislation

**Authorization for the Use of Military Force:** The scope of the 2001 and 2002 AUMFs are noted above. In addition to these, there are two other outdated AUMFs still on the books. The 1957 AUMF gave President Ronald Reagan the authority to fight communist threats in the Middle East and the 1991 AUMF began the Gulf War. Both of these military operations have been over for decades.

Recent efforts to repeal the 2002 AUMF include the [No War Against Iran Act](#), which included a repeal of the 2002 AUMF. The bill passed the House on January 30, 2020, but was not considered in the Senate. In the 117th Congress, the House passed [H.R. 256](#), which would repeal the 2002 AUMF. It received bipartisan support with a vote of [268-161](#). On August 4, 2021, the Senate Foreign Relations Committee voted to repeal the 1991 and 2002 AUMFs. The measure received bipartisan support with a [14-8](#) vote and Senate Majority Leader [Chuck Schumer](#) stated the full Senate will vote on it by the end of the year. On January 11, 2021, Rep. Lee also introduced [H.R. 255](#), which would repeal the broader 2001 AUMF and on June 29, 2021, the House voted to repeal both the [1957](#) and [1991](#) AUMFs.

In the HASC markup for the FY2022 NDAA, an [amendment](#) by Rep. Ruben Gallego was adopted that would “require the President to submit a report on hostilities involving US forces no later than 48 hours after any incident where they are involved.” This comes as President Biden has conducted [four airstrikes](#) in countries Congress did not authorize U.S. military operations and without consultation with Congress. President Biden has expressed his support for repealing the [2002 AUMF](#) and also said he would like to work with Congress to pursue a “[narrow and specific framework](#)” on congressional war authorizations.

**H.Res. 476:** [H.Res.476](#) is Rep. Barbara Lee’s bill to cut the Pentagon budget by \$350 billion by eliminating waste at the agency. The legislation calls for re-investing those funds in domestic programs to address the needs of the people as well as in

diplomacy to support communities abroad with basic needs. Rep. Lee introduced this legislation last year in [H.Res. 1003](#) as noted above.

**Militarization of Local Police Units:** The bloated Pentagon budget has not only divested funds from important human needs, but it has also led to the [over-militarization of police units](#) and turned neighborhoods into war zones. A measure in the NDAA, called the section 1033 program, has allowed the Pentagon to transfer weapons of war to state and local police units. These weapons include grenade launchers, drones, armored military vehicles, even explosives. Since 1997, the section 1033 program has [transferred \\$7.4 billion](#) worth of military grade equipment to state and local law enforcement. Representative Hank Johnson recently introduced [The Stop Militarizing Law Enforcement Act](#), which would end these weapons transfers. In the HASC markup for the FY2022 NDAA, Rep. Veronica Escobar introduced, but then withdrew, an [amendment](#), that would limit the types of military equipment that can be transferred to local enforcement under the 1033 program. In 2017, the Government Accountability Office undertook a [sting operation](#) and created a fake law enforcement agency. This fake agency was able to acquire \$1.2 million worth of military equipment through the section 1033 program. The over-militarization of state and local law enforcement, supported by weapons of war, have disproportionately affected communities of color and increased police brutality and violence against black and brown people.

**Sexual Assault and Sexual Harrasment in the Military:** Congress could use the NDAA as a vehicle to pass Sen. Kirsten Gillibrand's [Military Justice Improvement and Increasing Prevention Act](#), which would remove the decision to prosecute sexual assault and other serious crimes away from military commadors in the chain of command and give this power to independent military prosecutors. This measure has already been included in the [Senate NDAA](#) for FY2022 and, independently, the legislation has [65 cosponsors](#), meaning it has enough votes to pass the 60-vote threshold. [Secretary of Defense, Lloyd Austin](#) has expressed his support for this legislation. Rep. Jackie Speier has introduced [similar legislation](#) in the House and had over [40 amendments](#) adopted in the HASC markup for FY2022 NDAA that advanced military justice and expanded rights to victims of sexual assault and sexual harrasment, including [one amendment](#) that would remove cases of sexual assault and sexual harrasment from the military chain of command.

## Country-Specific Challenges

**Afghanistan:** In February 2020, President Trump negotiated a deal with the Taliban, which would withdraw all U.S. military forces from Afghanistan by May 1, 2021. In exchange, the Taliban guaranteed no violence against U.S. officials and NATO allies until May 1 and agreed to prevent any attacks on the West from its territory. In April



2021, President Biden announced that his administration would end the war in Afghanistan by September 11, 2021 (the 20 year anniversary of the attacks that drew the U.S. into the war) and remove all military personnel from the country by August 31, 2021, a deadline which the administration [met](#). As U.S. forces began to withdraw in spring and summer of 2021, the Taliban began to take over cities and towns that the U.S. left. In just 11 days, the U.S.-backed government in Afghanistan fell and the Taliban took control of Kabul on August 15, 2021. Afghanistan president, Ashraf Ghani, fled the country the day before the Taliban took over.

The speed at which the Taliban were able to take over led to many Afghans urgently fleeing the country. Some were interpreters who assisted U.S. military personnel and fear retribution, some were ethnic minorities who the Taliban heavily discriminates against, others were journalists, aid workers, women's rights and other activists, and individuals who fear the oppression to follow. To assist those trying to escape, the Biden Administration secured the Kabul airport, conducted evacuation flights and evacuated [120,000](#) individuals since the Taliban took over. With tens of thousands trying to leave, the world watched in horror as desperate Afghans held onto a moving U.S. Air Force plane as it took off and mothers threw their babies over razor-wire fence to U.S. military.

While President Biden made an important decision to end America's longest war, which has seen the loss of over 170,000 lives and cost [\\$2.26 trillion](#), after 20 years of U.S. military occupation, there is much the U.S. owes the people of Afghanistan. Most urgently this means helping those trying escape to safety. Currently, there are [18,000 Afghans](#) who applied for Special Immigrant Visas (SIVs) who are still waiting for their application to be processed. Congress can legislate to streamline this process in the NDAA and help the administration focus on getting as many people out and dealing with bureaucratic red tape later.

There are also thousands of Afghans who face severe risks, including death, for their role in civil society, the former government, or for their ethnic identity, for whom the U.S. and its NATO allies must provide safe harbor and refuge. To increase the United States ability to provide safe refuge, the president should increase the FY2022 refugee cap to no less than 200,000 refugees, create humanitarian parole for Afghans fleeing the Taliban, and seek supplemental humanitarian assistance for internally or externally displaced Afghans.

Congress can support the president's evacuation, resettlement, and humanitarian efforts in the NDAA by redirecting the unspent FY2020 and FY2021 funds and the earmarked FY2022 funds for the now-defunct Afghan Security Forces – amounting to approximately [\\$6 billion](#) – to help refugees resettle and assist Afghans. The fact that

the Afghan security forces no longer exist also means that SASC will have to amend authorization to reprogram these funds.

Rep. Jason Crow introduced the [HOPE for Afghan SIVs Act of 2021](#), which would postpone the medical exam requirement for SIVs applicants to when the applicant arrives in the U.S., clearing the way for many to leave Afghanistan sooner. This legislation passed the House on June 29, 2021. [Sen. John Cornyn](#) introduced a companion bill in the Senate, exemplifying the bipartisan support for assisting SIVs applicants. Additionally, Rep. Adam Kinzinger introduced the [Afghan Allies Protection Act of 2021](#), which will provide 4,000 additional SIVs to qualified Afghan nationals, and [Rep. Jackie Speier](#) introduced a bill to expand refugee access for Afghans at risk, such as women, minorities, journalists, humanitarian workers, and children. Congress has the opportunity to assist Afghans by passing these measures in the upcoming NDAA. In the HASC markup for FY2022 NDAA, the committee adopted an [amendment](#) that would require the Secretary of Defense to report to Congress on the feasibility of maintaining a database of local nationals that assist the U.S. military and it also adopted Rep. Liz Cheney's [amendment](#) to establish a commission on Afghanistan, that would examine the two decades of war.

In addition to the immediate crisis of getting people to safety, the U.S. also has a longer term commitment to the needs of the people in Afghanistan. The chaotic withdrawal and the recent terror attack at the Kabul airport, demonstrate that violence and militarism are not a path towards peace and stability. The issues the people of Afghanistan face, such as lack of healthcare, education, opportunities for women and girls, were never going to be solved by starting a war. To properly assist the Afghan people, the U.S. should invest in diplomacy and development, not defense.

During the two decades of war, U.S. lawmakers, presidents, and cabinet officials used the rights of women and girls to justify constant militarism and the ongoing war. As the government in Afghanistan fell and the Taliban took over, the media continues to ask questions about what this means for women and girls. The reality is that after 20 years of fighting, women only made modest advancements in Afghanistan's two largest cities, [Kabul and Kandahar](#), and virtually none in the rural towns and villages. Women and girls who were able to go to school, work, and participate in public life are at risk of losing these advancements and have held protests since the Taliban takeover, which have been met with [violence](#). The fears about the treatment of women under the Taliban are genuine and could amount to serious human rights violations, but militarism is not the answer. Just as it did during the 1980s when the U.S. was fighting the Soviet Union in Afghanistan, during the past two decades, U.S. funding and training was primarily directed towards [warlords](#) in efforts to defeat the Taliban. These warlords committed violent attacks and extreme human rights



violations against women, and some came to hold prominent positions in the U.S.-backed government. Overall the U.S. spent almost [1,000](#) times more money on military operations as it did on assisting women and girls demonstrating that war and militarism were never the solution to advance the rights of women and girls, nor the primary goal of the two decade military occupation.

**China:** On July 15, 2021, the House Foreign Affairs Committee reported the EAGLE Act ([H.R. 3524](#)) to the House floor. It creates conditions that would develop a diplomacy-first relationship with China to address some of the world's most pressing challenges, such as the COVID-19 pandemic and climate change. While there are some [problematic components](#) of the bill, it takes a more balanced approach than [other options](#) proposed in Congress that call for a great power competition with China and inflates the [military threat from China](#). Rhetoric and legislation that dramatically emphasizes the ambitions of the Chinese government could be used as an excuse to increase the military budget beyond genuine national security needs in the FY2022 NDAA. This can potentially risk a Cold War-style arms race with China. In the HASC markup for FY2022 NDAA, Rep. Elaine Luria spoke in support of an [amendment](#) that would increase the defense topline by \$23.9 billion and cited competition with China as the reason for her support. This inflammatory rhetoric and a zero-sum approach to the actions of China's government contributes to acts of [racism](#) against Asian-Americans. Congress and the White House can work together to develop a collaborative relationship with China to fight climate change and COVID-19, without inflammatory rhetoric that can encourage anti-Asian racism at home and unnecessarily escalate conflict abroad.

**Cuba:** In July 2021, Cubans protested in the largest demonstrations seen in decades on the island, which were in large part a response to economic deprivations and hardship caused by the COVID-19 pandemic. However, many of the economic problems Cuba is experiencing are caused by U.S. policy. For 60 years the U.S. has imposed an [embargo](#) on Cuba that has made it difficult for the country to boost its economy through trade. Cuba has also suffered under [U.S.-imposed sanctions](#), which were significantly expanded under President Trump. President Biden has not reversed these sanctions. In November 2020, President Trump also prohibited U.S. residents from sending [remittances](#) to their families in Cuba, leading to a shutdown of [Western Union](#) operations in Cuba. President Biden has not reversed this measure either. President Biden has stated that he supports the Cubans protesting and that the [U.S. stands with them](#). This support can be exemplified by lifting the embargo, removing sanctions, and reversing the prohibition on remittances - all actions Congress can take in the NDAA.

**Iran:** Congress has the opportunity to institute a just policy towards Iran and its people in the NDAA by calling on the Biden Administration to return to compliance

with the Iran Nuclear Deal, officially titled the [Joint Comprehensive Plan of Action](#) (JCPOA). When President Trump withdrew from the JCPOA, he also re-imposed and added additional sanctions, including non-nuclear related sanctions on Iran. These sanctions have led [Iran's oil imports](#) to drop drastically, [inflated Iran's currency](#), and made it hard for Iran to import [vital resources](#) to fight the COVID-19 pandemic, such as [PPE, medicine](#), and the [vaccine](#). Trump's violation of the deal and these ensuing "maximum pressure" sanctions, which President Biden has left in place so far, have led to a humanitarian crisis that continues to be exacerbated by ongoing waves of COVID-19 infections. In the NDAA, Congress must seek a full U.S. return to the deal and, upon return, ensure that the U.S. fulfills its obligations under the terms of the agreement, which include lifting sanctions on Iran, which have made it difficult for everyday Iranians to access basic needs, such as food, fuel, and medicine.

**Israel/Palestine:** Last year, both the House and Senate saw legislation that would prohibit U.S. funds from being used by the state of Israel to illegally annex all or parts of the Palestinian West Bank. Sen. Chris Van Hollen introduced an [amendment](#) to the FY2021 NDAA, which put these restrictions in place and in the House, Rep. Betty McCollum introduced a standalone [bill](#) that stipulated the same. Israeli occupation of the Palestinian West Bank and Gaza Strip are illegal under international law, and annexing any further territory of Palestine hinders prospects for a just political solution. To ensure that Palestinians have access to basic needs like food, water, and medicine, Congress should fully fund the United Nations Relief and Works Agency's (UNRWA) work in the West Bank and Gaza, and pass [H.R. 2590](#) which will prevent Israel from using U.S. military funding to detain Palestinian children in Israeli military prisons. Additionally, Congress should explicitly affirm U.S. citizens' first amendment right to engage in protest, which includes boycotts.

**Russia:** Shortly after President Biden took office, he agreed to extending [New START](#) with Russia, a nuclear arms control pact. On June 16, 2021, President Biden and Russian President Vladimir Putin, met for the first-time since President Biden took office. The leaders released a [Joint Statement on Strategic Stability](#) in which both countries agreed to hold talks to limit nuclear weapons and capabilities not addressed in New START. The first meeting of these talks were held on [July 28, 2021](#). Combined, the U.S. and Russia hold roughly [11,807 of the world's 13,082 nuclear weapons](#). Only seven countries combined hold the remaining 1,275. To reduce the risk of nuclear war and create a world without nuclear weapons, it won't be enough for the executive branch to negotiate agreements which can be changed or violated by a future president. Congress must ensure that the executive takes meaningful action to reduce the role of nuclear weapons, as noted below.

**Yemen:** The war in Yemen entered its sixth year in 2021. As of December 2020, [the UN](#) estimated that 233,000 innocent lives were lost during these six years, over 3,000

of which were children. The U.S. has been complicit in the death and destruction by supporting Saudi Arabia and the United Arab Emirates (UAE) with arms sales, intelligence sharing, and other logistical support. Between 2015 and 2020, the U.S. sold [\\$64.1 billion](#) worth of weapons to Saudi Arabia. The Biden Administration stated that it will sell [\\$23 billion](#) worth of weapons to the UAE in 2021, which include F-35 fighter jets and Reaper drones. These weapons have been used to wage war against the Houthis and have taken innocent lives.

In his first foreign policy speech as President, Joe Biden committed to the end of offensive weapons sales to countries involved in the Saudi-led war in Yemen. This is an important first step, but as [some experts have noted](#), the definition of what classifies as offensive and defensive weapons are left to the discretion of the administration and President Biden has not clarified to Congress or the American people, which weapons are considered offensive. After directly fueling the conflict for six years, and clear evidence of U.S. weapons and support being used in apparent war crimes and crimes against humanity, it is imperative that Congress take action by blocking weapons sales to these countries.

In addition to ending arms sales, Congress can utilize the FY2022 NDAA to urge President Biden to end intelligence sharing with the Saudis and Emiratis and lift the blockade around Yemen and open land and sea ports. The UN stated in February 2021 that over [400,000 children](#) in Yemen under the age of five could die by the end of this year if the blockade is not lifted. Overall, Congress should urge President Biden to put pressure on Saudi Arabia to end the war. The FY2022 NDAA could be a vehicle to pass Sen. Bernie Sanders and Rep. Ro Khanna's [Yemen War Powers Resolution](#) which passed the House and Senate in 2019 with overwhelming bipartisan support but was vetoed by President Trump.

## Other Topics

**Arms Sales:** As noted above, U.S. arms sales to Saudi Arabia and the UAE has created U.S. complicity in the war in Yemen which has resulted in the deaths of over 200,000 people. Currently, the president has the power to negotiate arms sales with foreign governments and is required to inform Congress at least [30-days](#) in advance from when the sale will be completed. During these 30-days, Congress can vote to reject the sale, but this must pass with a veto-proof majority in both chambers. Congress should be given the power to review and reject or accept arms sales the president has negotiated with other countries, which is one component of the bipartisan [National Security Powers Act](#). This act would also automatically repeal all existing AUMFs, and create expiration clauses for future AUMFs.

**Audit of the Pentagon:** According to the [Chief Financial Officers Act of 1990](#), federal agencies are required to conduct an annual audit in efforts to provide transparency and accountability over where taxpayers dollars are spent. The Department of Defense held its first ever department-wide audit in 2018. It [failed](#) this audit and failed the audits in 2019 and 2020 as well. The Pentagon remains the [only federal agency not to have passed](#) an audit. In its 2018 audit, the Pentagon's Defense Logistics Agency was unable to account for more than [\\$800 million](#) in construction projects and it still hasn't been able to confirm how many contractors and subcontractors it employs. In November 2020, the Pentagon's comptroller, Thomas Harker, now acting Secretary of the Navy, said the Pentagon likely won't be able to pass an audit until [2027](#).

On July 1, 2021, Reps. Barbara Lee and Michael Burgess introduced the [Audit the Pentagon Act of 2021](#). This bipartisan legislation would cut the budget of an office at the Pentagon by 0.5% if it doesn't pass an audit during the first year of the bill's enactment. This cut would be raised to 1% in subsequent years. A similar bipartisan bill was introduced in the [Senate](#), led by Sens. Bernie Sanders, Chuck Grassley, and Ron Wyden.

The Pentagon receives over half of the discretionary budget, yet is unable to account for every dollar. The fact that it receives the largest share of funds among all federal agencies, means that there is an even greater responsibility to provide oversight over its spending. Speaking on the 2018 audit, Patrick Shanahan, who was the Deputy Secretary of Defense at the time said that [“we failed the audit, but we never expected to pass it.”](#) This indifference to taxpayers dollars is exactly why Congress should utilize the NDAA to ensure that the Pentagon passes an audit, or be held accountable when it cannot.

**Freedom of Information Act:** For the seventh time, the Pentagon has submitted a [request](#) to Congress that it should alter the NDAA so that the Pentagon can be exempt from disclosures under the Freedom of Information Act (FOIA). The Pentagon did not clearly define what type of information it should be exempt from disclosing under FOIA. Congress must reject this request, as it has done previously. Granting this exemption, will hinder transparency, accountability, and oversight over actions at the Pentagon. Given that the Pentagon receives over half of the discretionary budget, it will be more important to ensure proper oversight over its actions and spending.

**Guantanamo Bay:** The prison has been open for almost two decades and has cost taxpayers [\\$13 million](#) per prisoner to operate. Currently, there are [39 detainees at Guantanamo Bay](#). Ten are eligible to be transferred, 17 are eligible for a review process for a potential transfer, ten are involved in a military commission process to

be prosecuted, and two have been convicted. Earlier this year, the Biden Administration [repatriated](#) its first prisoner, Abdul Latif Nasir, back to his home country of Morocco. Guantanamo Bay has been a costly and unjust prison, with reports of torture and keeping detainees imprisoned for decades without charging them with a specific offense. In the markup for FY2022 NDAA, HASC defeated [two](#) problematic [amendments](#) that would prohibit Guantanamo Bay from being closed. Congress can put an end to the infringement on civil liberties and legislate to close Guantanamo Bay in the FY2022 NDAA.

**Nuclear Weapons and Security:** The FY2021 NDAA authorized \$26.6 billion for nuclear programs at the Department of Energy and, as of right now, the House Armed Services Committee is proposing \$27.8 billion for these programs. The Department of Defense and Department of Energy is currently undertaking a nuclear modernization program, which is an effort to build more advanced nuclear weapons and delivery systems by replacing each leg of the nuclear triad. The Congressional Budget Office (CBO) estimated that the cost of funding, maintaining, and operating this program would be [\\$1.2 trillion](#) over the course of 30 years, the same amount of money President Biden is pushing to invest in five years in the bipartisan infrastructure package.

One of the most controversial upgrades is the new Ground-Based Strategic Deterrent (GBSD), intended to replace the entire fleet of the existing 400 Intercontinental Ballistic Missile (ICBM). The GBSD is designed to deliver nuclear weapons from land-based silos in the U.S. to targets across the world and is expected to cost [\\$264 billion](#) during the course of its life-cycle. Additionally, the W87-1, the warhead that is being designed for the GBSD, will cost at least \$12 billion to build. According to a [2017 CBO report](#), it would cost \$37 billion less to maintain the current ICBM, the Minuteman III, than developing and deploying the new GBSD through 2036.

President-elect Biden [stated](#) that he would explore making cuts to this program. In 2020, Rep. Ro Khanna introduced an amendment to cut the GBSD program by \$1 billion and make these funds available to fight the COVID-19 pandemic. It was voted down in committee [44 to 12](#). This year, Rep. Khanna introduced his [Investing in Cures Before Missiles \(ICBM\) Act](#), which would direct funds away from funding the new GBSD and towards fighting the COVID-19 pandemic. Additionally, Rep. John Garamendi introduced the [Investing in Commonsense Ballistic Missiles \(ICBM\) Act of 2021](#) which would pause development of the new GBSD and its associated W87-1 nuclear warhead and extend the life of the Minuteman III ICBM until 2040, which is less expensive than developing the new GBSD program.

In the HASC markup for FY2022 NDAA, Rep. John Garamendi introduced an [amendment](#), which was later withdrawn, that would pause the deployment of the GBSD for ten years, citing its excessive expense and the fact that the Minuteman III ICBM is much cheaper. The committee adopted a problematic [amendment](#) by Rep. Liz Cheney that would prohibit reducing the number of deployed ICBMs to below 400. HASC did, however, defeat one of Rep. Cheney's [amendments](#) that would restore funding for the B83 gravity bomb.

Another unnecessary project in the nuclear modernization program is the Sea-Launched Cruise Missile (SLCM), which Acting Navy Secretary, [Thomas Harker](#), has called for cancelling for FY2023. [Rep. Joe Courtney](#) and [Sen. Chris Van Hollen](#) introduced the Nuclear SLCM Ban Act of 2021 which would prohibit funds for the SLCM and its nuclear warhead from FY2022 and any year after that. Congress can also cut funding for the [W76-2 low-yield nuclear warhead](#) in the NDAA, which will save \$65 million per year and \$6.5 billion over ten years.

In addition to reducing wasteful spending on nuclear weapons, Congress also needs to take action to reduce the risk of nuclear weapons being deployed and can do so through the NDAA. The following are actions Congress can take to reduce this risk:

- **Adopt No-First Use:** A no-first-use policy means that the U.S. will not be the first country to use a nuclear weapon. Instead, it will maintain a second-strike posture and only employ a nuclear weapon if attacked with one first. Currently, the U.S. does not have a no-first-use policy. On the campaign trail, then-candidate [Biden](#) embraced support for no-first-use. [Rep. Adam Smith](#) and [Sen. Elizabeth Warren](#) introduced a bill for the U.S. to adopt a no-first-use policy.
- **End Sole Authority:** The President of the United States has the sole authority to order a nuclear strike. He does not need congressional approval and is not required to consult with the Secretary of Defense, Secretary of State, leaders of the intelligence community, military leaders, or other members of the Cabinet. This unilateral power in the wrong hands can be dangerous. [Rep. Ted Lieu](#) and [Sen. Ed Markey](#) introduced a bill that would prevent the president from deploying a nuclear weapon first, without congressional approval.
- **Smarter Approach to Nuclear Expenditures (SANE Act):** [Rep. Earl Blumenauer](#) and [Sen. Ed Markey](#) introduced the SANE Act, which would reduce spending on nuclear weapons programs and prohibit the procurement and deployment of low-yield nuclear weapons. The SANE Act would cut funding for submarines, missiles, aircrafts, weapons laboratories, and other items in the nuclear arsenal. These cuts would lead to an estimated savings of \$100 billion.
- **Hastening Arms Limitations Talks (HALT Act):** [Rep. Jim McGovern](#) and [Sen. Ed Markey](#) introduced the HALT Act which calls on the U.S. to implement a



freeze on nuclear testing, production, and deployment of weapons. The HALT Act specifies agreeing to a full five-year extension of [New START](#) (which the U.S. and Russia agreed to on February 3, 2021) and calls for the U.S. to ratify the [Comprehensive Test Ban Treaty](#), which prohibits explosive nuclear testing.

**Right-Wing Extremism in the Military:** In the wake of the January 6th insurrection at the Capitol, the Department of Defense, under the supervision of newly appointed Secretary Austin, issued a Department wide [stand-down](#), in efforts to address extremism in the ranks. About 15% of the individuals arrested for attacking the Capitol had served in the military. Speaker Pelosi created a [Select Committee](#) in the House to investigate what led to the January 6th attack. This came after Senate Republicans [blocked](#) the creation of bi-cameral commission to investigate the attack. In the HASC markup for FY2022 NDAA, the committee adopted an [amendment](#) by Rep. Anthony Brown that would give the Secretary of Defense the authority to remove extremists from the military and also define extremism. HASC also adopted one of Rep. Slotkin's [amendments](#) that would require the Secretary of Defense to report on the efforts of extremist organizations to recruit members of the U.S. military and also implement a strategy that would prevent these efforts. Lastly, HASC also adopted an [amendment](#) by Rep. William Keating that would require the Comptroller General of the U.S. to review the extent to which members of the U.S. military have affiliations with extremist groups.

**Security Training of Foreign Actors:** Every year, the U.S. trains, equips, and arms an estimated [200,000](#) foreign police officers, soldiers, and security forces under State Department [foreign security assistance programs](#), and even more under Department of Defense "train and equip" authorities. Some of those who participate in these trainings go on to commit human rights abuses and war crimes. The [Saudi operatives](#) who murdered Washington Post journalist, Jamaal Khashoggi, received this very paramilitary training under a State Department contract. As [Win Without War](#) has noted: other recipients of these trainings include the [Colombian police force](#), which has cracked down hard on protestors, the authoritarian regime of [Egypt](#)'s Abdel Fattah el-Sisi, the inhumane security forces in the [Philippines](#), and the [Israel Defense Forces](#). These programs have also gotten U.S. service members killed in many countries, including during a 2017 incident in Niger, which killed [three U.S. service members](#). After the event, most members of Congress and Senators stated they were [unaware](#) that the U.S. military had a presence in Niger.

These trainings are not anything new. As Win Without War continues to point out:

*"The Department of Defense-led [School of the Americas](#) (SOA) trained politicians, military leaders, and police officers from across Latin America in a variety of areas including intelligence and counterintelligence, "riot control," guerilla warfare, and*

even torture. SOA's [esteemed alumni](#) now includes [dictators](#), [coup-leaders](#), [torturers](#), [massacrers](#), and [war criminals](#)."

Training foreign militaries to wage their own endless wars is not an alternative to endless war. The dismal track record of these programs around the world makes the U.S. government complicit in human rights abuses and war crimes. U.S. taxpayers should not fund war crimes, killings of protestors, and assassinating journalists. Congress can take action in the NDAA to redirect funds from these programs and re-invest in actions that will actually keep Americans and the world safe, such as diplomacy, investing in civil society, global health, and fighting climate change.

**Spending Priorities:** While divesting funds away from costly and deadly nuclear and conventional weapons that do virtually nothing to keep us safe, Congress can invest towards areas that will actually improve the lives of people in the U.S. and around the world. The NDAA is an opportunity to boost funding for the Military Infectious Diseases Research Program at the Pentagon, which focuses on researching infectious diseases and developing vaccines. The COVID-19 pandemic has shown that investments like this would be life-saving, while nuclear weapons and fighter jets would do the opposite. The NDAA could be used to authorize funds to assist survivors of sexual assault and domestic abuse who served in the armed forces, increase research on renewable energy development, phase out gas and diesel vehicles in the Pentagon, help service men and women and veterans' with mental health and suicide prevention, and address the disgrace that nuclear waste is deposited in communities across America by investing in nuclear clean up.

**Transgender troops:** In July 2017, in a series of tweets, President Trump [banned transgender troops](#) from serving in the military. The Pentagon then drafted regulations to implement the ban, which were [blocked by federal courts](#). The [Supreme Court](#) allowed the ban to be implemented in 2019. Five days into taking office, President Biden signed an [executive order](#) reversing Trump's ban and on March 31, 2021, the Department of Defense revised its policies on [transgender individuals serving in the military](#). The new policies ban discriminating against transgender troops and provide medical treatment that recognize one's self-identified gender. To ensure that future presidents don't reverse President's Biden executive order, Congress should pass protections for transgender troops in the FY2022 NDAA.

**Weapons Cuts:** Most of the funding for the Pentagon goes to developing, maintaining, and operating weapons. [Almost half](#) the Pentagon's base budget goes to defense corporations, with one-third of it going to the top five defense contractors. Lockheed Martin receives an estimated [90 percent](#) of its revenue from the federal government. A costly and unnecessary weapons program Congress has

the opportunity to cut in the FY2022 NDAA is the F-35 fighter jet which is projected to cost [\\$1 trillion](#) to build and maintain.

The design of the F-35 fighter jet is complicated and unnecessarily expensive and makes the jet less effective in combat. However, the program generates revenue for defense corporations with contractors across the country, which makes it difficult for members of congress to oppose the effort as it creates jobs and political support in their districts. It costs about [\\$44,000](#) per hour to fly an F-35, which is \$352 million during the 8,000 hour lifespan of the jet. The A-10 and F-16 fighter jets, which the F-35 is expected to replace, will cost roughly half of that at [\\$20,000](#) per hour.

Watchdogs have identified other [specific weapons and programmatic cuts](#) to eliminate Pentagon waste. These include reducing peacetime troop deployments overseas, closing unnecessary military bases, and rolling back developments in nuclear weapons.

## Conclusion

The FY2022 NDAA comes at an opportune time for change in the U.S. and around the world. Congress is no longer constrained by the discretionary funding caps set under the BCA. This means that Congress can invest in meaningful change, such as expanding healthcare, education, and fighting climate change, without boosting funding for the Pentagon alongside it. FY2022 also provides the opportunity to eliminate OCO. Congress can utilize the NDAA to implement a foreign policy rooted in diplomacy not defense, by repealing outdated AUMFs, ending arms sales to countries that commit human rights abuses, lifting inhumane sanctions, and eliminating the risk of nuclear war.

***CPCPC thanks The Center for Economic and Policy Research, The Center for International Policy, Foreign Policy for America, The Institute for Policy Studies, The Ploughshares Fund, The Quincy Institute for Responsible Statecraft, and Win Without War for their comments and insights***