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Fact Sheet: Selected Highlights of the FY2017 National Defense Authorization Act (H.R. 4909, S. 2943)

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Introduction

This CRS Fact Sheet is designed as a time-urgent product offering Members the best available information pending publication of a CRS report on the FY2017 defense funding legislation.

Following are selected highlights of the conference agreement on the FY2017 National Defense Authorization Act (NDAA). The conference report (H.Rept. 114-840), filed in the House on November 30, 2016, resulted from negotiations between the House and Senate on House-passed H.R. 4909 and Senate-passed S. 2943. The agreement authorizes \$611.2 billion in discretionary funding for national defense activities within the jurisdictions of the House and Senate Armed Services Committees. That total includes

- \$523.7 billion for the Department of Defense (DOD) “base budget” which funds routine activities not associated with ongoing deployments in Afghanistan and Iraq;
- \$67.8 billion for Overseas Contingency Operations (OCO) which funds operations in Afghanistan and Iraq and certain other DOD activities; and
- \$19.7 billion for national security programs of the Department of Energy and other defense-related activities.

In addition to funds authorized by the NDAA, national defense-related funding for FY2017 includes \$7.8 billion for discretionary programs outside the jurisdiction of the two Armed Services Committees and \$8.1 billion for programs funded by mandatory spending.

Table 1 provides a summary of amounts recommended for authorization by the conferees. **Table 2** provides a summary of selected congressional budget reductions and restrictions, and **Table 3** provides a summary of selected Administration policy and cost-cutting proposals. **Table 4** provides a summary of selected congressional budget increases and policy initiatives.

Discretionary Spending Limits and the NDAA

Congressional action on the FY2017 National Defense Authorization Act (NDAA) was fundamentally shaped by legally binding caps on discretionary spending for defense programs and for non-defense programs in each fiscal year through FY2021. The spending caps—established by P.L. 112-25, the Budget Control Act of 2011 (BCA) and amended by P.L. 114-74 (BBA)—are enforced by “sequestration¹,” a process that entails across-the-board cuts to most funding accounts if enacted appropriations exceed either of the caps.

The annual defense caps apply to funding for the base budget, but not to amounts designated for emergencies or for OCO. The OCO category of funding—which is not defined in law—was adopted by the Obama Administration in 2009 to encompass funding associated with operations in Iraq and Afghanistan. In subsequent budgets, the number of operations funded has increased and the scope of funding designated as OCO has expanded.

The FY2017 NDAA debate focused, in part, on differences between the Administration and Congress over how much of the FY2017 DOD budget designated as OCO funding—and thus exempt from the budget caps—would be used for base budget purposes. An underlying issue was whether defense spending and non-defense base budget spending would be allowed to exceed

¹ See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by (name red acted).

their respective budget caps by roughly similar amounts through use of OCO-designated funding. The Administration and the congressional minority leadership objected to providing defense funding for base budget requirements in excess of the defense spending cap unless it was accompanied by a comparable increase in funding for non-defense, base budget programs.²

The 2015 BBA, which raised the defense and non-defense spending caps for FY2016 and 2017, also identified non-binding target levels of OCO funding for FY2016 and FY2017 for both the DOD budget and international affairs budget³ (which falls into the non-defense category).

The Administration's FY2017 DOD budget request included \$58.8 billion designated as OCO, of which \$5.2 billion was to be spent on base budget requirements. The Administration's FY2017 budget justification material makes several references to a similar enhancement of the non-defense foreign affairs budget, although the State Department published no detailed information identifying OCO-designated funding intended to be used for base budget purposes. A comparison of the foreign affairs agencies' OCO budget for FY2016 and their OCO request for FY2017 with their OCO budget for FY2015—the last year of funding not affected by BBA—suggests that the international affairs budget's *OCO-for-base* amount is in excess of \$5.0 billion—roughly the same as in the DOD budget request.⁴

In November 2016, the Administration amended its FY2017 OCO request, asking for an additional \$5.8 billion to cover the cost of retaining more U.S. troops in Afghanistan than the original budget had assumed and the cost of operations against the Islamic State.⁵

The House-passed version of the FY2017 NDAA (H/R/ 4909) would have dedicated \$23.1 billion of OCO-designated funding to DOD base budget purposes—\$18.0 billion more than the Administration proposed. However, the conferees agreed to allocate \$8.3 billion in OCO-designated funding for base requirements—\$5.2 billion stemming from the Administration's request and \$3.2 added during the conference negotiations (see **Table 1**.)

² See OMB, "Statement of Administration Policy on H.R. 4909, National Defense Authorization Act for Fiscal Year 2017," May 16, 2016, https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr4909r_20160516.pdf; and Senator Harry Reid, "Reid: Senate Must Give Defense Bill Deliberative Approach It Deserves," press release, May 25, 2016, http://www.reid.senate.gov/press_releases/2016-05-25-reid-senate-must-give-defense-bill-deliberative-approach-it-deserves#.VIGXYE0UVFo.

³ This is designated the State Department, Foreign Operations and Related Programs (SFOP) budget.

⁴ See U.S. Department of State, *Congressional Budget Justification Material for the Department of State, Foreign Operations, and Related Agencies*, pp. 137-38, <http://www.state.gov/documents/organization/252179.pdf>.

⁵ See U.S. Department of Defense, Fiscal Year 2017 Budget Request: *Overview—Overseas Contingency Operations Budget Amendment*, http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/amendment/FY17_OCO_Amendment_Overview_Book.pdf

Table 1. FY2017 National Defense Authorization Act (H.R. 4909, S. 2943)

(in millions of dollars of discretionary budget authority)

Bill Title	Budget Request	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
National Defense Base Budget				
Procurement	\$101,971.6	\$103,124.7	\$102,435.0	\$102,422.7
Research and Development	71,391.8	71,619.8	71,227.2	71,110.6
Operation and Maintenance	171,318.5	169,322.3	171,389.8	171,870.9
Military Personnel	135,269.2	134,849.8	134,018.4	134,569.5
Defense Health Program and Other Authorizations	36,557.0	37,058.6	37,398.0	36,058.4
Military Construction/Family Housing	7,444.1	7,694.0	7,477.5	7,709.6
Subtotal: DOD Base Budget	523,952.1	523,586.9	523,945.8	523,741.6
Atomic Energy Defense Activities	19,240.5	19,512.1	19,167.6	19,359.8
Defense-related Maritime Administration ^a	211.0	300.0	n/a	300.0
TOTAL: National Defense Budget Function (050) Base Budget	543,403.6	543,399.0	543,113.4	543,401.4
DOD OCO Budget	64,573.0^b	58,793.5	58,890.5	67,766.4
GRAND TOTAL: FY2017 NDAA	607,976.6	602,192.5	602,004.0	611,167.8

Source: H.Rept. 114-840, Conference Report to Accompany S. 2943.

Notes:

- a. Funding authorization for this program, provided in Title XXXV of the House bill, is outside the jurisdiction of the Senate Armed Services Committee.
- b. Includes November 2016 amendment to the President's Budget Request for OCO.

Table 2. Selected Congressional Budget Reductions and Prohibitions

Issue	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
Administration efforts to close the detention facility at Guantanamo Bay, Cuba	Would prohibit the transfer of detainees to the U.S. (section 1032) or to certain other countries (section 1034).	Would prohibit the permanent transfer of detainees to the U.S. or to certain other countries (sections 1021, 1026, 1029); would allow temporary transfer to U.S. for medical treatment (section 1024).	Maintains existing restrictions on the closure of the detention facility; extends current prohibitions on transfers of detainees into the U.S. and construction or modification of facilities in the U.S. for detainees (sections 1032-1035).
Reductions to the request on the basis of unobligated balances from prior budgets (or anticipated slower-than-planned obligations in FY2017), excessive fuel price estimates , unjustified growth , or other factors	Would reduce the request by \$1.77 billion, of which \$1.12 billion comes from the Operation and Maintenance accounts.	Would reduce the request by \$935 million, of which \$880 million comes from the Military Personnel accounts.	Reduces the request by \$1.28 billion in Operation and Maintenance accounts and \$1.29 billion from Military Personnel Accounts, but adds \$1.28 billion and \$1.29 billion, respectively, to OCO for base requirements in such accounts.

Issue	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
Foreign currency exchange rate assumptions	Would cut \$429 million on the assumption that the goods and services bought by U.S. forces abroad will cost less than budgeted due to assumptions regarding currency exchange rates.	Would cut \$121 million on the assumption that the goods and services bought by U.S. forces abroad will cost less than budgeted due to assumptions regarding currency exchange rates.	Cuts \$573 million on the assumption that the goods and services bought by U.S. forces abroad will cost less than budgeted due to assumptions regarding currency exchange rates.

Source: H.Rept. 114-840, Conference Report to Accompany S. 2943.

Table 3. Selected Administration Policy and Cost-Cutting Proposals

Administration Proposal	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
1.6% raise in Military Basic Pay in lieu of the 2.1% raise that otherwise would occur by law ^a	Would require that pay be increased by 2.1% (section 601); adds to the budget request \$330 million (in OCO funds).	Would provide a 1.6% basic pay increase, as requested (section 601).	Senate recedes to the House, adopting the 2.1% pay raise; adds \$330 million (in base budget).
Reduce military end-strength by 27,015 active and 9,800 reserve component personnel	Would authorize an end-strength increase of 28,715 active personnel and 25,000 reserve component personnel to the Administration's end-strength request; adds \$3.24 billion (in OCO funds) to the request.	Would authorize end-strength totals at the level requested by the Administration.	Authorizes an end-strength increase of 24,000 active personnel and 12,000 reserve component personnel; adds \$1.35 billion (in OCO funds) to the request.
Introduce some new TRICARE fees and increase some existing fees and copays	Would establish TRICARE fees and copays similar to Administration's proposal (section 701).	Would make significant changes to TRICARE system (Title VII, Subtitle A).	Renames the TRICARE Standard/Extra health plan option to TRICARE Select; modifies enrollment fees, deductibles, catastrophic caps, and co-payments for beneficiaries in the retired category and active duty family members who join the military on or after January 1, 2018; requires an open enrollment period; and prescribes certain requirements for pre-authorization for referrals under TRICARE Prime (section 701).
Reform of administration of the Defense Health Agency (DHA) and military medical treatment facilities	Would require DHA to become responsible for management of Military Treatment Facilities (MTFs) throughout the DOD, while preserving certain responsibilities of MTF commanders (section 702).	Would consolidate the medical departments of the Army, Navy, and Air Force with the Defense Health Agency (section 721).	Requires the Director of DHA to take responsibility for the administration of each MTF on October 1, 2018. Matters of responsibility include: budget; information technology; health care administration and management; administrative policy and procedure; military medical construction and 6) any other matters the Secretary of Defense determines appropriate (section 702).

Administration Proposal	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
Remove from service 7 (of the 22) Aegis cruisers for modernization and eventual 1-for-1 replacement of cruisers now in service	Would require that no more than 6 cruisers be inactivated at one time and that contracts be signed for their modernization (section 1024); adds \$202 million for operation (in OCO funds).	Would require that at least 11 (of the 22) cruisers be in service at all times, with 11 to be modernized and the other 11 replaced when they reach the end of their service lives (section 1011).	Prohibits the retirement, preparation for retirement, inactivation, or placement in storage of any Ticonderoga-class cruisers or Whidbey Island-class amphibious ships, except to allow the modernization and upgrades for those ships to continue in accordance with previous NDAA direction concerning the modernization and upgrades for these ships, as set forth in section 1026 of the FY15 NDAA (section 1024).
Disband 1 (of 10) active-duty carrier air wings (requiring change in current law)	Would reject the reduction in carrier air wings; adds \$86 million for wing operations (in OCO funds).	Would allow the reduction to 9 active-duty carrier air wings (section 1088).	Reduces to 9 the minimum number of carrier air wings until additional deployable aircraft carriers can fully support a tenth carrier air wing, or October 1, 2025, whichever comes first, at which time the Secretary of the Navy shall maintain a minimum of ten carrier air wings (section 1042).
To meet BBA budget caps, reduce FY2017 aircraft procurement funding by 12% (\$4.34 billion) below amount projected in early 2015	Would add a total of \$5.9 billion to the requested aircraft procurement authorization accounts (using OCO funds).	Would add a total of \$353 million to the requested aircraft procurement accounts.	Cuts \$270.3 million from the requested aircraft procurement accounts (\$244.7 million from base and \$25.6 million from OCO).
Plan a Base Realignment and Closure (BRAC) round ^b	Would prohibit the use of funds for a BRAC round (section 2707); cuts \$3.5 million slated for BRAC planning.	Would prohibit the use of funds for a BRAC round (section 2702); cuts \$4 million slated for BRAC planning.	Includes the Senate provision (section 2702); cuts \$3.5 million slated for BRAC planning.

Source: H.Rept. 114-840, Conference Report to Accompany S. 2943.

Notes:

- a. For background, see CRS In Focus IF10260, *Defense Primer: Military Pay Raise*, by (name redacted)
- b. For background, see CRS In Focus IF10362, *The President's FY2017 Military Construction Budget Request*, by (name redacted)

Table 4. Selected Congressional Budget Increases and Policy Initiatives

Issue	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
Registration of Women for the Military Draft	Had been required by section 528, adopted as a committee amendment by a vote of 32-30; provision was deleted by the rule governing floor debate.	Would require registration of women for the military draft (section 591).	Does not include Senate section 591.
Recovery of amounts owed to the U.S. by members of the uniformed services	Would amend 37 U.S.C. 1007 to establish a 10-year statute of limitations on the authority of the government to collect an indebtedness to the government owed by a servicemember if the indebtedness occurred through no fault of the member (effective October 1, 2027) and would require annual DOD report (section 642),	No similar provision.	Requires a board of review to determine whether the special pay to members and former members of the California Air National Guard was unwarranted and, if so, to recommend whether the Secretary should recoup the payment, waive the recoupment, or repay unwarranted recoupments. Would authorize the Secretary to waive collection of overpayments or to repay previously recouped payments that were unwarranted. Requires a report from DOD and a GAO report (section 671).
National Commission on Military, National and Public Service	Would require the Secretary of Defense to submit, not later than July 1, 2017, a report on the current and future need for a centralized registration system under the Military Selective Service Act.	Contained a series of provisions (sections 1066-1073) that would create a National Commission on Military, National, and Public Service.	Includes the Senate provisions establishing a National Commission on Military, National And Public Service and requires a study by the Secretary of Defense to inform the Commission on the current and future need for a centralized registration system under the Military Selective Service Act (section 552).
Troop levels in Afghanistan	Would add \$2.33 billion to support deployment of 9,800 U.S. troops (rather than 5,500 as proposed in the original FY2017 OCO budget).	Would make no change to the original FY2017 request.	Agreement supports the November 2016 amended OCO request, including \$2.5 billion in additional funding to maintain approximately 8,400 U.S. troops in Afghanistan.
Ballistic Missile Defense of U.S.	Would replace the National Missile Defense Act of 1999 with new policy language to	Would amend current law, which states that it is the goal of the missile defense system	Includes the House provision with a clarifying amendment

Issue	House-passed (H.R. 4909)	Senate-passed (S. 2943)	Conference Report
Territory	the effect that the United States should maintain and improve a robust layered missile defense system capable of defending the territory of the United States and its allies against the developing and increasingly complex ballistic missile threat (section 1665).	to protect U.S. territory against a “limited” missile attack; section 1665 would delete the word <i>limited</i> .	(section 1681).
Ship Procurement	Would increase shipbuilding authorization by a total of \$2.3 billion (in OCO funds); Includes funds for one additional Littoral Combat Ship (\$385 million), partial funding for a destroyer (\$433 million) and an amphibious landing transport (\$856 million), and \$263 million to accelerate construction of an aircraft carrier.	Would add \$100 million; includes partial funding for a destroyer (\$50 million) and an amphibious landing transport (\$50 million); cuts \$28 million from request the for Littoral Combat Ship.	Adds \$490 million; includes partial funding for a destroyer (\$50 million) and adds \$440 million for amphibious landing transport (LPD-29 or LX(R)). Cuts \$28 million from request for the Littoral Combat Ship.
Security Cooperation with partner countries ^a	Would recodify several existing authorities to train and assist partner countries (sections 1201-1206).	Would broaden the range of purposes for which DOD can train, equip, and assist partner countries (sections 1251-65).	Creates a new chapter in title 10, U.S.C.; includes provisions to consolidate “train-and-equip” authorities and consolidates reporting requirements (sections 1241-1253). Codifies and makes permanent “Section 1208” authority (section 1203).
Organization of DOD and Strategic Planning ^b	Would revise existing law governing the scope and frequency of high-level strategic reviews (sections 901-906).	Would mandate wide-ranging changes in DOD organization (sections 941 and 942).	Establishes a Commission on the National Defense Strategy for the United States (section 942); revises the requirements of the national military strategy (section 943); and revises the FY2016 section 1064 requirements for and independent study of the national security strategy (section 945).
Maintenance and Repair of Facilities	Would add \$2.4 billion (in OCO funds).	Would add \$839 million (in base budget).	Adds \$396.7 million (\$198.9 million base and \$197.8 million OCO-for-base).
National Guard and Reserve Equipment	Would add \$250 million.	Would make no change to request.	Adds \$250 million.

Source: H.Rept. 114-840, Conference Report to Accompany S. 2943.

Note:

- a. For additional background, see CRS Report R44313, *What Is “Building Partner Capacity?” Issues for Congress*, coordinated by (name redacted)
- b. For additional background, see CRS Report R44474, *Goldwater-Nichols at 30: Defense Reform and Issues for Congress*, by (name redacted)

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