



December 7, 2020

## Conference Report on H.R. 6395, the William M (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

### Key Points:

- On Tuesday, the House will consider the Conference Report on H.R. 6395, the William M. (Mac) Thornberry National Defense Authorization Act for FY 2021. This bipartisan bill complies with the bipartisan budget agreement. It authorizes \$732 billion in discretionary spending for our national defense for FY 2021, including approximately \$69 billion for Overseas Contingency Operations (OCO).
- This important bipartisan measure honors our values, strengthens our security, and advances America's leadership in the world.
- President Trump has threatened he will veto the conference report, based on 1) the inclusion of the measure's provisions requiring removing names and symbols honoring the Confederacy and individuals serving voluntarily in the Confederacy from all DOD assets; and 2) the omission of a provision unrelated to national defense that would abolish the protections social media companies currently have from liability for damages caused by what is posted by others on their platforms.
- Chairman Adam Smith is urging Democratic Members to support the conference report and to vote to override the President's veto, if he indeed issues one. The Congress has enacted a bipartisan NDAA conference report for 59 years in a row and this would be the 60th. Numerous military authorities will expire if a DOD authorization bill is not enacted.
- In the conference report, Democrats were successful in getting included numerous key Democratic priorities. Key wins for Democrats in the conference report include:
  - **Altering or Removing All Names and Symbols Honoring the Confederacy or Those Who Served Voluntarily With the Confederacy From All DOD Assets:** The conference report establishes an independent commission to make binding recommendations to the Secretary of Defense for the modification or removal of all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederacy or any person who served voluntarily with the Confederacy from all assets of the Department of Defense.
  - **Ensuring Paid Parental Leave Extended to All Federal Employees:** The conference report makes technical corrections to the paid parental leave benefit provided through the FY 2020 National Defense Authorization Act to ensure that the Federal Aviation Administration, Department of Veterans Affairs, and certain other civilian federal employees inadvertently omitted from the legislation receive the parental leave benefit.
  - **Providing Long-Overdue Benefits to Vietnam-Era Veterans Exposed to Agent Orange:** The bill provides long-overdue benefits to Vietnam-Era veterans exposed to Agent Orange, including adding Parkinsonism, bladder cancer, and hypothyroidism to the list of diseases associated with exposure to Agent Orange.
  - **Authorizing Hazardous Duty Pay for Service Members in Harm's Way:** The conference report authorizes the Secretary of Defense to standardize payment of hazardous duty pay for

the uniformed services, including the members of the Guard and National Reserve. It also increases Hazardous Duty Pay from \$250 to \$275 per month.

- **Providing A Pay Raise to the Troops:** The conference report authorizes a 3.0 percent increase in basic pay for service members.
- **Taking Steps to Further Protect Military Communities from PFAS.** The conference report takes steps to further protect military communities from per- and polyfluoroalkyl substances (PFAS), including authorizing \$1.4 billion for environmental remediation and BRAC accounts which support a range of remediation activities, to include those related to PFAS, at current military installations, formerly utilized defense sites, and installations closed by BRAC.
- **Including the Elijah Cummings Federal Employee Anti-Discrimination Act:** The conference report includes the Elijah Cummings Federal Employee Anti-Discrimination Act, passed by the House in January 2019, which strengthens equal employment opportunity protections for federal employees and strengthens prohibitions against discrimination and retaliation against whistleblowers.
- **No Backfill of the Military Construction Funds Taken for President's Border Wall:** The conference report does not authorize any backfill of military construction funds taken for the President's border wall.
- **Constrains Executive Overreach Relating to Emergency Military Construction Authority and Deployment of Military Personnel to the Southern Border:** The conference report imposes constraints on emergency military construction authority and on the authority of the military to deploy military personnel to the southern border.
- **Improving Identification of Federal Law Enforcement Personnel Responding to Civil Disturbances:** The conference report includes provisions requiring each member of a federal law enforcement agency, the Armed Forces, or National Guard responding to a civil disturbance to display visibly the individual's name and name of the individual's organization.
- **Requiring Improvements in Military Housing:** The conference report takes several steps to improve military housing, including updating minimum health and safety standards for all military base housing, repealing a provision that currently allows DOD to place families in substandard housing units, and requiring DOD to implement Comptroller General recommendations for improvement of military family housing.

Following is an overview of some of the key provisions of the bill.

### **Creating A More Inclusive, Diverse Military**

#### **Requiring Removing or Modifying Names, Symbols, Displays, Etc. Honoring the Confederacy or Individuals Serving Voluntarily with the Confederacy from All DOD Assets**

- Establishes an independent commission to make binding recommendations to the Secretary of Defense for the modification or removal of all names, symbols, displays, monuments, and paraphernalia that honor or commemorate the Confederacy or any person who served voluntarily with the Confederacy from all assets of the Department of Defense.

#### **Diversity Requirements for DOD**

- Establishes a Chief Diversity Officer of the DOD and a Senior Advisor for Diversity and Inclusions for each Military Service, including the Coast Guard.
- Creates a Deputy Inspector General for Diversity and Inclusion and Supremacist, Extremism and Criminal Gang Activity, for supervision of investigations of military personnel policies and programs as regards to their effect on diversity and inclusion at DOD and on preventing and responding to supremacist, extremist, and criminal gang activity by military personnel.

#### **Countering Racism and Extremism**

- Requires the DOD Inspector General to establish a mechanism to track and report supremacist, extremist, and criminal gang activity in the Armed Forces.

- Requires questions regarding racism, anti-Semitism, and supremacism be incorporated into DOD surveys; and requires a briefing on which surveys they will be included in.

### **Other Provisions**

- Includes the Elijah Cummings Federal Employee Anti-Discrimination Act, passed by the House in January 2019, which strengthens equal employment opportunity protections for federal employees and strengthens prohibitions against discrimination and retaliation against whistleblowers.
- Authorizes \$20 million for Historically Black Colleges and Universities and Minority Institutions.
- Requires the Secretary of Defense to partner with minority institutions of higher education to diversify the participants in the DOD's Science, Mathematics, and Research for Transformation (SMART) Defense Education Program.
- Establishes a mentoring and career counseling program at DOD with the goal of having the diversity of the population of officers serving in each branch reflect the diversity of the population of each armed force as a whole.

### **Providing A Pay Raise for Our Troops**

- Continues to improve the quality of life of our service men and women by authorizing support for a 3.0 percent pay increase for our service men and women.

### **Authorizing Hazard Duty Pay for Service Members in Harm's Way**

- Authorizes the Secretary of Defense to standardize payment of hazardous duty pay for the uniformed services, including the members of the Guard and National Reserve. It also increases Hazardous Duty Pay from \$250 to \$275 per month.

### **Requiring Improvements in Military Housing**

- Takes several steps to improve military housing, including updating minimum health and safety standards for all military base housing, repealing a provision that currently allows DOD to place families in substandard housing units, and requiring DOD to implement Comptroller General recommendations for improvement of military family housing.

### **Improving Sexual Assault Prevention and Response Programs**

- Creates a task force to study and make recommendations on domestic violence within the military services.
- Enables victims of sexual harassment to make confidential reports of sexual harassment outside of the chain of command.
- Requires the Secretary of Defense to implement a Safe to Report Policy across the Services, enabling victims to report sexual assaults without fear of punishment for certain minor collateral misconduct.
- Requires the Secretaries of Defense and Veterans Affairs to jointly develop, implement, and maintain a standard of coordinated care for members of the Armed Forces who are survivors of sexual trauma.

### **Child Care for Military Families and DOD Employees**

- Authorizes the Secretary of Defense to furnish child care to each child of a member of the Armed Forces or civilian employee of the DOD while that member or employee works on rotating shifts at a military installation.

### **Long Overdue Benefits to Vietnam-Era Veterans Exposed to Agent Orange**

- Provides long-overdue benefits to Vietnam-era veterans exposed to Agent Orange, including adding Parkinsonism, bladder cancer and hypothyroidism to the list of diseases associated with exposure to Agent Orange.

## **Making Key Investments in Military Infrastructure**

- Authorizes \$8.4 billion in military construction projects to fortify critical infrastructure and base realignment and closure clean up.

## **COVID-19 Pandemic Response**

- Requires one of the Assistant Secretaries to be the Assistant Secretary of Defense for Industrial Base Policy, whose principal duties will involve the overall supervision of policy for DOD for developing and maintaining the defense industrial base of the U.S. and ensuring a secure supply of materials critical to national security.
- Authorizes a total of over \$494 million for the Maritime Security Program, \$180 million more than the President's budget, to help mitigate the impacts of COVID on our maritime carriers.

## **Constraining Executive Overreach Relating to Emergency Military Construction Authority and Deployment of Military Personnel to the Southern Border**

- Amends the national emergency military construction authority (which President Trump has used to fund the border wall) to set an annual limit of \$100 million for the domestic use of the authority and \$500 million for overseas projects, with an exception for medical projects that may be necessary to support response to a health emergency or pandemic.
- Constrains the deployment of military personnel to the southern border of the United States by:
  - Modifying the authority of military personnel to assist Customs and Border Protection (CBP) at the southern border to:
    - Require a certification that there will be no impact on readiness.
    - Require a report on the deployment of U.S. military in support of southern border activities, including readiness levels to include impacted training events for units deployed.
    - Greatly expand existing quarterly report requirements on the mission of National Guard and active duty personnel at the southern border.
    - Require DOD to provide quarterly and total cost breakdowns for support provided to Customs and Border Protection (CBP).

## **No Backfill of the Military Construction Funds Taken for Trump's Border Wall**

- Does not authorize any backfill of military construction funds taken for the President's border wall.

## **Improving Identification of Federal Law Enforcement Personnel Responding to Civil Disturbances**

- Requires each member of a Federal law enforcement agency, the Armed Forces, or National Guard who provides support to federal authorities to respond to a civil disturbance to display visibly:
  - The individual's name or other identifier unique to that individual; and
  - The name of the Federal law enforcement agency, Armed Force, or other organization in which such individual is a member.
- Provides an exception to this requirement for individuals who in the performance of their regular duties work in an undercover status.

## **Sale or Donation of Excess Department of Defense Personal Property for Law Enforcement Activities**

- Includes disaster-related emergency preparedness activities among law enforcement activities eligible to participate in the program; provides preference for disaster-related emergency preparedness-type equipment requests, and highest preference for high-water vehicle requests.
- Prohibits transfer of bayonets, grenades (other than stun and flash-ban), weaponized tracked vehicles, and weaponized drones.
- Requires annual training by participating law enforcement agencies in de-escalation of force, and respect for the rights of citizens under the Constitution of the United States.

## **Protecting Our Civilian Workforces**

- Prohibits the Secretary of Defense from reducing the civilian workforce unless the Department assesses the impact of such reduction on workload, military force structure, lethality, readiness, and operational effectiveness.
- Permits most federal employees to carry over an additional 25 percent of annual leave into 2021, in recognition of their dedicated service during the pandemic.

## **Ensuring Paid Parental Leave Extended to All Federal Employees**

- Makes technical corrections to the paid parental leave benefit provided through the FY 2020 National Defense Authorization Act to ensure that the Federal Aviation Administration, Department of Veterans Affairs, and certain other civilian federal employees inadvertently omitted from the legislation receive the parental leave benefit.

## **Addressing Climate Change**

- Requires a report on the implementation of provisions from the FY2020 National Defense Authorization Act related to installation master planning, updates to the Unified Facilities Criteria (building codes), sea-level rise modeling, and climate assessment tools.
- Establishes an alternative fuel vehicle pilot program that will require the military department to expand their use of alternative fuel non-tactical vehicles to increase the use of hybrid and EV vehicles.
- Requires DOD to invest in research and development of advanced water harvesting technologies that would aid in addressing water security issues in areas impacted by drought due to climate change.
- Requires the military services to assess their water use at installations in regions experiencing water scarcity, maximize use of landscaping practices that reduce water usage, and improve their water conservation.
- Requires DOD to submit a report on its greenhouse gas emissions for the last 10 years within 180 days of enactment.

## **Provisions on Further Protecting Military Communities from PFAS Chemicals**

- Authorizes a total of \$1.4 billion for environmental remediation and BRAC accounts which support a range of remediation activities, to include those related to PFAS, at current military installations, formerly utilized defense sites, and installations closed by BRAC.
- Requires DOD to notify the congressional defense committees when there has been an uncontrolled release of PFAS-containing firefighting agent.
- Prohibits DOD from procuring certain items containing PFAS, including cookware, and carpets and upholstery with stain-resistant coatings.
- Establishes an interagency coordinating body for PFAS research.
- Authorizes \$90 million for research lines that support development of PFAS remediation and disposal technologies and firefighting agent replacement.
- Authorizes DOD to work with private entities to spur research, development and testing of PFAS-free fire-fighting agents.

## **Provisions on Partners and Allies**

- Expresses the Sense of Congress strongly reaffirming the U.S. commitment to the NATO alliance and urging further cooperation with NATO on shared challenges such as the COVID-19 pandemic.
- Enhances authorities for the DOD to engage with our closest allies and partners, including those in the National Technology and Industrial Base (United States, United Kingdom, Canada and Australia) to ensure secure sources of materials critical to U.S. national security.

## **Provisions on Yemen**

- Requires a GAO report examining the impact of U.S. military support to the Saudi-led coalition on the conflict in Yemen and civilian casualties.
- Includes a Statement of Policy on Yemen that prioritizes ending the conflict, stabilizing the region, and addressing the humanitarian crisis with our partners and allies, and requires a report from the Secretary

of State explaining what diplomatic efforts have been undertaken to end the conflict and to stabilize Yemen.

### **Provisions on Europe and Russia**

- Prevents reduction in the number of U.S. forces stationed in Germany below 34,500 until 120 days after the Secretary of Defense submits an assessment and planning regarding the implications for allies, costs, military families, deterrence, and other key issues. Also expresses the sense of Congress emphasizing the value of U.S. forces in Germany and the U.S.-German alliance.
- Fully funds the European Deterrence Initiative (EDI), and invests in additional capabilities that support deterrence in the European Command area of operations.
- Provides \$250 million for the Ukraine Security Assistance Initiative (USAI), which provides support and assistance to the Ukrainian Armed Forces.
- Establishes yearly reporting on any “bounties” or other attempts by the Russian Federation, its agents, or proxies to encourage or support attacks against U.S. troops or personnel in named operations or combat.

### **Provisions on Indo-Pacific**

- Prohibits the use of funds to reduce active duty U.S. forces in South Korea below 28,500 until 90 days after the Secretary of Defense certifies certain conditions.
- Authorizes a Pacific Deterrence Initiative to reassure allies and partners of an enduring U.S. commitment to the region and to enhance congressional oversight of military activities in the region. Authorizes \$2.2 billion in military activities as the basis of the Initiative.
- Prohibits the commercial export of defense articles and services and munitions items to the Hong Kong Police Force.

### **Provisions on Countering ISIS**

- Continues U.S. military support for our partners in Iraq and Syria to fight ISIS, while extending and expanding congressional oversight over U.S. military training and equipping activities.
- Requires the Secretary of Defense to certify U.S. military forces are not being used to extract, transport, transfer, or sell oil from Syria.

### **Provisions on Israel**

- Includes the U.S. Israel Security Assistance Act of 2020, a package of reforms that codifies \$500 million in U.S. assistance to Israel under the U.S.-Israel Memorandum of Understanding for eight years, one of the largest historical provisions of defense aid to Israel.
  - Includes dozens of measures and millions of additional dollars to boost U.S.-Israel cooperation on missile defense, directed energy, war reserves stockpiles, trade, international development, high-tech research, health technologies, space, desalination, defense R&D, acquisition, and numerous other issues.
  - Allows the creation of a Defense Department U.S.-Israel working group on operations and technology issues to facilitate greater cooperation between the U.S. and Israeli companies on defense acquisition and innovation.

### **Provisions on Iran**

- Requires the Department of Defense to submit detailed budget and activity information to the Congress on Operation Spartan Shield, which covers some Iran deterrence related activities, in the Central Command area of operations.

### **Provisions on Afghanistan**

- Requires the Department of Defense to submit detailed budget information to Congress on Operation Freedom Sentinel – specifically funds spent outside of Afghanistan that support operations in Afghanistan.

- Afghanistan Security Forces Fund (ASFF): Encourages the continual development of Gender Programs by specifying funds within ASFF for the recruitment, retention, and professional development of women in the ANDSF.
- Extends the Afghan Special Immigrant Visas program that allows Afghans (and their families) whose service to the U.S. government puts them at great risk, to immigrate to the United States.

### **Provisions on Guantanamo**

- Does not expand statutory restrictions on transfer of detainees from Guantanamo Bay.

### **Provisions on Aircraft**

- Authorizes \$8.73 billion for 93 F-35 Joint Strike Fighters, for modernization of the Air Force, Navy and Marine Corps fighter fleets.
- Authorizes \$2.71 billion for 15 KC-46A tanker aircraft
- Authorizes \$1.73 billion for 24 F/A-18E/F Super Hornet fighters.
- Authorizes \$1.42 billion for 8 P-8A Poseidon aircraft
- Authorizes \$1.24 billion for 12 F-15EX aircraft
- Authorizes \$1.12 billion for 11 medium lift V-22 Osprey aircraft
- Authorizes \$898.1 million for 60 UH-60 Blackhawk helicopters

### **Provisions on Shipbuilding**

- Authorizes funding for a total of nine new battle force ships, including one Columbia-class ballistic missile submarine, two Virginia-class submarines, two DDG-51 Arleigh Burke destroyers; one guided missile Frigate (FFG); one Expeditionary Fast Transport (EPF) ship, and two T-AT towing, salvage, and rescue ships.
- Provides funding for the restoration of a second Virginia Class submarine and the required advanced procurement to maintain the two per year build rate.

### **Cyber**

- Establishes a National Cyber Director within the Executive Office of the President to serve as the President's chief advisor on cyber matters and lead coordinator for Executive Branch departments and agencies' cyber issues.
- Extends the Solarium Commission for over a year and a half to provide updates to the Executive and Legislative Branches on the implementation of the Commission's final report.

### **Special Operations**

- Increases transparency into counterterrorism activities conducted by U.S. special operations forces.
- Directs a comprehensive report on resources necessary to implement the civilian casualty policy.

### **Intelligence**

- Increases accountability of funds expended for DOD clandestine activities to support operational preparation of the environment.
- Requires a report on foreign malign influence campaigns on social media platforms targeting elections for federal office.

### **Artificial Intelligence**

- Makes substantial improvements to the Joint Artificial Intelligence Center (JAIC) by bringing responsibility for it up to the Deputy Secretary of Defense, establishing a Board of Advisors and establishing acquisition authority for the Director of the JAIC.

### **Countering Weapons of Mass Destruction**

- Restores \$121.7 million in funding to the Department of Defense Cooperative Threat Reduction (CTR) Program with an increased focus on cooperative biological engagement to detect and confront biological threats in the United States.