

## National Security Reform: What Happened in Congress?

By: Mark Cancian and Andrew Hunter

January 10, 2017



### BACKGROUND

On December 23, 2016, President Obama signed the long-awaited National Defense Authorization Act (NDAA) for FY 2017. The act makes more changes to national security organizations and processes than any legislation since the landmark Goldwater–Nichols act of 1986. The national security community has been watching this legislation closely, not only because of the large changes expected to occur, but also because of the interplay between the Senate and the House. Sen. John McCain, chairman of the Senate Armed Services Committee, had taken an aggressive posture on reform, while the House's approach was viewed as more measured.

This paper looks at the NDAA outcome issue-by-issue to see what it means for a new administration. It focuses on changes to structure and process, following up the original Goldwater-Nichols changes. This paper thus does not do justice to the full scope of what is in the NDAA regarding forces, individual modernization programs, security cooperation, or personnel benefits. (A [CRS report](#) covers some of these issues.)

This paper also concludes [a series on defense reform that CSIS produced](#) over the past year. The series analyzed proposed changes in both the House and Senate bills and made recommendations about a way forward. CSIS has, in addition, held a series of [public events](#) and senior working groups to assess the proposals and [help the process move forward](#).

## ASSESSMENT

The NDAA's organizational and process changes are divided into four categories:

- Changes to strategy documents and the strategy formulation process
- Reorganizing of national security organizations: National Security Council, Joint Chiefs of Staff, Office of the Secretary of Defense
- Limits on size of headquarters and senior leadership, both military and civilian
- Restructuring of acquisition processes and organizations

### Changes to Strategy Documents and the Strategy Formulation Process

#### *Strategic Reviews*

##### **Final NDAA (Section 941):**

- Repeals Quadrennial Defense Review (QDR)/Defense Strategy Review (DSR) (10 USC 118)
- Replaces QDR/DSR with a "National Defense Strategy":
  - Provided by the secretary of defense every four years, "unless it is appropriate to do so at an intermittent time"
  - Structured as guidance to department
  - Presented to Congress as a classified document with an accompanying unclassified summary
  - Shorter list of required topics to cover than QDR/DSR
  - Due as soon as possible after a new administration takes office
- Secretary annually provides guidance to subordinate elements for program and budget review.
- Secretary provides, every two years, guidance to the chairman for the preparation and review of contingency plans.
- Department provides briefings to Congress on these two guidance documents but not full documents.

The NDAA repeals the section of the U.S. Code (10 USC 118) establishing the QDR/DSR. However, strategic reviews are not gone; there is still a requirement for a quadrennial review. Instead of having its own statutory section, the guidance is attached to section 113, which lays out the duties of the secretary of defense. Along with its changed statutory location, important characteristics have also changed.

First, the document is structured as classified guidance from the secretary to the department. It is not envisioned as a public statement of strategy and programs. However, the legislation allows for an unclassified document and that will likely take on the public role of strategy explanation and justification since a new administration will need to reach a broad audience.

The review is due as soon as possible after the new administration takes office. This is a change from the QDR, which was due with the following budget—in effect, 13 months after a new administration takes office. The new review (the “NDS”) could come out as late as the following budget, but it could also come out earlier if the new administration wants to get its perspective out more quickly. An accelerated timeline would be a challenge but has been accomplished in the past. The Bottom-Up Review of 1993 and the QDR of 2001—both occurring after changes of administration—were completed by September of the president's first year in office.

The guidance about program review and contingency plans is similar to previous guidance except for the new requirement to brief Congress on the content of the documents. This is a less stringent requirement than had been contained in the House bill, which called for the documents themselves to be given to the Congress. This had been a major sticking point because the executive branch considered these to be internal, pre-decisional documents. (For background on all strategy documents, see CSIS paper [“Revising the Strategy Formulation Process and Related Documents.”](#))

### *National Defense Panel*

#### **Final NDAA (Section 942):**

- Establishes the “Commission on the National Defense Strategy for the United States” to replace National Defense Panel
- Gives commission a broad tasking similar to NDP: “The Commission shall conduct a comprehensive assessment of the strategic environment, the threats to the United States, the size and shape of the force, the readiness of the force, the posture and capabilities of the force, the allocation of resources, and strategic and military risks in order to provide recommendations on the national defense strategy for the United States.”
- Membership similar to NDP, though larger (12 v. 8) BUT with all members appointed by armed services committees, and none by the secretary of defense.
- Interim product due in June 2017, final product in December 2017.
- Established for 2017 only, not a permanent requirement as the NDP had been.

The name has changed but the purpose and taskings remain similar. There are three important differences, however:

- The change in appointment of the members, including the chair and vice, which for the NDP had been appointed by the secretary of defense, means that the commission will be more independent of DOD than the NDP.
- The commission is on a faster timeline than previous NDPs. Whereas the NDP reported out after the QDR, this new commission reports out before DOD's strategic review. As a result, it provides an input to DOD strategic review, not commentary on it.
- The one-time establishment likely means the Congress wants to see how this plays out before making a permanent statutory requirement.

### *National Military Strategy (NMS)*

#### **Final NDAA (Section 943):**

- Every two years the chairman decides whether or not to prepare a new NMS.
- The NMS will be based on a review conducted by the chairman, the other members of the Joint Chiefs, and commanders of the combatant commands.
- The NMS "shall describe how the military will support the objectives of the US as articulated in the National Security Strategy, the most recent annual report of the Secretary of Defense, the most recent National Defense Strategy, and any other policy guidance from the President."
- "The NMS . . . shall be classified in form, but shall include an unclassified summary."

Two major changes here: first, the chairman could decide not to prepare a new NMS if the situation does not warrant one (for example, in the latter years of an administration). Second, the NMS will be primarily classified. The intention is that it will provide a more candid discussion of threats, needed capabilities, and risks.

### *National Security Strategy (NSS)*

#### **Final NDAA (Section 944):**

- Changes NSS guidance from submission to Congress "in both a classified form and an unclassified form" to "in classified form, but may include an unclassified summary."

Continuing the theme of classifying strategy documents, the NSS shifts from classified and unclassified to primarily classified.

Classifying strategy documents may increase the candidness of their discussion and therefore increase their usefulness, but the administration will still need a mechanism to explain its strategy and programs to the country and to the international community. One would expect, therefore, that some of the unclassified reports will be written for a broad audience and take on a public diplomacy role.

### **Changes to National Security Organizations: National Security Council, Joint Chiefs of Staff, Office of the Secretary of Defense**

#### *National Security Council*

##### **Final NDAA (Section 1085):**

- Capped at 200 professional personnel, with an 18-month transition period
- No requirement for Senate confirmation of national security adviser

Reacting to widespread criticism that the NSC had become too large (it grew to 400 in the Obama administration), the NDAA restricts it to 200 professional personnel. That excludes administrative personnel (there is no definition of "administrative"), but includes detailees and contractors. The NSC has about 75 actual billets, the rest of the staff being on loan ("detailed") from other agencies, primarily DOD and State.

Importantly, there was no requirement for confirmation of the national security adviser (NSA). A large NSC took on the aspects of a government agency, and the House bill would have required the NSA's confirmation if the staff size exceeded 150. By comparison, the Office of Management and Budget (OMB), the other large agency in the Executive Office of the President, has 450 staff and six officials requiring Senate confirmation. (For background, see CSIS paper ["Limiting the Size of the NSC Staff."](#))

*Tenure of Chairman and Vice Chairman of the Joint Chiefs of Staff (CJCS/VCJCS)***Final NDAA (Section 921 (b), (d)):**

- Changes the length of the tenure of the CJCS from two years to four, “beginning on October 1 of an odd numbered year.”
- Changes the length of the tenure of the VCJCS to “a single term of four years,” “beginning on October 1 of an odd numbered year, except that the term may not begin in the same year as the term of the Chairman.”
- Makes VCJCS a career terminal position but allows the president to give the VCJCS a follow-on assignment, if it is “in the national interest.”
- Applies to CJCS/VCJCS appointed on or after January 1, 2019.

The legislation extends the terms of both the chairman and the vice chairman to four years, making them comparable to those of the service chiefs. This was noncontroversial. The legislation also staggers the tenures to ensure continuity. The original Senate language had made the vice chairman's position terminal with the incumbent unable to step up either to the chairmanship or to a combatant command. The final NDAA incorporates this limitation but allows the vice chairman to be appointed to one of these positions with a waiver. The effective date means that it does not limit the terms of the current chairman, Gen. Joseph Dunford, or vice chairman, Gen. Paul Selva. (For background, see CSIS paper [“Tenure of the Chairman and Vice Chairman.”](#))

*Responsibilities and Authorities of the Chairman of the Joint Chiefs of Staff***Final NDAA (Section 921 (c)):**

- Deletes existing text (10 USC 151) describing duties of the chairman and replaces with seven pages of new text.

The new duties are similar to the old but explicitly require the chairman to provide advice on ongoing military operations and global allocation of forces. The new duties also deemphasize, though they still contain, requirements for participating in budget and acquisition processes. As the conference report notes, “This provision seeks to clarify the role of the Chairman and thereby set an expectation that the preponderance of any Chairman's time should be devoted to the key strategic, global, and joint duties that are the Chairman's unique purview within the military.” It does not contain authority to move forces between combatant commands, which had been a controversial element in the Senate bill.

(For background, see CSIS paper [“Operational Authorities of the Joint Chiefs of Staff.”](#))

*Advice and Opinions from Members of the Joint Chiefs Other Than the Chairman***Final NDAA (Section 921 (a)):**

- Deletes section of 10 USC 151 describing advice and opinions provided to the president, secretary of defense, and NSC by members of the Joint Chiefs other than the chairman (service chiefs, National Guard chief, vice chairman).
- Replaces deleted section with the following: "After first informing the Secretary of Defense and the Chairman, the members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisors, may provide advice to the President, the National Security Council, the Homeland Security Council, or the Secretary of Defense on a particular matter on the judgment of the military member."

Goldwater-Nichols had made the chairman the senior military officer and primary provider of military advice, somewhat eclipsing the service chiefs. The new section provides a mechanism for individual chiefs, with or without the Chairman, to provide independent advice. Whereas the previous section had restricted advice to "when requested," the new language has "as needed," thus allowing the chiefs to provide advice proactively.

The intended effect of the change is to provide a wider range of advice and opinions to the secretary and the president. The Congress may have been thinking of instances such as in 2003 when Gen. Eric Shinseki, Army chief of staff, warned that the occupation of Iraq would be more demanding than planning had allowed. Because he was a service chief and his opinion was not shared by the other members, it was not presented to the secretary and the president, but came out in congressional testimony. This authority for independent advice is clearly a "last resort" since the member would be going against not just the chairman, but likely the other joint chiefs as well. Time will tell whether chiefs use this authority

*Secretary of Defense "Delivery Unit"***Final NDAA (Section 913):**

- The secretary may establish a unit "responsible for providing expertise and support to improve the implementation of policies and priorities."
- "Not more than 30 individuals selected by the secretary primarily from among individuals outside the government with significant experience and expertise in management consulting, organizational architecture, relationship management, or theater analytics."

This provision creates an entirely new organization, designed to bring expertise about reform and business transformation into the department. The conference report encourages the department to use special "public private talent exchange authorities"

created in Section 1101 to hire the staff. Since the language is permissive (“may”), the new secretary can decide whether to create such an organization, considering that there are already similar capabilities in the chief management officer’s office and in the Cost Assessment and Program Evaluation office.

### *Cross Functional Teams in the Office of the Secretary of Defense*

#### **Final NDAA (Section 911):**

- “The Department of Defense shall conduct a study . . . to determine how best to implement effective cross-functional teams.”
- “The Secretary of Defense shall [also] establish cross-functional teams to address critical objectives and outputs.”
- Teams receive their charter from the secretary and draw personnel from across the organization.
- Reports required after 18 months on actions taken and lessons learned.

Cross-functional teams are a current interest in the business and management-consulting world. The idea is that empowered teams with composition across management stovepipes can identify opportunities and efficiencies more easily. The provision in the original Senate bill (the House had no comparable provision) caused a sharp response from DOD because it mandated in law the minimum number of teams, their functions, management, and personnel. The secretary saw this as micro-management. The final language is a compromise. It contains guidance for such teams and recommendations about their operation but leaves ultimate decisions to the secretary. (For background, see CSIS paper [“Creating OSD Mission Teams.”](#))

### *Creation of Cyber Command*

#### **Final NDAA (section 923):**

- Establishes a “unified combatant command for cyber operations with the primary function to prepare cyber operations forces to carry out assigned missions.”
- Notes that “transparency of U.S. Cyber Command operations, forces, and other activities is critical to oversight of the command by Congress.”
- Requires congressional notification of “all offensive and significant defensive military operations in cyberspace carried out by the command” and “[establishment of] formal procedures for notification to Congress of significant operations in cyberspace on a timely basis.”



Cyber Command already exists as a "sub-unified" command with a four-star commander under Strategic Command, so this is not a big change. Nevertheless, it increases attention on cyber issues and expands authorities available to the cyber commander. It also increases the number of combatant commands from 9 to 10 at a time when the Congress is concerned about the amount of DOD overhead.

The language shows a tension in congressional concerns. It wants to increase capabilities in cyberspace but is concerned about the potentially intrusive nature of such activities. Therefore, it balances the creation of the command with reporting and notification requirements to increase oversight.

### *Management of Special Operations Forces*

#### **Final NDAA (section 922):**

- Empowers the assistant secretary of defense for special operations forces (ASD/SOLIC) to "Exercise authority, direction, and control of all special operations peculiar administrative matters relating to the organization, training, and equipping of special operations forces."
- Inserts the ASD/SOLIC into the administrative chain of command for special operations forces.
- Defines "administrative matters" broadly as: "the special operations-peculiar administration and support of the special operations command, including the readiness and organization of special operations forces, resources and equipment, and civilian personnel. It does not refer to . . . operational matters . . . [or matters] that are not special operations-peculiar," which remain with the military services.
- Continues ASD/SOLIC oversight of policy and programs for irregular warfare and special operations.
- Codifies in statute existing practice that the commander of Special Operations Command monitors promotions and career management of special operations personnel.
- Codifies in statute the existing Special Operations Oversight and Policy Council "to integrate the functional activities of the headquarters of the Department of Defense in order to most efficiently and effectively provide for special operations forces and capabilities." Membership drawn from across OSD, the military services, and the Joint Staff.

This section significantly expands the authorities of the ASD/SOLIC, giving that official a unique role. The congressional intent is to make special operations forces more like a

separate service with the ASD/SOLIC operating as, in effect, a service chief. To support this expanded role, report language recommends, but the legislation does not require, an increase in staffing for the ASD/SOLIC office, despite the caps on OSD personnel overall. These actions recognize the doubling in size of special operations forces since 2001—they are now approaching the size of the British Army—and their prominent role in conflicts since then. However, the new structure further weakens the already tenuous connection between the services and their special operations personnel. For this reason, the legislation codifies the practice of having the commander of SOCOM watch promotions and career management to ensure that special operators receive fair treatment. The new authorities and independent role may also create tension with the ASD/SOLIC's nominal boss, the under secretary for policy. It will take time to sort out the new relationships.

## Limits on size of headquarters and senior leadership, both military and civilian

### *Reductions to General and Flag Officers*

#### **Final NDAA (Sections 501, 502):**

- Reduces the statutory limit on the number of general and flag officers (GO/FOs) on active duty by 110, to 852, by 2022. Provides sub-limits for each service and for joint organizations. Allows up to 30 additional for overseas contingencies.
- Allows secretary to waive limits with congressional notification.
- Institutes no limits on 4-star positions or cuts to GO/FOs in the reserve components.
- Eliminates many statutory ranks for specific positions.
- Requires a report to justify GO/FO positions.
- Committees believe that "An additional 10% reduction in the number of general and flag officer positions may be appropriate in addition to the 110 positions required to be eliminated."

The Senate had originally sought a 25 percent cut in all GO/FO positions, and even deeper cuts to four-star positions; the House had cut only four-star positions. The reduction of 110 constitutes an 11 percent cut to *authorized* positions, a classic compromise between the chambers. However, because DOD does not fill all authorized GO/FO billets, the actual number of GO/FOs on active duty ([as of November 2016](#)) is 889. Since the legislation caps the number at 882 (852 plus 30 for OCO), that means, in effect, that DOD does not need to eliminate any currently filled GO/FO billets, but it also cannot add any as the force expands.

The lack of specified cuts to four-star billets—which had been cut in both the House and Senate bills—likely reflects strong pushback by the department, where such billets reflect

major organizational arrangements, and possibly from within Congress, where district interests may have been affected.

The lack of any cuts to Guard and reserve general/flag officers, despite their larger growth in numbers, shows the strength of that community, which has units in every congressional district. The Guard is particularly powerful because of its dual federal/state role.

The elimination of statutory ranks for particular billets does not require that the billets be downgraded but gives the services flexibility to meet the reduced numbers. However, it means that many communities—reserves, chaplains, nurses, lawyers—may lose the seniority of their leadership and the organizational standing that such senior leadership entails.

The accompanying language about the potential need for 10 percent additional cuts may foreshadow future congressional action. (For background, see CSIS papers ["Reducing the Number of General and Flag Officers,"](#) ["Reducing Guard/Reserve General/Flag Officers,"](#) and ["Assessing Defense Reform: Reducing the Number of Four-Star General/Flag Officers."](#))

### *Cap on Senior Executive Service (SES) positions*

#### **Final NDAA (Section 1109):**

- Limits the total number of SES positions in DOD to 1,260 by the end of CY 2022, of which no more than 200 can be hired under the existing authority for "highly qualified" personnel.
- Requires a plan on SES allocations and periodic progress reports.

Currently DOD has about 1,200 SES personnel, who are roughly comparable to general/flag officers. The cap is essentially a freeze that prevents any growth, even as budgets and forces increased. The Senate had sought a 25 percent cut in SES personnel, but the department had pushed back, noting that SES were needed to offset limits on general/flag officers.

The cap on "highly qualified" personnel likely reflects a desire to focus these billets on the most technical skills and not allow them to become a mechanism to get around normal promotion procedures. The requirement for a plan and reports is comparable to similar requirements for general/flag officers. (For background, see CSIS paper ["Reducing the Number of SES by 25 Percent."](#))

### **Restructuring of acquisition processes and organizations**

The discussion here covers only a small number of the over 100 changes to acquisition processes in organizations. However, these are likely the most important.

*Acquisition Organizational Structure***Final NDAA (Section 901):**

- Disestablishes the existing undersecretary for acquisition, technology, and logistics (AT&L).
- Creates an undersecretary for research and engineering (USD R&E) focused on driving technology innovation and overseeing R&D activities before the systems design and development phase of acquisition. USD R&E also oversees developmental test and is senior to the USD A&S (below).
- Creates an undersecretary for acquisition and sustainment (USD A&S) focused on delivering systems. USD A&S will serve as the defense acquisition executive and chair the Nuclear Weapons Council.
- Creates a chief management officer, a senior position reporting directly to the secretary of defense, and repeals the pending statutory creation of a USD for business management and information.
- Organizational changes don't take effect until February 2018, after DOD submits an interim (March 2017) and a final (August 2017) implementation plan.

This language aligns the job of the newly created under secretary of defense for research and engineering (USD R&E) with the Senate-recommended separation of technology development from major defense acquisition programs (see below); retains a USD-level acquisition executive (the under secretary of defense for acquisition and sustainment (USD A&S)); and keeps the elements of the acquisition system unified after the beginning of system design. It leaves most of the details of how to divide the current USD AT&L office to DOD to determine, although industrial base responsibilities are listed among the duties of the USD A&S. Both of these USDs are established as Level II executives, as is the case now for the USD AT&L, but the USD R&E is clearly indicated as the senior position and the incumbent USD AT&L can assume the USD R&E position without a separate confirmation process.

This outcome retains the Senate's core objective of creating a USD R&E focused on innovation, but does not put the acquisition system under that official's direct control or shift responsibilities for logistics as the Senate had proposed. The new USD R&E will focus on spurring cutting-edge technology development, while the USD A&S focuses on overseeing acquisition programs throughout their life cycle. (For background, see CSIS paper [Establish Under Secretary of Defense for Research and Engineering](#).)

The 2018 implementation means that the new administration will nominate officials to existing positions but then transition after a year into the new structure.

The NDAA additionally disestablishes the undersecretary of defense for business management and information, created in the FY 2015 NDAA and scheduled to take effect in 2017, and replaces it with the creation of a new chief management officer (CMO) responsible for all the Department's business operations. While the level of the exact level of the position is unspecified, it has the hallmarks of an Under Secretary level position: it reports directly to the Secretary of Defense and is empowered to give direction to the services secretaries for matters within its purview. The CMO position is closer to current law than to the Senate's proposal to create an under secretary for management and support, which would have inherited some current USD AT&L responsibilities and taken over responsibility for overseeing most defense agencies.

### *Structure of Major Defense Acquisition Programs (MDAPs)*

#### **Final NDAA (Title 8, Subtitle B):**

- Creates separate authorities and funding for technology maturation and prototyping activities outside of the traditional major defense acquisition program (MDAP) structure.
- Requires detailed technology risk assessments, cost targets, and fielding dates before MDAPs are initiated.
- Requires use of open-system architecture to allow new technologies to spiral into platforms as they mature.
- Allows successful prototype efforts to move directly to production without further competition.

This language originated in large part with the House's Acquisition Agility Act (H.R. 4741), which was modified in collaboration with DOD leadership prior to its incorporation in the House version of the NDAA. The Senate had complementary language relating to excluding certain acquisitions of commercial technology and programs carried out under its previously established alternative acquisition paths (Section 804 of the FY16 NDAA) from treatment as MDAPs. These provisions were retained in conference with a few clarifications. It is still an open question, however, to what extent both the Department and the Appropriations Committees are willing to fund significant technology maturation and prototyping activities outside of the traditional MDAP structure. (For background, see CSIS Paper [New Acquisition Program Structure](#).)

*Business Model for Innovation***Final NDAA:**

- Establishes a preference for fixed price type contracts.
- Requires senior-level approval for cost type contracts but without penalties.
- Creates a Defense Cost Accounting Standards (CAS) Board and requires rewriting CAS to align with Generally Accepted Accounting Principles (GAAP), that is, commercial accounting standards, where possible.
- Separates independent research and development (IRAD) costs from bid and proposal costs.

The final language walks back some of the Senate's earlier provisions on the use of cost-type contracts, especially the proposed penalties imposed on such contracts, but retains a provision expressing a preference for fixed-price contracts for new contracts over \$50 million starting in FY 2018. In FY 2019, that \$50 million threshold is lowered to \$25 million. This preference can be overridden only by the service acquisition executive, the head of the Defense Agency, or USD(AT&L). These provisions reinforce other statutes already in place that establish a preference for fixed-price contracts. (For additional details, see CSIS paper [Measuring the Outcomes of Acquisition Reform](#).)

The language adopts the Senate proposal to establish a separate Defense Cost Accounting Standards (CAS) Board and directs both the new and existing CAS Boards to better align CAS with commercial accounting practices. The intention is to reduce the burden of maintaining a separate accounting system.

Additionally, the NDAA contains provisions aimed at reducing bid and proposal costs to 1 percent of contractor sales to DOD and requires the secretary of defense to establish regulations requiring independent research and development (IRAD) costs to be reported independently from other allowable indirect costs such as bid and proposal costs. This provision also clarifies the circumstances under which IRAD shall be considered "fair, reasonable, and allowable expenses on Department of Defense contracts."

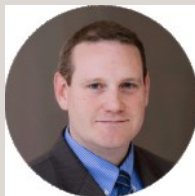
*Base Realignment and Closure (BRAC)***Final NDAA (Section 2702):**

- "Nothing in this Act shall be construed to authorize an additional Base Realignment and Closure (BRAC) round."

The NDAA is discouraging for BRAC. Not only does it prohibit the department from implementing another BRAC round, which the administration has requested four years running, it also denies the department's request for \$3.5 million to do a study on facility needs and capacity. The Congress complained: "The conferees remain concerned that the Secretary of Defense has yet to provide the force structure plan, the infrastructure inventory, and the assessment of infrastructure necessary to support the force structure that were required to be prepared [in the FY 2016 NDAA]. The conferees believe this congressionally directed report is necessary in order to evaluate the Department's need, and request for a new base realignment and closure round." The department submitted an ["interim" report on excess capacity](#) but never a final report. (For background, see CSIS paper ["Authorizing Base Realignment and Closure."](#))



**Mark Cancian** is a senior adviser with the CSIS International Security Program.



**Andrew Hunter** is a senior fellow in the International Security Program and director of the Defense-Industrial Initiatives Group at CSIS.