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Highlights of H.R. 3304: Final FY14 Defense Authorization Bill

Noteworthy

- **Floor Situation:** On Sunday, Majority Leader Reid filed cloture on the motion to concur in the House amendment to the Senate amendment to this bill. It seems highly likely he will block all opportunity for amendment before a final passage vote, meaning the Senate will have processed only two amendments during the entire consideration of the defense authorization bill.
- **Executive Summary:** The Administration's fiscal year 2014 defense budget request was for \$625.2 billion, composed of \$526.6 billion for the Department of Defense base budget, \$80.7 billion for ongoing operations in the war against terrorists (or what the Administration labels "Overseas Contingency Operations"), and \$17.9 billion for Department of Energy national security programs. The Congressional Budget Office scored the final request as seeking \$641 billion in budget authority, which included matters outside the jurisdiction of the congressional Armed Services Committees.

The bill provides \$625.1 billion in budget authority, of which \$526.8 billion is for the base budget, \$80.7 billion is for OCO, and \$17.6 billion is for DOE national security programs.

The Bipartisan Budget Agreement sets funding for the revised security category (Function 050) at \$520.5 billion in 2014 (an increase from \$498.1 billion in current law). OCO is not restricted by the revised cap. The Budget Control Act does provide automatic enforcement mechanisms, i.e. sequestration, to enforce the applicable spending caps for any appropriations exceeding those caps.

Authorization Overview

The House processed this bill on suspension, passing it by a [vote](#) of 350-69.

Of particular note, the bill authorizes the following amounts:

- \$98.4 billion in procurement funding, which is \$198 million more than the President's budget request;
- \$67.7 billion in funding for research, development, test, and evaluation, which is \$219 million more than the requested level;
- \$176.4 billion for operation and maintenance, which is \$1.3 billion more than the request;
- \$136.4 billion for military personnel, which is \$683 million less than the request;
- \$80.7 billion for Overseas Contingency Operations, which is essentially the amount of the request;
- \$17.6 billion for atomic energy defense activities, which is \$235 million less than the request; and
- \$10.4 billion for military construction, which is \$645 million less than the request.

Noteworthy Bill Provisions

Guantanamo

- Section 1033 extends for one year the prohibition on the use of funds to construct or modify facilities in the United States for the purpose of receiving Guantanamo detainees.
- Section 1034 prohibits for one year the use of funds to transfer to the United States Khalid Sheikh Mohammed or any other Guantanamo detainee.
- Section 1035 authorizes the transfer of a Guantanamo detainee out of U.S. custody in cases where the Secretary determines pursuant to a Periodic Review Board process that the detainee is no longer a threat to U.S. national security; or if transfer is essentially required by the outcome of other judicial process, such as habeas relief, acquittal of criminal charges, or completion of a criminal sentence.
- Section 1035 goes on to weaken the restrictions on the transfer of Guantanamo detainees out of U.S. custody, authorizing transfer when the Secretary determines actions will be taken to substantially mitigate the risk of the detainee reengaging in terrorist or other hostile activity that threatens the United States. In previous years, the Secretary had to make a variety of certifications prior to transfer and now those matters are only factors in the Secretary's determination.

- The bill does not contain a prohibition against the transfer of detainees to Yemen. Section 1038 requires a report on the capability of Yemen to detain, rehabilitate, and prosecute Guantanamo detainees.
- Section 1039 requires a report on the legal rights for which a Guantanamo detainee may become eligible by virtue of a transfer to the United States.

Sexual Assault

- As the House Armed Services Committee Fact Sheet points out, the bill “includes over 30 provisions or reforms to the Uniform Code of Military Justice related to combatting sexual assault in the military.” Title XVII of the bill is dedicated to this.
- Section 1702 makes changes to Article 32 of the Uniform Code of Military Justice. An Article 32 action is similar to a civilian grand jury investigation, to determine whether there is a basis for prosecution, except that the accused has access to the proceedings in the military system. This section mostly maintains the same structure as the current process, but now calls it a preliminary hearing, makes it more robust, and adds detail to it.
- Under the Uniform Code of Military Justice, convictions in a court martial are subject to post-trial review by the convening authority, in which the convening authority may alter the findings of a court martial. Section 1702 of this bill limits the authority of the convening authority to do that in certain sexual assault cases. It further requires, in cases in which the convening authority modifies the finding or the sentence of a court martial, a written explanation for such a modification.
- Section 1703 eliminates the five-year statute of limitations on trial by court martial for certain sexual assault offenses.
- Section 1705 requires the mandatory discharge from the armed forces of any member convicted of certain sexual assault offenses.
- Section 1709 directs the Secretary to promulgate regulations prohibiting retaliation against an alleged victim of a crime who reports a criminal offense, where retaliation is defined as, among other things, taking or threatening to take adverse personnel action or failing to take or threatening not to take a favorable personnel action.
- Section 1711 provides that people convicted of certain sexual assault offenses may not join the armed forces.
- Section 1731 directs the Panel on Response Systems to Sexual Assault — created by last year’s Defense Authorization Act — to complete additional assessments and reviews.
- Section 1742 requires a commanding officer who receives a report of a sexual offense involving a member of the armed forces in that officer’s chain of command to refer the matter to the appropriate investigation service.

- Section 1744 requires the review by certain authorities of decisions not to refer cases of certain alleged sexual assaults for trial by court martial.
- Section 1751 expresses the sense of Congress that commanding officers are responsible for establishing a command climate in which sexual assault allegations are properly managed and fairly evaluated and a victim can report criminal activity, including sexual assault, without fear of retaliation, including ostracism and group pressure from other members of the command. It goes on to say that the failure to maintain such a climate is an appropriate basis for relief from command and that senior officers should evaluate subordinate commanding officers on their performance in establishing such a command climate.
- Section 1752 expresses the sense of Congress that sexual assault offenses should be disposed of by court martial rather than by non-judicial punishment or administrative action.

Other

- President Obama has notified Congress of his intention to increase military pay this fiscal year by one percent. This bill does not interfere with that decision, and goes on to authorize various other bonuses and special pay authorities aimed at encouraging enlistment, reenlistment, and continued service by active duty and reserve military personnel.
- The bill does not authorize or otherwise include the Administration's proposed Tricare enrollment fees or increases to other Tricare fees.
- The bill does not provide any additional Iran sanctions authority.