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Defense Primer: Department of Defense Unfunded Priorities

Introduction

Department of Defense (DOD) unfunded priorities generally refer to reports submitted to Congress pursuant to *United States Code* provisions (10 U.S.C. § 222a and 10 U.S.C. § 222b) listing military programs, activities, or mission requirements that were not included in the President's annual budget request but that the department would fund with additional appropriations. The highest-ranking officers of the U.S. military services, combatant commands (COCOMs), and Missile Defense Agency (MDA) submit the reports, which are sometimes called unfunded priorities lists or unfunded requirements.

Some observers have described DOD unfunded priorities as “wish lists” that reduce budget discipline and increase unnecessary spending. Others have described them as “risk lists” that identify items intended to support strategic objectives.

For FY2022, DOD identified \$23.85 billion in unfunded priorities, according to CRS analysis of the documents. Congress is debating whether to increase funding in FY2022 defense authorization and appropriation legislation, in part to fund DOD unfunded priorities.

Background

For decades, reports accompanying defense authorization and appropriation legislation have sometimes referenced “unfunded requirements” of the military. The conference report (H.Rept. 97-749) to accompany the National Defense Authorization Act for Fiscal Year 1983 (NDAA; P.L. 97-252) authorized appropriations within the Operation and Maintenance, Air National Guard accounts for certain “unfunded requirements” (i.e., cold weather gear and chemical defense equipment). By the mid-1990s, according to some accounts, the services routinely submitted lists of unfunded priorities to Congress. In the 2000s, conference reports accompanying defense authorization and appropriation legislation sometimes referenced the “unfunded priority list” of DOD or a military service, or the “unfunded requirements list” of a military service.

Selected Legislative History

FY2013 NDAA. Section 1003 of P.L. 112-239 included a sense of Congress provision expressing the position that certain military officers should submit to Congress, through the Chairman of the Joint Chiefs of Staff (CJCS) and the Secretary of Defense (SECDEF), “a list of any priority military programs or activities under the jurisdiction of such officer for which, in the estimate of such officer additional funds, if available, would substantially reduce operational or programmatic risk or accelerate the creation or fielding of a critical military capability.”

FY2017 NDAA. Section 1064 of P.L. 114-328 established the statutory requirement of 10 U.S.C. § 222a for annual

reports on unfunded priorities of the services and COCOMs. In particular, the statute requires the service chiefs and combatant commanders to submit within 10 days of the President's budget request to Congress a report on the unfunded priorities of the service or command under their jurisdiction. The statute requires the officers to submit the documents to the SECDEF, CJCS, and congressional defense committees (i.e., the House and Senate Committees on Armed Services and Appropriations). The reports are to include items in order of priority and such information as the line item number in procurement accounts, program element number in research and development accounts, and the sub-activity group in operation and maintenance accounts. The statute defines an unfunded priority, in part, as a program, activity, or mission requirement that “is not funded in the budget of the President” and “is necessary to fulfill a requirement associated with an operational or contingency plan of a combatant command or other validated requirement.” Section 1696 of the act established a similar statutory requirement (10 U.S.C. § 222b) for an annual report on unfunded priorities of MDA.

FY2020 NDAA. Section 1005 of P.L. 116-92 amended 10 U.S.C. § 222a to include certain military construction projects in annual reports on DOD unfunded priorities. The section further defined a “covered military construction project” as a project included in any fiscal year of the five-year Future Years Defense Program (FYDP) submitted with the President's budget request or considered by a combatant commander “to be an urgent need.”

FY2021 NDAA. Sections 924 and 1006 of P.L. 116-283 amended 10 U.S.C. § 222a to include among the officers required to submit reports on unfunded priorities the Chief of Space Operations and the Chief of the National Guard Bureau, respectively. Section 1005 established the statutory requirement of 10 U.S.C. § 240i for the DOD Comptroller to submit a report on unfunded priorities related to audit readiness and remediation. Section 1867 renumbered the statutory requirement for the Under Secretary of Defense for Acquisition and Sustainment to submit a report on unfunded priorities of the national technology and industrial base to 10 U.S.C. § 4815.

FY2022 Unfunded Priorities

Secretary of Defense Lloyd J. Austin has said the FY2022 President's budget request meets DOD requirements. Chairman of the Joint Chiefs of Staff Mark A. Milley has said unfunded priorities lists provide a “flexibility option” for lawmakers. The military services, combatant commands, and MDA submitted a total of \$23.85 billion in unfunded priorities for FY2022 (see **Table 1**).

Table 1. Summary of FY2022 DOD Unfunded Priorities Amounts
(in dollars)

Component	Amount
Air Force	\$4,180,450,000
Army	\$6,421,287,000
Marine Corps	\$2,957,600,000
Navy	\$6,339,300,000
Space Force	\$831,900,000
National Guard Bureau	\$262,300,000
Africa Command	\$161,500,000
Central Command	\$324,400,000
Cyber Command	\$93,400,000
European Command	\$368,289,000
Indo-Pacific Command	\$889,940,000
Northern Command	\$134,500,000
Southern Command	\$162,728,000
Space Command	\$67,000,000
Special Operations Command	\$286,386,000
Missile Defense Agency	\$367,528,000
Total	\$23,848,508,000

Source: CRS analysis of FY2022 DOD unfunded priorities.

Notes: Strategic Command and Transportation Command did not submit unfunded priorities for FY2022.

Of the \$23.85 billion identified in unfunded priorities for FY2022, the military services (i.e., Army, Navy, Marine Corps, Air Force, and Space Force), National Guard Bureau, and MDA accounted for \$21.4 billion of the total (90%); the combatant commands \$2.5 billion (10%).

Strategic Command and Transportation Command did not submit unfunded priorities for FY2022. Navy Admiral Charles A. Richard, Commander of Strategic Command, wrote to lawmakers, “The Department made extensive efforts to thoroughly assess, prioritize, and balance force capacity, capability, and readiness ... I am satisfied USSTRATCOM priorities are adequately addressed in the Department of Defense’s portion of the President’s budget.”

Combined, DOD unfunded priorities for FY2022 contained several hundred individual budget line items, from air-defense activities estimated at \$110,000 to major weapon systems valued at more than \$1 billion. Topping the lists in terms of dollar amount was \$1.7 billion identified by the Navy to procure a second guided-missile destroyer (DDG-51) in FY2022. The service said the funding is needed to complete a multi-ship procurement and to conduct multiple missions in a “demanding” environment.

DOD unfunded priorities lists typically lack a standard format and can vary in their presentation and classification of information. Some FY2022 lists include a narrative to

describe a requirement; others provide a line item in a spreadsheet. Some include appropriation account codes; others include appropriation account acronyms. Most are unclassified; some are marked “Controlled Unclassified Information” (CUI) or “For Official Use Only” (FOUO).

Selected FY2022 Legislative Activity

During the House Armed Services Committee markup of its version of the FY2022 NDAA (H.R. 4350), Representative Mike Rogers offered an amendment to increase appropriations authorized in the bill by \$23.9 billion, saying, “My amendment includes member priorities from both Republican and Democrat members and unfunded priorities from the combatant commands and services.” The committee voted to adopt the amendment 42-17. Among those who voted against the amendment was Chairman Adam Smith, who has described unfunded priorities as a “forcing mechanism” to increase the defense budget. The House-passed FY2022 NDAA would authorize \$768.1 billion for programs within the scope of the legislation—\$25 billion more than requested, according to H.Rept. 117-118. During floor debate of the bill, Representative Kurt Schrader offered an amendment to limit the reporting requirement of 10 U.S.C. §222a to the military services and Special Operations Command and to eliminate 10 U.S.C. §222b. The House voted against the amendment 167-256.

In releasing a version of the Department of Defense Appropriations Act, 2022 (Division A of S. 3023), the Senate Appropriations Committee recommended \$725.8 billion for programs within the scope of the legislation—\$19.3 billion more than requested—with “increases to selected high-priority items identified on the unfunded priority lists of the service chiefs and combatant commands,” according to the accompanying explanatory statement. The panel expressed concern over the Navy’s decision to list a destroyer as its top unfunded priority and questioned “whether the Navy’s budget requests accurately reflect the service’s most important priorities.”

Potential Issues for Congress

- How might unfunded priorities influence Congress’s ability to make changes to the defense budget irrespective of DOD’s support?
- How might the submission of unfunded priorities without the approval of the Secretary of Defense affect civil-military relations?
- How might a lack of a standard format for unfunded priorities lists affect the level of effort required for congressional oversight?
- How might the classification level of certain unfunded priorities lists affect congressional oversight and influence public opinion?

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