



Updated March 29, 2024

Defense Primer: Department of Defense Unfunded Priorities

Introduction

By law, certain U.S. Department of Defense (DOD) officials and other executive branch agency officials are required to submit reports to Congress describing defense and intelligence-related priorities that were not included in the President's annual budget request. These reports, known as *unfunded priorities lists* (UPLs), identify certain programs, activities, or mission requirements for which appropriations were not requested, along with the funding amounts that may be necessary to resource them. Pursuant to 10 U.S.C. §222a, the highest-ranking officers of the U.S. military services and combatant commands (COCOMs) are to submit UPLs (also sometimes referred to as unfunded requirements, or UFRs) to the Secretary of Defense, Chairman of the Joint Chiefs of Staff, and congressional defense committees. Some Members 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. With the value of such items sometimes totaling tens of billions of dollars a year (e.g., DOD alone identified nearly \$24 billion in FY2022 UPLs), Congress often debates authorization and appropriation of funding for certain unfunded priorities.

Background

For decades, reports accompanying defense authorization and appropriation legislation have sometimes referenced “unfunded requirements” of the military. For instance, 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. In 2009, in preparation of the FY2010 President's budget request to Congress, then-Secretary of Defense Robert M. Gates limited access to information about proposals to decrease funding for certain defense programs—a move that he acknowledged generated congressional concerns over transparency into the department's budget development process. In 2021, then-Chairman of the Joint Chiefs of Staff General Mark A. Milley said unfunded priorities lists provide a “flexibility option” for lawmakers. In 2023, Secretary of Defense Lloyd J. Austin III said he would support removing statutory requirements for UPLs.

Selected Legislation

FY2013 NDAA. Section 1003 of P.L. 112-239 included a provision expressing the sense of Congress 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 the Missile Defense Agency (MDA).

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.

Selected Permanent Laws

Table 1 lists statutory provisions requiring components of DOD, the intelligence community, and other agencies to submit UPLs, under varying terms.

Table 1. Selected Provisions in United States Code Related to Defense and Intelligence UPLs

Title and Section	Description
Department of Defense	
10 U.S.C. §222a	Military services combatant commands unfunded priorities
10 U.S.C. §222b	Missile Defense Agency unfunded priorities
10 U.S.C. §222e	Under Secretary of Defense (USD) for Research and Engineering unfunded priorities
10 U.S.C. §240i	USD(Comptroller) unfunded priorities for audit readiness and remediation
10 U.S.C. §4815	National technology and industrial base unfunded priorities
10 U.S.C. §4901 note	Small business innovation research and small business technology transfer programs unfunded priorities
Department of Homeland Security	
14 U.S.C. §5102 note	Coast Guard shoreside infrastructure and facilities projects unfunded priorities
14 U.S.C. §5108	Coast Guard unfunded priorities list
Department of Energy	
50 U.S.C. §2756	National Nuclear Security Administration unfunded priorities
Intelligence Community	
50 U.S.C. §3113	Intelligence community unfunded priorities

Source: CRS analysis of selected provisions of the *United States Code (U.S.C.)*.

DOD UPLs

DOD unfunded priorities lists typically lack a standard format. Some lists have included a narrative to describe a requirement; others have provided a line item in a spreadsheet. Some have included appropriation account codes; others have included appropriation account acronyms. Most have been unclassified; some have been marked “Controlled Unclassified Information” (CUI) or “For Official Use Only” (FOUO), even after DOD issued guidance discontinuing the FOUO designation.

Combatant commanders do not always submit UPLs. In 2021, the heads of Strategic Command and Transportation Command did not submit FY2022 UPLs for their respective commands. Then-Navy Admiral Charles A. Richard, Commander of Strategic Command at the time, 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.”

The value of items on DOD unfunded priorities can vary. Previous UPLs have included items that ranged in cost from air-defense activities valued at approximately \$100,000 to a

Navy guided-missile destroyer (DDG-51) estimated to cost \$1.7 billion. Following the inclusion of the destroyer on a UPL, some Members questioned whether the Navy’s official budget request accurately reflected the service’s most important priorities.

Selected Legislative Activity

Some Members of Congress have offered legislative proposals to authorize and appropriate funding to support unfunded priorities. Other Members have offered proposals to eliminate statutory requirements for UPLs. In the 117th Congress, during the House Armed Services Committee markup of its version of the FY2023 NDAA (H.R. 7900), Representative Mike Rogers supported an amendment to increase appropriations authorized in the bill by \$37 billion in part by saying, “The amendment funds critically needed priorities from our service chiefs and combatant commanders that were left unfunded by the President’s budget.” The committee voted to adopt the amendment 42-17. Among those who voted against the amendment was then-Chairman Adam Smith, who has described unfunded priorities as a “forcing mechanism” to increase the defense budget. The FY2023 NDAA (P.L. 117-263) authorized \$847.3 billion for programs within the scope of the legislation—nearly \$45.0 billion more than requested. In the 117th Congress, Senator Elizabeth Warren wrote Secretary Austin to curtail the use of DOD UPLs and introduced legislation (S. 5255) to repeal statutory requirements for certain department UPLs. In a press release announcing the legislation, Senator Warren said, “The Department of Defense’s priorities should be reflected in its budget.” In the 118th Congress, Representative Pramila Jayapal introduced legislation (H.R. 4740) to repeal statutory requirements for certain DOD and DOE UPLs. The bills were referred to, but not reported out of, committee.

Potential Issues for Congress

- How might unfunded priorities affect overall funding levels and/or tradeoffs in the national defense budget?
- How might unfunded priorities influence Congress’s ability to make changes to the defense budget, as requested, 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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