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Congress Passes Defense Authorization Bill, Including New Authority for CFIUS

Authors: Sheila P. Burke

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On August 1, the Senate voted 87 to 10 to approve the Conference Report on the 2019 National Defense Authorization Act (NDAA), ending a months-long dispute between Congress and the White House over whether to impose penalties on certain Chinese companies, including telecommunications giant ZTE, for violating American sanctions on North Korea and Iran. The House voted 359 to 54 to approve the NDAA in the previous week. The final bill authorizes \$716 billion in military funding for FY19, including \$639 billion for the Department of Defense and national security programs at the Department of Energy, as well as \$69 billion for Overseas Contingency Operations. Congress originally intended to pass the NDAA earlier this summer, but growing disputes between Congress and the White House over President Trump's decision to ease sanctions on ZTE and other Chinese companies delayed the process. The standoff eventually ended when Congress approved a softened measure.

The agreed upon NDAA Conference Report includes the Foreign Investment Risk Review Modernization Act (FIRRMA), which will significantly expand the jurisdiction and reform the operations of the Committee on Foreign Investment in the United States (CFIUS) to review a number of transactions that were previously not covered by the Committee. These transactions include types of business transactions both inside and outside the U.S. involving critical 1) infrastructure, 2) technology, and 3) emerging and foundational technologies (e.g., artificial intelligence). Lawmakers' concerns with respect to China served as the driving force behind CFIUS reform. While acknowledging the importance of foreign investment, FIRRMA aims to stop China and other countries from leveraging U.S. investment to steal sensitive technology and information that threatens U.S. national security. Many FIRRMA provisions will take effect immediately on enactment of the NDAA. However, most provisions that address expanded coverage of certain transactions take effect 18 months after enactment or 30 days after CFIUS adopts corresponding regulations, whichever comes first.

The bill, named in honor of Senate Armed Services Committee Chairman John McCain (R-AZ), authorizes \$7.6 billion for the purchase of 77 F-35 Joint Strike Fighters. The NDAA also prohibits the delivery of F-35s to Turkey, a NATO ally, before completion of a U.S. government report on the country due later this year. President Trump is expected to sign the bill in the coming days.