



# Center for Military Readiness — Policy Analysis —

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## NDAAs for 2024: Missed Opportunities Must be Revisited

The 118<sup>th</sup> Congress made significant progress in meeting CMR's [Challenge to Congress for 2023](#), but many opportunities to **End Wokeism in the Military** were missed during a **Conference Committee (CC)** that resolved differences in the **House** and **Senate** versions of the **National Defense Authorization Act (NDAA) for 2024**.

Both defense bills, ([H.R. 2670](#) and [S. 2226](#)) included many measures that would have helped to end woke extremism and restore sound priorities in our military. However, the House/Senate Conference Committee, which met behind closed doors, reportedly allowed Senate Majority Leader **Chuck Schumer** and House Ranking Member **Hakeem Jeffries** to dominate the proceedings and aggressively protect the **Biden Administration's** doctrinaire woke agenda.

The resulting defense bill includes some steps in the right direction, but during Conference Committee negotiations, key social policy provisions, most often in the House defense bill, were removed or revised. The 3,093-page [Conference Committee Report \(CCR\)](#) revealed that House conferees had to "recede" to the Senate **817 times**, compared to **481 times** when the Senate deferred to the House. Important issues left unaddressed are not going away.

The agenda for next year will be clear. Congress must affirm military **meritocracy, readiness, and morale** – not woke policies that **take progressivism to extremes and impose them with coercion, even if it hurts the institution**.

Observers who expected more are wondering: *When will members of Congress meet the challenge to fix our military?*

### 1. *Modified Meritocracy Language Fails to End Racial Discrimination*

Both the House and Senate addressed CMR's paramount issue for 2023: **Meritocracy in the Military**. In two cases that the **Supreme Court** decided this year, *Students for Fair Admissions (SFFA) vs. Harvard and the University of N. Carolina*, the Court handed down rulings ending racially discriminatory admission policies in higher education.

The military service academies were not parties to the Harvard/UNC litigation, but the Court ignored the Biden Administration's unproven claims that discriminatory policies at civilian college **ROTC** programs are necessary to advance "national security." This strongly suggests that in a future case, the Court may find racial preferences in military service academy admission policies to be unconstitutional as well.

The SFFA has filed new litigation challenging racial discrimination at the **U.S. Military Academy** and the **U.S. Naval Academy**, but legal proceedings could take years. In the meantime, **Department of Defense (DoD)** and military service academy authorities already have signaled that they [intend to circumvent](#) the Court's ruling prohibiting discrimination by using race as a "determining factor" between two similar candidates.

Absent congressional action, these officials will continue enforcing discriminatory practices under **President Joe Biden's** February 2023 [Executive Order](#). EO 14091 established a government-wide **Diversity Industrial Complex**, empowered to enforce [racially discriminatory "equity" mandates](#) favoring some demographic groups over others.

The **U.S. Constitution** assigns to Congress the power to make policy for the military. In view of the Supreme Court's recent Harvard/UNC ruling, Congress should have specifically prohibited racial discrimination in military service academy admission policies without equivocation.

- **Sec. 529C** of the Conference Committee report adopted part of **S. Sec. 535**, which stated unequivocally, "**Merit Requirement** – *All Department of Defense personnel actions, including accessions, promotions, assignments and training, shall be based exclusively on individual merit and demonstrated performance.*" (emphasis added) The word "**exclusively**," however, was removed under pressure from Democrat leaders.
- The text does not include the word "**primarily**," used in **S. 534**, which could have been interpreted as a loophole. And the resulting language appears helpful: "**Merit Requirement** – *A military accession or a promotion*

*in the Department of Defense shall be based on individual merit and demonstrated performance.*” Given the mindset of the Biden Administration, however, Congress must do more than this. Narrowing the scope of the mandate and omitting the word “*exclusively*” likely will allow DoD officials to continue using racial discrimination to achieve percentage-based DEI goals that are not the same as **non-discrimination** and **equality**.

- **CCR Sec. 563** incorporated language in both bills (**S. Sec. 560** and **H. Sec. 570E**) requiring the military service academies to “**consider standardized test scores**” as part of the application process. (emphasis added) This will help in countering pressures to drop such tests to advance diversity. Still, Congress should clarify its intent by assigning heavier weight to objective test scores than to less consequential subjective factors.
- Conferees omitted compelling findings in the Senate bill (**S. Sec. 535 (a)** through **(c)**), which explained tenets of critical race theory are antithetical to our merit-based military. The deleted text also would have redefined “equity” to mean “equality,” and prohibited the DoD from **directing or compelling acceptance of critical race theory (CRT)** concepts, including beliefs that “*any sex, race, ethnicity, religion or national origin is inherently superior or inferior.*”

Members took a step in the right direction, but more needs to be done to end racial discrimination and to restore meritocracy as the sole consideration.

## 2. Diversity, Equity, & Inclusion (DEI) Programs and Chief Diversity Officers (CDOs)

The entire nation has begun to recognize how divisive, demoralizing, and costly DEI programs and enforcers have become. Single-minded Pentagon officials nevertheless requested **\$140 million** to expand its **Diversity Domains**, up from **\$68 million** and **\$86.5 million** in **2022** and **2023**, respectively. The Biden Administration and Democrat leaders resisted attempts to defund or abolish DEI offices:

- **CCR Sec. 1101** referenced **H. Sec. 364** and **S. Sec. 537**, identical measures prohibiting the Defense Secretary from appointing or employing **military or civilian employees** whose duties include diversity, equity, and inclusion with a **rank or pay grade higher than GS-10** (up to **\$70,000**). The House receded with an amendment limiting application of the salary cap to DoD civilian employees whose **primary duties** are related to DEI. Personnel earning more than the salary cap will be reassigned.
- **CCR Sec. 529B** referenced **H. Sec. 570F**, which would have **eliminated** all DEI offices and **terminated** their personnel and highly paid consultants. The Conference Report dropped that section and **H. Sec. 904**, to eliminate the **Chief Diversity Officer** of the Department of Defense, and **H. Sec. 1120**, which would have required an assessment validating each **civil service** position in the Office for Diversity, Equity, & Inclusion. (According to sources, the separately approved GS-10 pay cap could have the effect of eliminating the higher-pay-grade Chief Diversity Officer.)

The House receded, dropping both provisions and deferring to **S. Sec. 928**, which stated that the Secretary of Defense may not establish any new positions with responsibility for matters relating to DEI or fill any vacancies in such positions. This is a small step toward common sense, but it will **expire upon delivery** of a **Comptroller General** report on the DoD DEI workforce.

- The House bill (**H. Sec. 570G**) would have prohibited funds made available to the military service academies to discriminate or to use quotas in admissions on the basis of race or ethnicity for *one year*, FY 2024. The Senate had no such provision and the House **receded**, dropping the measure.
- The House also receded on **H. Sec. 596**, which would have “sunsetting” the **Defense Advisory Committee on Diversity and Inclusion (DACODAI)** by September 19, 2024. Instead, conferees directed the DoD to provide a detailed report on all DACODAI activities by May 1, 2024, including appointment procedures, the legally required level of “balance” in points of view, costs, and recommendations.

## 3. Critical Race Theory (CRT) and Anti-Extremism Programs

The House and Senate NDAs included several sections addressing **critical race theory (CRT)** and “**anti-extremist**” programs that demoralize and weaken bonds of cohesion. These were positive steps in the right direction, but most were dropped or weakened with revisions:

- **CCR Sec. 576** prohibited the use of federal funds to endorse critical race theory at the military service academies and defined CRT as *“the theory that individuals, by virtue of race, ethnicity, color, or national origin, bear collective guilt and are inherently responsible for actions committed in the past by other individuals of such race.”*

This was a positive step, but the effect was significantly weakened and possibly nullified by the gratuitous addition of a **“technical amendment,”** titled **“Protection of Academic Freedom.”** This clause protects the freedom of instructors to select textbooks and other classroom materials and instructions. (This is ironic and unfortunate at a time when freedom to teach divisive CRT ideology appears to be fueling antisemitic demonstrations on many college campuses since the October 7 attack on Israel.)

- The CCR also dropped **H. Sec. 1099B**, titled **“Protection of Ideological Freedom,”** which would have prohibited the Defense Department from compelling service members to believe or declare a belief in certain **politically based and race-based ideological concepts**. These were described in **H. Sec. 1099B** as the belief that members of **one race, color, sex, or national origin are morally superior** to others, that an individual by virtue of his or her race, color, sex, or national origin, is **inherently racist, sexist, or oppressive**, whether consciously or unconsciously, that a person’s **moral character** or status as either **privileged or oppressed** is necessarily determined by his or her **race, sex, or national origin**, and reflected other typical tenets of CRT ideology.
- Conferees also omitted **H. Sec. 660**, which would have prohibited the use of federal funds for the promotion of certain race-based theories or to compel teachers or students in **DoD Education Activity (DoDEA)** schools to affirm, adhere to, adopt, or process beliefs in a manner that violates **Title VI of the Civil Rights Act of 1964**.

**H. Sec. 660** described these as claims that 1) Any race is **inherently superior or inferior** to any other race, color, or national origin; 2) The U.S. is a **fundamentally racist** country; 3) The **Declaration of Independence** or the **U.S. Constitution** are racist documents; 4) An individual’s **moral character or worth is determined** by the individual’s **race, color, or national origin**; 5) An individual, by virtue of the individual’s race, is **inherently racist** or oppressive, whether consciously or unconsciously; and 6) An individual, because of the individual’s race, bears **responsibility for the actions committed by other members** of the individual’s race, color, or national origin. **CCR Sec. 576** retained only the last point, #6, missing the opportunity to draw attention to the divisiveness of toxic CRT ideology and instructions, especially in schools serving military dependent children.

- **CCR Sec. 578** incorporated **H. Sec. 569**, requiring publication of training materials of the controversial **Defense Equal Opportunity Management Institute (DEOMI)**.
- **CCR Sec. 579** also incorporated **H. Sec. 598**, to prohibit funds for the **Defense Countering Extremism Activity Working Group (CEAWG)**, but dropped the requirement that all documents and correspondence of the group be provided to the **Committee on Armed Services** and the **Select Subcommittee on the Weaponization of the Federal Government**. The CEAWG, established in April 2021, submitted a report in December 2021 that found [fewer than 100 cases](#) of extremist activity. A [second report](#) released in December 2023 added little new data.
- Conferees omitted **H. Sec. 568**, which would have required the Secretary of Defense to submit an annual report to Congress detailing the **training hours** spent on, and **total costs** incurred by, the DoD for training on critical race theory in the previous year. The CCR also omitted the definition of CRT in **H. Sec. 568**: *“The term ‘critical race theory’ means an ideology based on the following premises: (1) **Race is a socially constructed category that is used to oppress and exploit people of color**; and (2) **The law and legal institutions of the United States are inherently racist** insofar as they function to create and maintain social, economic, and political inequalities between whites and non-whites, especially African Americans.”*

#### 4. Gender Identity and Transgender Policies

The Conference Committee failed to address problems caused by the Biden Administration’s radical **transgender** policies. These include **high costs** for **medical treatments and surgeries**, increased **non-deployability**, and **privacy violations for women** forced to share [private living spaces and showers](#) with biological men. Problems are under-reported due to [DoD regulations](#) barring disclosure without high level permission. It is likely that military women’s **athletic teams** soon will be affected by “inclusion” of [male athletes claiming to be women](#).

- Conferees refused to include **H. Sec. 717**, an important measure that would have prohibited **TRICARE** from covering and the DoD from furnishing [sex reassignment surgeries](#) and **gender hormone treatments for transgender individuals**.
- The House also receded to the Senate on **H. Sec. 640C**, which would have prohibited DoD from providing **gender transition procedures**, including surgery or irreversible hormone treatments, through the **Exceptional Family Member Program** for children.

This issue is becoming [increasingly controversial](#), but the DoD is committed to the wrong side.

### 5. *Abortion Travel and Time Off Subsidies*

In October 2022, Defense Secretary **Lloyd Austin** issued a controversial memo authorizing generous time off and transportation subsidies for servicewomen seeking **abortions** in states different from their home base. The Senate failed to act on the issue, but the House bill, **H. Sec. 716** would have nullified the Austin memo and prohibited the Secretary of Defense from [paying for or reimbursing expenses](#) relating to non-covered abortion services across state lines.

The prolonged hold that **Sen. Tommy Tuberville** put on Defense Department promotions could have been ended quickly by Secretary Austin, or by passage of **H. Sec. 716**. Instead, opposition from Democrat leaders caused the House to recede. Austin’s unilateral policy invites the DoD to subsidize travel expenses for [other controversial medical procedures](#), including transgender treatments and surgeries for adults and children in states where they are legal.

### 6. *Drag Shows on Military Bases and Digital Recruiting Ambassadors*

Despite enormous controversies related to **drag queen performances** and drag queen story hours for military children, the Congress addressed sexualized exhibitionism but did not do enough to reinstate good order and discipline:

- Conferees should have codified Defense Secretary **Lloyd Austin**’s promise to [end drag queen performances and story hours](#) on military bases, but they didn’t. Instead, the House receded on **H. Sec. 595**, leaving the door open for reinstatement of sexualized performances in the future. The Conference Report referred to DoD regulations on the use of federal facilities for such performances but failed to mention their demoralizing effect on military culture and discipline, especially in the presence of children.
- In 2023, a flamboyant gay sailor posting videos as “recruiting ambassador” drag queen **Harpy Daniels** discredited the Navy. **CCR Sec. 594** approved **H. Sec. 599**, ending the **Digital Ambassador Program**. The program already was discontinued, but it may not be restarted until certain requirements are met.

### 7. *Parents Rights – DoD Education Activity (DoDEA) Schools*

Civilian parents as well as military will benefit from parents’ rights provisions in the NDAA:

- **CCR Sec. 589** incorporated **H. Sec. 651**, a measure to **protect the rights of parents of children in DoDEA schools** with regard to [curriculum, instructional materials](#), and **parental consent on medical matters**. The CCR also included most elements of **H. Sec. 659**, requiring **disclosure of curriculum** in DoDEA schools for military dependents, but did not approve **H. Sec. 660**, to prohibit funding for **race-based theories** in DoDEA schools. (See above under #3, Critical Race Theory) This section also renewed a request for a long-overdue report on parents’ rights mandated in last year’s NDAA for 2023.
- **CCR Sec. 589** added a new clause, not present in **H. Sec. 651**, under **(c.) Exceptions**. The provision delays for **two years** the effective date of requirements for parents to “*inspect a list of the books and other reading materials contained in the library of the school,*” and to “*provide parents access to the online school library catalog.*” (emphasis added) The purpose of delayed enforcement is not explained.
- **CCR Sec. 589** includes requirements for swift parental notification if a child receives emergency medical care, but a new clause under **“(e.) Definitions**” defines a child’s “*medical examination or screening*” to mean “(A) . . . a physical examination provided by a health care provider; and (B) does not include an evaluation by, or an encounter with, non-clinical staff school staff.” The purpose of this clause is unclear.

- The CCR omitted **H. Sec. 661**, which would have prohibited DoDEA schools from purchasing **pornographic and radical gender ideology books** for their libraries.

## 8. *Sex-Neutral Standards for Combat Arms MOSs (Army Combat Fitness Test)*

Years of tests with the failed **Army Combat Fitness Test (ACFT)** revealed difficulties in training both men and women with [sex-neutral standards in the combat arms](#) – units that involve greater physical strength and endurance. Policies assigning women to the combat arms with “**gender-neutral**” standards pretended that men and women were essentially interchangeable, but this theory has clashed with reality during years of tests with the tougher ACFT:

- **CCR Sec. 577** omitted **S. Sec. 557**, which would have restored the **Army Physical Fitness Test (APFT)** as the test of record, followed by a 24-month pilot program.
- Instead, conferees retained **H. Sec. 567**, which originally called for **sex neutral ACFT standards** for specific combat occupations, such as **infantry, armor, field artillery, and Special Operations Forces** — units such as the infantry that engage in direct ground combat against the enemy. The CCR changed the phrase “**sex-neutral**” to “**increased minimum fitness standards**” for a specific list of military occupational specialties (MOSs) or areas of concentration. However, the CCR also removed **H. Sec. 567**’s references to **combat medics (68W)** and **radio operators (25C)** assigned to close combat units.
- One year after enactment, the Secretary of the Army is required to provide a briefing describing the methodology used to establish the required “increased standards” for the combat MOSs listed. Omitting the politically sensitive phrase “gender-neutral” may help to focus attention on combat effectiveness, not sex or women’s careers, but diligent oversight will be needed to restore higher fitness standards in the Army’s toughest occupations.

## 9. *COVID Mandate Repeal and Restitution*

Congress ended universal **COVID-19** mandates in 2022 and did more to help active-duty and other military members who were adversely affected or unjustly discharged due to those mandates. For example:

- In **CCR Sec. 526**, the Senate receded and incorporated **H. Sec. 525**, a measure to prohibit adverse action against a servicemember solely on the basis of refusing a COVID-19 vaccination, if they had submitted a request for a religious, administrative, or medical exemption. **CCR Sec. 526** directs the military departments to consider reinstatement.
- **CCR Sec. 527** also deferred to **H. Sec. 526**, to require a review board to grant a request for review of a discharge or dismissal based solely on failure to obey a lawful order regarding the COVID-19 vaccine. (A provision to prioritize these requests was not incorporated.)
- In **CCR Sec. 528**, conferees modified and incorporated **H. Sec. 527**, to require the Defense Secretary to communicate to certain former servicemembers about options and the process for possible reinstatement after refusal to accept the COVID-19 vaccine. ([Only 3% of COVID-19 resisters](#) have requested reinstatement.)
- Conferees did not incorporate **H. Sec. 564**, which would have exempted **cadets or midshipmen** from being required to repay tuition if they were not tendered an appointment as a commissioned officer on the sole basis that they refused to receive a vaccination against COVID-19. (The CCR notes that cadets or midshipmen who were separated solely because of their refusal to accept the COVID-19 vaccine were not subjected to repayment provisions.) Conferees directed the Secretary of Defense to establish a process for removing adverse actions against cadets or midshipmen returning to military service or to a service academy.

## 10. *Climate Change Executive Orders and Mandates*

The House and Senate bills included several measures addressing mandates related to “**climate change**” and associated pressures to ensure compliance, some of which were incorporated in the CCR:

- **CCR Sec. 318** incorporated **H. Sec. 1822** and **S. Sec. 820**, to prohibit the use of DoD funds to implement a proposed rule requiring federal contractors to meet **greenhouse gas emissions reduction targets**. The CCR reduced the effective time frame from the two years in **S. Sec. 820** to one year.

- **H. Sec. 1050** would have prohibited the DOD from implementing recent **climate change executive orders**. The Senate had no similar measure and the House receded.
- The CCR also omitted **H. Sec. 1046**, which would have prohibited funds for **advisory committees** related to **environmental, social, and governance (ESG)** aspects.
- In a positive step, **CCR Sec. 319** incorporated **H. Sec. 313**, to require an **annual assessment** and determination by the Defense Secretary that sufficient **recharging infrastructure** is in place **to support electric non-tactical vehicle fleets** in each covered command area of operations. The Senate receded with an amendment requiring that an **infrastructure plan** be completed prior to deployment of covered non-tactical vehicles.
- The House bill (**H. Sec. 896**) required the Secretary of Defense to conduct a study on the effects on the national security of the U.S. from the influence of the **People’s Republic of China** on the **electric vehicle (EV)** supply chain. The Senate had no similar measure and the House receded, but conferees adopted the House language in requesting a study on several aspects of the EV issue, including *“Potential vulnerabilities posed by an increased use of electric vehicles by the vehicle fleet of the Department of Defense.”*

## 11. *Displays of Unapproved Flags*

In 2023, excessive displays of **LGBT pride** flags, even at the [White House](#), got out of hand.

- The Senate narrowly defeated an amendment to authorize displays of only the American flag and authorized exceptions on public buildings, but **H. Sec. 1048** prohibited displays of unapproved flags in DoD public spaces. Senate conferees receded with further clarifying language defining types of flags, e.g., American, state, military unit, veterans, POW/MIA, religious flags and other banners *“approved at the discretion of the military chain of command or senior civilian leadership, as appropriate.”*
- The signed law (**P.L. 118-31**) mentions *“the authority of a military commander to enforce good order and discipline on a military installation,”* but it does not mention flags associated with **“LGBT Pride”** or other controversial events.

## 12. *Conclusion: Requests for Information and Congressional Oversight*

As indicated above, the House called for numerous studies, reports, and data from DoD officials on a variety of controversial issues that were addressed in the CCR. House-specific requests for information are not mentioned in the joint conference committee report.

For example, the House requested a **“Gender Identity Impact Study for Female Active Duty Servicemembers.”** One of the issues to be addressed: *“(2) How the [gender-identity] changes impact natal born women servicemembers and civilian personnel, including in women only spaces such as bathrooms and locker rooms.”*

The House bill also called for reports on **“Religious Freedom Training”** and one on **“Extremism-Related Training and Education Programs for Servicemembers.”** The results of these studies and reports deserve close attention in the coming year.

The 118<sup>th</sup> Congress made great progress in using both the power of the U. S. Constitution and the power of the purse to advance sound policies for our military. Many issues were addressed for the first time, laying down a sound foundation for revisiting every positive measure that was not incorporated this year.

As always, Americans are counting on diligent congressional oversight to rid the military of divisive wokeism that undermines the only military we have. ■

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*The Center for Military Readiness (CMR) is an independent public policy organization, founded by President Elaine Donnelly in 1993, which reports on and analyzes military/social issues. This **CMR Policy Analysis** was prepared for educational purposes; it does not constitute endorsement of legislation. More information is available at [www.cmrlink.org](http://www.cmrlink.org). This document and its active links can be viewed at [https://cmrlink.org/data/sites/85/CMRDocuments/CMR Policy Analysis December 2023-11.pdf](https://cmrlink.org/data/sites/85/CMRDocuments/CMR%20Policy%20Analysis%20December%202023-11.pdf).*