



August 14, 2019

The Honorable James Inhofe  
Chairman  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable Adam Smith  
Chairman  
House Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jack Reed  
Ranking Member  
Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable Mac Thornberry  
Ranking Member  
House Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen Inhofe and Smith and Ranking Members Reed and Thornberry:

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. Founded by Pentagon whistleblowers concerned about ineffective and unaffordable weapon systems, for nearly 40 years we have advocated reforms to protect the military and taxpayers. As you resolve the differences between the House and Senate versions of the National Defense Authorization Act for Fiscal Year 2020 (H.R. 2500/S. 1790), we hope the final bill will include overdue reforms and enhance the ability of the Department of Defense (DoD) to allocate limited taxpayer resources to ensure our national security.

### **Provisions we support:**

#### **Review of the size and scope of the Pentagon's revolving door (Sec. 1060 in the Senate bill)**

As Congress considers a number of bills to strengthen ethics laws across the federal government,<sup>1</sup> it is time for Congress to have the Government Accountability Office collect current and comprehensive information about former Pentagon officials working for Pentagon contractors. A previous review found 52 contractors employed 2,435 former DoD officials who had previously served as generals, admirals, senior executives, program managers, contracting

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<sup>1</sup> See for example Representative Brian Fitzpatrick's (R-PA) "Nonpartisan Bill for the People," H.R. 1612. <https://www.congress.gov/116/bills/hr1612/BILLS-116hr1612ih.pdf>; Representative Max Rose's (D-NY) "Lobbyist Loophole Disclosure Act," H.R. 783. <https://www.congress.gov/116/bills/hr783/BILLS-116hr783ih.pdf>; Senator Elizabeth Warren's (D-MA) and Representative Jackie Speier's (D-CA) Department of Defense Ethics and Anti-Corruption Act, S. 1503. <https://www.congress.gov/116/bills/s1503/BILLS-116s1503is.pdf>; and Representative John Sarbanes's (D-MD) "For the People Act," H.R. 1. <https://www.congress.gov/116/bills/hr1/BILLS-116hr1pcs.pdf>

officers, or in other acquisition positions that made them subject to restrictions on their post-DoD employment.<sup>2</sup>

**Annual reporting on retired military officers employed by foreign governments** (Sec. 1057 in the Senate bill, Sec. 609 in the House bill)

The assumption when a retired military officer speaks on national security issues is that they are speaking about what is in the best interest of the United States. If they are on the payroll of another government, that can create an actual or perceived conflict of interest. POGO urges conferees to adopt the House's language, supported by 25 groups from across the political spectrum, to require annual *public* reporting on retired officers who have received permission to work for foreign governments.<sup>3</sup>

**Continued accountability to achieve audit readiness** (Sec. 6003 in the Senate bill)

The American people want to be confident that the Pentagon can track how it spends their money. Unfortunately, the Pentagon failed its first audit, and subsequent Defense Department Office of Inspector General reports have found significant deficiencies in the ability of the Department to track its property as well.<sup>4</sup> POGO supports this amendment to continue to track progress on achieving auditability.

**Preserving tools to assess weapon effectiveness** (Sec. 252 in the House bill)

POGO strongly urges eliminating the sunset of the requirement for the director of operational test and evaluation to provide an annual public report on the results of independent and realistic tests of major weapons systems. This is the most important report for Congressional oversight to ensure our weapons are safe and effective. Even the Section 809 Panel, which recommended getting rid of a number of Defense Department reports, highlighted this report as worth preserving.<sup>5</sup>

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<sup>2</sup> Government Accountability Office, *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, May 2008, p. 4. <https://www.gao.gov/assets/280/275717.pdf>

<sup>3</sup> Alaska Public Interest Research Group (AKPIRG), Center for International Policy, Citizens for Responsibility and Ethics in Washington, Common Cause, CREDO, Demand Progress, Essential Information, Friends Committee on National Legislation, Global Witness, Government Accountability Project, Government Information Watch, Liberty Coalition, London Center for Public Policy, National Priorities Project at the Institute for Policy Studies, New Mexicans for Money Out of Politics, Open the Government, Peace Action, Physicians for Social Responsibility, POGO, Public Citizen, Senior Executives Association (SEA), Taxpayers for Common Sense, Taxpayers Protection Alliance, Win Without War, and Women's Action for New Directions (WAND), "Broad Coalition Supports Ethics Amendments to the Defense Policy Bill," July 8, 2019.

<https://www.pogo.org/letter/2019/07/broad-coalition-supports-ethics-amendments-to-the-defense-policy-bill/>  
<sup>4</sup> Aaron Mehta, "The Pentagon failed its audit, but officials aren't surprised," *Defense News*, November 15, 2018. <https://www.defensenews.com/pentagon/2018/11/15/the-pentagon-failed-its-audit-but-officials-arent-surprised/>; Department of Defense Office of Inspector General, *Audit of Management of Government-Owned Property Supporting the F-35 Program*, March 13, 2019. <https://media.defense.gov/2019/Mar/15/2002101767/-1/-1/1/DODOIG-2019-062.PDF>; and Department of Defense Office of Inspector General, *Audit of Air Force Accountability of Government Property and Oversight of Contractual Maintenance Requirements in the Contract Augmentation Program IV in Southwest Asia*, July 18, 2019. <https://media.defense.gov/2019/Jul/22/2002159818/-1/-1/1/DODIG-2019-103.PDF>

<sup>5</sup> Section 809 Panel, *Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations*, January 2018, p. 267. [https://section809panel.org/wp-content/uploads/2018/01/Sec809Panel\\_Vol1-Report\\_Jan18\\_FINAL.pdf](https://section809panel.org/wp-content/uploads/2018/01/Sec809Panel_Vol1-Report_Jan18_FINAL.pdf)

**Improving effectiveness of intelligence community whistleblower protections** (Secs. 9322-9325 in the Senate bill)

Providing safe and meaningful channels for intelligence community whistleblowers to disclose wrongdoing is a key component of preventing leaks of classified information. POGO supports these provisions, which codify the appeals process created by the executive branch in 2012 to allow intelligence community whistleblowers who believe they have been illegally retaliated against to appeal to an external review panel of inspectors general; harmonize whistleblower policies; study the feasibility of a centralized hotline to report to the Inspector General of the Intelligence Community; and assess the ability of whistleblowers to get adequate legal representation.<sup>6</sup>

**Preventing excessive overcharges** (Sec. 809 in the Senate bill, Secs. 346, 803-805, and 826 in the House bill)

A number of Department of Defense Office of Inspector General reports have identified loopholes in acquisition laws that have made it difficult, if not impossible, for the government to negotiate fair and reasonable prices.<sup>7</sup> POGO supports better documentation of market research and the collection of data involving prototype projects. Additionally, POGO supports collecting cost or pricing data to ensure that the government is paying fair and reasonable prices. That research, along with helping contracting officers obtain information to prevent profiteering, will result in savings for the Pentagon and taxpayers, especially in procurements where the Department is the only buyer and contracts are awarded without competition. POGO also supports Sec. 346 in the House bill, which requires an audit of excess profits in sole-source commercial depot maintenance contracts.

**Enhanced military whistleblower protections** (Sec. 541 in the House bill)

Your Committees' investigations into gross deficiencies and misconduct in military housing underscore how important it is for service members to have meaningful whistleblower protections. The burden to prove retaliation in the military rests on the individual, unlike in any other area of government, where officials must prove they did not retaliate. Unfortunately, a number of provisions intended to prevent reprisal for reporting housing concerns<sup>8</sup> will be toothless unless you give service members a fair burden of proof in line with reforms made in the 2012 Whistleblower Protection Enhancement Act.

**Reestablishing a wartime contracting commission** (Sec. 899G in the House bill)

Congress's role overseeing our wars, and making the decision to go to war, has been unconstitutionally diminished over the course of multiple administrations. POGO strongly

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<sup>6</sup> For more on current protections for intelligence community whistleblowers see Project On Government Oversight, Government Accountability Project, and Public Employees for Environmental Responsibility, "Whistleblower Laws," *Caught Between Conscience and Career*, pp. 106-108.

[https://s3.amazonaws.com/docs.pogo.org/publication/Caught\\_Between\\_Conscience\\_and\\_Career.pdf](https://s3.amazonaws.com/docs.pogo.org/publication/Caught_Between_Conscience_and_Career.pdf)

<sup>7</sup> For a list of these reports see Project On Government Oversight, *In for a TransDigm, Out for Billions*, May 29, 2019, pp. 20-34. <https://docs.pogo.org/report/2019/in-for-a-transdigm-out-for-billions.pdf>

<sup>8</sup> Scott Maucione, "Congress proposes oversight, new rights for service members in privatized housing," *Federal News Network*, June 4, 2019. <https://federalnewsnetwork.com/congress/2019/06/congress-proposes-oversight-new-rights-for-service-members-in-privatized-housing/>

supports this provision establishing a commission to look at spending in support of our many ongoing wars, including the use of overseas contingency funds and private security contracts.<sup>9</sup>

**Eliminating nuclear earmark requirements** (Secs. 3114 and 3117 in the House bill)

Defense budgets should be based on national security needs, not arbitrary targets set by parochial interests or unnecessary statutory provisions that require agencies to produce wish lists on top of their annual budgets. These amendments will help reduce wasteful spending to prioritize funds for real national security needs.

**Reimbursing taxpayers for their weapon system investments** (Sec. 1282 in the House bill)

The American people underwrite many of the costs of developing weapon systems but rarely share in the profits when those systems are sold overseas. A 2018 Government Accountability Office review found waivers cost taxpayers \$16 billion they could have recovered from overseas sales from FY 2012-2017.<sup>10</sup> This amendment would limit the issuance of waivers in order to ensure taxpayers are repaid and to increase transparency in foreign military sales.

**Studying opportunities for cost savings** (Sec. 1099Y in the House bill)

The current level of Pentagon spending is unsustainable. POGO supports studying opportunities for savings, including increased use of pre-award audits and options to adjust workforce structures to be most cost-effective.

**Hold contractors who don't pay owed taxes accountable** (Sec. 899H in the House bill)

A recent Government Accountability Office review found agencies awarded more than 1,800 contracts to businesses with tax debts in 2015 and 2016.<sup>11</sup> Establishing an easy way for government officials to identify tax cheats will ensure that federal dollars are not awarded to risky contractors and reward contractors who pay their taxes.

**Extend limits on contracting with the federal government** (Sec. 1099B in the House bill)

Currently, Members of Congress are prohibited from contracting with the federal government.<sup>12</sup> In part, this prohibition ensures that lawmakers focus on what is best for the American taxpayer, not their own financial interests. This amendment would apply that same prohibition to the president, vice president, and any Cabinet member.

**Strengthening financial management** (Sec. 899N in the House bill)

Financial management at the Department of Defense continues to be a high-risk area. In its last review, the Government Accountability Office found that requirements to show demonstrated

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<sup>9</sup> For more information see Letter from Project On Government Oversight to Representative Stephen Lynch on support for bipartisan legislation to reestablish the Commission on Wartime Contracting, H.R. 3576, July 11, 2019. <https://lynch.house.gov/sites/lynch.house.gov/files/Support%20Letter%20Commission%20for%20Wartime%20Contracting%207.11.19.pdf>

<sup>10</sup> Government Accountability Office, *Foreign Military Sales: DOD Should Take Additional Steps to Streamline Process for Assessing Potential Recovery of Certain Acquisition Costs*, January 31, 2018. <https://www.gao.gov/assets/690/689759.pdf>

<sup>11</sup> Government Accountability Office, *Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections*, April 15, 2019, pp. 21-22. <https://www.gao.gov/assets/700/698552.pdf>

<sup>12</sup> 41 U.S.C. § 6306.

progress on this issue have not been met.<sup>13</sup> POGO supports this amendment to require the Government Accountability Office to analyze whether the Department is taking the steps necessary to improve financial management.

**Preserving Congressional review of arms sales** (Sec. 1270 in the House bill)

POGO continues to be concerned about the erosion of Congressional authority over foreign policy, including arms sales, over multiple administrations.<sup>14</sup> We support this amendment to preserve Congressional review of arms sales or defense services by appropriately limiting emergency authorities under the Arms Export Control Act. We also support the progress of bipartisan efforts in the Senate to restore Congress's constitutional role.<sup>15</sup>

**Recovering funds for F-35 parts that failed to meet program requirements** (Sec. 134 in the House bill)

A Department of Defense Inspector General report found the Joint Strike Fighter program potentially overpaid \$10.6 million in incentive fees, accepted parts that did not meet program requirements, and could continue to pay up to \$55 million annually for those parts.<sup>16</sup> This amendment would hold the contractors accountable by requiring the Department to seek compensation for these deficiencies.

**Preserving independent expertise on complex spending and programs** (Sec. 215 in the House bill)

The scientific advisory board known as JASON has provided objective and technically complex analysis on some of the country's most sensitive national security projects to ensure policymakers and the public have all the facts when taxpayer dollars are on the line. POGO encourages Congress and national security agencies to leverage its expertise, and supports requiring notification to Congress for any termination of its contract.

**Realistic testing of the ground-based midcourse defense system** (Sec. 1671 in the House bill)

The most recent independent cost estimate shows that the ground-based midcourse defense system will cost \$67 billion.<sup>17</sup> Assessing whether this program meets its performance goals should be based on realistic testing, as required by this amendment.

**Holding contractors accountable for violating labor laws** (Sec. 899E in the House bill)

The federal government should only do business with responsible contractors. Unfortunately, numerous reviews and investigations have found federal contractors among the companies that

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<sup>13</sup> Government Accountability Office, *High Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, March 6, 2019, pp. 149-150. <https://www.gao.gov/assets/700/697245.pdf>

<sup>14</sup> Senator Richard Lugar, "LUGAR: Obama's arms-sale power grab," *Washington Times*, April 17, 2012. <https://www.washingtontimes.com/news/2012/apr/17/obamas-arms-sale-power-grab/>

<sup>15</sup> Rebecca Kheel, "Senate panel advances bill to restrict emergency arms sales," *The Hill*, June 25, 2019. <https://thehill.com/policy/defense/450302-senate-panel-advances-bill-to-restrict-emergency-arms-sales>

<sup>16</sup> Department of Defense Inspector General, *Audit of F-35 Ready-For-Issue Spare Parts and Sustainment Performance Incentive Fees*, June 13, 2019, pp. i-ii. <https://media.defense.gov/2019/Jun/17/2002145901/-1/-1/1/DODIG-2019-094.PDF>

<sup>17</sup> Jason Sherman, "GAO: True cost of GMD program \$67 billion and counting, 63 percent higher than MDA estimate," *Inside Defense*, May 31, 2018. <https://insidedefense.com/daily-news/gao-true-cost-gmd-program-67-billion-and-counting-63-percent-higher-mda-estimate>



commit the largest wage violations and fail to uphold basic safety requirements.<sup>18</sup> POGO supports this amendment to direct federal agencies to initiate debarment proceedings for contractors with repeat and willful labor and wage violations.

**Reclaiming Congress’s constitutional authority to declare war** (Secs. 1099W, 1270U, 1270W in the House bill)

Congress’s reassertion of its war powers begins with repealing authorities that presidents over multiple administrations have abused to wage unauthorized and illegal wars. POGO supports amendments to reassert Congress’s constitutional role and enhance reporting on U.S. forces involved in hostilities not authorized by Congress.

**Enhanced intelligence community oversight** (Secs. 1076, 1098 in the House bill)

Excessive secrecy continues to plague our national security agencies. POGO supports amendments to increase reporting on backlogs on historical declassification obligations, and to require periodic reporting on security clearance adjudication backlogs that undermine the ability of the federal government to attract and retain a talented workforce.

**Rein in major weapons cost growth** (Sec. 898 in the House bill)

Congress should have more information about cost growth on major defense systems. POGO supports reporting of such costs to ensure that weapons spending is not subject to waste, fraud, or abuse.

**Provisions we oppose:**

**Hamstringing the ability of the Department to reduce excessive infrastructure** (Sec. 2702 in the Senate bill)

Congress should support the ability of the Department to reduce excess infrastructure and reallocate resources to higher national security priorities, rather than prohibiting another Base Realignment and Closure (BRAC) round. Past rounds continue to garner \$13 billion in *annual* savings, and another round would likely save an additional \$2 billion per year.<sup>19</sup> POGO has joined experts across the political spectrum in repeatedly calling for another BRAC.<sup>20</sup>

**Attacking press freedom and reducing accountability for intelligence community misconduct** (Sec. 9305 in the Senate bill)

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<sup>18</sup> These violations are tracked in both POGO’s Federal Contractor Misconduct database at [www.contractormisconduct.org](http://www.contractormisconduct.org) and Good Jobs First’s Violation Tracker at <https://www.goodjobsfirst.org/violation-tracker>. See also Government Accountability Office, *Assessments and Citations of Federal Labor Law Violations by Selected Federal Contractors*, October 1, 2010. <https://www.gao.gov/assets/310/309785.pdf>; Senate Health, Education, Labor, and Pensions Committee Staff Report, *Acting Responsibly? Federal Contractors Regularly Put Workers’ Lives and Livelihoods at Risk*, December 11, 2013. <https://www.help.senate.gov/imo/media/doc/Labor%20Law%20Violations%20by%20Contractors%20Report.pdf>; and Senator Elizabeth Warren, *Breach of Contract: How Federal Contractors Fail American Workers on the Taxpayer’s Dime*, March 6, 2017. [https://www.warren.senate.gov/files/documents/2017-3-6\\_Warren\\_Contractor\\_Report.pdf](https://www.warren.senate.gov/files/documents/2017-3-6_Warren_Contractor_Report.pdf)

<sup>19</sup> Department of Defense, *Department of Defense Infrastructure Capacity*, March 2016, p. 18. <https://defensecommunities.org/wp-content/uploads/2015/01/2016-4-Interim-Capacity-Report-for-Printing.pdf>

<sup>20</sup> Center for Strategic and International Studies, “An Open Letter on BRAC,” June 19, 2017. <https://defense360.csis.org/open-letter-brac/>

It is important to protect the identity of intelligence agents who put their lives at risk for our country, but that secrecy should not extend to protecting those who commit misconduct or cover up threats to the intelligence agencies themselves. This provision criminalizes disclosure of the identity of current or retired operatives, even if that information would shed light on waste, fraud, or abuse. POGO joins a broad coalition of organizations urging you not to include this provision.<sup>21</sup>

**Creating a new space bureaucracy** (Secs. 1601-1608 in the Senate bill, Secs. 921-925 in the House bill)

Space operations are best addressed through the existing services, and the plans put forward by Pentagon officials indicate that this bureaucracy is likely to be duplicative and wasteful. Moreover, analyses have found that even the most conservative version of this proposal would increase costs by \$3.6 billion through 2024.<sup>22</sup>

**Insulating accounting firms from accountability** (Sec. 1008 in House bill)

The federal government should only be contracting with responsible accounting firms. POGO opposes this amendment, which would insulate those firms from accountability by requiring the Department to maintain secrecy around any disciplinary proceedings against a firm.

We hope you will consider these recommendations to make the Department of Defense more effective and more responsible with taxpayer dollars.

Sincerely,

A handwritten signature in blue ink that reads "Danielle Brian". The signature is fluid and cursive, with the first name "Danielle" being more prominent than the last name "Brian".

Danielle Brian  
Executive Director  
Project On Government Oversight

cc: Members, House and Senate Armed Services Committees

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<sup>21</sup> Open the Government, "Cut It Out: Broad Coalition Calls on Congress to Remove Provision Criminalizing Reasonable Disclosures from Intelligence Authorization Act," July 9, 2019.

<https://www.openthegovernment.org/cut-it-out-broad-coalition-calls-on-congress-to-remove-provision-criminalizing-reasonable-disclosures-from-intelligence-authorization-act/>

<sup>22</sup> Congressional Budget Office, *At a Glance: H.R. 2500, National Defense Authorization Act for Fiscal Year 2020*, June 26, 2019, p. 7. <https://www.cbo.gov/system/files/2019-06/hr2500.pdf>