

# REPORT

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PROJECT ON GOVERNMENT OVERSIGHT

## **Baker's Dozen:**

POGO's Suggested  
Priorities for Oversight and  
Legislative Reforms

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# **The Project On Government Oversight's 2015 Baker's Dozen of Suggested Congressional Oversight Priorities and Legislative Reforms**

For more than 30 years, the Project On Government Oversight (POGO) has championed good government reforms as a nonpartisan, independent watchdog. Implementing the following recommendations will help the country achieve a more effective, accountable, open, and ethical government—one that is truly responsive to the needs of its citizens. Furthermore, while it is always a goal to have the best possible government at the lowest feasible cost, our troubled economy makes it even more imperative that Congress shrink the cost of government thoughtfully. The place to begin to save billions of taxpayer dollars is to reduce waste, fraud, and abuse. We welcome the opportunity for meaningful discussions about this roadmap for reform.

## **INCREASING TRANSPARENCY OF OUTSIDE INFLUENCE ON THE GOVERNMENT**

The well-oiled revolving door between government and industry has frequently undermined the integrity of contracting, enforcement, and regulatory decisions. In the world of government contracting, POGO has identified hundreds of instances involving high-ranking government officials who shifted into the private sector to serve as lobbyists, board members, or executives of the largest federal contractors in the field they used to oversee. In the world of Wall Street regulation, for instance, POGO has reported that former employees of the Securities and Exchange Commission (SEC) routinely help corporations try to influence SEC rulemaking, counter the agency's investigations into suspected wrongdoing, soften the blow of SEC enforcement actions, block shareholder proposals, and win exemptions from federal law. The revolving door also enables industry alumni to serve in senior government positions where their decisions can affect former employers or clients. POGO has also found that some big businesses make it financially advantageous for executives to take government jobs. To make matters worse, the government ethics system often relies on current and former employees to disclose and manage their own conflicts of interest.

### ***Recommendations:***

- **Let the public see where employees go after they leave federal agencies.** Congress should require former agency employees to enter into a binding revolving door exit plan that sets forth the programs and projects from which they are banned from working. Moreover, any individuals contacting the agency they used to work for should be required to disclose their previous title and responsibilities. Agencies should post all exit plans and disclosure statements online shortly after receiving them.
- **Increase lobbying disclosure requirements.** Congress should require all individuals outside the government—not just agency alumni—to file a disclosure statement whenever they communicate with or appear before an agency official to discuss agency business including regulations or rules, policymaking, federal funds, examinations, and enforcement actions. Congress should require them to identify their employer or client and with whom they met, and to explain the communication in detail.

- **Extend the cooling off periods for employees who enter and leave government.** Congress should require employees who leave federal agencies to wait at least two years before contacting the agency on behalf of anyone to discuss agency business, including regulations or rules, policymaking, federal funds, examinations, and enforcement matters. In addition, Congress should require employees who leave federal agencies to wait at least one year before taking a job with a firm if they had contact with that firm on agency business affecting the firm within a year prior to their departure. Separately, Congress should codify the following provisions from President Obama's revolving door ethics pledge: prohibiting appointees from accepting gifts offered by registered lobbyists; requiring appointees to recuse themselves from official actions affecting a former employer or client, with long cooling-off periods for appointees who used to be registered lobbyists; requiring appointees who leave government to cool off before contacting their former agency, with longer cooling-off periods for those who become registered lobbyists; and allowing for these provisions to be waived when a waiver would serve the public's interest. All waivers and recusal agreements should be made publicly available.
- **Empower the executive branch's ethics watchdog.** Congress should give the Office of Government Ethics more authority to disqualify potential employees from a government post, to monitor recusal agreements, and to standardize ethics procedures throughout the executive branch.

## **MAKING FEDERAL WATCHDOGS MORE INDEPENDENT AND ACCOUNTABLE**

Inspectors General (IGs) are on the front lines of protecting taxpayers from waste, fraud, and abuse. They also serve as the eyes and ears of Congress within the executive branch. Congress has enacted various laws over the years to strengthen the independence of IGs. In light of several recent incidents, however, it has become apparent that additional legislative changes may be warranted. One federal IG stepped down from his post in August 2014 after languishing on administrative leave for nearly two years. Around the same time, a group of 47 IGs wrote to Congress alleging that federal officials have impeded their ability to access agency records. In addition, there are still far too many IG offices headed by acting officials seeking to curry favor with agency leaders.

While it is important to affirm the independence of IGs, they also must be held accountable when they fail to live up to their mission. IGs often focus on unimportant but easy matters and neglect the substantive work they should be carrying out. Even worse, recent reports reveal an unfortunate trend of IGs allegedly hiding or editing negative findings about agency malfeasance. In addition, there is still too much uncertainty surrounding the process for investigating allegations of IG misconduct and removing IGs who are unfit for office.

### ***Recommendations:***

- **Strengthen IG independence.** Congress should consider various measures to bolster the independence and authority of IGs. These measures include clarifying IG authority to

access agency records; putting more pressure on the President and Congress to fill IG vacancies; stipulating that IGs can only be removed for certain causes such as neglect of duty or abuse of authority; requiring more reporting on agency responses to IG recommendations; and giving the Department of Justice (DOJ) IG more authority to investigate misconduct by DOJ attorneys.

- **Make IG reports more meaningful and accessible to the public.** Congress should require IGs to make all audits and more of their investigative reports accessible to the public, especially when those investigations confirm allegations of misconduct by senior agency officials. In addition, Congress should revamp IG reporting requirements so that semiannual reports are more meaningful and reflective of the information that Congress and agencies actually need. Congress should also require IGs to report whether their recommendations were implemented, if they achieved the predicted results, and how much of any “questioned costs” and “funds to be put to better use” are actually recovered or put to a better use.
- **Improve the process for investigating IGs.** Congress should clarify the process by which the Integrity Committee (IC) of the federal IG council investigates allegations of misconduct by senior IG officials. The IC should be required to make explicit recommendations at the end of an investigation, there should be more transparency surrounding the IC’s processes and findings, and the IC should be required to notify Congress when an investigation into alleged IG misconduct takes longer than six months to complete. In addition, the FBI’s designee to the IG Council should not chair the IC; instead that FBI official should be an advisor to the Integrity Committee. The Chair of the Committee should be an Inspector General with experience in investigating sensitive matters.

#### **CLOSING DANGEROUS LOOPHOLES THAT LEAVE FEDERAL CONTRACTORS AND EMPLOYEES WITHOUT ADEQUATE PROTECTIONS**

In the fiscal year 2008 National Defense Authorization Act (NDAA), whistleblower rights enforceable through district court jury trials were enacted for all Department of Defense (DoD) contractors, including at the Defense Intelligence Agency and the National Security Agency (NSA). Contrary to predictions that contractor whistleblowers would flood the courts, only 25 cases were filed under this provision in the five years it was in place. In 2009, all government contract employees paid with stimulus funds, including other IC agencies that were not covered by the 2008 NDAA, like the Central Intelligence Agency, were given whistleblower protections. These whistleblower shields were both so successful in deterring taxpayer waste and contractor abuse that the Council of Inspectors General for Integrity and Efficiency proposed its permanent expansion for all government contractors.

In 2012, Senator Claire McCaskill introduced a whistleblower protection amendment for all government contractors, and it won bipartisan Senate approval in the fiscal year 2013 NDAA. However, during the closing conference committee negotiations, whistleblower rights were extended only to contractors outside of the intelligence community. Preexisting rights for IC contractors were removed, despite a proven track record that the law was working as intended

and did not produce any adverse impacts on national security during its five-year lifespan. In the absence of adequate protections, IC whistleblowers have only two alternatives to almost certain retaliation: remain silent observers of wrongdoing or make anonymous leaks.

In another disturbing step backwards, the Federal Circuit Court of Appeals gave agencies the ability to designate virtually any federal job as “sensitive,” with no meaningful oversight of such a determination. To hold a sensitive position, an employee must be designated as able to have a sensitive job. Because there is no oversight or effective guidance of what makes an employee eligible for a sensitive designation there is no oversight of the removal of that designation. A sensitive employee has no due process rights to challenge a decision to remove them from their position by revoking their “sensitive designation.” Already agencies have begun converting their entire workforce to sensitive jobs, making thousands of employees vulnerable to being fired without due process.

In 1978, Congress created the Merit Systems Protection Board to hear federal employee appeals of alleged prohibited personnel practices. But this new system circumvents the MSPB, allowing the agencies an unchecked ability to remove federal employees from their positions without access to an appeal. Without the stability, balanced treatment, and consistent review Congress intended the MSPB process to provide, federal workers have lost and will continue to unfairly lose their jobs.

#### ***Recommendations:***

- **Restore best practice whistleblower protections for IC contractor employees.** Congress should enact legislation that will protect any disclosure made by an employee of a contractor or subcontractor to a supervisor, Member of Congress, or an Inspector General; require an Inspector General to look into the allegation of misconduct within 10 business days to determine whether it appears credible, and report that determination up the chain of command and to the whistleblower; and protect any good-faith whistleblower from professional retaliation and/or criminal prosecution.
- **Stay current changes to the administration of sensitive jobs until they receive the appropriate oversight and review.** Congress should stay proceedings to remove workers who are found ineligible to occupy sensitive positions until the Government Accountability Office (GAO) can assess the sufficiency of internal agency appeal processes and the impact of limiting the rights of a large portion of the federal workforce to appeal to the MSPB.
- **Restore due process rights for “sensitive employees” who have been fired or charged with misconduct.** Congress should enact legislation to restore due process rights for employees who were removed from their positions due to a change in “sensitive” status. This right existed for all federal employees from 1883-2012 and guaranteed them a day in court before an independent administrative board after termination of employment.

## PROVIDING INCENTIVES AND PROTECTIONS FOR PRIVATE SECTOR WHISTLEBLOWERS

Whistleblowers play an essential role in exposing corporate misconduct. Laws such as the False Claims Act have been enormously successful at recovering defrauded funds for the federal government by incentivizing whistleblowers to report the fraud. The government also offers rewards and protections to whistleblowers who provide high-quality tips to the Internal Revenue Service, Securities and Exchange Commission, and Commodity Futures Trading Commission. Unfortunately, recent court rulings have weakened some of the incentives and protections for private sector whistleblowers. In addition, some companies have attempted to use confidentiality and non-disclosure agreements to stop current and former employees from blowing the whistle.

### *Recommendations:*

- **Expand incentives and protections for financial industry whistleblowers.** The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) has become an important tool for prosecuting fraud in the financial industry. However, whistleblower rewards under this statute are effectively capped at \$1.6 million. The law should be modernized and aligned with similar statutes such as the False Claim Act. Eligible whistleblowers should be entitled to a reward of not less than 10 percent, and not more than 30 percent, of significant monetary sanctions collected by the government. In addition, under FIRREA and other laws, current and former employees should be offered a wider range of protections and remedies if they suffer retaliation for blowing the whistle.
- **Stop companies from using de facto gag orders to silence private sector whistleblowers.** Congress should clarify that it is illegal for employers to use various tactics, such as confidentiality and non-disclosure agreements, to prevent whistleblowers from engaging with Congress.

## REFORMING THE ADMINISTRATION OF THE VA AND ITS TREATMENT OF VETERANS

The Department of Veterans Affairs made the news in 2014 for its substandard treatment of veterans waiting for care. At the same time it became clear that the Department was ignoring the concerns of whistleblowers, retaliating against them, and using fear and retaliation to make sure other employees toed the Department line. Hundreds of VA employees as well as doctors, nurses, and technicians from hospitals across the country came forward to tell POGO their stories of retaliation when they tried to raise concerns about problems affecting patient safety and treatment. The culture at the VA is one of fear, bullying, and retaliation, a systemic problem reaching every level of facilities across the country.

In addition, there is a twofold problem within the VA's benefit appeals process: the backlog of appeals of disability benefit claims and the perpetual remand cycle faced by veterans once their appeals are heard by the Board of Veterans Appeals (BVA). POGO recently highlighted the story of Steven Massong, a veteran who applied for disability benefits after a botched VA surgery left him with a half-amputated foot and scrotum. After settling the malpractice claim



with the VA, Massong was stunned when the VA denied his claim for disability benefits. Massong originally applied for disability benefits in 2006 and 2007, received the original denials immediately, and began the appeals process. He is still waiting for a decision on his appeal.

***Recommendations:***

- **Enact legislation that codifies accountability for those who retaliate against whistleblowers.** The cultural shift that is required inside the Department of Veterans Affairs must be accompanied by statutory mandates that protect whistleblowers and witnesses inside the agency from retaliation. Legislation should ensure that whistleblowers are able to be confident that stepping forward to expose wrongdoing will not result in retaliation, and should provide a system to hold retaliators within the VA accountable.
- **Extend whistleblower protections to contractors and veterans who raise concerns about medical care provided by the VA.** While federal employees working at the VA enjoy whistleblower protections, contractors do not. Congress should extend the same protections to contractors in order to promote internal oversight in an increasingly contractor-heavy landscape. In addition, a veteran who is receiving poor care should be able to speak to his or her patient advocate without fear of retaliation. Without this reassurance, there is a disincentive to report poor care, allowing it to continue uncorrected. Congress should extend whistleblower protections to veteran whistleblowers.
- **Create more specific and transparent VA reporting requirements.** Currently, the chairman of the BVA must annually report “the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year.” However, this reporting only shows us that there is a tremendous delay between the filing of an appeal and when it comes before the BVA; it does not give insight into why or even where the breakdown is occurring. Reporting these numbers is a good start, but Congress should require more specific reporting. For example, regional VA offices, where the majority of the pre-hearing delay occurs, should report the average wait time for each step in the appeals process. Those numbers will give a more accurate snapshot of where the delays are the worst so that we can begin working on ways to reduce them.

**MODERNIZING THE FREEDOM OF INFORMATION ACT**

The Freedom of Information Act (FOIA) is a critical tool for helping the public understand what the federal government is doing and why. It requires federal agencies to release any requested information that is not exempt, and requires agencies to make basic information about their policies available. However, FOIA responses have slowed, backlogs have grown, and the Obama Administration’s promise to be the most transparent Administration in history now looks laughable.

Right now agencies are closing old requests unilaterally, through the growing practice of asking requesters to state proactively that they are still interested in getting a response. Fees are being assessed on requests that have far exceeded the statutory time limits set forth by FOIA, a practice that is contrary to law but is encouraged by the DOJ. Due to a loophole in statutory interpretation, Members of Congress can be denied access to information under any of the FOIA exemptions unless they are asking in the capacity of Chair of a committee or subcommittee. Agency resources are being wasted because of ineffective record-keeping of what has already been released in response to a FOIA request and because there is little proactive disclosure of information. Last Congress, FOIA reform seemed inevitable—with two very similar bills passing each chamber unanimously; the legislation failed, however, because of the powerful influence of outside lobbying.

***Recommendations:***

- **Utilize technology to make FOIA more efficient.** Congress should require agencies to post any document that has been released under the FOIA. It should also require agencies to provide an online tracking system that enables users to immediately locate where their request is in the process, who is responsible for processing the request (once assigned), how to contact the reviewer, and a realistic estimate of a release date.
- **Fix a loophole that allows agencies to treat Members of Congress's requests for information as FOIA requests.** Under current interpretation of the statute, Members of Congress can be denied information under FOIA if they are not asking for it in the capacity of Chair of a committee or subcommittee. Congress should revise the statute to clarify that no Member of Congress can be denied information regardless of applicable FOIA exemptions.
- **Narrow the allowable application of Exemption b(5).** This exemption covers "interagency or intra-agency communication" and includes drafts of final decisions. However, agencies are now using exemption b(5) to withhold a broad swath of material that is crucial to understanding what the government has done and why, including final agency interpretations of legal authority. Congress should clarify how b(5) should be applied. In addition, Congress should revise the statute so that the application of the exemption sunsets after a certain period of time. Current proposed legislation sets that sunset at 25 years.
- **Codify a strong presumption of openness.** Congress should codify the presumption of openness into the law, rather than continue to allow agencies to withhold information merely because they can—not because there is a genuine reason to withhold.
- **Close the fee loophole.** Despite the clear intent of Congress in the 2007 OPEN Government Act, agencies have been exploiting a loophole in the law to charge requesters fees after the agency has missed its statutory deadline to respond. Congress should clarify that an agency cannot charge fees if it fails to meet the statutory deadline. This includes when an agency claims there are "unusual or exceptional circumstances" if they then fail to meet the new deadline.



## **BRINGING INCREASED TRANSPARENCY AND OVERSIGHT TO THE LEGAL INTERPRETATIONS USED BY THE EXECUTIVE BRANCH**

The Office of Legal Counsel (OLC), as part of the DOJ, interprets federal laws for the Attorney General and all executive branch agencies. These legal memorandums are binding on the executive branch and effectively state what the law means. For instance, previous OLC memos have explained the legal justification to use torture, to carry out targeted killings with drones, and to conduct domestic surveillance in the United States. Despite the importance of these memorandums, they are only made public at the discretion of the OLC.

There is great danger in this expanding body of secret law, where the laws passed by Congress are interpreted and applied behind closed doors by a small group of government officials and federal judges. Laws made and implemented in secret restrict the ability to conduct oversight, engage in public debate, and make legislative correction—ultimately threatening the foundations of our constitutional democracy. When the American people are not allowed to influence government policies or to even know what those laws are, then democracy fails.

### ***Recommendations:***

- **Promote government accountability and greater public awareness by requiring the executive branch to produce and release reports on national security policies and surveillance programs.** Congress should require the executive branch to draft and submit detailed, classified reports to the Privacy and Civil Liberties Oversight Board and Congress, and to release unclassified versions to the public. These reports should be issued on a regular basis as determined by Congress.
- **Ensure that the rights and interests of the American public are protected during Foreign Intelligence Surveillance Court (FISC) hearings.** Congress should create a body of *ad litem* attorneys to represent the American public whenever the government requests surveillance orders before FISC, which grants surveillance warrants when the subject is a suspected foreign intelligence agent inside the United States. The *ad litem* attorneys would be housed in PCLOB and report directly to the Executive Director, thereby establishing a measure of independence and separation from the executive branch, and would have security clearance sufficient to review all evidence in government surveillance requests. The attorneys would also have the opportunity to appeal adverse decisions to the Foreign Intelligence Surveillance Court of Review.

## **STOPPING WASTEFUL NATIONAL SECURITY SPENDING**

Spending money on facilities, projects, and weapons systems that we do not need does not make our country safer. But under the guise of national security we have been spending at an alarming rate and not seeing much increased security in return. National security is a core responsibility of the federal government, which is why it is so important that Congress closely examine national

security spending to ensure that taxpayer dollars are only used in ways that actually make us safer and meaningfully contribute to national defense.

The Department of Energy continues to allocate billions of dollars to wasteful facilities, despite viable alternatives. The Department of Defense continues to request and receive money for failed or failing programs and untested weapons systems. Congress needs to make sure that bureaucrats' pet projects are not allowed to trump true national security priorities.

***Recommendations:***

- **Place the Mixed Oxide Fuel Fabrication Facility (MOX) on “cold standby” while looking into alternative plutonium disposition plans.** MOX was originally proposed as a way of disposing of weapons-grade plutonium, but the cost of building the facility has jumped from \$1.6 billion to \$10 billion. In the Department of Energy's budget request earlier this year, the project was placed on “cold standby” in order to explore alternatives, but the recent omnibus spending bill allocated over \$300 million to continue construction on the facility with an explicit prohibition on using the funds to put the building on “cold standby.” Congress should not allocate any more funding for this wasteful project. The Department of Energy has identified several alternative options for plutonium disposition, which should be carefully considered instead of continuing to fund this nuclear bridge to nowhere. MOX has no customers and will only continue to cost taxpayers billions of dollars.
- **Consider the use of existing facilities in the nuclear complex as an alternative to the Uranium Processing Facility (UPF).** The UPF is another nuclear facility plagued by cost increases and delays. The building, to be constructed at Y-12 National Security Complex, was originally expected to cost \$1 billion at the most, but current projections place it between \$6.5 billion and \$19 billion. These cost overruns, as well as delays and a \$500 million design mistake, prompted the Energy Department to bring in a “Red Team” of experts in to evaluate the project. The Red Team recommended utilizing existing facilities at Y-12 as an alternative option to the “big box” UPF, as POGO had recommended in 2013. Moreover, POGO has found that there are buildings at other facilities in the nuclear complex, such as the Pantex site in Texas, that also have the capability of performing some of the uranium missions planned for the UPF. Congress should require the Energy Department to report on the feasibility of using these existing facilities as an alternative to this billion-dollar boondoggle.
- **Pause production of the F-35 Joint Strike Fighter until Initial Operational Test and Evaluation is complete.** With an anticipated lifetime cost of \$1.5 trillion, the F-35 Joint Strike Fighter program is the most expensive weapons system in DoD history. The Department of Defense has already purchased 227 F-35 aircraft even though initial operational test and evaluation (IOT&E) to determine the program's readiness to go into operation will not be complete until 2019. Testing to date has revealed significant design problems that limit the F-35's combat capabilities, and efforts to slow down and reform the program have been insufficient to address significant risks to taxpayers. The DoD already has more than enough planes to complete testing, and Congress should not fund

additional purchases until that testing is complete and they can make an informed decision about the cost and future of the F-35 program.

- **Pause the Littoral Combat Ship program.** What was once designed to be a light, fast, and cheap surface combat ship has become an expensive, heavily manned “frigate” that cannot survive combat. Concerned about the ship’s survivability, Secretary of Defense Chuck Hagel ordered a review of the program and approved a plan for an up-armored LCS that the Director of Operational Test and Evaluation has found still “will not yield a ship that is significantly more survivable.” It will, however, make the program more expensive and continue a dual-block acquisition strategy that avoids competition and promises to increase the overall lifecycle costs for the program. The Navy has repeatedly tried to force Congress to make quick block-buy production decisions before operational testing was even complete. Congress should closely examine the Navy’s new plan and pause the LCS program until the Navy can show that this ship can survive combat at a price taxpayers can afford.
- **Keep the *Ohio*-class submarine in the Navy’s budget.** For several years the Congressional Budget Office (CBO) has found that the *Ohio*-class submarine replacement program (SSBN(X)) is likely to break the Navy’s shipbuilding budget if the Navy doesn’t keep costs down. But rather than exercising discipline over the program, the Navy has argued that the SSBN(X) should be treated as “national strategic asset,” and be kept separate from the shipbuilding budget. Allowing the Navy to fund this program separately reduces discipline in the program and increases the likelihood of gross cost overruns in what the CBO expects to be a \$102 billion to \$107 billion program. Moreover, it creates a dangerous precedent for the military services to treat other expensive programs, like long range bombers and aircraft carriers, as national assets that shouldn’t come out of their budget.
- **Reduce scope of the B61 modernization program to essential capabilities.** The B61 Life Extension Program (LEP) was initially expected to cost approximately \$4 billion, but delays and budget cuts have caused the costs to jump to more than \$10 billion and earned the program a spot in the Government Accountability Office’s High Risk Series. The B61 LEP also requires a new guided tail kit, which will be funded separately and has increased in price 87.5 percent from \$800 million to \$1.5 billion. The National Nuclear Security Administration (NNSA) rejected a much cheaper plan to improve the reliability, safety, and security of the B61, which would cost only \$1.5 billion in favor of a gold-plated plan to significantly change the weapon. The CBO predicts that the entire nuclear weapon enterprise will cost \$348 billion over the next decade. Congress should pursue the LEP program that preserves all of our current nuclear capabilities at a price taxpayers can afford.
- **Cut excess general-officer positions that make our military top-heavy.** Star creep—the creation of a top-heavy military with a historically large proportion of generals and admirals—hurts morale, combat effectiveness, and the budget. The U.S. military is the most top-heavy in the world, with the ratio of officers to enlisted personnel more than doubling since World War II. While there have been some reductions in recent years as a

consequence of reforms initiated by then-Defense Secretary Robert Gates, cuts to the officer corps have not kept pace with cuts to enlisted ranks. A radical culling of politically appointed civilians, headquarters, three- and four-star generals, and their associated staff and infrastructure would both save real money and greatly improve the efficiency, performance, and morale of those committed to defending the nation. Congress should require the Department of Defense to fully implement the recommended cuts and prevent efforts by the Pentagon to increase top-ranking positions while reducing the enlisted force.

## **ENACTING PRO-TAXPAYER CONTRACTING REFORMS**

The federal government spent over \$460 billion on goods and services in fiscal year 2013. Year after year we hear about weapons systems and IT projects that are over budget and behind schedule or just plain wasteful. The following reforms would protect taxpayers, save money, and make the contracting system more transparent, accountable, and efficient.

### ***Recommendations:***

- **Protect the False Claims Act.** The Chamber of Commerce is attempting to remove the strongest provisions of the federal False Claims Act, which was used to recover nearly \$6 billion in fiscal year 2014 alone and over \$44 billion since 1986. Congress should not buy in to promises of self-policing and should instead protect the Act and hold fraudsters accountable.
- **Adopt DoD proposal to buy truly commercial items.** The Defense Department has proposed narrowing the definition of a “commercial item” to mean goods or services that are actually sold to the general public in “like quantities.” This proposal is a huge improvement over the current broader definition, which includes goods or services that have no genuine commercial market. The commercial item tag prevents the government from substantiating pricing information and ensuring that the goods and services it buys from contractors are offered at reasonable prices. Congress should amend the current commercial item definition, which is prone to abuse and which is slowing down the contracting process.
- **Improve the government’s ability to compare workforce costs.** Congress should pass legislation to ensure that federal agencies are better informed about the lifetime costs of hiring military, civilian, and contractor workers. Improved cost modeling and improved inventories of contracts for services will result in cost-saving budgetary and workforce decisions, ensure contractors are not performing inherently governmental functions, and improve military readiness and government operations.
- **Require timely suspension and debarment referrals and reviews.** The suspension and debarment system was created to protect taxpayers from risky contractors and grantees. Sometimes, suspension and debarment officers (SDOs) drag their feet on cases, waiting for the Justice Department or other agencies to take action. Congress should require

Inspectors General to report cases to the agency SDO and should mandate a specific period of time in which a suspension or debarment determination must be made.

- **Shine a light on federal spending.** USAspending.gov should become the one-stop shop for government officials and the public for all spending information. Congress should amend federal spending transparency laws to include public disclosure of actual copies of each contract, delivery or task order, modification, amendment, other transaction agreement, grant, and lease. Additionally, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, past performance and responsibility data, and other related government reports should be incorporated into USAspending.gov.

## **TACKLING MILITARY ACQUISITION REFORM**

Defense spending is in serious need of reform, both in how and what we buy. Congressional oversight is key to instilling discipline in the system. Some weapons are less effective but cost far more than current weapons in the inventory. Other weapons are developed without determining whether these systems can even combat the threats that U.S. troops are likely to face in the short and medium term. Past reform efforts have failed to slow cost and schedule growth throughout the Pentagon's acquisition system. In fact, the problem has only become worse. Just a few examples are the Joint Strike Fighter program, the Littoral Combat Ship program, the *Ford*-class aircraft carrier program, and the DDG-1000 program. The GAO found that costs for the Pentagon's weapon programs increased by nearly \$448 billion last year, with an average delay of over two years.

For the most part, improving discipline in weapons spending doesn't require new rules but better enforcement of the rules that exist, especially as they relate to hard-nosed assessments of whether critical technologies are ready early in a weapon's acquisition. At key decision-points known as "Milestones," where a major weapons program advances from technology validation (Milestone A) to full-scale development (Milestone B) to production (Milestone C), the Pentagon often does not exercise any meaningful oversight or even make any significant decisions in the face of substantial problems.

### ***Recommendations:***

- **Emphasize role of testing and evaluation.** The Pentagon should not allow weapons systems to ramp up production until intended technologies have been proven through comprehensive developmental testing and the completion of rigorously realistic independent operational test and evaluation. Congress should confer with GAO, the Director of Operational Test and Evaluation, and developmental test organizations to prevent overlap between operational testing and production—referred to as concurrency. When too much concurrency is present, Congress should withhold funding of programs until they are restructured with little or no concurrency. The Pentagon should successfully complete competitive and realistic prototype testing and independent Analyses of Alternatives (AoA) evaluations, and Congress and GAO should prohibit any

waivers to competitive prototyping, with rare exceptions and exhaustive precautions to prevent the current systemic abuse of waiver authority. Congress should also provide more robust staff and resources for the Director of Operational Test and Evaluation.

- **Competitive fly before you buy.** Real competition improves performance and saves taxpayer dollars. Artificial fly-offs, schedule-driven testing, and political engineering of large programs like the F-35 and Littoral Combat Ship programs have resulted in costly technical difficulties and development delays that could have been avoided if realistic prototype testing and evaluation had been completed before committing to production. Congress should require all Major Defense Acquisition Programs (MDAPs) to go through a real fly-off competition, testing prototypes before making a production decision. Congress should also establish adequately funded and maintained operational units (e.g., aircraft squadrons and ground force brigades/battalions) independent of R&D organizations to conduct tests and experiments.
- **Hold DoD accountable for weapon program outcomes.** Often DoD fails to follow its own rules for buying MDAPs. Congress should hold the Pentagon accountable by regularly investigating and holding hearings on major weapon programs, and especially on the use of any waivers from procurement requirements. Legislation should require DoD to gain congressional approval for waivers from any testing, acquisition, or production requirements. Congress should also request a GAO analysis of the consequences of any such waivers before granting their approval. All waivers should be made public.
- **Make DoD financially accountable.** Almost 25 years after the enactment of the Chief Financial Officers' Act of 1990, the Pentagon has failed to even once issue a Statement of Budgetary Resources (which accountants describe as analogous to an accurate checkbook)—ignoring for nearly a quarter of a century the law that was created to hold it accountable. Congress should press DoD to become auditable, and also require DoD's various audit agencies, with assistance from private firms and the GAO as necessary, to conduct routine comprehensive audits of all 80 DoD MDAPs. Congress should impose budgetary penalties for DoD components and programs that cannot be fully audited, and career penalties for managers who preside over unaccountable programs and agencies. The current modus operandi, in which DoD largely relies on contractors to determine proper payments and if costs are reasonable, has existed for decades and is unacceptable. Congress should also consider reviving the Renegotiation Board created during World War II to recoup excess profits from the defense industry and to recoup fees for weapon systems developed with taxpayer funds that are subsequently sold to foreign governments.

## OPENING THE SENATE NDAA MARKUP PROCESS

Each year for the past 54 years, Congress has enacted a National Defense Authorization Act, which now authorizes more than half a trillion dollars in Pentagon funding and sets military policy for the year. The House Armed Services Committee (HASC) conducts its markup, or

consideration of the bill, in the open for members of the public and press to see. During this process, members of the committee may offer amendments or publicly comment on provisions included in the bill. The Senate is a different story. Although half of the Senate Armed Services Committee's subcommittees have in recent years made progress in opening up their markups to the public, the full committee conducts its legislative markup behind closed doors. The Senate committee does not release the text of the bill it is considering or the roll call votes that members take during the markup until well after it is over. Again, the House Armed Services Committee's transparency stands in stark contrast to its Senate counterpart in this regard. This does not mean that all deliberations need to be conducted in the public eye; in fact, it is important that Members and their staff be able to conduct deliberations in private. However, official actions—such as hearings, markups, committee votes, and Floor actions—need to be done in the open.

The incoming chairman of the Senate Armed Services Committee, Senator John McCain (R-AZ), has publicly stated that he would like to open up the markup and support a more transparent consideration of the NDAA. But, he also wants to see whether members of the committee support this good government reform. Typically, the first vote of the Senate Armed Services Committee markup is on whether to keep the process closed to the public. Over the past several years, though, an increasing number of Senators have voted to enhance transparency. Improving the Senate committee's markup process may also help return regular order to the Senate Floor and allow increased participation and input from lawmakers not on Armed Services.

### ***Recommendations:***

- **Let the public observe Committee proceedings, the NDAA text, and all the considered amendments.** Chairmen should give the public access to all Senate subcommittee and full committee markups of the NDAA, including live and archived webcasting on the Senate Armed Services Committee website. The HASC publicly announces the date, place, and subject of the NDAA's markup at least three days prior to the hearing and gives the public full access to the markup, including through a live webcast that remains available after the hearing. The Senate should do the same thing. Also following HASC's lead, the Senate should make available online the text of the actual bill the full committee will amend during the markup at least 24 hours prior to beginning markup, and make available online the amendments that will be offered and considered during markup no later than 24 hours after markup (though preferably when they are filed).
- **Post the amended bill without delay.** The Senate should post online the text of the NDAA, as amended and approved during the Senate Armed Services Committee markup, 48 hours after completion. There is no reason for this to take upwards of a week, as it has in the past. Making information quickly available to the public should be a priority for Congress.



## ENSURING TAXPAYERS GET A FAIR RETURN ON PUBLICLY OWNED NATURAL RESOURCES

Natural resources extracted from federal lands provide one of the federal government's highest non-tax sources of revenue. In 2014, the Department of the Interior (DOI) collected over \$13 million in royalties, revenues, and other fees from companies that extracted oil, gas, coal, and other minerals from federal lands. However, the GAO, the DOI Inspector General, and other watchdogs have long questioned whether the federal government is truly ensuring that taxpayers receive their fair share for extraction on public lands. What's more, on account of a 19th century law that's still on the books, the federal government doesn't collect any royalties from companies that extract valuable "hardrock" minerals, such as gold, copper, and silver, from public lands.

### *Recommendations:*

- **Reform oil, gas, and coal revenue collection.** The federal government's management of oil, gas, and coal leases is vulnerable to lost revenues, according to reports by the GAO and the DOI Inspector General, which warned that the federal government may not be receiving fair market value for sale of its natural resources. Congress should ensure that DOI reforms the royalty structure and closes loopholes that cost taxpayers money—particularly those that allow coal companies to pay royalties based on non-arms-length transactions. The current system cheats taxpayers out of potential revenues that could go to the Treasury, state governments, and various environmental funds.
- **Institute fees and royalties on hardrock mining.** Under the Mining Law of 1872, which was meant to promote development of the American west, companies that extract hardrock minerals from public lands do not have to pay any royalties to the federal government. Additionally, the cost to buy these public lands costs no more than \$5 per acre—the same price set in 1872. This means that there's a lot of money being left on the table, and taxpayers are missing out on millions of dollars in potential revenue each year. Congress should explore options to institute royalties on hardrock mining, as well as set up a hardrock mining reclamation fee—similar to fees that the coal mining industry pays—to provide the federal, state, and tribal governments with funds to clean up hazardous mining sites.

## ADDRESSING THE PROBLEMS AND LOOPHOLES IN THE FARA

The Department of Justice has been lax in its enforcement of the Foreign Agents Registration Act, a law that requires American lobbyists working on behalf of foreign interests to register with the Justice Department. In addition to reporting on their contracts, political contributions, and any political activity done on behalf of their foreign clients, the registrants are required to file any informational materials distributed to two or more people within 48 hours. However, this law is regularly violated and a loophole makes enforcement by the Justice Department nearly impossible. These informational materials contain all kinds of details about what these countries are lobbying for, including trade deals and aid money. And when the registrants fail to file informational materials on time, government policies can be influenced and even created without the public knowing what's going on behind the scenes.

***Recommendations:***

- **Increase oversight and enforce the Foreign Agents Registration Act.** The Department of Justice should conduct more audits, use all tools available to ensure better compliance, and strictly enforce the law when violations are found. When incomplete, inaccurate, or late filings are submitted, the Justice Department should use its authority to suspend the foreign agent from lobbying. If necessary, the Justice Department should seek court orders to prevent foreign agents from lobbying when they violate the law.
- **Incorporate civil fines into FARA.** Congress should amend FARA to give the Justice Department the authority to levy civil fines to punish offenders who do not properly label their FARA filings, who file late, who don't file if they should have, or who don't register if they should have. These penalties should increase with the severity and number of infractions.
- **Require the filing of all informational materials regardless of number of recipients.** The Department should require registrants to file informational materials if they are distributed to any person, and Congress should ensure that the Department implements this requirement. If a lobbyist sends an email or letter to one pivotal legislator, such as a Committee chairman or someone working on a specific foreign policy, the lobbyist would not currently have to file that material. This law should be expanded to include documents sent to a single recipient.