



August 22, 2022

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

The Honorable James Inhofe  
Ranking Member  
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 Mike Rogers  
Ranking Member  
House Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

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

We write on behalf of the Project On Government Oversight (POGO) to urge you, as you resolve the differences between the House and Senate versions of the National Defense Authorization Act for Fiscal Year 2023 (H.R. 7900/S. 4543), to include the following overdue reforms and enhance the ability of the Department of Defense to allocate limited taxpayer resources to ensure an effective national security for the United States and its citizens.

Founded in 1981, 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. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

**We support the following provisions:**

**Advancing clean contracting reforms (H.R. 7900 § 802; S. 4543 §§ 822 and 827)**

For too long, Congress has squandered taxpayer dollars by allowing military contractors to overcharge the Pentagon for critical parts and equipment. POGO supports these provisions to refine current contracting law, offer contractors financial incentives to meet certain performance and transparency standards, and ultimately help the Department of Defense get the products it needs at the best prices.

**Strengthening liability for companies that fail to disclose beneficial owners (H.R. 7900 § 5851)**

Protecting national security information from adversaries and foreign entities is essential to a strong defense. That's why it's critical that the federal government know the true beneficial owners of companies that receive federal funding to ensure taxpayer dollars go to law-abiding contractors, grantees, and subrecipients. This provision enhances §885 from the fiscal year 2021

NDAA and would increase liabilities for companies that fail to disclose beneficial ownership information.<sup>1</sup>

### **Prohibiting defense stock trading for certain Pentagon officials (H.R. 7900 § 2818)**

Government officials should not have financial conflicts of interest in industries they are directly involved with regulating. Lawmakers must prohibit certain senior level Pentagon officials from owning or trading stocks in defense companies that receive more than a billion dollars in revenue from the Department of Defense.

### **Apply fair burden of proof standards to military whistleblower retaliation claims (H.R. 7900 § 541)**

Effective protections against whistleblower retaliation are a critical incentive for whistleblowers to report misconduct through the proper channels, but military service member whistleblowers are currently subject to a near-impossible burden of proof when they try to benefit from protections afforded to those who make lawful disclosures.<sup>2</sup> This section would amend the law to align with the best-practice burden of proof standards in all other public and private sector whistleblowing laws.

### **Assessing efforts to modernize F-35 propulsion systems (S. 4543 § 154)**

The F-35 engine does not meet the operational needs of the services, and it is not sustainable in the long run. The F-35's propulsion system needs to be further studied to ensure the most effective and cost-efficient solution moving forward. The F-35 program has already become a case study in military acquisition malpractice, we should not allow further lack of oversight to squander taxpayer dollars. This provision would direct the Government Accountability Office to evaluate efforts to modernize the F-35 engine and recommend future courses of action.

### **Improving acquisition planning (S. 4543 § 801)**

Weapon acquisition at the Department of Defense is notoriously slow and expensive. Congress should require the Pentagon to include life-cycle cost estimation and test plans in acquisition planning for certain programs to help improve the process. Such acquisition planning should also include potential transition pathways to existing or planned programs to prevent duplicative acquisition efforts and help verify performance goals.

### **Protecting small businesses in government contracting (H.R. 7900 § 859D)**

Far too often, the Pentagon bends a rule to open up federal procurement funding intended for small businesses to large companies. This provision would amend the rule to ensure that small business contractors have the maximum practicable opportunity to participate in the federal supply chain.

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<sup>1</sup> Joanna Derman and Scott Amey, "Identifying Beneficial Owners is a Win-Win and a National Security Priority," Project On Government Oversight, March 24, 2022, <https://www.pogo.org/resource/2022/03/identifying-beneficial-owners-is-a-win-win-and-a-national-security-priority>.

<sup>2</sup> "Testimony on Strengthening Watchdogs and Whistleblower Protections": Hearing before the House Armed Services Committee, 117<sup>th</sup> Cong. (April 15, 2021) (testimony of Mandy Smithberger, Director, Center for Defense Information at POGO), <https://www.pogo.org/testimony/2021/04/testimony-on-strengthening-watchdogs-and-whistleblower-protections>.

### **Understanding how the Pentagon uses Americans' private location data (H.R. 7900 § 1098)**

Agencies across the government regularly evade individuals' privacy protections by purchasing metadata that can reveal deeply personal information about where people go and who they talk to. This provision would provide crucial insight into the scale of metadata purchases by Department of Defense components.

### **Limiting exceptions to competitive service positions (H.R. 7900 § 5705)**

This provision would impose limits on excepting executive branch positions from the competitive service, ensuring that federal operations do not again become a partisan political spoils program but rather are filled by the most qualified candidates.

### **Reclaiming Congress' constitutional war powers (H.R. 7900 § 1229A)**

Congress should repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002, which is an outdated law that presidents can abuse to justify military actions removed from its original scope. Congress should reclaim its constitutional war powers to check future potential executive overreach.

### **Catching money launderers where they are (H.R. 7900 § 5401)**

Increasingly, corrupt foreign officials, traffickers, arms dealers, and other criminals are exploiting loopholes in order to launder dirty money into the United States. This provision addresses a key national security risk to the U.S. financial system by empowering the Treasury Department to extend anti-money laundering requirements to non-bank service providers — including certain investment advisers, lawyers, and accountants, as well as persons who form or register companies.

### **We oppose the following provisions:**

#### **Preventing retirement of Littoral Combat Ships (H.R. 7900 §§ 119B and 1031; S. 4543 §§ 1023 and 1025)**

The Littoral Combat Ship program has failed to produce the operational capabilities envisioned at the outset while far exceeding its initial projected cost. The Navy, the Pentagon, and the White House have all proposed retiring littoral combat ships,<sup>3</sup> and there is no reason to delay or block the Navy from moving forward with partial retirement when those resources might be used to meet more pressing concerns.

#### **Mothballing the A-10 fleet (H.R. 7900 § 121)**

The A-10 is the only aircraft in the U.S. military dedicated to the close air support mission.<sup>4</sup> This provision decreases the minimum inventory maintenance requirement, effectively mothballing the fleet through neglect. Until there is a dedicated attack aircraft to replace the program, the Air Force must not divest itself of one of the most successful, battle-tested aircraft and — as

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<sup>3</sup> Paul McLeary, "20 years later, the Navy says its littoral combat ships (kind of) work," *Politico*, July 15, 2022, <https://www.politico.com/news/2022/07/15/20-years-later-the-navy-says-its-littoral-combat-ships-kind-of-work-00046137>.

<sup>4</sup> Dan Grazier, "Air Force Leaders Defy Congress's A-10 Mandates," Project On Government Oversight, April 26, 2022, <https://www.pogo.org/analysis/2022/04/air-force-leaders-defy-congresss-a-10-mandates>.

importantly — the community of attack pilot professionals that has proven itself essential to U.S. military operations.

**Legitimizing pseudo-classification (S. 4543 §§ 233 and 874)**

Pseudo-classification allows the Pentagon to withhold critical information from the public about the performance of its most expensive acquisition programs. These provisions of the Senate bill would formalize “controlled unclassified” information as a legitimate designation. In reality, it is a designation that denies constituents and taxpayers access to unclassified information, allows the agency to randomly conceal information, and prevents the public from holding Congress accountable to its oversight duties and advancing a more effective national security policy.

**Accelerating the revolving door (S. 4543 § 506)**

The Department of Defense inspector general is tasked with ensuring the Pentagon tracks requests from officials to leave the department and work for military contractors. This provision would repeal the requirement that the inspector general continue to maintain records of written ethics opinions on such requests, which would accelerate the revolving door between the Pentagon and the defense industry. For years, POGO’s reporting has shown how the revolving door blurs the line between what strengthens national security and what financially benefits large defense contractors.

We appreciate your consideration of these recommendations to promote accountability, encourage fiscal discipline, and advance military readiness through the NDAA.

Sincerely,



Danielle Brian  
Executive Director, POGO



Geoff Wilson  
Director, Center for Defense Information