



May 12, 2021

The Honorable Bernie Sanders
Chair, Senate Committee on the Budget
624 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lindsey Graham
Ranking Member, Senate Committee on the Budget
624 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Sanders, Ranking Member Graham, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I wish to submit comments for the record for your May 12 hearing, "Waste, Fraud, Cost Overruns, and Auditing at the Pentagon." NTU has worked on Pentagon budget reform for decades, and we hope our experience and expertise on some of these matters will aid in the Committee's work ahead of Congressional consideration of a budget resolution, appropriations bills, and the fiscal year (FY) 2022 National Defense Authorization Act (NDAA).

As you well know, the national defense budget is the largest single portion of the federal government's discretionary budget. The FY 2021 NDAA, enacted into law earlier this year, authorized \$731.6 billion for national defense spending.¹ The bulk of that total, \$635.5 billion or nearly 87 percent, went to the base Department of Defense (DoD) budget. An additional nine percent (\$69 billion) went to the Overseas Contingency Operations (OCO) account, which, as you know, allows Congress to authorize and appropriate additional non-base budget dollars to defense -- above and beyond discretionary spending caps from the Budget Control Act (BCA). The remaining four percent (\$27.1 billion) went to additional federal agencies responsible for defense activities.

We hope that in the months ahead, lawmakers from across the ideological spectrum recognize that the enormous and growing DoD budget is just as much subject to waste, fraud, and cost overruns as any other part of the federal budget, if not more so. More importantly, we hope lawmakers work across the political aisle to combat waste in the DoD budget.

Though national security is one of the most important undertakings of the U.S. government, members of Congress can and should question every corner of the DoD budget to determine if American taxpayers and military personnel are being properly served by existing programs and initiatives. To the extent that expensive pursuits at DoD are actually putting upward pressure on the budget, failing or falling short of military milestones and objectives, and/or actually harming military readiness and national security, Congress should not be afraid to make budget cuts that right-size taxpayer investments in DoD for the future.

To that end, NTU has several recommendations for Committee members' consideration.

¹ Towell, Pat. "FY2021 National Defense Authorization Act: Context and Selected Issues for Congress." Congressional Research Service, March 8, 2021. Retrieved from: <https://crsreports.congress.gov/product/pdf/R/R46714> (Accessed May 10, 2021.)

- Follow the Biden administration’s lead in refusing to fund the OCO account, but go several steps further in demanding future transparency from any administration or Congressional OCO requests;
- Eliminate the statutory requirements for annual unfunded priorities lists from the service branches, also known as DoD “wish lists”;
- Pursue ‘sticks,’ and not just ‘carrots,’ on DoD’s audit performance and remediation efforts;
- Pause or reconsider major programs that watchdogs have flagged for cost overruns, such as the F-35 Joint Strike Fighter aircraft and the Navy’s increasingly expansive shipbuilding plans; and
- Reduce the DoD topline, which does not reflect the current mix of domestic and international security challenges facing the U.S. and its citizens.

We consider each in turn below.

Go the Extra Mile on OCO Transparency

President Biden’s FY 2022 discretionary budget proposal suggests “discontinu[ing] requests for Overseas Contingency Operations as a separate funding category, instead funding direct war costs and enduring operations in the DOD base budget.”² This is a major and positive development that will make the DoD budget more accountable to and transparent for taxpayers. NTU and other civil society organizations have documented for years how lawmakers and DoD officials have abused OCO budgets and budget requests. Our 2020 study on the matter found that, over seven fiscal years, \$164 billion in OCO funds had been diverted to base budget initiatives, enduring costs, or other non-war expenditures outside of the original intent for the OCO account.³

However, Congress can and should go further. As the Project on Government Oversight’s Mandy Smithberger testified to the House Appropriations Subcommittee on Defense in March (emphasis ours):

...we support this committee’s recommendation that the Department of Defense stop requesting funding for the OCO accounts, and would urge the committee to *push the Pentagon to avoid creating or using supplemental funds for base budget needs in the future.*⁴

Indeed, we are hyper-aware that President Biden has *not* proposed eliminating the OCO account, but has merely proposed discontinuing OCO requests “as a separate funding category” for the upcoming fiscal year. Of course, Congress has also not yet agreed to the President’s request to discontinue funding for OCO.

² Office of Management and Budget. (April 9, 2021). “Summary of the President’s Discretionary Funding Request.” Retrieved from: <https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf#page=22> (Accessed May 10, 2021.)

³ Lautz, Andrew. “Reforming the OCO Account: A Better Deal for Taxpayers, Watchdogs, and the Military.” National Taxpayers Union, May 26, 2020. Retrieved from:

<https://www.ntu.org/publications/detail/reforming-the-oco-account-a-better-deal-for-taxpayers-watchdogs-and-the-military>

⁴ Smithberger, Mandy. “Testimony on the Need to End the Overseas Contingency Operations Account.” Project on Government Oversight, March 23, 2021. Retrieved from:

<https://www.pogo.org/testimony/2021/03/pogo-testimony-on-the-need-to-end-the-overseas-contingency-operations-account/>

To be clear, Congress should follow the President's lead and discontinue funding OCO for FY 2022 and beyond. However, it should also seek more information from the executive branch and DoD on governing principles for OCO going forward should the account -- which increasingly became a slush fund in recent years -- rear its ugly head again.

In November 2020, a group of taxpayer advocates wrote to the Biden-Harris transition team, asking them to ensure that DoD and the Office of Management and Budget (OMB) expeditiously revise its criteria for the OCO account.⁵ A similar provision in the conference version of the FY 2021 NDAA asked DoD to “deliver a briefing to the congressional defense committees no later than February 1, 2021 to discuss the future governing principles of overseas contingency-related funding in the fiscal year 2022 budget.”⁶ While we are not aware of whether or not such a briefing occurred, the future governing principles of the OCO account should be made public so that taxpayers are aware of how and when future OCO budget requests may arise. Narrow and consistent principles for the OCO account are necessary to avoid a future return to slush-fund status for OCO. Absent a commitment from the Administration and Congressional leaders to eliminate the account and avoid any future OCO requests, a public report on the future governing principles for OCO is necessary.

Halt the Wasteful “Wish Lists”

Another bad DoD budgeting practice that gets less attention from stakeholders than OCO is the annual process of service branches (and other DoD components) submitting “unfunded priorities” requests. Also referred to in the media as “wish lists,” these statutorily-required reports allow military leaders to conduct an end-run around civilian leadership at DoD and tell Congress where they should spend extra money. While the wish lists were certainly a problem over the last few years, and helped put off tough budget decisions at DoD in an era of expanding budget caps, we are particularly worried about the upward pressure the “wish lists” put on the DoD budget in the spending caps-free era that begins in FY 2022.

As a recent Bloomberg editorial put it:

For one, [the wish list practice] encourages Congress to continue pouring money into costly projects that often benefit defense contractors and local constituencies more than the national interest. Enabling the service branches to lobby for themselves also harms the Defense Department's ability to make budgeting decisions based on strategic objectives, rather than parochial needs. And by allowing military leaders to defy the authority of the secretary of defense, the wish lists undermine the core democratic principle of civilian control of the military.⁷

⁵ Lautz, Andrew. “Taxpayer Advocates Urge Biden-Harris Transition to Scrutinize Pentagon Budget.” National Taxpayers Union, November 25, 2020. Retrieved from:

<https://www.ntu.org/publications/detail/taxpayer-advocates-urge-biden-harris-transition-to-scrutinize-pentagon-budget>

⁶ House of Representatives. (December 3, 2020). “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021: Conference Report to Accompany H.R. 6395.” Retrieved from:

<https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf#page=1888>

⁷ Bloomberg Editorial Board. (May 7, 2021). “Congress Should End the U.S. Military's Wish Lists.” Retrieved from:

<https://www.bloomberg.com/opinion/articles/2021-05-07/congress-should-end-the-military-s-wish-lists> (Accessed May 10, 2021.)

A group of civil society organizations from across the ideological spectrum agrees, writing to Secretary of Defense Austin recently to ask him to curtail these wish lists for the upcoming fiscal year:

We urge you to take up the mantle from Secretary Gates by asking the service branches, the Missile Defense Agency, and the Under Secretary of Defense for Acquisition and Sustainment to significantly cut the size and scope of their UFRs for FY 2022 (and beyond, so long as UFR requirements exist under law). Should you choose to lead here you will no doubt encounter some resistance from Congress, but you can also count on strong support from the undersigned organizations, who work with members of Congress across the ideological spectrum on budget, spending, and Defense Department matters on a daily basis.⁸

Fortunately, NTU has a roadmap for legislative and executive branch leaders to stop this wasteful practice, from ending the statutory requirements -- as Rep. Pramila Jayapal (D-WA) proposed doing last year -- to asking the Armed Services Committees to standardize how they report on their *fulfillment* of unfunded priorities in NDAA conference reports, since no doubt some DoD components will continue to furnish “wish lists” to Congress even after they are no longer required to do so.⁹

Use Sticks to Improve Audit Remediation

In November 2020, DoD failed its audit for a third time. It has now failed each of the three audit attempts since 2018, and a DoD leader said last year that the agency does not expect to pass a clean audit until 2027.¹⁰ This is concerning, given that DoD “remains the only government agency that has yet to pass an audit.”¹¹ Congress has been solid on exploring “carrots,” or incentives, for various DoD components to pass their audits, but has been more hesitant to explore “sticks,” or punishments, for DoD components that continue to fail.

For example, in the FY 2021 NDAA lawmakers included a provision that requires DoD to “develop and issue guidance for personnel and components of the Department of Defense to incentivize the achievement of an unqualified audit opinion.”¹² This demonstrates that lawmakers at least understand and respect the importance of a clean audit opinion at DoD, but Congress *also* declined to include a more robust effort to hustle along DoD’s progress on this critical initiative.

⁸ Lautz, Andrew. “Cross-Ideological Coalition Urges DoD Secretary to Rein in ‘Wish Lists.’” National Taxpayers Union, April 20, 2021. Retrieved from: <https://www.ntu.org/publications/detail/cross-ideological-coalition-urges-dod-secretary-to-rein-in-wish-lists>

⁹ For more, see: Lautz, Andrew. “Congress Should Do Away With DoD Unfunded Priorities Lists, A Multibillion-Dollar Wish List Boondoggle.” National Taxpayers Union, March 30, 2021. Retrieved from: <https://www.ntu.org/publications/detail/congress-should-do-away-with-dod-unfunded-priorities-lists-a-multibillion-dollar-wish-list-boondoggle>

¹⁰ Stone, Mike. “Pentagon fails audit yet again, could pass around 2027, comptroller says.” *Reuters*, November 16, 2020. Retrieved from: <https://www.reuters.com/article/us-usa-pentagon-auditor/pentagon-fails-audit-yet-again-could-pass-around-2027-comptroller-says-idUSKBN27X03P> (Accessed May 10, 2021.)

¹¹ Mehta, Aaron. “The Pentagon failed its audit again, but sees progress.” *Defense News*, November 16, 2020. Retrieved from: <https://www.defensenews.com/pentagon/2020/11/16/the-pentagon-failed-its-audit-again-but-sees-progress>

¹² House of Representatives. (December 3, 2020). “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021: Conference Report to Accompany H.R. 6395.” Retrieved from: <https://www.congress.gov/116/crpt/hrpt617/CRPT-116hrpt617.pdf#page=1781>

Three members of this Committee, Chair Sanders (I-VT), Sen. Chuck Grassley (R-IA), and Sen. Ron Wyden (D-OR) -- along with Sen. Mike Lee (R-UT) -- cosponsored an amendment to the FY 2021 NDAA that would have reduced a DoD component's budget by the lesser of 0.5 percent or \$100 million if they failed to pass their audit.¹³ Unfortunately, this amendment was not included in the final version of the FY 2021 NDAA. For FY 2022, Congress should consider and include more 'stick-based' approaches to DoD's ongoing audit issues. Waiting until 2027 for a clean audit at DoD is not acceptable to taxpayers.

Focus on Trimming Waste and Overruns for Major Programs

Even as DoD struggles to pass an audit, manages a withdrawal of troops and military resources from Afghanistan, and confronts a number of security challenges at home and around the world, the agency and many members of Congress continue to double or triple down on programs that watchdogs have regularly pointed out suffer from numerous concerns, delays, and cost overruns. Two programs of note we would like to highlight are the F-35 Joint Strike Fighter aircraft and the Navy's increasingly expansive shipbuilding plans.

A recent report from the nonpartisan Government Accountability Office (GAO) brings into sharp focus the numerous issues and flaws facing the \$1.7-trillion F-35 program. Among the concerns, summarized in part in an article for *Responsible Statecraft*:

...according to GAO, the F-35 faces four major sustainment challenges in the years ahead, including 1) supply chain concerns such as spare parts delivery, 2) maintenance issues such as a lack of support equipment, 3) a malfunctioning and ineffective logistics software system that the military is currently in the process of completely replacing, and 4) underperforming engines.¹⁴

Dan Grazier from the Project on Government Oversight (POGO) argues that "[t]he F-35 program is approaching a crossroads," and adds that "[t]he real-world impacts of the F-35's delays and ever mounting burden on the budget are significant."¹⁵ We couldn't agree more. GAO has two recommendations for Congress in its latest report and we believe that lawmakers should implement both of them in this year's NDAA:

- 1) require DoD to report every year on its progress in making the F-35 more sustainable and affordable, and;
- 2) make future F-35 procurement decision[s] contingent on program progress in addressing all of [GAO's] above concerns.¹⁶

¹³ Congressional Record. (June 24, 2020). "SA 1789." Retrieved from:

<https://www.congress.gov/116/crec/2020/06/24/CREC-2020-06-24-pt1-PgS3212.pdf#page=60>

¹⁴ Lautz, Andrew. "Would you pay \$1.7 trillion for a plane that couldn't fly?" *Responsible Statecraft*, April 27, 2021. Retrieved from: <https://responsiblestatecraft.org/2021/04/27/would-you-pay-1-7-trillion-for-a-plane-that-couldnt-fly/>

¹⁵ Grazier, Dan. "Is the F-35 Program at a Crossroads?" Project on Government Oversight, February 23, 2021. Retrieved from: <https://www.pogo.org/analysis/2021/02/is-the-f-35-program-at-a-crossroads/>

¹⁶ For more, see: Lautz, Andrew. "Would you pay \$1.7 trillion for a plane that couldn't fly?" *Responsible Statecraft*, April 27, 2021. Retrieved from: <https://responsiblestatecraft.org/2021/04/27/would-you-pay-1-7-trillion-for-a-plane-that-couldnt-fly/>

As for the Navy's shipbuilding plans, government watchdog reports *also* point to the need for restraint here. GAO and Congressional Budget Office (CBO) papers reveal that the Navy is regularly well behind schedule on repairing and maintaining the Naval fleet, despite aggressive and expensive plans to expand the fleet over the next 30 years.¹⁷

CBO, in particular, laid out four options for lawmakers and military leaders to address projected delays in 25 of the next 30 years. One option, and perhaps the best choice for taxpayers, is reducing the size of the Navy's fleet. Other, less significant options include additional personnel, more private contracting for maintenance services, and better Navy projections of maintenance needs.¹⁸

Unfortunately, some lawmakers are planning a fifth option that would be more expensive than any of the above considerations; that is: give the Navy more money, faster, and with less oversight than is typical to update and upgrade public and private shipyards.¹⁹ This should be concerning to taxpayers for a number of reasons, and the legislation appears to have few safeguards against the Navy wasting taxpayer dollars or burning through the cash faster than is responsible to fulfill a 20-year plan. Worse yet, some lawmakers are reportedly attempting to squeeze this legislation into an infrastructure package rather than through the defense budget.²⁰ This is an irresponsible budgeting practice, and Congress should consider re-examining and/or pausing Naval fleet expansion plans -- and, indeed, reducing the fleet -- until public and private shipyards can catch up with maintenance delays.

Reduce the DoD Topline

Pursuing all the above options -- limiting opportunities for future abuse of the OCO account, eliminating statutory requirements for DoD wish lists, pursuing 'sticks' rather than 'carrots' on DoD audit performance, and re-examining underperforming and over-budget legacy programs -- should, if successfully implemented, put *downward* pressure on the DoD budget. For example, Congress can eliminate funding for the OCO account without *then* backfilling the DoD budget with all the base and enduring costs stuffed into OCO in recent years. It can cut or curtail the DoD wish lists and recognize that what's in the DoD budget request may, indeed, be enough for the nation's military. Congress can also enact small but meaningful penalties for ongoing audit failures, and can pause or roll back expensive programs that regularly fail taxpayers and servicemembers.

¹⁷ For more, see: Government Accountability Office. (August 20, 2020). "Navy Shipyards: Actions Needed to Address the Main Factors Causing Maintenance Delays for Aircraft Carriers and Submarines." GAO-20-588. Retrieved from: <https://www.gao.gov/products/gao-20-588>; Congressional Budget Office. (March 25, 2021). "The Capacity of the Navy's Shipyards to Maintain Its Submarines." Retrieved from: <https://www.cbo.gov/system/files/2021-03/57026-Shipyards.pdf>

¹⁸ *Ibid.*

¹⁹ Senator Roger Wicker. (April 28, 2021). "Wicker, Kaine, Collins, King, Shaheen, Wittman, Gallagher Introduce SHIPYARD Act to Support National Defense Infrastructure." Retrieved from: <https://www.wicker.senate.gov/public/index.cfm/2021/4/wicker-kaine-collins-king-shaheen-wittman-gallagher-introduce-shipyard-act-to-support-national-defense-infrastructure> (Accessed May 10, 2021.)

²⁰ Connor O'Brien. "At today's HASC member hearing, Adam Smith and Seapower Chair Joe Courtney back the idea of including \$20B+ for upgrades to Navy shipyards in an infrastructure package. Seems like there's some momentum of using infrastructure for fund some of these backlogs." Twitter, May 5, 2021. Retrieved from: <https://twitter.com/connorobrienNH/status/1389992959131725828> (Accessed May 10, 2021.)

In other words, reducing the DoD's topline does not have to reduce America's security or its military readiness. In fact, as experts from NTU to POGO to government watchdogs like GAO and CBO have proven, ongoing waste in the DoD budget can actively *harm* national security and readiness efforts.

There is a cost to inaction on DoD waste, fraud, cost overruns, and audit failures, and that cost is borne by *both* the American taxpayer and the brave servicemembers who put their lives on the line for our country every day. Congress can take big and bold steps to cut out wasteful spending and re-examine DoD priorities with the upcoming FY 2022 NDAA and the corresponding appropriations debate. We encourage the Committee to be actively involved in these discussions and debates, and to the extent NTU's experts and advocates can assist we are at your service.

Sincerely,

Andrew Lautz
Director of Federal Policy