

## Recommendation 24: Repeal, preserve, or maintain various DoD congressional reporting requirements.

### Problem

For more than 40 years, Congress, DoD, oversight agencies, and external analysts have endorsed efforts to eliminate existing reporting requirements and restrain the growth of future requirements. Acquisition leaders have charged that reporting requirements distract offices from their primary missions. Researchers have argued complying with reporting requirements is costly. Oversight agencies indicate that reporting requirements frequently become duplicative. Congress itself has acknowledged that many reporting requirements become obsolete over time. Overall, the current system of defense acquisition reporting requirements lacks the needed coherence or consistency to achieve its policy aims.

Despite widespread support for reporting requirement reform, remedies have repeatedly failed. The difficulty of measuring the costs and benefits of specific reporting requirements inhibits reform. So does the nature of the identified reports, which may address commendable aims when considered in isolation, but which create broader problems when considered as a whole because of the collective burden they create.

### Background

The difficulties for executive branch agencies that arise from congressional reporting requirements are unintended consequences of congressional oversight. Reporting requirements can provide crucial context for drafting legislation, inform congressional efforts to ensure agencies fulfill statutory directives, and assist Congress in monitoring internal functioning of the executive branch.<sup>1</sup> Reporting requirements can also burden resources of the targeted agency and become duplicative or obsolete over time,<sup>2</sup> creating tension between congressional oversight and the executive focus on core agency missions.

Balancing these necessary, but differing, aims has been the goal of a number of previous efforts to improve the reporting requirements framework. As early as 1978, GAO indicated the total number of recurring reports had increased from 377 to 759 between 1920 and 1970, yet acknowledged it was unable to provide Congress with “an accurate cost assessment for reports preparation” because agency cost data contained “wide variances in both dollars and staffing for very similar reports.”<sup>3</sup> Unease regarding reporting requirements animated five distinct legislative efforts to modify and eliminate entire blocs of reports during the 1980s and 1990s, as well as a 1993 study from the Clinton Administration that castigated the reporting requirements system for imposing more than \$100 million

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<sup>1</sup> Ibid.

<sup>2</sup> GAO, *Congressional Reports: OMB and Other Agency Reporting Requirements*, August 1992, accessed August 4, 2017, <http://www.gao.gov/assets/90/89386.pdf>. Congressional Research Service, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRM Modernization Act of 2010 (GPRAMA)*, May 29, 2013, accessed August 4, 2017, <https://fas.org/sgp/crs/misc/R42490.pdf>.

<sup>3</sup> GAO, *Statistics on Congressional Reporting Requirements*, July 25, 1978, accessed August 4, 2017, <https://www.gao.gov/assets/130/123963.pdf>.

in annual costs in the service of reports that frequently “seem to have little intrinsic value.”<sup>4</sup> Congress acted on four separate occasions in the 1990s and 2000s to alter the structural dynamics that had undermined previous reform initiatives.<sup>5</sup> Despite these efforts, the challenge posed by reporting requirements has persisted through the present day.

DoD has been a central actor in the broader reporting requirements dilemma. The previously mentioned 1993 study from the Clinton Administration amassed data on reporting requirements for selected agencies and noted that DoD was obligated to submit more reports to Congress than any other federal agency, other than the presidency itself.<sup>6</sup> In 2003, DoD proposed to eliminate or modify 183 DoD-specific congressional reporting requirements, but Congress largely rejected the proposal due to the department’s inability to “demonstrate that the costs of these reports were higher than the perceived benefits.”<sup>7</sup> As recently as 2013, an Office of Management and Budget (OMB) proposal to eliminate or modify hundreds of mandatory plans and reports across the executive branch featured more proposals regarding DoD requirements than any other government entity.<sup>8</sup>

The defense-specific aspect of the reporting requirements problem induced Congress to pursue a defense-specific solution. Section 1080 of the FY 2016 NDAA declared that DoD must submit a list to Congress of all congressional reporting requirements imposed on the department by any NDAA as of April 1, 2015.<sup>9</sup> According to the statute, DoD’s obligation regarding each report included on the list would terminate 2 years after the enactment date.<sup>10</sup> Congress hoped to reduce the reporting burden on DoD in one sweeping action. In accordance with Section 1080, DoD submitted the list to Congress on March 10, 2016.<sup>11</sup> Subsequently, Congress modified the termination provision through Section 1061 of the FY 2017 NDAA, which delayed the termination date for a select group of the reports listed by DoD until December 31, 2021.<sup>12</sup> In doing so, Congress distinguished between reports that would be allowed to terminate according to the original timeline—concluding on November 25, 2017—and reports that would remain mandatory for another five years. On January 18, 2017, DoD submitted an updated list to

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<sup>4</sup> White House Office of the Vice President, *Streamlining Management Control – Part 2*, September 1993, accessed August 7, 2017, <https://clintonwhitehouse6.archives.gov/1994/06/1994-06-30-npr-report-on-streamlining-management-control-part-a.html>. Congressional Research Service, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRM Modernization Act of 2010 (GPRAMA)*, May 29, 2013, accessed August 4, 2017, <https://fas.org/sgp/crs/misc/R42490.pdf>. Congress enacted legislation targeting groups of reporting requirements in 1980, 1982, 1986, 1995 and 1998.

<sup>5</sup> Congressional Research Service, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRM Modernization Act of 2010 (GPRAMA)*, May 29, 2013, accessed August 4, 2017, <https://fas.org/sgp/crs/misc/R42490.pdf>. The laws were the Government Management Reform Act of 1994, the Federal Reports Elimination and Sunset Act of 1995, the Reports Consolidation Act of 2000, and the GPRM Modernization Act of 2010.

<sup>6</sup> White House Office of the Vice President, *Streamlining Management Control – Part 2*, September 1993, accessed August 7, 2017, <https://clintonwhitehouse6.archives.gov/1994/06/1994-06-30-npr-report-on-streamlining-management-control-part-a.html>.

<sup>7</sup> RAND National Defense Research Institute, *Measuring the Statutory and Regulatory Constraints on DoD Acquisition*, 2006, accessed August 7, 2017, [https://www.rand.org/content/dam/rand/pubs/technical\\_reports/2006/RAND\\_TR347.pdf](https://www.rand.org/content/dam/rand/pubs/technical_reports/2006/RAND_TR347.pdf).

<sup>8</sup> Congressional Research Service, *Reexamination of Agency Reporting Requirements: Annual Process Under the GPRM Modernization Act of 2010 (GPRAMA)*, May 29, 2013, accessed August 4, 2017, <https://fas.org/sgp/crs/misc/R42490.pdf>.

<sup>9</sup> FY 2016 NDAA, Pub. L. No. 114-92, 129 Stat. 1000 (2015).

<sup>10</sup> *Ibid.*

<sup>11</sup> Office of the Assistant Secretary of Defense for Legislative Affairs, Letter to Congress, *FY17 NDAA (P.L. 114-328), section 1061(k) DoD Report*, January 18, 2017.

<sup>12</sup> FY 2017 NDAA, Pub. L. No. 114-328 (2015). Section 1061 also removed several reporting requirements from the termination schedule entirely, thereby preserving them indefinitely.

Congress that encompassed all of the reports still designated for termination in November 2017.<sup>13</sup> Those reports have now terminated. The reports extended for another 5 years by Section 1061 remain set to terminate in December 2021.

Congress's rationale for its latest effort to eliminate DoD reporting requirements is consistent with its longstanding views on the dangers of an excessive reporting burden. In the conference report for the FY 2016 NDAA, the HASC and SASC agreed that "excessive reporting" placed a burden on DoD and needed to be balanced against "the importance and value of reports from the Department of Defense as a key enabler of effective oversight."<sup>14</sup>

A broad consensus exists among defense stakeholders that the current level of reporting requirements hampers DoD's ability to effectively direct resources to core objectives. Despite the consensus, however, the problem has proven resistant to easy solutions. The fundamental reason for its persistence is the tension between the legitimate needs of congressional oversight and the desires of defense agencies to focus on their primary mission functions. Even taking these factors into account, credible attempts to improve the situation have been stymied by a more parochial issue: a lack of convincing case-by-case arguments for the elimination of reporting requirements. As discussed above, federal agencies have long struggled to calculate the costs of reporting requirements in a broadly applicable manner.

In the absence of such cost estimates, the next step must be to analyze the merits of individual reporting requirements to justify their elimination or modification. It is in this regard that many previous efforts have fallen short. The Clinton Administration's 1993 study concluded that "an essential factor in the elimination of reports has been the provision of convincing reasons."<sup>15</sup> The study cited a failed 1986 congressional effort to reduce reporting requirements, for which Congress "eliminated 71 percent of the reports whose elimination agencies had adequately justified" but only eliminated 10 percent of the reports "when agencies did not provide adequate justification."<sup>16</sup> Due to the lack of adequate justification for most reporting requirements, only 23 reports were eliminated out of a total of 240 recommendations; a subsequent GAO report blamed "inadequate justification of reports proposed for elimination" as a factor in the broader failure of the effort.<sup>17</sup> In 2003, DoD's proposed elimination of reporting requirements was similarly undermined by its inability to convince Congress on the merits of the reports at issue.<sup>18</sup>

The success of reporting requirements reform efforts hinges on the quality of the analysis. The Section 809 Panel focused its analysis on reports that affect the defense acquisition system, using the ongoing congressional effort under Section 1080 of the FY 2016 NDAA and Section 1061 of the FY 2017

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<sup>13</sup> Office of the Assistant Secretary of Defense for Legislative Affairs, Letter to Congress, *FY17 NDAA (P.L. 114-328), section 1061(k) DoD Report*, January 18, 2017.

<sup>14</sup> FY 2016 NDAA, Pub. L. No. 114-92, Joint Explanatory Statement of the Committee of Conference, <https://www.gpo.gov/fdsys/pkg/CPRT-114JPRT97637/pdf/CPRT-114JPRT97637.pdf>.

<sup>15</sup> White House Office of the Vice President, *Streamlining Management Control – Part 2*, September 1993, accessed August 7, 2017, <https://clintonwhitehouse6.archives.gov/1994/06/1994-06-30-npr-report-on-streamlining-management-control-part-a.html>.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> RAND National Defense Research Institute, *Measuring the Statutory and Regulatory Constraints on DoD Acquisition*, 2006, accessed August 7, 2017, [https://www.rand.org/content/dam/rand/pubs/technical\\_reports/2006/RAND\\_TR347.pdf](https://www.rand.org/content/dam/rand/pubs/technical_reports/2006/RAND_TR347.pdf).

NDAAs as a starting point. The panel determined which reports should be categorized as *defense acquisition* reports and performed a case-by-case analysis of existing acquisition reporting requirements to improve the short-term reporting environment.

### Case-by-Case Reporting Requirements

Twenty-nine reporting requirements related to defense acquisition (See Table 8-1 below) terminated on or before November 25, 2017, as a result of congressional actions in the FY 2016 and FY 2017 NDAs. Because these reports were due to sunset before publication of this report, the Section 809 Panel did not consider them in its analysis, but it does support the congressional action to terminate them.

**Table 8-1. Reporting Requirement Set to Sunset by November 25, 2017**

U.S.C. Title or Statute	Summary	Frequency
10 U.S.C. § 235	Procurement of Contract Services: Specification of Amounts Requested in Budget	Annual
10 U.S.C. § 1705(f)	Department of Defense Acquisition Workforce Development Fund	Annual
10 U.S.C. § 1722b(c)	Career Development for Civilian and Military Personnel in the Acquisition Workforce	Biennial
10 U.S.C. § 2537(b)	Improved National Defense Control of Technology Diversions Overseas	Annual
10 U.S.C. § 2306b(l)(4)	Reporting Requirements Relating to Multiyear Contracts – Annual Report	Annual
10 U.S.C. § 2330a(c)	Inventories and Reviews of Contracts for Services	Annual
10 U.S.C. § 2410i(c), second sentence	Prohibition on Contracting with Entities that Comply with the Secondary Arab Boycott of Israel – Waiver Authority	Annual
10 U.S.C. § 2445b	Cost, Schedule, and Performance Information of Major Automated Information System Programs	Annual
10 U.S.C. § 2506(b)	DoD Technology and Industrial Base Policy Guidance	Annual
10 U.S.C. § 2861(d)	Authority to Carry out Military Construction Projects in Connection with Industrial Facility Investment Program	Annual
10 U.S.C. § 2866(b)(3)	Use of Financial Incentives and Water Cost Savings	Annual
10 U.S.C. § 2912(d)	Availability and Use of Energy Cost Savings	Annual
Pub. L. No. 101-189; 103 Stat. 1394 211(e) (FY 1990-1991 NDA)	Balanced Technology Initiative Program	Annual
Pub. L. No. 107-107 346(b) (115 Stat. 1062) (FY 2002 NDA)	Development of Army Workload and Performance System and Wholesale Logistics Modernization Program	Annual
10 U.S.C. § 817(d) (2306 note) (FY 2003 NDA)	Grants of Exceptions to Costs or Pricing Data Certification Requirements and Waivers of Cost Accounting Standards	Annual
Pub. L. No. 109-163 123(d)(1) (119 Stat. 3157 (FY 2006 NDA)	Cost Limitation for Next-General Destroyer Program	Annual
Pub. L. No. 109-163 218(c)(3) (119 Stat. 3172) (FY 2006 NDA)	Requirements for Development of Tactical Radio Communications Systems	Annual
Pub. L. No. 110-181 328(b)(1) (10 U.S.C. § 4544 note) (FY 2008 NDA)	Extension of Authority for Army Industrial Facilities to Engage in Cooperative Activities with Non-Army Entities	Annual
Pub. L. No. 110-181 330(e) (122 Stat. 68) (FY 2008 NDA)	Pilot Program for Availability of Working-Capital Funds for Certain Product Improvements	Annual
Pub. L. No. 110-181 845 (5 U.S.C. App. 5 note) (FY 2008 NDA)	Disclosure of Government Contractor Audit Findings	Semi-Annual
Pub. L. No. 111-84 121(e) (123 Stat. 2212) (FY 2010 NDA)	Littoral Combat Ship Procurement	Annual

U.S.C. Title or Statute	Summary	Frequency
Pub. L. No. 111-383 243(c) (10 U.S.C. § 2358 note) (FY 2011 NDAA)	Pilot Program to Include Technology Protection Features During Research and Development of Defense Systems	Annual
Pub. L. No. 111-383 866(d)(1) (10 U.S.C. § 2302 note) (FY 2011 NDAA)	Pilot Program on Acquisition of Military Purpose Non-Developmental Items	Annual
Pub. L. No. 112-239 126(b) (126 Stat. 1657) (FY 2013 NDAA)	Designation of Mission Modules of the Littoral Combat Ship as a Major Defense Acquisition Program	Quarterly
Pub. L. No. 112-239 144(c) (126 Stat. 1663) (FY 2013 NDAA)	Treatment of Certain Programs for the F-22A Raptor Aircraft as Major Defense Acquisition Program	Annual
Pub. L. No. 112-239 865 (126 Stat. 1861) (FY 2013 NDAA)	Reports on Use Indemnification Agreements	Annual
Pub. L. No. 112-239 1276(e) (10 U.S.C. § 2350c note) (FY 2013 NDAA)	DoD Participation on Multilateral Exchange of Air Transportation and Air Refueling Services (ATARES)	Annual
Pub. L. No. 113-66 1611(d) (127 Stat. 947) (FY 2014 NDAA)	Advancing Small Business Growth	Annual
Pub. L. No. 113-291 232(e) (10 U.S.C. § 2358 note) (FY 2015 NDAA)	Pilot Program on Assignment to Defense Advanced Research Projects Agency of Private Sector Personnel with Critical Research and Development Expertise	Annual

Also as a result of congressional actions in the FY 2016 and FY 2017 NDAA's, there are currently 28 reporting requirements related to defense acquisition that are set to terminate on December 31, 2021. The Section 809 Panel conducted assessments of each report to inform its recommendations, which are included below. Although the Section 809 Panel recommends eliminating the majority of the reporting requirements, it also recommends maintaining some on a short-term basis for further examination and preserving others in a manner consistent with Recommendation 23 of this report.



## THE FOLLOWING STATUTORY REPORTING REQUIREMENTS SHOULD BE REPEALED.

*Subrecommendation 24a: Repeal the statutory requirement for the Defense Test Resource Management Center biennial strategic and budget reports, 10 U.S.C. § 196(d) and (e).*

### Background

Congress established the reporting requirements for defense test and evaluation facilities and resources in 10 U.S.C. § 196(d) and (e). The FY 2003 NDAA added 10 U.S.C. § 196, which created the Test Resource Management Center (TRMC) and established its requirements.<sup>19</sup> Section 196(d)(3) requires the director of the center to submit a report to the Secretary of Defense that includes a strategic plan for test and evaluation facilities and resources, as well as a description of the review on which the plan is based.<sup>20</sup> The director of the center must develop the strategic plan by coordinating with the Director of Operational Test and Evaluation (DOT&E), secretaries of the Military Services, and heads of Defense Agencies with test and evaluation responsibilities.<sup>21</sup> The strategic plan must cover 10 fiscal years, and it must be submitted at least once every 2 years. The review on which the plan is based must assess the adequacy of the test and evaluation facilities and resources to meet the Department's test and evaluation requirements.<sup>22</sup> Section 196(d)(4) requires that, within 60 days of receiving the report, the Secretary must transmit the report to Congress.<sup>23</sup> Additionally, Section 196(e)(2) requires the director of the center to submit a report to the Secretary on the proposed budgets for test and evaluation facilities and resources, along with certifications as to whether the proposed budgets are adequate and provide support for the strategic plan.<sup>24</sup> Section 196(e)(3) requires the Secretary to submit a report to Congress that addresses any proposed budgets that the director did not certify as adequate. The deadlines for the budget reports from DOT&E and the Secretary are, respectively, January 31 and March 31 of the preceding fiscal year.<sup>25</sup>

### Findings

The reporting requirements at 10 U.S.C. § 196(d) and (e) were implemented to promote a long-term, strategic planning process for test and evaluation facilities and resources, and to provide Congress with better oversight of the process. The primary function of TRMC is to oversee funding and maintenance for the test ranges that constitute DoD's Major Range and Test Facility Base (MRTFB).<sup>26</sup> The strategic plan and budget reports analyze how well the budgeted resources meet DoD's stated objectives regarding MRTFB. The Military Services responded to the creation of the TRMC and corresponding budgetary mandates by increasing their range operating budgets, which climbed by more than 50 percent in FY 2006 and remained at heightened levels through at least FY 2011.<sup>27</sup> TRMC reporting requirements overlap substantially with DOT&E's annual report at 10 U.S.C. §139(h), which calls on DOT&E to detail "resources and facilities available for operational test and evaluation and levels of

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<sup>19</sup> FY 2003 NDAA, Pub. L. No. 107-314, 116 Stat. 2487 (2002).

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> GAO, *Weapons Acquisition Reform: Actions Needed to Address Systems Engineering and Developmental Testing Challenges*, September 2011, accessed July 13, 2017, <http://www.gao.gov/assets/330/323377.pdf>.

<sup>27</sup> *Ibid.*

funding made available for operational test and evaluation activities.”<sup>28</sup> Because TRMC and DOT&E are required to coordinate their findings in these areas, the report at 10 U.S.C. § 139(h) is sufficient to disclose the necessary information to Congress without any redundancy.

## Conclusions

TRMC reporting requirements at 10 U.S.C. § 196(d) and (e) are redundant to a larger and more influential report at 10 U.S.C. § 139(h). TRMC is required to work with DOT&E on the relevant findings, and DOT&E discloses its own findings separately to Congress. This arrangement is unnecessary and duplicative. Congressional oversight of test and evaluation facilities and resources would be better served by ensuring both offices coordinate properly on the findings contained within DOT&E’s annual report. Congress repeal this reporting requirement.

The Test Resource Management Center dissented from the Section 809 Panel’s recommendation. TRMC argued that although a ‘slight overlap’ existed between the DOT&E report at 10 U.S.C. § 139(h) and the TRMC reports at 10 U.S.C. § 196(d) and (e), the TRMC reports possessed a “broader focus” that was crucial to ensuring adequate resources for DoD’s testing infrastructure.<sup>29</sup> After receiving this comment, the Section 809 Panel opted not to alter its recommendation, taking the position that the reports at 10 U.S.C. § 196(d) and (e) do not offer enough value on their own to justify their continuation, in light of the existence of the DOT&E report.

*Subrecommendation 24b: Repeal the statutory requirement for the Ballistic Missile Defense Programs annual budget justification reports, 10 U.S.C. § 223a(a).*

## Background

10 U.S.C. § 223a(a) establishes a reporting requirement for DoD’s early-stage ballistic missile procurement process. The reporting requirement was initially imposed in the FY 2004 NDAA, which created 10 U.S.C. § 223a.<sup>30</sup> The original statutory language of Section 223a included paragraph (a), directing the Secretary to report to Congress regarding three distinct procurement elements of DoD’s ballistic missile defense system programs: (a) the “production rate capabilities” of all intended production facilities in a ballistic missile defense program; (b) the “potential date of availability” for the initial fielding of each element in a ballistic missile defense program; and (c) the “estimated date on which the administration of the acquisition of that element [of a ballistic missile defense program] is to be transferred” from the Missile Defense Agency (MDA) to a military department.<sup>31</sup> The requirements applied to “each ballistic missile defense system element” under the authority of MDA, and they were specifically targeted at the early stages of a ballistic missile program, when the agency was still “engaged in planning for production and initial fielding.”<sup>32</sup> The statute required the Sec Def to submit the information to Congress on an annual basis, as a part of the DoD’s budget justification materials that accompany DoD’s proposed annual budget.<sup>33</sup> There have been no subsequent amendments to the

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<sup>28</sup> Director of Operational Test and Evaluation, 10 U.S.C. § 139.

<sup>29</sup> Test Resource Management Center, email to Section 809 Panel staff, November 13, 2017.

<sup>30</sup> FY 2004 NDAA, Pub. L. No. 108-136, 117 Stat. 1420 (2003).

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

report requirement, and 10 U.S.C. § 223a(a) remains unchanged from the original statute.<sup>34</sup> As such, the report is still required annually.

## Findings

In January 2002, Secretary of Defense Donald Rumsfeld issued a memorandum that exempted DoD's missile defense programs from the reporting requirements for major defense acquisition programs (MDAPs).<sup>35</sup> In May 2002, DoD broadened the scope of classification regarding missile defense programs, rendering previously public information such as developmental test details newly classified.<sup>36</sup> The classification decision sparked criticism from members of Congress and congressional staffers, who charged that the Bush Administration was inhibiting the ability of the House and Senate Armed Service Committees to fulfill their proper roles overseeing the ballistic missile defense program.<sup>37</sup> In response, Congress passed 10 U.S.C. § 223a(a) in the FY 2004 NDAA, compelling DoD to provide budget justification materials to Congress regarding early-stage procurement targets and projections.<sup>38</sup> More than 13 years later, the broad case for congressional oversight still exists due to continuing flaws in early-stage ballistic missile planning; a May 2015 GAO report concluded that several ballistic missile defense programs were "pursuing high-risk approaches" that failed to adhere to best practices and risked "cost growth and schedule delays" in acquisition outcomes. The specific report at 10 U.S.C. § 223a(a)—created due to discrete political circumstances—is not unique in pursuing that goal, and overlaps with several other reports promoting the same end. The redundant nature of the reports suggests that streamlining can occur without a loss in oversight.

## Conclusions

Transparency in early-stage ballistic missile procurement is an important element of proper oversight, yet the information contained within the reporting requirement at 10 U.S.C. § 223a(a) overlaps with other ballistic missile reporting requirements, notably the report in 10 U.S.C. § 225(c) and sections 232 and 1662 of the FY 2002 NDAA and FY 2015 NDAA, respectively. All of these reports focus on early-stage developments within ballistic missile programs. Moreover, the report at 10 U.S.C. § 223a(a) justifies budgetary requests, which already contain information relating to relevant programs. The report is redundant and does not offer enough value on its own to justify its continuation.

▮ The Missile Defense Agency concurred with the Section 809 Panel's recommendation.<sup>39</sup>

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<sup>34</sup> Ballistic Missile Defense Programs: Procurement, 10 U.S.C. § 223a.

<sup>35</sup> Congressional Research Service, *Missile Defense: The Current Debate*, July 19, 2005, accessed June 1, 2017, <https://fas.org/sgp/crs/weapons/RL31111.pdf>.

<sup>36</sup> *Ibid.*

<sup>37</sup> David Ruppe, "Bush Administration Thwarting Scrutiny of Missile Defense, Hill Critics Say," *Global Security Newswire*, January 7, 2004, <http://www.nti.org/gsn/article/bush-administration-thwarting-scrutiny-of-missile-defense-hill-critics-say/>.

<sup>38</sup> *Ibid.*

<sup>39</sup> Missile Defense Agency, phone call with Section 809 Panel staff, November 29, 2017.



### *Subrecommendation 24c: Repeal the statutory requirement for the Programs for Combating Terrorism: Annual budget overview report, 10 U.S.C. § 229.*

#### **Background**

Congress established the reporting requirement at 10 U.S.C. § 229 to more accurately assess the total cost of combating terrorism, which was defined by DoD in 1994 as encompassing “actions, including AT [antiterrorism] and CT [counterterrorism], taken to oppose terrorism through the entire threat spectrum.”<sup>40</sup> 10 U.S.C. § 229 establishes a requirement for the Secretary to submit a consolidated budget justification display that includes “all programs and activities of the Department of Defense combating terrorism program.” The report is intended to support the President’s annual budget for DoD and must be submitted in classified and unclassified form. The FY 2000 NDAA added 10 U.S.C. § 229, and the reporting requirements largely existed in their current form in the original provision.<sup>41</sup> Congress mandated that the report include the amount requested for each program element, project, and initiative to support the combating terrorism program, as well as a rationale for each funding level request.<sup>42</sup> The report must also provide a summary of estimated expenditures for the current year, the budget year, and through the completion of the current 5-year defense plan for the combating terrorism program.<sup>43</sup> The only substantive amendment to section 229 occurred in the FY 2016 NDAA, when previously required semiannual reports on the combating terrorism program were eliminated.<sup>44</sup> In all other respects, the reporting requirement as it currently stands in section 229 has existed since the FY 2000 NDAA.<sup>45</sup>

#### **Findings**

In 1997, GAO reported that federal funding for combating terrorism was “unknown and difficult to determine,” and recommended a review of cost data reports on an annual basis.<sup>46</sup> Since the requirement was enacted, GAO has issued multiple reports regarding the continuing weakness of federal funding data for combating terrorism. In 2002, GAO reported there were several difficulties in collecting and analyzing the data due to the various types of missions involved (e.g., intelligence, law enforcement) and the fact that funds for combating terrorism were often embedded in appropriation accounts that include other activities.<sup>47</sup> In 2006, GAO specifically addressed DoD funding data for the War on Terror, determining the data to be unreliable.<sup>48</sup> GAO has recommended that the Secretary take steps to ensure the reported costs for combating terrorism are reliable and to establish a methodology to determine how funding is apportioned for the War on Terror, but it is unclear whether DoD has achieved any improvements. The report includes data based on a distinction among *antiterrorism*, *counterterrorism*, and *combatting terrorism* that was conceived before the terrorist attacks of September

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<sup>40</sup> DoD Combatting Terrorism Program Procedures, DoDI 2000.14 (1994).

<sup>41</sup> FY 2000 NDAA, Pub. L. No. 106-65, 113 Stat. 727 (1999).

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> FY 2016 NDAA, Pub. L. No. 114-92, 129 Stat. 977 (2015).

<sup>45</sup> Programs for Combating Terrorism: Display of Budget Information, 10 U.S.C. §229.

<sup>46</sup> GAO, *Combating Terrorism: Spending on Government wide Programs Requires Better Management and Coordination*, December 1997, accessed July 25, 2017, <http://www.gao.gov/assets/230/224961.pdf>.

<sup>47</sup> GAO, *Combating Terrorism: Funding Data Reported to Congress Should Be Improved*, November 2002, accessed July 25, 2017, <http://www.gao.gov/assets/80/79348.pdf>.

<sup>48</sup> GAO, *Global War on Terrorism: DoD Needs to Improve the Reliability of Cost Data and Provide Additional Guidance to Control Costs*, September 2005, accessed July 25, 2017, <http://www.gao.gov/new.items/d05882.pdf>.

11, 2001, which could explain why DoD has struggled to generate the specific data called for by the report. The report may reflect an outdated, pre-9/11 perspective.

## Conclusions

The combating terrorism reporting requirement at 10 U.S.C. § 229 appears to be an obsolete inheritance from a pre-9/11 approach to terrorism. Congress created the report to provide better insight into the total cost of DoD's combating terrorism program, but the structure of that program has undermined the report's ability to facilitate improved congressional oversight of DoD's response to the terrorist threat. The report predates the War on Terror and the vast transformation in DoD policy that has occurred since 2001. The report's outdated approach has made it difficult for DoD to properly comply. In recognition of these facts, Congress acted in the FY 2016 NDAA to repeal related semiannual reports on the combating terrorism program. That decision is merited, and further action to repeal the annual report as well should take place. For the reasons stated above, the Section 809 Panel recommends that Congress repeal this reporting requirement.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

***Subrecommendation 24d: Repeal the statutory requirement for the Annual Long-Term Plan for the Procurement of Aircraft for the Navy and the Air annual strategic plan, 10 U.S.C. § 231a.***

## Background

10 U.S.C. § 231a establishes a reporting requirement for long-term aircraft procurement in support of U.S. strategic planning. The reporting requirement was initially imposed in the FY 2009 NDAA, which created Title 10 U.S.C. § 10 231a.<sup>49</sup> The original statutory language of section 231a directed the Secretary to submit an annual report to Congress regarding the integration of long-term aircraft procurement for the Navy and the Air Force into the broader strategic outline of U.S. defense policy.<sup>50</sup> The statute required the report, titled *Annual Aircraft Procurement Plan*, to describe "a plan for the procurement of the aircraft specified in subsection (b) for the Department of the Navy and the Department of the Air Force" to a 30-year time horizon.<sup>51</sup> The report would contain a detailed procurement program, as well as projected funding levels and an assessment of whether the "combined aircraft forces" of the Navy and the Air Force satisfied America's national security requirements.<sup>52</sup> The report was also statutorily obligated to support the framework outlined by the official *National Security Strategy Report* or the *Quadrennial Defense Review*.<sup>53</sup> If DoD concluded that the budget for a given fiscal year failed to provide the necessary funding to maintain aircraft procurement in accordance with the report, the statute further required that the report must specify "the risks associated with the reduced force structure of aircraft that will result from funding aircraft procurement at such level."<sup>54</sup> Subsequent amendments have expanded the scope of the *Annual Aircraft Procurement Plan* by broadening its analysis to include

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<sup>49</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4379 (2008).

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

Army aircraft and mandating detailed explanations and justifications for the cost estimates provided.<sup>55</sup> The original components of the plan remain in statutory effect.

## Findings

Congress modeled the aircraft procurement reporting requirement at 10 U.S.C. § 231a upon the preexisting 30-year naval construction report at 10 U.S.C. § 231. The reports were formulated with nearly identical statutory language. The *Annual Aircraft Procurement Plan* was intended to inform Congress regarding the “cumulative long-term effects of annual appropriation decisions,” expose any shortfalls between long-term aircraft objectives and short-term budgets, and compel DoD to articulate its guiding assumptions about the evolution of America’s airpower capabilities.<sup>56</sup> Nearly from the very beginning, however, the 30-year aircraft procurement reports have struggled to achieve consistency due to the structural unpredictability of the aerospace industry. The first two reports, submitted by DoD alongside the FY 2011 and FY 2012 budget requests, provided only 10 years of programmatic detail due to “long-term uncertainties in requirements and technology.”<sup>57</sup> A 2011 CBO analysis concluded that the reports would be more informative for Congress if DoD provided a greater level of detail concerning “the expected inventory of each type of aircraft over the span covered,” as well as the underlying assumptions for each type of aircraft. DoD experienced difficulty in attempting to rationalize that information.<sup>58</sup> DoD neglected to submit a report altogether in the FY 2015 budget cycle, and recent reports have failed to clarify the impact of the sequestration caps established by the Budget Control Act of 2011 on the department’s projected aircraft procurement.<sup>59</sup> DoD’s ability to implement the reporting requirement has been undermined by aerospace structural factors, such as the likelihood of rapid technological shifts and the unpredictable evolution of the department’s requirements. These inherent forces within the aerospace sector have proven difficult to adapt to an annual report.

## Conclusions

The long-term aircraft procurement reporting requirement at 10 U.S.C. § 231a is modeled on a similar report for naval vessels at 10 U.S.C. § 231. The naval vessel report has proven to be an asset for both DoD and Congress; the aircraft procurement report has not experienced similar success. The differing structural realities of the naval vessel and aircraft procurement sectors have affected the utility of the respective reports, and the aircraft procurement report has been troubled from the start. Rapid shifts and enduring volatility in the aerospace sector render it ill-suited for consistent projections on such a long time horizon. DoD has struggled to comply with the reporting mandate, failing to achieve its objectives in multiple reports and failing to submit a report altogether in FY 2015. The goal of the report is admirable, but the nature of the underlying information appears to render it impracticable.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

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<sup>55</sup> Budgeting for Life-Cycle Cost of Aircraft for the Navy, Army, and Air Force: Annual Plan and Certification, 10 U.S.C. § 231a.

<sup>56</sup> Congressional Budget Office, *The Value of 30-Year Defense Procurement Plans for Congressional Oversight and Decisionmaking*, June 1, 2011, accessed June 12, 2017, <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/06-01-dodtestimony.pdf>.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Mackenzie Eaglen, “Pentagon’s Aviation Plan Headed for a Dead Stick Landing,” *American Enterprise Institute*, May 31, 2015, accessed June 12, 2017, <https://www.aei.org/publication/pentagon-aviation-report-dead-stick-landing/>.

### *Subrecommendation 24e: Repeal the statutory requirement for the Cyber Mission Forces annual budget overview report, 10 U.S.C. § 238(a).*

#### **Background**

10 U.S.C. § 238(a) establishes a reporting requirement for the Secretary to submit a budget justification display that includes “a major force program category for the five-year defense plan of the Department of Defense for the training, manning, and equipping of the cyber mission forces.”<sup>60</sup> The reports are also obligated to detail the program elements for cyber mission forces.<sup>61</sup> The FY 2015 NDAA added 10 U.S.C. § 238 to better account for cyber mission forces.<sup>62</sup> The provision required the Secretary to submit the first budget justification report to Congress starting with the budget materials for FY 2017, and to submit reports thereafter for each fiscal year.<sup>63</sup> The reporting requirement at section 238(a) has not been amended since the FY 2015 NDAA.<sup>64</sup>

#### **Findings**

The DoD 2015 Cyber Strategy outlined five strategic goals for its cyber operations, including to “build and maintain ready forces and capabilities to conduct cyberspace operations.”<sup>65</sup> The preparation process for the FY 2017 defense budget request included determining and outlining the costs for the Cyber Mission Force, which comprises 133 teams, to ensure that it would be fully operational by the end of FY 2018.<sup>66</sup> Because the reporting requirement was implemented for the first time in FY 2017, little analysis has been conducted of the report itself.

#### **Conclusions**

Congress created the cyber mission forces reporting requirement at 10 U.S.C. § 238(a) in the FY 2015 NDAA. The report is intended to promote congressional oversight of DoD’s Cyber Mission Force, which is not scheduled to be fully operational until the end of FY 2018. Because the report has only been in effect for 1 fiscal year, it is difficult to evaluate its relative merits; however, it appears the goals of the Cyber Mission Force would be better served by withdrawing the report until DoD has had the necessary time to implement its cyber strategy. After DoD has initiated the program, Congress could determine whether the burden of a reporting requirement is justified. But it is unclear if the report is necessary at the present time, and therefore difficult to validate its costs.

The Office of the USD(AT&L) dissented from the Section 809 Panel’s recommendation. DoD argued that due to the challenging nature of the current budgetary environment, the report served a useful purpose by providing an opportunity to tell Congress “a clear and unambiguous story regarding how much we are spending to man, train and equip the CMF.”<sup>67</sup> The panel opted not to alter its recommendation. A reporting requirement is

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<sup>60</sup> FY 2015 NDAA, Pub. L. No. 113-291, 128 Stat. 3638 (2014).

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Cyber Mission Forces: Program Elements, 10 U.S.C. § 238.

<sup>65</sup> DoD, *DoD Cyber Strategy*, April 2015, accessed July 25, 2017, [https://www.defense.gov/Portals/1/features/2015/0415\\_cyber-strategy/Final\\_2015\\_DoD\\_CYBER\\_STRATEGY\\_for\\_web.pdf](https://www.defense.gov/Portals/1/features/2015/0415_cyber-strategy/Final_2015_DoD_CYBER_STRATEGY_for_web.pdf)

<sup>66</sup> Under Secretary of Defense (Comptroller)/Chief Financial Officer, *FY 2017 Defense Budget Overview*, January 2019, accessed July 25, 2017, [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017\\_Budget\\_Request\\_Overview\\_Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017_Budget_Request_Overview_Book.pdf)

<sup>67</sup> Office of the Under Secretary of Defense for AT&L, ASD(A), email to Section 809 Panel staff, November 8, 2017.

an unwieldy instrument for congressional outreach, the report is not necessary to build congressional support for the CMF, and other avenues are available to encourage support for the CMF without the corresponding costs of the report.

*Subrecommendation 24f: Repeal the statutory requirement for the Corrosion Control and Prevention annual budget and policy report, 10 U.S.C. § 2228(e).*

## Background

10 U.S.C. § 2228(e) establishes a reporting requirement for implementing DoD's long-term strategy to reduce corrosion in military equipment and infrastructure. The reporting requirement was initially imposed in the FY 2008 NDAA, which added a new paragraph (e) to the existing Section 2228 that governed DoD's Office of Corrosion Policy and Oversight.<sup>68</sup> Congress had previously empowered the office to "oversee and coordinate efforts throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department" through the development of anticorrosion policies and programs.<sup>69</sup> The office also possessed responsibility for monitoring DoD acquisition practices to ensure that corrosion prevention technologies were properly integrated into the acquisition process, and for developing a long-term strategy to mitigate the effect of corrosion across the department.<sup>70</sup> The FY 2008 NDAA required the Secretary to disclose the funding requirements and an estimated return on investment (ROI) for the implementation of the office's long-term anticorrosion strategy, as well as provide a comparison with the actual funds requested in DoD's annual budget and a justification for any shortfall between required and requested funds.<sup>71</sup> It also required the Comptroller General to submit a second report to Congress that assessed DoD's budget submission for anticorrosion policy, as well as the department's own anticorrosion report.<sup>72</sup> Congress subsequently altered the reporting requirement to encompass a greater level of detail and replaced the Comptroller General's role with a different requirement that the "corrosion control and prevention executive of a military department" submit annual reports to the Director of Corrosion Policy and Oversight that provided "recommendations pertaining to the corrosion control and prevention program of the military department."<sup>73</sup> The most recent change occurred in the FY 2017 NDAA, in which Congress amended the provision to establish an end date for the reporting requirement upon the submission of the FY 2022 budget.<sup>74</sup>

## Findings

The reporting requirement at 10 U.S.C. § 2228(e) arose due to the severity of the corrosion problem confronting the Defense Department. Corrosion costs DoD tens of billions of dollars annually; in 2010, the department estimated that the annual cost of equipment and infrastructure corrosion was \$22.9 billion.<sup>75</sup> The Office of Corrosion Policy and Oversight was created to develop policies that would reduce corrosion and coordinate the implementation of those policies throughout DoD. A 2013 GAO

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<sup>68</sup> FY 2008 NDAA, Pub. L. No. 110-181, 122 Stat. 79 (2008).

<sup>69</sup> Office of Corrosion Policy and Oversight, 10 U.S.C. § 2228.

<sup>70</sup> *Ibid.*

<sup>71</sup> FY 2008 NDAA, Pub. L. No. 110-181, 122 Stat. 79 (2008).

<sup>72</sup> *Ibid.*

<sup>73</sup> Office of Corrosion Policy and Oversight, 10 U.S.C. § 2228.

<sup>74</sup> FY 2017 NDAA, Pub. L. No. 114-328, 130 Stat. 2376 (2016).

<sup>75</sup> GAO, *Defense Management: The Department of Defense's Fiscal Year 2012 Corrosion Prevention and Control Budget Request*, April 13, 2011, accessed July 14, 2017, <http://www.gao.gov/assets/100/97425.pdf>.



report concluded that DoD's anticorrosion efforts were inadequate, both in terms of the quality of the annual reports and the department's ability to implement the recommendations of the reports.<sup>76</sup> For example, GAO stated that the military departments "did not always collect required information" regarding ROI for corrosion projects, and that they were "unable to determine whether projects had achieved their estimated ROI" as a result.<sup>77</sup> DoD's own internal estimates indicated that the annual cost of corrosion remained essentially unchanged 7 years after the office was created, totaling \$23.4 billion annually through FY 2013.<sup>78</sup> The inadequate quality of the reports posed an obstacle to congressional oversight. Due to these shortcomings, it appears congressional support for the Office of Corrosion Policy and Oversight itself is declining. In its version of the FY 2018 NDAA, the House of Representatives voted to repeal 10 U.S.C. § 2228 and eliminate the USD(AT&L) office entirely, but require the Military Services to oversee their own anti-corrosion policy efforts.<sup>79</sup> The final version of the NDAA preserved the office but mandated a one-time report from the Secretary to evaluate "the continued need for the Office of Corrosion Policy and Oversight," as well as to recommend "whether to retain or terminate the Office."<sup>80</sup> The provision sends a clear signal regarding congressional unhappiness with DoD's current anticorrosion framework. Congress's decision to set a separate termination date for the reporting requirement in conjunction with the submission of the FY 2022 budget suggests that Congress views the current report at 10 U.S.C. § 2228(e) with similar skepticism.<sup>81</sup>

## Conclusions

In its recent actions, Congress has already signaled that the corrosion control reporting requirement at 10 U.S.C. § 2228(e) is likely to be eliminated over the next several years. In the FY 2017 NDAA, Congress specifically voted to establish an end date for the report alongside the FY 2022 budget. In the FY 2018 NDAA, Congress expressed skepticism about the very existence of the Office of Corrosion Policy and Oversight. The report does not appear to have assisted in mitigating the problem of corrosion within DoD, as the costs of corrosion have remained largely unchanged since its creation.

The Office of Corrosion Policy and Oversight dissented from the Section 809 Panel's recommendation. The office defended the report's value in providing Congress with "an accounting of corrosion prevention and mitigation," while highlighting DoD's "corrosion cost avoidance."<sup>82</sup> After receiving this comment, the panel opted not to alter its recommendation because the comment did not directly address the concerns raised by the panel's analysis.

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<sup>76</sup> GAO, *Defense Management: DOD Should Enhance Oversight of Equipment-Related Corrosion Projects*, September 2013, accessed July 14, 2017, <http://www.gao.gov/assets/660/657498.pdf>.

<sup>77</sup> Ibid.

<sup>78</sup> Joint Technology Exchange Group, *Topic: Corrosion Prevention and Repair*, March 30, 2015, accessed July 14, 2017, [http://jiteg.ncms.org/wp-content/gallery/20150330\\_Corrosion/JTEG%20Corrosion%20Forum%20%28Combined%29%20pdf.pdf](http://jiteg.ncms.org/wp-content/gallery/20150330_Corrosion/JTEG%20Corrosion%20Forum%20%28Combined%29%20pdf.pdf).

<sup>79</sup> National Defense Authorization Act for Fiscal Year 2018, House of Representatives, H.R. 2810, Sections 902 and 903 (2017), <https://www.congress.gov/congressional-report/115th-congress/house-report/404/1?overview=closed>.

<sup>80</sup> FY 2018 NDAA, Pub. L. No. 115-91 (2017)

<sup>81</sup> FY 2017 NDAA, Pub. L. No. 114-328, 130 Stat. 2376 (2016).

<sup>82</sup> Office of Corrosion Policy and Oversight, email to Section 809 Panel staff, November 11, 2017.

### *Subrecommendation 24g: Repeal the statutory requirement for the Major Satellite Acquisition Programs annual integration report, 10 U.S.C. § 2275.*

#### **Background**

10 U.S.C. § 2275 establishes a reporting requirement for the integration of acquisition and delivery schedules within major satellite acquisition programs (MSAP). The reporting requirement was initially imposed in the FY 2013 NDAA, which created a new section 2275 of Title 10.<sup>83</sup> The original statutory language of section 2275 directed the USD(AT&L) to submit reports to Congress disclosing the total funding for all MSAPs, as well as the extent to which the schedules for the acquisition and delivery of capabilities had been integrated for each program.<sup>84</sup> The statute compelled a unique report for each MSAP. In addition to certain cost and capability requirements, the reports were required to assess whether the MSAP was a *nonintegrated program* due to a failure to integrate “the schedules for the acquisition and the delivery of the capabilities of the segments for the program.”<sup>85</sup> If such a nonintegrated designation was declared for any MSAP by the USD(AT&L), the statute called for a second phase of reporting requirements to enhance congressional oversight over the program. The USD(AT&L) was obligated to evaluate the impact of the program’s nonintegration on its mission and describe the actions being enacted to achieve full integration.<sup>86</sup> The USD(AT&L) was also obligated to submit annual update reports to Congress on the integration status of each nonintegrated MSAP until the program had achieved integration, or until 5 years had passed, after which the reporting requirement for the program would terminate but an automatic GAO review of the program would be triggered.<sup>87</sup> There have been no subsequent amendments to the report requirement, and 10 U.S.C. § 2275 remains unchanged.<sup>88</sup>

#### **Findings**

The reporting requirement at 10 U.S.C. § 2275 stemmed from longstanding concerns regarding the impact of flawed integration strategies on the cost and schedule objectives of major satellite acquisition programs. In 2007, the Air Force’s Space and Missile Systems Center reconstituted a program management assistance group that was charged with improving persistent system integration difficulties.<sup>89</sup> As a consequence, Congress sought to improve integration strategies for MSAPs by passing 10 U.S.C. § 2275 in the FY 2013 NDAA, which required DoD to craft broad outlines for the integration of acquisition and delivery schedules and strengthened congressional oversight over the process.<sup>90</sup> Congress acted in the belief that a more intensive effort to monitor major satellite acquisition schedules would prompt DoD to strengthen its own synchronization efforts.<sup>91</sup> The effort has had mixed results. A RAND study published in 2015 concluded that integration difficulties continue to be one of

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<sup>83</sup> FY 2013 NDAA, Pub. L. No. 112-239, 126 Stat. 1870 (2013).

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> Reports on Integration of Acquisition and Capability Delivery Schedules for Segments of Major Satellite Acquisition Programs and Funding for Such Programs, 10 U.S.C. § 2275. The provision was modified by a technical amendment in December 2014, but no substantive alteration occurred.

<sup>89</sup> GAO, *Space Acquisitions: DOD Faces Challenges in Fully Realizing Benefits of Satellite Acquisition Improvements*, March 21, 2012, accessed June 1, 2017, <http://www.gao.gov/assets/590/589487.pdf>.

<sup>90</sup> GAO, *Space Acquisitions: DOD Is Overcoming Long-Standing Problems, but Faces Challenges to Ensuring Its Investments Are Optimized*, April 24, 2013, accessed June 1, 2017, <https://www.gao.gov/assets/660/654137.pdf>.

<sup>91</sup> *Ibid.*

the primary causes of cost growth and schedule delays in MSAP's.<sup>92</sup> A GAO report from 2015 noted that a combination of congressional and DoD efforts had led to notable improvements in MSAP performance in recent years.<sup>93</sup> The nature of DoD's major satellite programs is evolving in a manner that could reduce vulnerability to integration problems in the near future because most of them have advanced to their mature phases of acquisition, in which cost and schedule problems are diminished.<sup>94</sup> Concerns over MSAP program integration that prompted the reports at 10 U.S.C. § 2275 in the first place may not be representative of the main issues that will confront MSAPs in the years to come. For those MSAP programs that still remain in the early stages, improvements in DoD's oversight of MSAPs could make the problems addressed by the report less pressing in the years to come.

## Conclusions

The MSAP reporting requirement at 10 U.S.C. § 2275 is outdated in its focus on program integration. Congress imposed the report to address flawed MSAP integration strategies that were driving up costs and causing schedule delays in the early stages, but the maturation of most MSAP programs to mature phases of acquisition has reduced the risk caused by those problems. Furthermore, the report has contributed to improvements in early-stage MSAP performance, which diminishes the need for the report among those MSAP programs that have not yet matured. In effect, the report at 10 U.S.C. § 2275 is outmoded because it is directed at a problem that no longer undermines MSAP performance to the extent that it did several years prior.

▮ The Office of the USD(AT&L) concurred with the Section 809 Panel's recommendation.<sup>95</sup>

### *Subrecommendation 24h: Repeal the statutory requirement for the Commercial Space Activities annual Cooperation with DoD report, 10 U.S.C. § 2276(e).*

## Background

10 U.S.C. § 2276(e) establishes a reporting requirement for DoD's cooperation with the commercial space industry. The reporting requirement was initially imposed in the FY 2013 NDAA, which created 10 U.S.C. § 2276.<sup>96</sup> The statutory language of section 2276 included paragraph (e), which directed the Secretary to submit an annual report to Congress regarding the funds, services and infrastructure that were impacted by any collaboration between DoD and private sector companies in the commercial space sector.<sup>97</sup> Section 2276, as a whole, authorized DoD to approve use of its space transportation infrastructure by private sector companies, in exchange for payments or services, to reduce the upkeep costs for that infrastructure and enhance public-private cooperation.<sup>98</sup> The reporting requirement encompassed any aspect of DoD space infrastructure that had been subject to private-sector use through the authority, as well as any funds that DoD had secured in exchange for providing use of the

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<sup>92</sup> RAND, National Defense Research Institute, *Acquisition of Space Systems: Past Problems and Future Challenges, Volume 7*, 2015, accessed June 1, 2017, <http://www.acq.osd.mil/parca/docs/2015-rand-MG1171z7.pdf>.

<sup>93</sup> GAO, *Space Acquisitions: Some Programs Have Overcome Past Problems, but Challenges and Uncertainty Remain for the Future*, April 29, 2015, accessed June 2, 2017, <http://www.gao.gov/assets/670/669930.pdf>.

<sup>94</sup> Ibid.

<sup>95</sup> Office of the Under Secretary of Defense for AT&L, ASD(A), email to Section 809 Panel staff, November 8, 2017.

<sup>96</sup> FY 2013 NDAA, Pub. L. No. 112-239, 126 Stat. 1872 (2013).

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

infrastructure.<sup>99</sup> The statute required the Secretary to submit the report to Congress by January 31 of each year.<sup>100</sup> There have been no subsequent amendments to the report requirement, and 10 U.S.C. § 2276(e) remains unchanged in its current form from the original statute.<sup>101</sup>

## Findings

The reporting requirement at 10 U.S.C. § 2276(e) emanated from the novel approach of using space infrastructure that was sanctioned by Congress with the passage of the FY 2013 NDAA. Section 2276 permitted DoD to receive payments and services from commercial companies in exchange for granting them the right to use the department's space infrastructure for their own launch purposes.<sup>102</sup> At the time, NASA itself did not possess a similar authority.<sup>103</sup> Advocates for the initiative touted the potential for lower costs and greater efficiencies in maintaining DoD's space infrastructure, without any risk of compromising the department's asset ownership and with flexibility in modifying its assets for future purposes.<sup>104</sup> Advocates also believed that the initiative could benefit the commercial space industry and support the National Space Policy as a whole through a more effective use of national resources and enhanced public-private partnerships.<sup>105</sup> Given the innovative nature of the new authority, the reporting requirement at 10 U.S.C. § 2276(e) likely served as a means for Congress to assess its merits as it was implemented. For example, Congress specified in an accompanying statement to the FY 2013 NDAA that the authority was "intended for those commercial entities who already operate at Department of Defense sites or will be required to operate there due to the nature of the mission they are conducting," and the report would have served as a tool to ensure DoD was properly observing congressional intent.<sup>106</sup> In practice, the authority does not appear relevant due to the lack of interest expressed by the commercial space sector. For example, a U.S. Air Force presentation in May 2014 noted that "no private sector entity has expressed interest in leveraging this provision." There is no indication that demand has increased in subsequent years.<sup>107</sup>

## Conclusions

The commercial space reporting requirement at 10 U.S.C. § 2276(e) lacks a compelling rationale due to DoD's minimal use of the underlying space infrastructure authority. Congress created the report to ensure transparency during the development of an innovative new process, through which DoD was authorized to allow private-sector companies to use the department's space transportation

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Commercial Space Launch Cooperation, 10 U.S.C. § 2276.

<sup>102</sup> U.S. Air Force, *Title 10 USC, Sec 2276: Commercial Space Launch Cooperation*, May 2014, accessed June 5, 2017, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/ast/advisory\\_committee/meeting\\_news/media/2014/may/20\\_Title\\_10\\_US\\_C\\_CSLC\\_May\\_2014.pdf](https://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/meeting_news/media/2014/may/20_Title_10_US_C_CSLC_May_2014.pdf).

<sup>103</sup> Dan Leone, "NASA Wants More Spaceport Infrastructure Opened to Private Sector," *Space News*, July 3, 2013, accessed January 5, 2018, <http://spacenews.com/36111nasa-wants-more-spaceport-infrastructure-opened-to-private-sector/>.

<sup>104</sup> U.S. Air Force, *Title 10 USC, Sec 2276: Commercial Space Launch Cooperation*, May 2014, accessed June 5, 2017, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/ast/advisory\\_committee/meeting\\_news/media/2014/may/20\\_Title\\_10\\_US\\_C\\_CSLC\\_May\\_2014.pdf](https://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/meeting_news/media/2014/may/20_Title_10_US_C_CSLC_May_2014.pdf).

<sup>105</sup> Ibid.

<sup>106</sup> FY 2013 NDAA, Pub. L. No. 112-239, Joint Explanatory Statement of the Committee of Conference, <https://www.ngaus.org/sites/default/files/NDAA%20Conference%20Report.pdf>.

<sup>107</sup> U.S. Air Force, *Title 10 USC, Sec 2276: Commercial Space Launch Cooperation*, May 2014, accessed June 5, 2017, [https://www.faa.gov/about/office\\_org/headquarters\\_offices/ast/advisory\\_committee/meeting\\_news/media/2014/may/20\\_Title\\_10\\_US\\_C\\_CSLC\\_May\\_2014.pdf](https://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/meeting_news/media/2014/may/20_Title_10_US_C_CSLC_May_2014.pdf).

infrastructure in exchange for payments or services that could reduce upkeep costs for the infrastructure. The need for congressional oversight was rooted in the program's novelty. There is little evidence that DoD has used the authority to an extent that could justify an annual report on its operation. As long as the authority remains little-used, the report lacks sufficient justification to remain in existence. If DoD does begin to use the authority with greater frequency, Congress can scrutinize the authority's early performance and determine whether a new reporting requirement is necessary.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

***Subrecommendation 24i: Repeal the statutory requirement for the Depot-Level Maintenance overview report, 10 U.S.C. § 2466(d).***

**Background**

10 U.S.C. § 2466(d) establishes a reporting requirement for the Secretary to submit to Congress the percentage of funds expended in the preceding fiscal year, projected for the current fiscal year, and projected for the subsequent fiscal year for performance of depot-level maintenance. The report is due within 90 days after the submission of the President's budget. The reporting requirement was initially imposed in the FY 1998 NDAA, which used a previously-mandated, one-time report as a model for the permanent report.<sup>108</sup> The initial version of the report only encompassed funds expended during the preceding fiscal year, but subsequent amendments broadened the report to current and ensuing fiscal years as well. The report encompasses each of the Armed Forces other than the Coast Guard, as well as each Defense Agency.<sup>109</sup>

**Findings**

GAO has reviewed and written extensively on the depot-level maintenance reports at 10 U.S.C. § 2466(d), highlighting the continuing errors, omissions, and weaknesses in the data reported. Starting from 1999, the data collected were so error-prone and inadequate that GAO "could not determine whether the military services were in compliance with the 50-percent ceiling," which imposed a 50 percent cap on the annual percentage of depot funds that could be spent on contracting.<sup>110</sup> In the same report, GAO stated that it did not believe that DoD's projections of future depot maintenance expenditures for FYs 2000–2004 were "reasonably accurate."<sup>111</sup> In 2003, GAO released another report that discussed the many deficiencies in the reported data, resulting in a recommendation to streamline multiple reports into a single report that covered only a 3-year period (prior year, current year, and budget year) and to extend the deadline for the report to April 1 of each year.<sup>112</sup> Despite the adoption of some recommendations, GAO was still unable to validate DoD's compliance with the 50-percent ceiling

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<sup>108</sup> FY 1998 NDAA, Pub. L. No. 105-85, 111 Stat. 1695 (1997)

<sup>109</sup> Limitations on the Performance of Depot-Level Maintenance of Materiel, 10 U.S.C. § 2466.

<sup>110</sup> GAO, *Depot Maintenance: Action Needed to Avoid Exceeding Ceiling on Contract Workloads*, August 2000, accessed June 29, 2017, <http://www.gao.gov/assets/230/229470.pdf>.

<sup>111</sup> *Ibid.*

<sup>112</sup> GAO, *Depot Maintenance: DoD's 50-50 Reporting Should Be Streamlined*, September 2003, accessed June 29, 2017, <http://www.gao.gov/assets/230/229470.pdf>.



or to determine its reported projections to be reasonably accurate due to persistently unreliable data.<sup>113</sup> In 2005, GAO also noted that the reports did not provide analyses of annual changes, long-term trends, or methodologies used to prepare projections, which limited the reports' usefulness for Congress to exercise its oversight role.<sup>114</sup> Seven years later, in the FY 2012 NDAA, Congress created a depot maintenance reporting requirement at 10 U.S.C. § 2464(d) that addressed some of these concerns by adopting a broader and longer-term perspective on depot policy and mandating more detailed justifications from DoD concerning projected shortfalls. The Section 809 Panel has recommended that this requirement at 10 U.S.C. § 2464(d) be maintained.

## Conclusions

Depot maintenance funding is a crucial matter, yet the reporting requirement at 10 U.S.C. § 2466(d) is not the best mechanism to ensure the existence of proper transparency and oversight. Inaccurate data has undermined the report's value; the information submitted by DoD to Congress for many years was flawed to such a large extent that analysts were unable to use it in the service of even basic conclusions. The report's narrow focus on funding has limited its utility to address broader issues of depot maintenance, which may have contributed to the creation of a related report at 10 U.S.C. § 2464(d) that has proven to be considerably more effective as a source of data for congressional oversight since its creation in the FY 2012 NDAA. The broader mandate of 10 U.S.C. § 2464(d) and its greater success with data collection has created a redundancy of effort for the report at 10 U.S.C. § 2466(d). For the reasons stated above, the Section 809 Panel recommends that Congress repeal this reporting requirement.

The Office of the Assistant Secretary of Defense for Logistics and Material Readiness (L&MR) dissented from the Section 809 Panel's recommendation. L&MR argued that the reports at 10 U.S.C. § 2464(d) and 10 U.S.C. § 2466(d) are "complementary," and that the former focuses on establishing the proper "organic capabilities" for depot maintenance while the latter focuses on ensuring sufficient resource commitment to sustain "core [depot] capabilities."<sup>115</sup> After receiving this comment, the panel opted not to alter its recommendation in the belief that the report at 10 U.S.C. § 2464(d) is a more effective vehicle for congressional oversight of depot maintenance policies than the report at 10 U.S.C. § 2466(d). The extent to which the two reports may be complementary does not outweigh the issues of data quality and redundancy that lessen the value of the report at 10 U.S.C. § 2466(d).

***Subrecommendation 24j: Repeal the statutory requirement for the Covered Naval Vessels Repair Work in Foreign Shipyards annual report, 10 U.S.C. § 7310(c).***

## Background

10 U.S.C. § 7310(c) establishes a reporting requirement for DoD's use of foreign shipyards in the repair and maintenance of covered naval vessels. The reporting requirement was initially imposed in the

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<sup>113</sup> GAO, *Depot Maintenance: Actions Needed to Provide More Consistent Funding Allocation Data to Congress*, November 2006, accessed June 29, 2017, <http://www.gao.gov/assets/260/254047.pdf>.

<sup>114</sup> GAO, *Depot Maintenance: Persistent Deficiencies Limit Accuracy and Usefulness of DoD's Funding Allocation Data Reported to Congress*, November 2005, accessed June 29, 2017, <http://www.gao.gov/assets/250/248595.pdf>.

<sup>115</sup> Office of the Assistant Secretary of Defense for Logistics & Material Readiness, email to Section 809 Panel staff, November 8, 2017.

FY 2009 NDAA, which amended the existing 10 U.S.C. § 7310.<sup>116</sup> The underlying text of the section was already in place by enactment of the FY 2009 NDAA, namely stating that naval vessels based out of homeports in the United States were prohibited from being “overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.”<sup>117</sup> Furthermore, naval vessels based out of homeports overseas were prohibited from receiving repair work in those shipyards for a period of 15 months before any planned reassignment to a shipyard in the United States, and naval vessels based in U.S. homeports were required to receive repair work in those shipyards for a period of 15 months before any planned reassignment to a homeport overseas.<sup>118</sup> Upon its creation, the reporting requirement in paragraph (c) provided an overview of the number of naval vessels that fell within the section’s authority. Congress mandated that the Secretary of the Navy submit the report annually, and that each report detail “all repairs and maintenance performed on any covered naval vessel that has undergone work for the repair of the vessel in any shipyard outside the United States or Guam.”<sup>119</sup> Each report was to assess the previous fiscal year, rather than the fiscal year in which it was being submitted.<sup>120</sup> Congress determined a precise set of criteria that were required for incorporation into each report, including the percentage of the Navy’s annual ship repair budget that was dedicated to the repair of covered vessels in foreign shipyards; the legal justification for the use of foreign shipyards; the name and class of any vessel, and the category of repair undertaken in any foreign shipyard; the location of any foreign shipyard used for repairs; details regarding the duration, cost, and schedule of any repairs in a foreign shipyard; and the nature of the contract for any repairs performed in a foreign shipyard.<sup>121</sup> The reporting requirement has not been amended since the FY 2009 NDAA.<sup>122</sup>

## Findings

Along with a related report in section 1017(e) of the FY 2007 NDAA, the reporting requirement in 10 U.S.C. § 7310(c) constitutes another aspect of Congress’s longstanding commitment to support the domestic shipbuilding industry. Section 7310 is one of several legislative initiatives undertaken by Congress to bolster domestic shipyards, including the Jones Act (which mandates domestic ownership of all domestic maritime shipping), 10 U.S.C. § 7309, and 14 U.S.C. § 665.<sup>123</sup> The reporting requirement, implemented at the end of 2008, further strengthened congressional ability to monitor DoD’s use of foreign shipyards for repairs on naval vessels. There is little evidence, however, to support the notion that naval vessels seeking repairs in foreign shipyards represent a practical problem for naval operations, which raises the question as to whether domestic factors are outweighing military considerations in the operation of the reporting requirement. The issue of naval repairs in foreign shipyards appears to have more salience as a domestic matter than as a military concern.

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<sup>116</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4584 (2008).

<sup>117</sup> Overhaul, Repair, Etc. of Vessels in Foreign Shipyards: Restrictions, 10 U.S.C. § 7310.

<sup>118</sup> *Ibid.*

<sup>119</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4584 (2008).

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> Overhaul, Repair, Etc. of Vessels in Foreign Shipyards: Restrictions, 10 U.S.C. § 7310.

<sup>123</sup> National Defense University, *Shipbuilding Industry 2011*, Spring 2011, accessed June 19, 2017, <http://es.ndu.edu/Portals/75/Documents/industry-study/reports/2011/icaf-is-report-shipbuilding-2011.pdf>.

## Conclusions

The foreign shipyard repair and maintenance reporting requirement at 10 U.S.C. § 7310(c) lacks a compelling policy rationale. Federal support for the domestic shipbuilding sector is a longstanding national policy; however, the reporting requirement itself has only existed since 2009, marking it as a recent supplement to a policy framework that had existed for many decades prior. The report is not justified as a useful tool for naval repairs oversight, which is ostensibly the subject of the report. The report's inadequate justification and limited policy effect render it difficult to support on substantive grounds.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

### *Subrecommendation 24k: Repeal the statutory requirement for the Reserve Component Equipment annual procurement report, 10 U.S.C. § 10543(a).*

## Background

10 U.S.C. § 10543(a) establishes a reporting requirement for the proposed expenditures and appropriations supporting the major procurement activities of the Reserve Components of the armed forces. The reporting requirement was initially imposed in the FY 1997 NDAA, which created 10 U.S.C. § 10543.<sup>124</sup> The provision required the Secretary to disclose to Congress “the estimated expenditures and the proposed appropriations” underlying equipment and military construction procurement for “each of the Reserve Components of the armed forces.”<sup>125</sup> The report was due to be completed annually and submitted as a part of the annual future-years defense program report under 10 U.S.C. § 221.<sup>126</sup> Although Congress has subsequently broadened the scope of section 10543 as a whole, the reporting requirement in paragraph (a) has not been amended since the FY 1997 NDAA.<sup>127</sup>

## Findings

The reporting requirement at 10 U.S.C. § 10543(a) arose due to congressional concerns over inadequate equipment provisions for the National Guard and Reserve Components. As early as 1983, the Army recognized the need to enhance reserve readiness by establishing the Minimum Essential Equipment for Training program, which intended to “identify, by unit, specific types and quantities of equipment that were critical to training in Reserve Component units and to give those units priority.”<sup>128</sup> The initiative failed due to poor management, however, and Congress increasingly took notice in the early 1990's due to fears that “shortages of essential equipment continue to hamper Army National Guard and Army Reserve efforts to conduct effective training.”<sup>129</sup>

Amidst ongoing DoD struggles to properly equip the Reserve Components, Congress mandated the annual report on Reserve Component equipment and military construction in 1996 as part of its effort

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<sup>124</sup> FY 1997 NDAA, Pub. L. No. 104-201, 110 Stat. 2699 (1996).

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> National Guard and Reserve Component Equipment Procurement and Military Construction Funding: Inclusion in Future-Years Defense Program, 10 U.S.C. § 10543.

<sup>128</sup> GAO, *Army Reserve Components: Minimum Essential Equipment for Training Has Not Been Effectively Managed*, May 1990, accessed June 20, 2017, <http://www.gao.gov/assets/220/212554.pdf>.

<sup>129</sup> *Ibid.*

to ensure that the reserves received adequate funding to maintain a proper degree of readiness.<sup>130</sup> The effect of the report in the intervening 2 decades is questionable. The policy dilemma remains acute: As recently as March 2017, the Army's deputy chief of staff for operations (G-3) acknowledged to Congress that reserve readiness remained problematic due to shortfalls in personnel, training and equipment.<sup>131</sup> Nevertheless, the report itself is made redundant by 10 U.S.C. § 10541 (National Guard and Reserve Component Equipment: Annual Report to Congress), which requires a comprehensive submission to Congress regarding numerous facets of equipment procurement for the National Guard and the Reserve Components.<sup>132</sup>

The information provided by the report at 10 U.S.C. § 10543(a) is already contained within the larger report at 10 U.S.C. § 10541, which was first created in 1990 and predates the later report by half a decade.<sup>133</sup> A 2007 analysis by the Federal Research Division of the Library of Congress cited the report at 10 U.S.C. § 10541 repeatedly as the primary source for Reserve Component funding data, without mentioning the separate report at 10 U.S.C. § 10543(a).<sup>134</sup> The relationship between the two reports indicates that the report at 10543(a) has not fulfilled its original purpose.

## Conclusions

The Reserve Component equipment procurement reporting requirement at 10 U.S.C. § 10543(a) is made redundant by 10 U.S.C. § 10541, which represents the paramount source of congressional oversight for Reserve Component and National Guard readiness. This redundancy deprives the report at 10 U.S.C. § 10543(a) of much of its potential value. Reserve Component equipment readiness remains an important issue, but a duplicative report can distract from proper congressional oversight as much as it can inform. In light of its overlapping condition, the limited benefits of the report do not justify its continuation.

The Office of the Under Secretary of Defense for Personnel and Readiness concurred with the Section 809 Panel's recommendation.<sup>135</sup>

*Subrecommendation 24l: Repeal the statutory requirement for the Reserve Components annual procurement threshold report, 10 U.S.C. § 10543(c).*

## Background

The reporting requirement established by 10 U.S.C. § 10543(c) is closely related to the reporting requirement at 10 U.S.C. § 10543(a), discussed above. Paragraph (a) of section 10543 requires that DoD detail the estimated expenditures and proposed appropriations for Reserve Components in regards to equipment procurement and military construction, and paragraph (c) creates a conditional report for

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<sup>130</sup> RAND, *Equipping the Reserve Components of the Armed Services*, 1997, accessed June 20, 2017, [https://www.rand.org/content/dam/rand/pubs/documented\\_briefings/2005/DB209.pdf](https://www.rand.org/content/dam/rand/pubs/documented_briefings/2005/DB209.pdf).

<sup>131</sup> Charlsy Panzino, "3-Star: More Training Days for the Guard as the Army Struggles with Readiness," *Army Times*, March 8, 2017, accessed January 5, 2018, <https://www.armytimes.com/articles/3-star-more-training-days-for-the-guard-as-the-army-struggles-with-readiness>.

<sup>132</sup> National Guard and Reserve Component Equipment: Annual Report to Congress, 10 U.S.C. § 10541.

<sup>133</sup> FY 1991 NDAA, Pub. L. No. 101-510, 104 Stat. 1714 (1990).

<sup>134</sup> Federal Research Division, *Funding for Reserve Component Equipment: An Analysis of the Budget Process*, November 2007, accessed June 20, 2017, [https://www.loc.gov/rr/frd/pdf-files/CNGR\\_Funding-Equipment.pdf](https://www.loc.gov/rr/frd/pdf-files/CNGR_Funding-Equipment.pdf).

<sup>135</sup> Office of the Under Secretary of Defense for Personnel and Readiness, email to Section 809 Panel staff, November 29, 2017.

DoD in the event that the department’s funding request for equipment procurement and military construction falls short of a congressionally-mandated threshold. The reporting requirement in paragraph (c) was imposed in the FY 1998 NDAA as an amendment to the existing section 10543, which had been created the previous year.<sup>136</sup> The statute asserted that DoD must aggregate its annual funding requests for Reserve Component equipment procurement and military construction, and then determine whether the aggregate request equaled at least 90 percent of the “average authorized amount applicable for that fiscal year.”<sup>137</sup> If the aggregate request failed to meet the 90 percent threshold, the Secretary was obligated to submit a report to Congress that specified “the additional items of equipment that would be procured, and the additional military construction projects that would be carried out” if the funding request was elevated to the 90 percent threshold.<sup>138</sup> In the FY 2012 NDAA, Congress amended the reporting requirement to allow more time for the Secretary to complete the report by extending the period from 15 days to 90 days after the submission of the presidential budget.<sup>139</sup> No other amendments to the provision have occurred since the FY 1998 NDAA.<sup>140</sup>

## Findings

The reporting requirement at 10 U.S.C. § 10543(c) is linked to the Reserve Component equipment procurement report at 10 U.S.C. § 10543(a). The report at 10 U.S.C. § 10543(c) is conditional in nature—triggered by a failure to meet a funding threshold rather than a simple annual disclosure of data—yet it is still inherently derived from the information produced in paragraph (a) of section 10543. As a result, arguments regarding the efficacy of the annual report must also be considered in assessing the conditional report. The two reports should be considered in tandem, and the redundancy of the report in paragraph (a) affects the utility of the report in paragraph (c) as well.

## Conclusions

The Reserve Component reporting requirement at 10 U.S.C. § 10543(c) should be repealed for reason similar to those justifying repeal of the report at 10 U.S.C. § 10543(a). The report arises on a provisional basis if DoD’s annual funding requests for Reserve Component equipment procurement and military construction fall short of a designated threshold. That threshold is linked to information collected to satisfy the obligation of 10 U.S.C. § 10543(a); however, as detailed above, the data provided by 10 U.S.C. § 10543(a) is duplicative with the primary Reserve Component report at 10 U.S.C. § 10541. Even though the two reports emphasize different elements of the issue for Congress, their value is mutually undermined by redundancy with 10 U.S.C. § 10541. The report’s utility is too limited to justify its continuation.

The Office of the Under Secretary of Defense for Personnel and Readiness concurred with the Section 809 Panel’s recommendation.<sup>141</sup>

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<sup>136</sup> FY 1998 NDAA, Pub. L. No. 105-85, 111 Stat. 1872 (1997).

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> FY 2012 NDAA, Pub. L. No. 112-81, 125 Stat. 1587 (2011).

<sup>140</sup> National Guard and Reserve Component Equipment Procurement and Military Construction Funding: Inclusion in Future-Years Defense Program, 10 U.S.C. § 10543.

<sup>141</sup> Office of the Under Secretary of Defense for Personnel and Readiness, email to Section 809 Panel staff, November 29, 2017.



*Subrecommendation 24m: Repeal the statutory requirement for the Missile Defense Agency annual overview report, FY 2002 NDAA, 232(h)(3).*

## Background

Section 232(h)(3) of the FY 2002 NDAA establishes an annual reporting requirement for the MDA test program. In its original form, section 232 – which is classified as a note under 10 U.S.C. § 2431 – required the DOT&E to “assess the adequacy and sufficiency of the Ballistic Missile Defense Organization test program” for the preceding fiscal year.<sup>142</sup> Congress also required the official to submit a report by February 15 of each year that summarized the results of the assessment.<sup>143</sup> The reporting requirement was amended in the FY 2009 NDAA in order to broaden the scope of the report by compelling the DOT&E to consider “the operational effectiveness, suitability, and survivability of the ballistic missile defense system, and its elements, that have been fielded or tested before the end of the fiscal year.”<sup>144</sup> Thus, the annual report to Congress encompassed both a review of each year’s Ballistic Missile Defense Organization test program (later amended to the MDA test program) and an analysis of any ballistic missile programs that were fielded or tested that year. The substantive components of the reporting requirement have not been amended since the FY 2009 NDAA.<sup>145</sup>

## Findings

Section 232(h) originated during a period of reorganization and expansion in DoD’s ballistic missile defense program. MDA emerged in its contemporary form in 2002, during a period in which the administration of President George W. Bush signaled a strong commitment to increased funding for missile defense programs.<sup>146</sup> The reporting requirement at section 232(h)(3) was likely intended to compel further transparency from MDA and enhance the ability of Congress to exercise an appropriate level of oversight. Fifteen years later, however, the MDA test program remains flawed. A GAO report from April 2016 determined that the test program was prone to “constant alterations,” which rendered it difficult to “assess individual element and BMDS developmental progress and to trace the costs associated with each test.”<sup>147</sup> GAO offered a similarly critical perspective in May 2017, asserting that MDA’s test program lacked an adequate degree of “traceability and insight” and suggesting that MDA undertake to improve the test program’s consistency, scheduling, cost estimates and funding disclosures.<sup>148</sup> MDA’s test program is thus likely to remain a source of concern in the near future.

## Conclusions

The reporting requirement imposed in section 232(h)(3) of the FY 2002 NDAA does not provide enough value to justify its perpetuation. The requirement overlaps with other missile defense reporting requirements, such as 10 U.S.C. § 223a(a) and 10 U.S.C. § 225(c), as well as section 1662 of the FY 2015 NDAA, in that each possesses a focus on early-stage developments within the ballistic missile program.

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<sup>142</sup> FY 2002 NDAA, Pub. L. No. 107-107, 115 Stat. 1039 (2001).

<sup>143</sup> *Ibid.*

<sup>144</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4390 (2008).

<sup>145</sup> Weapons Development and Procurement Schedules, 10 U.S.C. § 2431.

<sup>146</sup> GAO, *Defense Acquisitions: Missile Defense Agency’s Flexibility Reduces Transparency of Program Cost*, April 30, 2007, accessed June 23, 2017, <https://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-07-799T/html/GAOREPORTS-GAO-07-799T.htm>.

<sup>147</sup> GAO, *Missile Defense: Ballistic Missile Defense System Testing Delays Affect Delivery of Capabilities*, April 28, 2016, accessed June 23, 2017, <http://www.gao.gov/assets/680/676855.pdf>.

<sup>148</sup> GAO, *Missile Defense: Some Progress Delivering Capabilities, but Challenges with Testing Transparency and Requirements Development Need to be Addressed*, May 2017, accessed June 23, 2017, <http://www.gao.gov/assets/690/684963.pdf>.

Further, the report has demonstrated little success at improving outcomes in the MDA testing program in the 15 years since it was created. The report's duplicative information and inability to support MDA in achieving its goals of timeliness, transparency, and traceability supports the case for the requirement's repeal.

MDA concurred with the Section 809 Panel's recommendation.<sup>149</sup> DOT&E dissented from the recommendation. The office acknowledged that the report contained "some similarities in report content" with the other MDA reports, but argued that the report focused to a greater extent on the "adequacy of the MDA test program" than the other reports. The panel opted not to alter its recommendation in the belief that redundancy in report content between this report and the other MDA reports outweighs the report's value in terms of enhanced oversight.<sup>150</sup>

### *Subrecommendation 24n: Repeal the statutory requirement for the Ford-Class Aircraft Carrier annual cost estimate report, FY 2007 NDAA, 122(d)(1).*

#### **Background**

Section 122(d)(1) of the FY 2007 NDAA establishes a reporting requirement for deviations from the Navy's cost estimates regarding its Ford-Class aircraft carrier program. Section 122 implemented a framework for Navy procurement on the Ford-Class program by mandating that the lead ship could not exceed \$10.5 billion in procurement funds, and all follow-on ships could not exceed \$8.1 billion in procurement funds.<sup>151</sup> The provision did authorize adjustments in the procurement budget for several specified reasons, such as inflation, outfitting, and post-delivery costs, the application of new technologies, nonrecurring design and engineering costs, and safety deficiencies.<sup>152</sup> The provision also imposed conditions on the technology justification, namely that cost adjustments for new technologies were only warranted if the technologies were projected to decrease life-cycle costs or respond to *emerging threats* that undermined American national security.<sup>153</sup> In paragraph (d)(1) of the provision, Congress directed the Secretary of the Navy to submit an annual report detailing "any change in the amount" of the procurement budget for a Ford-Class aircraft carrier under any of the official justifications.<sup>154</sup> The reporting requirement has not been amended since the FY 2007 NDAA.

#### **Findings**

Despite the best efforts of Congress, the Ford-Class aircraft carrier program has been plagued with cost overruns in the decade since the passage of the FY 2007 NDAA. In June 2017, GAO reported that the lead ship CVN-78 had experienced 23 percent cost growth to an estimated \$12.9 billion, more than \$2 billion in excess of the original congressional ceiling.<sup>155</sup> At the same time, CVN-78 was expected to possess reduced capability at delivery despite the enormous additional funding that had been directed

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<sup>149</sup> Missile Defense Agency, phone call with Section 809 Panel staff, November 29, 2017.

<sup>150</sup> DOT&E, email to Section 809 Panel staff, December 8, 2017.

<sup>151</sup> FY 2007 NDAA, Pub. L. No. 109-364, 120 Stat. 2105 (2006).

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> GAO, *Ford-Class Aircraft Carrier: Follow-On Ships Need More Frequent and Accurate Cost Estimates to Avoid Pitfalls of Lead Ship*, June 2017, accessed June 27, 2017, <https://www.gao.gov/assets/690/685241.pdf>.

into its procurement.<sup>156</sup> Follow-on ships in the Ford-Class program have not proven immune from similar cost failings; the next ship, CVN-79, is now projected to cost \$11.4 billion, more than \$3 billion higher than the original congressional ceiling.<sup>157</sup> GAO remains doubtful that the underlying cost problems in the Ford-Class program have been properly remedied. In the same report, GAO argued that “the cost estimate for the second Ford-Class aircraft carrier, CVN 79, is not reliable and does not address lessons learned from the performance of the lead ship, CVN 78.”<sup>158</sup> GAO’s analysis demonstrates the intense oversight directed at the Ford-Class program independently of the reporting requirement at section 122(d)(1). In the past 10 years, GAO has conducted multiple assessments of the Ford-Class program’s budgetary development at the behest of Congress, publishing reports in 2007, 2013, 2014, 2015, and 2017.<sup>159</sup> Furthermore, the CRS wrote a report on the history and status of the Ford-Class program in August 2017 and the SASC conducted a hearing on the Ford-Class program in October 2015.<sup>160</sup> The program’s size and importance for the Navy’s future has produced a level of intensive oversight that extends far beyond what the reporting requirement can provide. The report itself is thus a marginal factor and subsequently of little value in congressional oversight of the Ford-Class program.

## Conclusions

In recent years, separate oversight mechanisms have overtaken the Ford-Class aircraft carrier reporting requirement that was imposed in section 122(d)(1) of the FY 2007 NDAA. The need for vigilant congressional oversight of the Ford-Class program has not diminished, but the report itself is now a peripheral component of oversight efforts led by congressional committees and offices such as GAO and CRS. As a result of the intense scrutiny that the Ford-Class program is likely to operate under for at least the near-term, the reporting requirement has become largely redundant to other oversight efforts.

The Navy’s Office of Legislative Affairs concurred with the Section 809 Panel’s recommendation.<sup>161</sup>

*Subrecommendation 24a: Repeal the statutory requirement for the Carriage by Vessel annual Repair Work in Foreign Shipyards report, FY 2007 NDAA, 1017(e).*

## Background

Section 1017(e) of the FY 2007 NDAA establishes a reporting requirement for covered vessels that undergo repair work at foreign shipyards. Section 1017 created a new provision that is classified as a note under 10 U.S.C. § 2631.<sup>162</sup> The statutory language of section 1017 identified the objective of the provision as the maintenance of the national defense industrial base.<sup>163</sup> To accomplish that aim, Congress directed the Secretary to create an “acquisition policy” with a new criterion for “obtaining

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Congressional Research Service, *Navy Ford (CVN-78) Class Aircraft Carrier Program: Background and Issues for Congress*, August 2017, accessed October 26, 2017, <https://fas.org/sgp/crs/weapons/RS20643.pdf>.

<sup>161</sup> Department of the Navy, Office of Legislative Affairs, email to Section 809 Panel staff, December 14, 2017.

<sup>162</sup> Supplies: Preference to United States Vessels, 10 U.S.C. § 2631.

<sup>163</sup> FY 2007 NDAA, Pub. L. No. 109-364, 120 Stat. 2379 (2006).

carriage by vessel of cargo.”<sup>164</sup> The new criterion would require the consideration of “the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.”<sup>165</sup> By this means, Congress directed DoD to evaluate whether any company seeking a contract to deliver supplies to the department by ship also utilized foreign shipyards for any repair or maintenance work on its fleet. The reporting requirement at paragraph (e) instructed DoD to provide an annual overview to Congress regarding any contractor to which the new acquisition policy applied, as well as the details of the contractor’s repair work in foreign shipyards.<sup>166</sup> The reporting requirement has not been amended since the FY 2007 NDAA.<sup>167</sup>

## Findings

Similar to a related report at 10 U.S.C. § 7310(c), the report required by Section 1017(e) arose out of Congress’s longstanding support for the use of domestic shipyards in the defense acquisition system.<sup>168</sup> Section 1017 of the FY 2007 NDAA broadened this support into a new aspect of the defense acquisition system by requiring DoD to evaluate whether offerors used foreign or domestic shipyards for repair and maintenance work on their covered vessels. Analogous to 10 U.S.C. § 7310(c), the report’s policy rationale is limited and appears to be primarily rooted in domestic, rather than military, concerns. Furthermore, the effect of the report on DoD’s supply system since its implementation is unclear.

## Conclusions

In a similar fashion to the reporting requirement at 10 U.S.C. § 7310(c), the carriage by vessel reporting requirement that was imposed in section 1017(e) of the FY 2007 NDAA lacks a compelling policy justification. The report is aimed at bolstering the domestic shipbuilding sector by increasing the scrutiny on contractors using foreign shipyards, but there is little evidence that the issue is substantively important to DoD’s operations or that the report has even had a discernible impact. The inadequate policy justification for the report argues against its continuation.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

*Subrecommendation 24p: Repeal the statutory requirement for the Bandwidth Capacity annual overview report, FY 2009 NDAA, 1047(d)(2).*

## Background

Section 1047(d)(2) of the FY 2009 NDAA establishes a reporting requirement in regards to the bandwidth requirements for MDAPs. Section 1047 required the Secretary and the Director of National Intelligence (DNI) to conduct an expansive joint review of the near, mid- and long-range bandwidth requirements for the military and intelligence communities.<sup>169</sup> Congress mandated that the review encompass existing bandwidth capacities, projected bandwidth capacities, possible technological

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Supplies: Preference to United States Vessels, 10 U.S.C. § 2631.

<sup>168</sup> National Defense University, *Shipbuilding Industry 2016*, Spring 2016, accessed June 6, 2017, <http://es.ndu.edu/Portals/75/Documents/industry-study/reports/2016/es-is-report-shipbuilding-2016.pdf>.

<sup>169</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4602 (2008).

developments that could impact bandwidth capacities, and strategies to mitigate shortfalls and meet anticipated costs for bandwidth capacities for both communities.<sup>170</sup> Congress also established a 1-year deadline, after the date of enactment, for the Secretary and DNI to submit a report to Congress detailing the conclusions of the report.<sup>171</sup> Finally, Congress directed the two officials to establish a review process to guarantee that all MDAPs would enjoy the necessary bandwidth capacity in the future, as a part of the Milestone B or Key Decision Point B approval process.<sup>172</sup> One year later, with the initial deadline having passed, Congress amended Section 1047 to eliminate the language referring to the one-time report.<sup>173</sup> In its place, Congress established a new annual report to detail the conclusions that the Secretary and the DNI had reached concerning the bandwidth requirements needed to support MDAPs in the previous fiscal year.<sup>174</sup> The reporting requirement has not been amended again since the FY 2010 NDAA.<sup>175</sup>

## Findings

The reporting requirement at Section 1047(d)(2) was intended to facilitate congressional oversight of DoD's bandwidth acquisition system. In the years preceding the FY 2009 NDAA, DoD received criticism for possessing a bandwidth acquisition structure that moved too slowly, lacked flexibility, and imposed unnecessary costs.<sup>176</sup> Despite the report, bandwidth acquisition remained troublesome for DoD in the aftermath of the FY 2009 NDAA. A GAO report in July 2015 concluded that DoD's bandwidth acquisition system was still "fragmented and inefficient," resulting in a constant struggle to ensure that bandwidth requirements were achieved.<sup>177</sup> GAO also criticized DoD for lacking the necessary data to craft long-term procurement decisions regarding bandwidth, and for failing to overcome a decentralized system of bandwidth procurement.<sup>178</sup> GAO's critical assessment highlighted the continuing difficulties confronting DoD's attempts to ensure long-term bandwidth support for major programs, which was the central subject of the reporting requirement. Additionally, DoD did act in September 2016 to improve the quality of bandwidth capacity planning through updated guidance (DoDI 8420.02), yet the reporting requirement did not play a direct role in that process and is not well-positioned to convey the impact of any changes to Congress.<sup>179</sup>

## Conclusions

The reporting requirement's lack of success is rooted in its makeshift origin and ineffective configuration. The report was initially intended to be a 1-year report before it was made permanent in the FY 2010 NDAA. The contemporary permanent report is overly broad and poorly targeted to address the policy problem. The report imposes joint responsibility for bandwidth oversight onto the Secretary and the DNI; such responsibility is ill-suited for offices at that level, which are not ideal sources for the detailed oversight required by the report. As a result, the report fails to properly direct

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<sup>170</sup> Ibid.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid.

<sup>173</sup> FY 2010 NDAA, Pub. L. No. 111-84, 123 Stat. 2449 (2009).

<sup>174</sup> Ibid.

<sup>175</sup> Major Defense Acquisition Programs: Certification Required Before Milestone B Approval, 10 U.S.C. § 2366b.

<sup>176</sup> GAO, *Defense Satellite Communications: DOD Needs Additional Information to Improve Procurements*, July 2015, accessed June 27, 2017, <https://www.gao.gov/assets/680/671484.pdf>.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> DoD Satellite Communications (SATCOM), DoDI 8420.02 (2016).



its focus to generating the necessary data from DoD's existing decentralized bandwidth system. The report has outlived whatever initial usefulness it may have possessed, and its imperfect structure undermines its utility to Congress and reduces the likelihood that tangible improvements in bandwidth acquisition would arise from congressional oversight of its data.

The office of the DoD Chief Information Officer concurred with the Section 809 Panel's recommendation.<sup>180</sup>

### *Subrecommendation 24q: Repeal the statutory requirement for the Afghanistan Infrastructure Fund annual overview report, FY 2011 NDAA, 1217(i).*

#### **Background**

Section 1217(i) of the FY 2011 NDAA establishes a reporting requirement in regards to a joint program between DoD and the State Department to fund infrastructure projects in Afghanistan as a part of the broader U.S. counterinsurgency strategy. Section 1217 created a new authority that is classified as a note under 22 U.S.C. 7513.<sup>181</sup> The statutory language of Section 1217 granted far-reaching authority to a joint DoD–State Department “Afghanistan Infrastructure Fund” to develop infrastructure projects—described only as “water, power, and transportation projects; and other projects in support of the counterinsurgency strategy in Afghanistan”—using up to \$400 million in funds for the first fiscal year of the program.<sup>182</sup> Congress directed the Secretary to provide notification at least 30 days before using any funds under the new program authority, explaining why the designated infrastructure project would be sustainable and justifying the project's counterinsurgency rationale.<sup>183</sup> The reporting requirement at paragraph (i) was intended to provide a general overview of the program by detailing the “allocation and use of funds” under the program, as well as a “description of each project” funded through the program authority.<sup>184</sup> The reporting requirement, which was directed to the Secretary “in coordination with the Secretary of State,” was automatically triggered for each fiscal year “in which funds are obligated, expended, or transferred under the program.”<sup>185</sup> Subsequent amendments extended the funding authority through FY 2014 and imposed limitations on the total amount of funding that could be utilized by DoD and State before submitting further justification to Congress.<sup>186</sup> The reporting requirement itself has not been amended since its creation in the FY 2011 NDAA.<sup>187</sup>

#### **Findings**

Section 1217 was intended to further strengthen America's counterinsurgency strategy in Afghanistan by funding “high-priority, large-scale infrastructure projects in support of the civil-military campaign in Afghanistan.”<sup>188</sup> Within several years, the program authorized by Section 1217 appears to have exhausted its congressional support. The most recent amendment to Section 1217 occurred in the

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<sup>180</sup> DoD Chief Information Officer, email to Section 809 Panel staff, December 5, 2017.

<sup>181</sup> Authorization of Assistance, 22 U.S.C. § 7513.

<sup>182</sup> FY 2011 NDAA, Pub. L. No. 111-383, 124 Stat. 4393 (2011).

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> Authorization of Assistance, 10 U.S.C. § 7513.

<sup>187</sup> *Ibid.*

<sup>188</sup> FY 2011 NDAA, Pub. L. No. 111-383, Joint Explanatory Statement of the Committees on Armed Services of the U.S. Senate and House of Representatives, [http://www.wifcon.com/dodauth11/hr6523\\_explan.pdf](http://www.wifcon.com/dodauth11/hr6523_explan.pdf).

FY 2014 NDAA, in which funding authority for the Afghanistan Infrastructure Fund was authorized through FY 2014 at a lower level of funding (\$250 million, as compared to \$350 million in FY 2013 and the original \$400 million in FY 2011).<sup>189</sup> Congress opted not to provide any further funding authority to the Section 1217 program after FY 2014. Congress also approved two additional requirements that signaled its intention to end the program as a source of funding for new infrastructure projects after FY 2014: (a) a new requirement upon the Secretary to assess whether the Afghan National Security Forces were capable of providing security for infrastructure projects funded through the program in FY 2014<sup>190</sup> and (b) a mandate that the Secretary consult with the Secretary of State and the USAID Administrator to draft a plan “for the transition to the Government of Afghanistan, or a utility entity owned by the Government of Afghanistan, of the project management of projects funded with amounts authorized by this Act for the Afghanistan Infrastructure Fund.”<sup>191</sup> Congress also articulated the contours of the plan, namely a description of all projects that would transition to Afghan control and an assessment of the ongoing costs to the Afghan government and the United States of managing the projects, as well as the capability of the Afghan government to manage the projects successfully.<sup>192</sup> Congress effectively required DoD to submit a plan for the termination of the direct American role in funding and maintaining infrastructure projects through the Afghanistan Infrastructure Fund. The statutory language articulated in the FY 2014 NDAA remains in effect, which indicates that the fund no longer possesses the authority to support new projects.

## Conclusions

As the Afghanistan Infrastructure Fund nears its end, the reporting requirement for the program that was imposed in Section 1217(i) of the FY 2011 NDAA has lost its purpose. Congress created the report to facilitate its oversight of the program, but the fund has lacked the authority to finance new projects since the end of FY 2014. Congress’s decision to halt funding authority and instruct DoD to prepare for the transition of infrastructure projects funded through the program to Afghan control signals that the program is effectively defunct. In light of this, the oversight afforded by the report is no longer necessary.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

*Subrecommendation 24r: Repeal the statutory requirement for the MDAP Testing and Evaluation annual justification of progress report, FY 2013 NDAA, 904(h)(1) and (2).*

## Background

Paragraphs (1) and (2) of Section 904(h) of the FY 2013 NDAA establish a reporting requirement to detail MDAPs that proceed to testing and evaluation despite internal DoD objections. The statutory language, which is classified as a note under 10 U.S.C. § 133, directed the USD(AT&L) to submit an annual report to Congress that describes every instance in which an MDAP moved forward in the testing and evaluation process over departmental objections. Congress specified that each report must consist of two components: a record of every MDAP that “proceeded to implement a test and

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<sup>189</sup> FY 2014 NDAA, Pub. L. No. 113-66, 127 Stat. 907 (2013).

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

evaluation master plan” despite the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation’s [DASD(DT&E)] finding of disapproval for the plan; and a record of every MDAP that “proceeded to initial operational testing and evaluation” despite the same official’s determination that the program was not yet ready for operational testing.<sup>193</sup> For both categories, Congress mandated that the report explain the causes of the internal objections, the rationale behind DoD’s decision to proceed with the program regardless, and the actions taken by DoD to address the internal concerns while moving forward with testing and evaluation.<sup>194</sup> Congress required the USD(AT&L) to submit the annual reports within 60 days of the end of each fiscal year.<sup>195</sup> Congress also specified that the reports were only due between fiscal years 2013 and 2018, establishing a 5-year timeline without any reference to subsequent reporting requirements after fiscal year 2018.<sup>196</sup> The reporting requirement in paragraphs (1) and (2) has not been amended since the FY 2013 NDAA.<sup>197</sup>

## Findings

Section 904(h) of the FY 2013 NDAA was intended to address congressional discontent over the role of the DASD(DT&E) within DoD’s testing and evaluation process. Congress established the position in the FY 2009 NDAA for the purpose of strengthening the role of testing and evaluation in developing major weapons systems.<sup>198</sup> Within 4 years, however, Congress concluded that DoD had failed to properly integrate the position into its internal structure. In a Joint Explanatory Statement that accompanied the FY 2013 NDAA, Congress criticized DoD for failing to provide the necessary resources, staff, and access to the position, as well as failing to ensure that the deputy assistant secretary was fully assimilated into the department’s testing and evaluation process.<sup>199</sup> Congress also expressed concern that DoD had failed to give “adequate attention to shortcomings identified by DASD(DT&E) in developmental testing.”<sup>200</sup> This final objection was addressed in paragraphs (1) and (2) of Section 904(h), which compelled DoD to submit a report to Congress disclosing any instance in which the testing and evaluation process for an MDAP moved forward over the objections of the DASD(DT&E).<sup>201</sup> The reporting requirement was designed to assist the DASD(DT&E) in fully integrating the oversight role that Congress had originally envisioned. It was also created with a 5-year sunset, indicating that Congress may have believed that a reporting requirement instituted for bureaucratic reasons did not necessarily need to become a permanent fixture of congressional oversight.

## Conclusions

The reporting requirement imposed by Congress in section 904(h)(1) of the FY 2013 NDAA is nearing the end of its designated lifespan. Congress established that the report would sunset in FY 2018, suggesting that Congress always intended for the report to serve a specific, short-term purpose in assessing DoD’s integration of the DASD(DT&E) into its broader testing and evaluation process. The

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<sup>193</sup> FY 2013 NDAA, Pub. L. No. 112-239, 126 Stat. 1868 (2013).

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> Under Secretary of Defense for Acquisition, Technology, and Logistics, 10 U.S.C. § 133.

<sup>198</sup> FY 2013 NDAA, Pub. L. No. 112-239, Joint Explanatory Statement of the Committee of Conference, <https://www.ngaus.org/sites/default/files/NDAA%20Conference%20Report.pdf>.

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

original congressional timeframe is appropriate, and the report does not need to be extended beyond its current 5-year window. The report's sunset date offers a useful moment to evaluate the issue once again without reflexively extending the report's existence.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

### *Subrecommendation 24s: Repeal the statutory requirement for the Ticonderoga-Class Cruisers and Dock Landing Ships annual modernization report, FY 2015 NDAA, 1026(d).*

#### **Background**

Paragraph (d) of Section 1026 of the FY 2015 NDAA established a reporting requirement to bolster congressional oversight of the Navy's modernization of Ticonderoga-Class cruisers and dock landing ships. Section 1026 authorized the Navy to use funds from the Ship, Modernization, Operations, and Sustainment Fund (SMOSF) to modernize eleven Ticonderoga-Class cruisers and three Ticonderoga-class dock landing ships.<sup>202</sup> The provision also detailed a series of requirements and limitations that the Navy was required to obey over the course of the modernization.<sup>203</sup> To ensure that the modernization process adhered to congressional directives, Congress imposed a reporting requirement in paragraph (d) of Section 1026. The requirement directed the Secretary of the Navy to submit annual reports assessing the status of modernization efforts during each fiscal year that Ticonderoga-Class modernization was taking place.<sup>204</sup> Congress specified a number of obligatory components for each report, including an overview of "the status of modernization efforts, including availability schedules, equipment procurement schedules, and by-fiscal year funding requirements;" a description of vessel readiness and operational status while undergoing modernization; a material condition assessment for each vessel undergoing modernization; lists of rotatable pool equipment across the entire class, as well as lists of non-rotatable pool equipment that had been removed from each vessel and justifications for the removal; and per-vessel cost projection statements illustrating the estimated obligations for the remainder of the modernization, as compared to remaining funds in the SMOSF.<sup>205</sup> As a further consequence of the reports, Congress required the Secretary of the Navy to disclose any "material deviations" from projected per-vessel modernization costs within 30 days.<sup>206</sup> The reporting requirements in paragraph (d) have not been amended since the FY 2015 NDAA.

#### **Findings**

Section 1026 of the FY 2015 NDAA represented an effort on the part of Congress to thwart the Navy's potential decommissioning of a number of Ticonderoga-Class cruisers and dock landing ships. The dispute was rooted in the spending restrictions of the Budget Control Act of 2011, which prompted the Navy to announce that it would decommission seven Ticonderoga-class cruisers and two amphibious vessels to save \$6 billion through FY 2017.<sup>207</sup> In the face of congressional opposition to the proposal, the

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<sup>202</sup> FY 2015 NDAA, Pub. L. No. 113-291, 128 Stat. 3490 (2014).

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

<sup>207</sup> GAO, *Military Capabilities: Navy Should Reevaluate Its Plan to Decommission the USS Port Royal*, April 2014, accessed July 24, 2017, <http://www.gao.gov/assets/670/662376.pdf>.

Navy changed course and offered a revised plan to temporarily inactivate 11 of its 22 Ticonderoga-Class cruisers in order to modernize the ships.<sup>208</sup> Congress remained skeptical, however, and feared that the Navy could use a *temporary* inactivation as a pretext for a permanent decommissioning.<sup>209</sup> Congress responded by imposing constraints on the Navy's modernization process for the Ticonderoga-class vessels through Section 1026, which ensured that modernization would proceed on a regular schedule without compromising the ability of the ships to rejoin the active fleet at any time.<sup>210</sup> Congress signaled its intent with clarity in the conference report accompanying the FY 2015 NDAA, declaring that "we also expect the Secretary [of the Navy] to ensure that these ships are maintained in the inventory until the end [sic] their expected service lives, excluding time spent in a phased modernization status."<sup>211</sup> The reporting requirement itself was designed to provide Congress with the necessary information to ensure that the Navy was properly implementing the modernization in line with congressional intent; however, circumstances have changed since 2015. The Trump Administration's stated goal to dramatically expand the size of the Navy has led naval officials to explore potential options for integrating the Ticonderoga-Class vessels back into the active fleet for a longer period of time.<sup>212</sup> The direction of the Ticonderoga-Class program has shifted away from a clash between Congress and the Navy over the future of the program, and appears likely to return to a consensus in favor of an extended role in the active fleet.

## Conclusions

Congress imposed the Ticonderoga-Class modernization reporting requirement in Section 1026(d) of the FY 2015 NDAA in response to circumstances that have changed. The report represented part of a congressional effort to ensure that the Navy did not decommission a series of Ticonderoga-Class cruisers and dock landing ships under the pretext of temporary inactivation and modernization. At present, however, the Trump Administration is seeking expansion of the active fleet and as a result, the Navy appears less likely to pursue Ticonderoga-Class decommissioning. The report is outdated in light of this expansion.

The Navy's Office of Legislative Affairs concurred with the Section 809 Panel's recommendation.<sup>213</sup>

*Subrecommendation 24t: Repeal the statutory requirement for the Ballistic Missile Defense Systems annual preproduction assessment reports, FY 2015 NDAA, 1662(c)(2) and (d)(2).*

## Background

Paragraphs (c)(2) and (d)(2) of Section 1662 of the FY 2015 NDAA establish two reporting requirements to facilitate congressional oversight of DoD's missile defense systems prior to production and

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<sup>208</sup> Defense News, "US Navy's Cruiser Problem – Service Struggles Over Modernization, Replacements," July 7, 2014, accessed July 28, 2018, <http://www.defensenews.com/pentagon/2014/07/07/us-navy-s-cruiser-problem-service-struggles-over-modernization-replacements/>.

<sup>209</sup> Ibid.

<sup>210</sup> FY 2015 NDAA, Pub. L. No. 113-291, Joint Explanatory Statement of the Committee of Conference, <https://www.armed-services.senate.gov/imo/media/doc/113-S1847-JES.pdf>.

<sup>211</sup> Ibid.

<sup>212</sup> Breaking Defense, "More Maintenance \$\$ Gets Navy to 355 Ships Sooner: NAVSEA," June 1, 2017, accessed January 5, 2018, <https://breakingdefense.com/2017/06/more-maintenance-gets-navy-to-355-ships-sooner-navsea/>.

<sup>213</sup> Department of the Navy, Office of Legislative Affairs, email to Section 809 Panel staff, December 14, 2017.



deployment. The statutory language, which is classified as a note under 10 U.S.C. § 2431, sought to strengthen DoD's testing and assessment procedures for ballistic missile defense systems by requiring "sufficient and operationally realistic testing" for each system before a final decision to approve production and deployment.<sup>214</sup> To support that goal, the provision required that the Secretary receive two additional assessments before advancing the production and deployment of ballistic missile systems. Congress assigned the first assessment to the DOT&E, with a mandate to consider "the sufficiency, adequacy, and results of the testing of each covered system, including an assessment of whether the covered system will be sufficiently effective, suitable, and survivable when needed."<sup>215</sup> The second assessment was assigned to the Commander of the United States Strategic Command, with a mandate to perform "a military utility assessment of the operational utility of each covered system."<sup>216</sup> In both instances, Congress also created a reporting requirement for the DOT&E and the Commander of the U.S. Strategic Command to submit a summary of their assessments to Congress after submitting the assessments to the Secretary.<sup>217</sup> These reporting requirements in paragraphs (c)(2) and (d)(2) have not been amended since the FY 2015 NDAA.<sup>218</sup>

## Findings

Congress hoped the required assessments in paragraphs (c) and (d) of Section 1662, as well as the fact that the Secretary was obligated to review them before advancing to the production phase, would impose further discipline on DoD's missile defense programs by facilitating a more judicious decision-making process from testing and evaluation to production and deployment.<sup>219</sup> The reason for the provision was congressional unease with the pace of DoD's progression from ballistic missile development and testing to production, which had sparked concerns in multiple programs. For example, a GAO report in February 2016 asserted that DoD's progress with its homeland missile defense program relied upon "a highly optimistic, aggressive schedule that overlaps development and testing with production activities, compromises reliability, extends risk to the warfighter, and risks the efficacy of flight testing."<sup>220</sup> The report followed a previous GAO analysis in April 2014, in which the agency concluded that DoD's ground-based midcourse defense system suffered from "major disruptions" due to a series of test failures that occurred "in conjunction with a highly concurrent development, production, and fielding strategy."<sup>221</sup> GAO also identified further risk in DoD's Redesigned Kill Vehicle program, which proposed to "[align] production decisions with flight testing."<sup>222</sup> GAO noted that it had issued recommendations to DoD revolving around "including sufficient schedule and resource margin in its test plan, and aligning production decisions with flight testing."<sup>223</sup> The agency also noted that DoD had largely concurred with the recommendations and

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<sup>214</sup> FY 2015 NDAA, Pub. L. No. 113-291, 128 Stat. 3657 (2014).

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.*

<sup>217</sup> *Ibid.*

<sup>218</sup> Weapons Development and Procurement Schedules, 10 U.S.C. § 2431.

<sup>219</sup> FY 2015 NDAA, Pub. L. No. 113-291, Joint Explanatory Statement of the Committee of Conference, <https://www.armed-services.senate.gov/imo/media/doc/113-S1847-JES.pdf>.

<sup>220</sup> GAO, *Missile Defense: Assessment of DoD's Reports on Status of Efforts and Options for Improving Homeland Missile Defense*, February 17, 2016, accessed June 22, 2017, <http://www.gao.gov/assets/680/675263.pdf>.

<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

pledged to implement them.<sup>224</sup> DoD had yet to implement several of these crucial recommendations by February 2016.<sup>225</sup> As recently as May 2017, GAO concluded again that “the [ballistic missile defense] program is still operating at a self-imposed fast pace, as production and fielding of assets occurs despite the inability to thoroughly validate them due to testing delays.”<sup>226</sup> DoD’s willingness to proceed with the production and deployment of ballistic missile systems before achieving testing goals continues to pose challenges for the department.

## Conclusions

The ballistic missile preproduction reporting requirement that was imposed in Section 1662(c)(2) and (d)(2) of the FY 2015 NDAA is too limited and duplicative to truly address the problem. The provision merely requires the Secretary to review the reports from DOT&E and Strategic Command, with no imperative to adhere to their suggestions before advancing to production and deployment. The provision is also redundant with previously existing ballistic missile reporting requirements, particularly the reports at 10 U.S.C. § 223a(a) and 10 U.S.C. § 225(c), as well as Section 232 of the FY 2002 NDAA. All of the reports focus on early-stage developments within ballistic missile programs. GAO analysis offers little evidence to support the idea that DoD has improved its processes in the period since the report was imposed. The duplicative nature and limited effect of the report fail to justify its continuation.

MDA concurred with the Section 809 Panel’s recommendation,<sup>227</sup> but DOT&E dissented. DOT&E acknowledged that the Section 1662 (c)(2) report contained “some similarities in report content” with the other MDA reports, but argued that the report was uniquely “event-driven” in terms of acquisition milestones. The panel opted not to alter its recommendation in the belief that the redundancy in report content between this report and the other MDA reports outweighs the report’s value in terms of enhanced oversight.<sup>228</sup>

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<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> GAO, *Missile Defense: Some Progress Delivering Capabilities, But Challenges with Testing Transparency and Requirements Development Need to be Addressed*, May 2017, accessed June 22, 2017, <http://www.gao.gov/assets/690/684963.pdf>.

<sup>227</sup> Missile Defense Agency, phone call with 809 Panel Staff, November 29, 2017.

<sup>228</sup> DOT&E, email to Section 809 Panel staff, December 8, 2017.

**THE PANEL RECOMMENDS THE FOLLOWING STATUTORY REPORTING REQUIREMENTS  
BE PRESERVED SUBJECT TO THE EVERY 5 YEARS SUNSET REVIEW  
DESCRIBED IN RECOMMENDATION 23.**

*Subrecommendation 24u: Preserve the statutory requirement for the Director of Operational Test and Evaluation annual overview report, 10 U.S.C. § 139(h).*

### **Background**

10 U.S.C. § 139(h) establishes a reporting requirement for DoD's operational test and evaluation (T&E) activities. The reporting requirement was initially imposed in the FY 1984 NDAA, which created a new section 136a of Title 10 that later became section 139.<sup>229</sup> The original statutory language of section 139 established DOT&E to serve as the "principal adviser to the Secretary of Defense on operational test and evaluation" within DoD.<sup>230</sup> The position was charged with overseeing all of DoD's operational T&E processes, as well as coordinating operational testing between agencies and evaluating the results of all operational tests.<sup>231</sup> Additionally, the statute directed DOT&E to submit an annual report to Congress that provided a comprehensive summary of DoD's operational T&E activities for each fiscal year.<sup>232</sup> In the subsequent 3 decades, the statutory basis for the position was subject to a large number of amendments, and the reporting requirement was expanded as well to encompass any waivers or deviations from testing and evaluation requirements that may have occurred in a given year.<sup>233</sup> According to the current provision, the annual reports are due no later than January 31 of each year.<sup>234</sup>

### **Findings**

Congress created the DOT&E position during a period of budget growth for DoD's research budget. Funding for DoD's RDT&E program surged in the 1980s as a result of the Reagan Administration's military build-up, nearly doubling between FY 1980 and FY 1987.<sup>235</sup> The reporting requirement likely constituted an effort on the part of Congress to enhance oversight of DoD's T&E budget, in accordance with its larger funding commitment. In the subsequent 30 years, DoD's RDT&E budget declined during the 1990's, surged after the September 11, 2001 terrorist attacks, and then declined once more to a stable level at about \$65 billion annually after FY 2013.<sup>236</sup> Amidst these cycles, DOT&E has evolved into a crucial component of DoD's T&E process. A 2015 GAO report concluded that less than 10 percent of all programs under the position's jurisdiction between FY 2010 and FY 2014 were the subject of "significant disputes" with the Military Services, and that the position possessed "valid and substantive operational test-related concerns for each program reviewed."<sup>237</sup> GAO also detailed that disputes between DOT&E and the Military Services were resolved to DOT&E's satisfaction, and that

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<sup>229</sup> Section 1211, Department of Defense Authorization Act, 1984, Pub. L. No. 98-94, 97 Stat. 684 (1983).

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

<sup>233</sup> Director of Operational Test and Evaluation, 10 U.S.C. § 139.

<sup>234</sup> *Ibid.*

<sup>235</sup> Congressional Research Service, *Defense Research: A Primer on the Department of Defense's Research, Development, Test and Evaluation (RDT&E) Program*, July 14, 1999, accessed June 8, 2017, <https://www.hsdl.org/?view&did=451511>.

<sup>236</sup> Congressional Research Service, *Department of Defense Research, Development, Test, and Evaluation (RDT&E): Appropriations Structure*, December 13, 2016, accessed June 8, 2017, <https://fas.org/sgp/crs/natsec/R44711.pdf>.

<sup>237</sup> Government Accountability Office, *DOD Operational Testing: Oversight Has Resulted in Few Significant Disputes and Limited Program Cost and Schedule Increases*, June 2015, accessed June 8, 2017, <http://www.gao.gov/assets/680/670565.pdf>.

those resolutions caused “limited cost and schedule impacts to the programs.”<sup>238</sup> GAO opted not to make any recommendations regarding DOT&E’s oversight performance, indicating that the agency was satisfied with the position’s role and authority.<sup>239</sup>

## Conclusions

The operational T&E reporting requirement at 10 U.S.C. § 139(h) is critical for the ability DOT&E to fulfill the office’s mission. The position occupies an important role in DoD’s coordination efforts throughout its test and evaluation budget, and the report itself is a central aspect of the office’s functions. In recent years, DOT&E has made strides in terms of producing greater discipline and efficiency in program T&E activities. The issue remains a priority for DoD, and the existence of the report assists with both the office’s internal success and the ability of Congress to exercise proper oversight.

DOT&E concurred with the Section 809 Panel’s recommendation.<sup>240</sup>

*Subrecommendation 24v: Preserve the statutory requirement for Naval Vessel Construction annual strategic plan report, 10 U.S.C. § 231.*

## Background

10 U.S.C. § 231 establishes a reporting requirement for long-term naval vessel construction in support of U.S. strategic planning. The reporting requirement was initially imposed in the FY 2003 NDAA, which created 10 U.S.C. § 231.<sup>241</sup> The original statutory language of section 231 directed the Secretary to submit an annual report to Congress regarding the integration of long-range naval vessel construction into the broader strategic outline of U.S. defense policy.<sup>242</sup> The statute required the report, titled *Annual Naval Vessel Construction Plan*, to describe “a plan for the construction of combatant and support vessels for the Navy” to a 30-year time horizon.<sup>243</sup> The report would contain a detailed construction program, as well as the projected funding levels and procurement strategies necessary to achieve the program.<sup>244</sup> The report was also statutorily obligated to support the framework outlined by the official national security strategy report or the *Quadrennial Defense Review*.<sup>245</sup> If DoD concluded that the budget for a given fiscal year failed to provide the necessary funding to maintain naval vessel construction in accordance with the long-range construction report, the statute further required that the report must specify “the risks associated with the reduced force structure of naval vessels that will result from funding naval vessel construction at such level.”<sup>246</sup> Subsequent amendments have added further elements to the Annual Naval Vessel Construction Plan, such as an estimated total cost of construction

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<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

<sup>240</sup> Director of Operational Test and Evaluation, email to Section 809 Panel staff, November 28, 2017.

<sup>241</sup> FY 2003 NDAA, Pub. L. No. 107-314, 116 Stat. 2639 (2002).

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

for each vessel and a requirement for CBO evaluation of the plan.<sup>247</sup> The original components of the plan remain in statutory effect.

## Findings

The reporting requirement at 10 U.S.C. § 231 originated at the start of the 21<sup>st</sup> Century. Its precursor was a one-time provision in the FY 2000 NDAA, which required DoD to submit a 30-year naval construction plan in 2000.<sup>248</sup> That plan was the first 30-year overview to be produced by DoD. Although similar plans were not submitted in 2001 or 2002, the process resumed with the permanent statutory requirement that was approved in the FY 2003 NDAA and codified at 10 U.S.C. § 231.<sup>249</sup> After altering the requirement in the FY 2011 NDAA to request quadrennial reports, Congress reversed course the following year and reaffirmed its desire for annual reports.<sup>250</sup> That congressional decision reflected a general recognition of the report's positive contribution to long-range naval planning.<sup>251</sup> For example, the most recent report highlighted the challenge in joining short-term budgetary realities to long-range strategic planning. The Congressional Research Service estimated that, according to the long-range naval construction plan submitted by the Secretary alongside DoD's proposed FY 2018 budget, the Navy would need to add more than 50 additional ships to the plan to achieve the broader fleet goal and maintain it through the 30-year period.<sup>252</sup> The cost of achieving this objective would range between \$4.6 billion and \$5.1 billion annually in additional shipbuilding funds over the course of the entire 30-year period.<sup>253</sup> The analysis was made possible by the report, to the benefit of both congressional leaders and DoD, which can now engage with Congress to reconcile the department's plans with congressional intent. Such a process demonstrates the value of the report, operating as intended.

## Conclusions

The naval vessel construction reporting requirement at 10 U.S.C. § 231 has proven its value since its implementation in 2003. The report is well-designed to provide Congress with the information that it needs to make long-term budgetary judgments regarding naval construction programs. The report also bolsters DoD's strategic framework for naval planning. In slightly over a decade, the report has performed admirably and earned broad support from stakeholders. The report offers demonstrated benefits and should be preserved.

The Navy's Office of Legislative Affairs concurred with the Section 809 Panel's recommendation.<sup>254</sup>

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<sup>247</sup> Budgeting for Construction of Naval Vessels: Annual Plan and Certification, 10 U.S.C. § 231.

<sup>248</sup> Congressional Research Service, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*, June 7, 2017, accessed June 9, 2017, <https://fas.org/sgp/crs/weapons/RL32665.pdf>.

<sup>249</sup> *Ibid.*

<sup>250</sup> *Ibid.*

<sup>251</sup> Mackenzie Eaglen, "Pentagon's Aviation Plan Headed for a Dead Stick Landing," *American Enterprise Institute*, May 31, 2015, accessed June 12, 2017, <https://www.aei.org/publication/pentagon-aviation-report-dead-stick-landing/>.

<sup>252</sup> Congressional Research Service, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*, June 7, 2017, accessed June 9, 2017, <https://fas.org/sgp/crs/weapons/RL32665.pdf>.

<sup>253</sup> *Ibid.*

<sup>254</sup> Department of the Navy, Office of Legislative Affairs, email to Section 809 Panel staff, December 14, 2017.



### *Subrecommendation 24w: Preserve the statutory requirement for the Director of Operational Test and Evaluation annual program report, 10 U.S.C. § 2399(g).*

#### **Background**

10 U.S.C. § 2399(g) establishes a reporting requirement that is connected to a larger reporting requirement at 10 U.S.C. § 139(h). The reporting requirement at 10 U.S.C. § 139(h) directed DOT&E to submit an annual report to Congress that provided a comprehensive summary of DoD’s operational test and evaluation activities for each fiscal year.<sup>255</sup> The reporting requirement at 10 U.S.C. § 2399(g) created an additional component of that annual report by requiring DOT&E to include greater detail about each program described within the report. The separate reporting requirement was initially imposed in the FY 1990–1991 NDAA, which created 10 U.S.C. § 2399.<sup>256</sup> As a part of the section, which governed the progression of new programs in the framework of operational T&E procedures, a new paragraph (g) was created that added a further obligation to the annual report of section 139(h).<sup>257</sup> DOT&E would subsequently be required to detail “the status of test and evaluation activities” for each program in the report, and to compare that status with the previously-approved program master plan.<sup>258</sup> The director was also required to note the existence of any waivers that had been granted in accordance with the test and evaluation procedures of the program.<sup>259</sup> There were no successive amendments to the report requirement, and 10 U.S.C. § 2399(g) remains unchanged in its current form from the original statute.

#### **Findings**

Due to the fact that 10 U.S.C. § 2399(g) establishes a reporting requirement within the annual report imposed by 10 U.S.C. § 139(h), any evaluation of Section 2399(g) should take place within the context of the report in Section 139(h). The success of that broader report establishes the credibility of 10 U.S.C. § 2399(g) and suggests that the two reports should be viewed together as a positive element in the T&E process.

#### **Conclusions**

The operational T&E reporting requirement at 10 U.S.C. § 2399(g) modifies the broader report at 10 U.S.C. § 139(h). By requiring additional information in the underlying report, Section 2399(g) serves less as its own reporting requirement than as an appendage to an existing report with a record of success. The reporting requirement at 10 U.S.C. § 2399(g) should be considered in tandem with the primary report in Section 139, and Congress should preserve this reporting requirement.

DOT&E concurred with the Section 809 Panel’s recommendation.<sup>260</sup>

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<sup>255</sup> Section 1211FY 1984 NDAA, Pub. L. No. 98-94, 97 Stat. 684 (1983).

<sup>256</sup> Section 802, FYs 1990-1991 NDAA, Pub. L. No. 101-189, 103 Stat. 1485 (1989).

<sup>257</sup> *Ibid.*

<sup>258</sup> *Ibid.*

<sup>259</sup> *Ibid.*

<sup>260</sup> Director of Operational Test and Evaluation, email to Section 809 Panel staff, November 28, 2017.

## THE FOLLOWING STATUTORY REPORTING REQUIREMENTS SHOULD BE MAINTAINED UNDER THE CURRENT 2021 TERMINATION DATE.

*Subrecommendation 24x: Terminate in 2021 the statutory requirement for the Ballistic Missile Defense Programs annual acquisition baselines report, 10 U.S.C. § 225(c).*

### Background

10 U.S.C. § 225(c) establishes a reporting requirement for DoD “acquisition baselines” regarding ballistic missile defense programs. The reporting requirement was initially imposed in the FY 2012 NDAA, which created a new 10 U.S.C. § 225.<sup>261</sup> The original statutory language of Section 225 included paragraph (c), which directed the MDA director to submit annual reports to Congress regarding “acquisition baselines” that had been created and defined by paragraphs (a) and (b) of the same section.<sup>262</sup> The acquisition baselines represented broad frameworks outlining the acquisition paths for program and major subprogram elements of ballistic missile defense systems. As established by the statute, the baselines detailed comprehensive schedules, technical descriptions of capabilities and requirements, cost estimates, and test baselines.<sup>263</sup> MDA was obligated to submit its annual report to Congress by February 15 of each year, with the first report presenting each acquisition baseline and all subsequent reports providing updates concerning any new acquisition baselines and any changes to existing acquisition baselines.<sup>264</sup> There have been no subsequent amendments to the report requirement, and 10 U.S.C. § 225(c) remains unchanged in its current form from the original statute.<sup>265</sup>

### Findings

The reporting requirement at 10 U.S.C. § 225(c) arose due to congressional concern that MDA possessed excessive flexibility during the early stages of ballistic missile acquisition planning and production. As a part of the MDA’s creation in its contemporary form in 2002, the agency received an unusually large degree of latitude in its acquisition policies to emphasize speed over traditional oversight and deliver missile defense programs on an expedited schedule.<sup>266</sup> The purpose of this increased latitude was to accelerate the pace of ballistic missile programs by deferring traditional acquisition oversight until the programs had advanced to such an extent that they were suitable for transition to a military service.<sup>267</sup> Congressional anxiety later emerged, however, regarding the lack of accountability in early-stage ballistic missile acquisition policies.<sup>268</sup> Congress acted to remedy the perceived lack of oversight by enacting 10 U.S.C. § 225(c) in the FY 2012 NDAA, which imposed a more stringent framework on the MDA’s ballistic missile program acquisition policies and required their disclosure to Congress.<sup>269</sup> Since the advent of the report, acquisition oversight and transparency have improved for the MDA’s ballistic missile programs and subprograms. In May 2017, GAO noted that a combination of congressional and agency actions had introduced greater accountability into the early-

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<sup>261</sup> FY 2012 NDAA, Pub. L. No. 112-81, 125 Stat. 1337 (2011).

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> Acquisition Accountability Reports on the Ballistic Missile Defense System, 10 U.S.C. § 225.

<sup>266</sup> Government Accountability Office, *Missile Defense: Some Progress Delivering Capabilities, but Challenges with Testing Transparency and Requirements Development Need to Be Addressed*, May 2017, accessed June 1, 2017, <https://www.gao.gov/assets/690/684963.pdf>.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

stage acquisition process.<sup>270</sup> GAO also stated that the agency had failed to adopt all of its recommendations, and that its current approach to acquisition failed to strike the proper balance between “timeliness, affordability, reliability, and effectiveness.”<sup>271</sup>

## Conclusions

The ballistic missile acquisition baseline reporting requirement at 10 U.S.C. § 225(c) appears to help address an important congressional concern. The report has proven valuable in supporting congressional efforts to enhance the transparency of the MDA’s early-stage ballistic missile acquisition policies. Those efforts have achieved some initial successes (although more remains to be done). The report also overlaps with several other reports, specifically 10 U.S.C. § 223a(a), Section 232 of the FY 2002 NDAA, and Section 1662 of the FY 2015 NDAA, all of which focus on different elements of the early-stage ballistic missile acquisition process. Unlike those reports, the acquisition baselines contained within 10 U.S.C. § 225(c) adopt a comprehensive perspective and are directed at MDA itself, rather than instructing other offices to evaluate specific aspects of MDA programs. The report covers a range of areas and provides MDA’s perspective directly to Congress. 10 U.S.C. § 225(c) is better suited than its overlapping reports to serve as a core MDA report in enhancing congressional oversight. The report’s success thus far and its comprehensive scope both serve to support its continuation to solidify recent improvements. The reporting requirement is justified at present and should be maintained through its scheduled termination date in 2021, when it can be further evaluated based upon MDA’s ballistic missile acquisition performance at that time.

MDA concurred with the Section 809 Panel’s recommendation.<sup>272</sup>

*Subrecommendation 24y: Terminate in 2021 the statutory requirement for Depot-Level Maintenance biennial capability requirements report, 10 U.S.C. § 2464(d).*

## Background

10 U.S.C. § 2464(d) establishes a reporting requirement for the Secretary to submit to Congress an assessment of depot-level maintenance and repair capability requirements for each armed service. The reports are prepared every 2 years, and each report evaluates depot-level capability requirements for the following fiscal year. The reporting requirement was initially imposed in the FY 2012 NDAA, which created a new paragraph (e) of Section 2464.<sup>273</sup> The new statutory text directed the Secretary to submit a biennial report to Congress identifying “the core depot-level maintenance and repair capability requirements and sustaining workloads” for each of the armed forces except for the Coast Guard.<sup>274</sup> Congress also directed the report to describe “the corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements,” as well as “a detailed rationale for the shortfall and a plan either to correct, or mitigate, the effects of the shortfall” in any situation where “core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads.”<sup>275</sup> The reporting requirement has not been amended since its

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<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

<sup>272</sup> Missile Defense Agency, phone call with Section 809 Panel staff, November 29, 2017.

<sup>273</sup> FY 2012 NDAA, Pub. L. No. 112-81, 125 Stat. 1368 (2011).

<sup>274</sup> Ibid.

<sup>275</sup> Ibid.

creation in the FY 2012 NDAA, although it was shifted to a new position as paragraph (d) of Section 2464 in the FY 2013 NDAA.<sup>276</sup>

## Findings

The reporting requirement at 10 U.S.C. § 2464(d) arose because Congress was determined to preserve the effectiveness of military depots. Since 1984, Congress has mandated that DoD maintain a “core depot-level maintenance and repair capability” that cannot be contracted out to private contractors.<sup>277</sup> DoD is also required to ensure that military depots receive the necessary assignment of workload to ensure that capabilities are preserved during peacetime and prepared for unexpected mobilizations or emergencies.<sup>278</sup> The reporting requirement at 10 U.S.C. § 2464(d) was designed to provide Congress with the necessary information to exercise proper oversight of DoD’s depot-maintenance policies. Unlike a related report at 10 U.S.C. § 2466(d), which focuses primarily on funding levels, the report at 10 U.S.C. § 2464(d) adopts a broader approach and evaluates capability requirements, workload shortfalls, and remedial policies. Since the report’s inception, DoD has struggled to comply with the requirements established by Congress. Although the reports have partially complied by providing adequate data regarding depot-level maintenance requirements and the planned workload to meet the requirements, they have consistently failed to offer “required information on the rationale” for workload shortfalls that would prevent the department from meeting core depot requirements.<sup>279</sup> DoD has described its depot-level maintenance capability requirements properly, but it has neglected to explain the reasons underlying its inability to provide sufficient resources to meet those requirements. This element is a core aspect of the requirement, because it is fundamental to determining the effectiveness of DoD’s depot maintenance policies. GAO discovered data errors in DoD’s 2014 report that prompted a call for more “accurate and complete” reports in the future.<sup>280</sup> In its evaluation of DoD’s 2016 biennial report, GAO identified the same problems: only partial compliance with the three core components of the report; inaccurate information for the Missile Defense Agency’s depot-level maintenance capability requirements; and flawed guidance to reporting agencies that undermined their ability to provide the Secretary with accurate information for the report.<sup>281</sup> GAO recommended that Congress expand the scope of the information subject to the reporting requirement, and that DoD update DoDI 4151.20 to enhance the quality of the information being supplied by reporting agencies.<sup>282</sup>

## Conclusions

Despite its flaws, the depot maintenance and repair capability reporting requirement at 10 U.S.C. § 2464(d) serves a useful purpose. Depot maintenance is a vital issue, and the report has strengthened congressional oversight over DoD’s depot-level planning with the information that DoD has been able to successfully disclose. While the report has failed to achieve all of its aims—particularly in its attempt to require DoD to properly justify workload shortfalls regarding depot maintenance—the need for an improved DoD response to the report is more compelling than the argument for repeal. As long as the

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<sup>276</sup> FY 2013 NDAA, Pub. L. No. 112-239, 126 Stat. 1695 (2013), <http://uscode.house.gov/statviewer.htm?volume=126&page=1694#>.

<sup>277</sup> GAO, *Depot Maintenance: Improvements to DOD’s Biennial Core Report Could Better Inform Oversight and Funding Decisions*, November 2016, accessed July 24, 2017, <http://www.gao.gov/assets/690/681260.pdf>.

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

report can demonstrably deliver greater transparency for DoD depot maintenance policy, its continuation can be justified through its 2021 termination date. Additionally, the report at 10 U.S.C. § 2464(d) has proven to be more successful than its related and overlapping report at 10 U.S.C. § 2466(d), which focuses more narrowly on depot funding and experienced even more grave flaws in the integrity of its data.<sup>283</sup>

The Office of the Assistant Secretary of Defense for Logistics & Material Readiness concurred with the Section 809 Panel's recommendation.<sup>284</sup>

### *Subrecommendation 24z: Terminate in 2021 the statutory requirement for the National Technology and Industrial Base annual policy overview report, 10 U.S.C. § 2504.*

#### **Background**

10 U.S.C. § 2504 establishes a reporting requirement for DoD's strategy to maintain the nation's technology and industrial base. The reporting requirement was initially imposed in the FY 1997 NDAA, which created a new 10 U.S.C § 2504.<sup>285</sup> The original statutory language of Section 2504 directed the Secretary to submit an annual report to Congress describing DoD's departmental guidance, selected assessments, and programs in support of the national security strategy for the national technology and industrial base.<sup>286</sup> An amendment in the FY 2013 NDAA added a component that required DoD to prepare a description of the "mitigation strategies" and other policies that it planned to implement in order to eliminate vulnerabilities within the national technology and industrial base.<sup>287</sup> 10 U.S.C. § 2504 has not been subject to any further amendment since the FY 2013 NDAA.<sup>288</sup>

#### **Findings**

The reporting requirement at 10 U.S.C. § 2504 is rooted in the same unease over the health of America's defense industrial base that has concerned policymakers since the end of the Cold War.<sup>289</sup> Although DoD supported the post-Cold War consolidation of the defense industrial base for much of the 1990's, the rapid contraction and transformation of the sector eventually sparked anxiety among defense officials and members of Congress.<sup>290</sup> By 1997, both Congress and DoD signaled increasing alarm that the capabilities of the defense industrial base could be weakened by the ongoing evolution of the defense sector.<sup>291</sup> The reporting requirement at 10 U.S.C. § 2504 likely gained support in this context as Congress sought to assess DoD's ongoing strategy to safeguard the defense industrial base. The FY 2013 NDAA amendment, which compelled DoD to provide even more information in the report,

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<sup>283</sup> GAO, *Depot Maintenance: Persistent Deficiencies Limit Accuracy and Usefulness of DoD's Funding Allocation Data Reported to Congress*, November 2005, accessed June 29, 2017, <http://www.gao.gov/assets/250/248595.pdf>.

<sup>284</sup> Office of the Assistant Secretary of Defense for Logistics & Material Readiness, email to 809 Panel Staff, November 8, 2017.

<sup>285</sup> FY 1997 NDAA, Pub. L. No. 104-201, 110 Stat. 2614 (1996).

<sup>286</sup> *Ibid.*

<sup>287</sup> FY 2013 NDAA, Pub. L. No. 112-239, 126 Stat. 2063 (2013).

<sup>288</sup> Annual Report to Congress, 10 U.S.C. § 2504.

<sup>289</sup> For the remainder of this analysis, the terms "national technology and industrial base" and "defense industrial base" will be used interchangeably. Congressional Research Service, *Defense Primer: U.S. Defense Industrial Base*, December 14, 2016, accessed June 6, 2017, <https://fas.org/sgp/crs/natsec/IF10548.pdf>.

<sup>290</sup> Kenneth Flamm, "Post-Cold War Policy and the U.S. Defense Industrial Base," *The Bridge*, 35, no. 1 (2005), 5-12, accessed January 5, 2018, <https://www.nae.edu/File.aspx?id=7297&v=d611c600>.

<sup>291</sup> *Ibid.*



arrived in a similar context. The defense industrial base confronted the twin challenges of declining defense spending and the budgetary constraint of sequestration due to the Budget Control Act of 2011.<sup>292</sup> The amendment also required DoD to develop a national security strategy for the national technology and industrial base, reflecting congressional intent to adopt an even more assertive oversight posture in regards to the defense industrial base.<sup>293</sup> Several years later, the broader conditions surrounding the defense sector remain volatile. The Trump Administration has endorsed a sizeable increase in the defense budget and calls to end the sequestration caps on defense spending are growing among members of Congress.<sup>294</sup> The defense industrial base reporting requirement is designed to ensure that DoD possesses a strategy to navigate this uncertainty in the defense sector, and that Congress is capable of evaluating the strategy's reliability.

## Conclusions

Congress created the reporting requirement at 10 U.S.C. § 2504 in order to address a critical policy dilemma that remains ongoing: the post-Cold War decline of America's traditional defense industrial base. The transformation of the defense industrial sector shows no signs of abating, and both Congress and DoD are correct to use the report as one tool for adjusting to the uncertainty of the sector. The report serves an important purpose and should maintain the December 2021 termination date for the reporting requirement.

The Office of Manufacturing and Industrial Base Policy dissented from the Section 809 Panel's recommendation. MIBP agreed with the reasoning in regard to the report, but the office requested that the reporting requirement be made permanent, rather than maintained through December 2021.<sup>295</sup> After receiving this comment, the Section 809 Panel opted not to alter its recommendation in the belief that further review of the report's efficacy in 2021 will be a valuable means to assess its ongoing usefulness to the department.

In Section 6 of this report, the Section 809 Panel has articulated its own perspective on the reporting requirement's proper role regarding the defense industrial base and proposed amendments to the report at 10 U.S.C. § 2504.

*Subrecommendation 24aa: Terminate in 2021 the statutory requirement for the Distribution of Chemical and Biological Agents to Non-Federal Entities annual overview report, FY 2008 NDAA, 1034(d).*

## Background

Section 1034(d) of the FY 2008 NDAA establishes a reporting requirement regarding DoD's distribution of chemical agents to nonfederal entities for purposes of scientific testing. Section 1034 authorized the

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<sup>292</sup> Congressional Research Service, *Defense Primer: U.S. Defense Industrial Base*, December 14, 2016, accessed June 6, 2017, <https://fas.org/sgp/crs/natsec/IF10548.pdf>.

<sup>293</sup> FY 2013 NDAA, Pub. L. No. 112-239, Joint Explanatory Statement of the Committee of Conference, <https://www.ngaus.org/sites/default/files/NDAA%20Conference%20Report.pdf>.

<sup>294</sup> Joe Gould, "Hawkish Lawmakers Frustrated by Budget Caps Press for Repeal," *Defense News*, May 15, 2017, accessed January 5, 2018, <http://www.defensenews.com/articles/hawkish-lawmakers-frustrated-by-budget-caps-press-for-repeal>.

<sup>295</sup> Office of Manufacturing and Industrial Base Policy, email to Section 809 Panel staff, November 9, 2017.

Secretary to provide “small quantities of a toxic chemical or precursor” to states, municipalities or private organizations in order to promote the “development or testing, in the United States, of material that is designed to be used for protective purposes.”<sup>296</sup> Congress instructed the Secretary to estimate the cost of the distribution and receive an advance payment from the entity before allowing the transaction to proceed.<sup>297</sup> In paragraph (d) of the provision, Congress created an annual reporting requirement for the Secretary to disclose each instance in which the chemical distribution authority was used during the previous calendar year.<sup>298</sup> Specifically, Congress required the report to include “a description of each use of the authority and [to] specify what material was made available and to whom it was made available.”<sup>299</sup> The reporting requirement was amended and broadened in the FY 2017 NDAA to include “any biological select agent or toxin for the development or testing of any biodefense technology.”<sup>300</sup> As a result, the Secretary was required to disclose identical information for any distribution of biological agents as had previously been required for chemical agents.<sup>301</sup> The amendment also declared that the reporting requirement would terminate on January 31, 2021.<sup>302</sup>

## Findings

The reporting requirement at Section 1034(d) was not present in the first version of the provision. Although the House version of the FY 2008 NDAA contained the authority for the Secretary to provide “small quantities of toxic chemicals” to nonfederal entities, negotiations with the Senate yielded the reporting requirement as an addition to the House language.<sup>303</sup> Thus, from the very inception of the provision, Congress actively decided that a reporting requirement was necessary to ensure proper oversight of DoD’s use of the authority. Biological agents were incorporated into the section 1034 authority at the end of 2016 due to longstanding congressional concerns that DoD was failing to “successfully develop medical countermeasures to respond to biological incidents,” which produced a series of critical hearings and a congressionally mandated GAO report to review DoD’s biological countermeasures.<sup>304</sup> However, the FY 2017 NDAA simultaneously broadened the reporting requirement in Paragraph (d) to include biological agents and created a sunset date for the requirement after four years. Although congressional intent regarding the reporting requirement is uncertain, it is plausible that Congress sought to delay a final decision on the report to evaluate DoD’s use of its newfound authority for biological agents.

## Conclusions

The chemical and biological agent reporting requirement that was imposed in Section 1034(d) of the FY 2008 NDAA enhances congressional oversight on an issue of the utmost importance. It is evident that DoD’s distribution of chemical or biological agents to other entities for testing must be transparent to ensure that the system is not vulnerable to errors of judgment or ineptitude. Congress is correct to

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<sup>296</sup> FY 2008 NDAA, Pub. L. No. 110-181, 122 Stat. 308 (2008).

<sup>297</sup> *Ibid.*

<sup>298</sup> *Ibid.*

<sup>299</sup> *Ibid.*

<sup>300</sup> FY 2017 NDAA, Pub. L. No. 114-328, 130 Stat. 2393 (2016).

<sup>301</sup> *Ibid.*

<sup>302</sup> *Ibid.*

<sup>303</sup> FY 2008 NDAA, Pub. L. No. 110-181, Joint Explanatory Statement of the Committee on Conference, [https://www.gsa.gov/portal/mediald/184487/fileName/National\\_Defense\\_Authorization\\_Act\\_2008.action](https://www.gsa.gov/portal/mediald/184487/fileName/National_Defense_Authorization_Act_2008.action).

<sup>304</sup> GAO, *Biological Defense: DOD Has Strengthened Coordination on Medical Countermeasures but Can Improve Its Process for Threat Prioritization*, May 2014, accessed June 27, 2017, <https://www.gao.gov/assets/670/663212.pdf>.

assert its prerogatives and scrutinize DoD's use of such a sensitive authority. The objective of the reporting requirement is justified on substantive grounds. In the FY 2017 NDAA, Congress instituted its own, separate termination date in January 2021 for this reporting requirement. The Section 809 Panel supports the implied congressional intent to evaluate the reporting requirement through 2021 before making a final determination regarding its permanence.

The Office of the Assistant Secretary of Defense for Nuclear, Chemical and Biological Defense Programs concurred with the Section 809 Panel's recommendation.<sup>305</sup>

***Subrecommendation 24ab: Terminate in 2021 the statutory requirement for the Research and Development in Defense Laboratories annual funding report, FY 2009 NDAA, 219(c).***

### **Background**

Section 219(c) of the FY 2009 NDAA establishes a reporting requirement in regards to additional funding for research and development in defense laboratories. Section 219 permitted the Secretary to authorize the directors of defense laboratories to use "an amount of funds equal to not more than three percent of all funds available to the defense laboratory" in order to promote research and development in their laboratories.<sup>306</sup> Congress granted the new funding authority in support of three agendas: basic and applied research for military missions; the "transition of technologies" from the laboratory to operational use; and laboratory workforce development activities.<sup>307</sup> Congress also directed the Secretary to submit an annual report that would encompass six distinct elements: a description of the mechanisms that DoD established to distribute funding to defense laboratories, the total amount of funding distributed to each laboratory, a description of the investments made by each laboratory using funds authorized by the provision, an analysis of any improvements in laboratory performance as a result of the additional funding, an assessment of whether the research conducted with funds under the authority had contributed to the development of "needed military capabilities," and any proposals to modify DoD's distribution mechanisms to enhance the impact of funding under the authority.<sup>308</sup> In its original form, the entire provision was set to expire on October 1, 2013.<sup>309</sup> Subsequent amendments made the authority under the provision permanent, permitted the use of funding for "minor military construction of the laboratory infrastructure," altered the funding amount from a ceiling of 3 percent of laboratory funds to a range of 2 to 4 percent, and allowed laboratory directors to charge fees in certain circumstances in order to obtain funds.<sup>310</sup> The scope of the reporting requirement itself was simplified in the FY 2010 NDAA to include merely "a report on the use of the authority under subsection (a) during the preceding year."<sup>311</sup>

### **Findings**

Since its approval, Section 219 has become an important mechanism for DoD funding of certain types of laboratory research. Section 219 is one of two programs available to DoD to fund defense laboratory-

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<sup>305</sup> OASD(NCB-CB), email to Section 809 Panel staff, November 8, 2017.

<sup>306</sup> FY 2009 NDAA, Pub. L. No. 110-417, 122 Stat. 4389 (2008).

<sup>307</sup> *Ibid.*

<sup>308</sup> *Ibid.*

<sup>309</sup> *Ibid.*

<sup>310</sup> Research and Development Projects, 10 U.S.C. § 2358

<sup>311</sup> FY 2010 NDAA, Pub. L. No. 111-84, 123 Stat. 2660 (2009).

initiated research, alongside the In-House Laboratory Independent Research program.<sup>312</sup> In September 2016, the Acting Director of the U.S. Army Research Laboratory (ARL) testified before Congress that the Section 219 authority provided the ARL with “an agile and fast capability to maximize our potential for the discovery, innovation and transition of leading-edge foundational research in support of strategic land-power dominance.”<sup>313</sup> He asserted that the ARL “benefited greatly” from the authority, which supported the maintenance of “world-class laboratories” and offered the ability to “attract, train, and then retain the best and brightest engineers and scientists our country has to offer.”<sup>314</sup> At the same hearing, the Acting Director of Research at the U.S. Naval Research Laboratory (NRL) echoed the ARL’s sentiments, declaring that the NRL “fully supports” the use of Section 219 authority for minor construction.<sup>315</sup> In all likelihood, these positive assessments bolstered congressional support for the authority, contributing to Congress’s decision to increase the ceiling on Section 219 funds from 3 percent to 4 percent of a defense laboratory’s budget in the FY 2017 NDAA.<sup>316</sup> The provision appears to be functioning as intended, and recent congressional actions and DoD statements indicate that it remains popular among stakeholders.

## Conclusions

The defense laboratories reporting requirement that was imposed in Section 219(c) of the FY 2009 NDAA concerns a funding authority that has rapidly gained popularity among stakeholders. The laboratories themselves have expressed support for the authority and Congress has imposed a minimum annual funding level, as well as a range for annual funding subject to the discretion of the services. Despite its popularity, the existence of an annual funding range does suggest the need for a degree of congressional oversight to ensure that funding decisions are aligned rationally with department priorities. For these reasons, the status quo should be maintained regarding the 2021 termination date. At that point, Congress can evaluate the operation of the funding authority and assess whether continued oversight is necessary, or whether the program is working well enough to be released from the need for a report.

The Section 809 Panel did not receive comments from DoD regarding this recommendation.

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<sup>312</sup> GAO, *Federal Research: Information on DOE’s Laboratory-Directed Research and Development Program*, April 2016, accessed June 27, 2017, <http://www.gao.gov/assets/680/676432.pdf>.

<sup>313</sup> Philip Perconti, *Testimony Before the Emerging Threats and Capabilities Subcommittee of the House Armed Services Committee*, September 28, 2016, accessed January 5, 2018, <http://www.defenseinnovationmarketplace.mil/resources/HHRG-114-AS26-Wstate-PercontiP-20160928.pdf>.

<sup>314</sup> *Ibid.*

<sup>315</sup> Edward R. Franchi, *Testimony Before the Emerging Threats and Capabilities Subcommittee of the House Armed Services Committee*, September 28, 2016, accessed January 5, 2018, <http://www.defenseinnovationmarketplace.mil/resources/HHRG-114-AS26-Wstate-FranchiE-20160928.pdf>.

<sup>316</sup> FY 2017 NDAA, Pub. L. No. 114-328, 130 Stat. 2047 (2016).

## Implementation

### ***Legislative Branch***

- Immediately repeal the following 20 reporting requirements:
  - 10 U.S.C. §§ 196(d) and (e)
  - 10 U.S.C. § 223a(a)
  - 10 U.S.C. § 229
  - 10 U.S.C. § 231a
  - 10 U.S.C. § 238(a)
  - 10 U.S.C. § 2228(e)
  - 10 U.S.C. § 2275
  - 10 U.S.C. § 2276(e)
  - 10 U.S.C. § 2466(d)
  - 10 U.S.C. § 7310(c)
  - 10 U.S.C. § 10543(a)
  - 10 U.S.C. § 10543(c)
  - FY 2002 NDAA, 232(h)(3)
  - FY 2007 NDAA, 122(d)(1)
  - FY 2007 NDAA, 1017(e)
  - FY 2009 NDAA, 1047(d)
  - FY 2011 NDAA, 1217(i)
  - FY 2013 NDAA, 904(h)
  - FY 2015 NDAA, 1026(d)
  - FY 2015 NDAA, 1662(c)(2) and (d)(2)
  
- Preserve the following three reporting requirements (subject to the every 5 years sunset review described in Recommendation 23):
  - 10 U.S.C. § 139(h)
  - 10 U.S.C. § 231
  - 10 U.S.C. § 2399(g)
  
- Maintain the following five reporting requirements through the current December 2021 termination deadline:
  - 10 U.S.C. § 225(c)
  - 10 U.S.C. § 2464(d)
  - 10 U.S.C. § 2504
  - FY 2008 NDAA, 1034(d)
  - FY 2009 NDAA, 219(c)



***Executive Branch***

- No Executive Branch changes are required.

***Implications for Other Agencies***

- There are no cross-agency implications for this recommendation.

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