

December 5, 2022

The Honorable Lloyd J. Austin III  
Secretary of Defense  
U.S. Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Austin:

I am writing regarding my concerns that the Department of Defense's (DoD or "the Department") use of "unfunded priorities" lists is distorting the budget process and leading to wasteful spending. The Department's most recent request for an additional \$25 billion, including \$19.3 billion for inflation,<sup>1</sup> continues a troubling pattern of the Department using these lists to lobby Congress to increase an already excessive budget – and contradicts assurances that I received less than one month ago that the Department would not need these blanket inflation-based policy changes.<sup>2</sup> I urge you to significantly curtail the use and size of these lists in next year's budget submission and to carefully review and reassess the list you submitted to Congress.

In March of this year the Department asked for \$773 billion in its annual budget request.<sup>3</sup> In your testimony before the Senate Committee on Armed Services you personally confirmed to me that it is a "robust budget" that "allows us to get the capabilities we need."<sup>4</sup> Yet despite this already robust request, the Department submitted a request for an additional \$24 billion in its "unfunded priorities."<sup>5</sup> And now, DoD is asking for an additional \$25 billion (including over \$19 billion attributable to inflation)<sup>6</sup> which would bring the total budget to \$822 billion. DoD was required

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<sup>1</sup> Bloomberg, "F-35 Jet Funding is Running \$1.4 Billion Short, Pentagon Tells Congress," Anthony Capaccio and Roxana Tiron, November 15, 2022, <https://www.bloomberg.com/news/articles/2022-11-15/f-35-jet-funding-is-running-1-4-billion-short-pentagon-tells-congress?leadSource=uverify%20wall>.

<sup>2</sup> Letter from Under Secretary of Defense for Sustainment and Acquisition William LaPlante to Senator Warren, October 19, 2022, <https://www.warren.senate.gov/imo/media/doc/Letter%20-%20Dr%20LaPlante.pdf>.

<sup>3</sup> Department of Defense, "The Department of Defense Releases the President's Fiscal Year 2023 Defense Budget," press release, March 28, 2022, <https://www.defense.gov/News/Releases/Release/Article/2980014/the-department-of-defense-releases-the-presidents-fiscal-year-2023-defense-budg/>.

<sup>4</sup> Office of U.S. Senator Elizabeth Warren, "At Hearing, DoD Secretary Agrees with Senator Warren That the Proposed DoD Budget Should Not Increase By \$90 to \$400 million," press release, April 7, 2022, <https://www.warren.senate.gov/newsroom/press-releases/at-hearing-dod-secretary-agrees-with-senator-warren-that-the-proposed-dod-budget-should-not-increase-by-90-to-400-billion>.

<sup>5</sup> National Taxpayers Union, "When You Wish Upon a (\$24.3 Billion) Star: DoD 'Wish Lists' for FY 2023," Andrew Lautz, May 4, 2022, <https://www.ntu.org/publications/detail/when-you-wish-upon-a-235-billion-star-dod-wish-lists-for-fy-2023>.

<sup>6</sup> Bloomberg, "F-35 Jet Funding is Running \$1.4 Billion Short, Pentagon Tells Congress," Anthony Capaccio and Roxana Tiron, November 15, 2022, <https://www.bloomberg.com/news/articles/2022-11-15/f-35-jet-funding-is->

by statute to submit an initial unfunded priorities list along with its budget request.<sup>7</sup> But there is no such requirement that the Department submit a second list – which, in this case, appears to be pure budgetary bloat.

This latest wish list the Department provided to Congress appears to be an end-of-year money grab, designed to short circuit the administration’s budget and the congressional appropriations process. DoD components appear to be playing a shell-game with American taxpayers, purposely leaving out popular programs in initial budget requests, and then later attempting to jam them through Congress without having to make the hard choices involved in the traditional budget process. For example, the list submitted to Congress in November seeks funding to implement the Department’s civilian harm mitigation and response action plan (CHMR-AP).<sup>8</sup> I have been pressing the Department to do more to prevent civilian harm and support am supportive of DoD dedicating budget resources to that end.<sup>9</sup> But that funding can and should come from already ample existing resources.

This year’s unfunded priorities list is only the latest example of this budgetary gambit. Earlier this year I criticized the Army for claiming safe and healthy housing for military families was a top priority but placing that request in its unfunded priorities list rather than its annual budget request.<sup>10</sup> Last year the Navy excluded one DDG-51 Flight III destroyer ship from its budget request and put it in its unfunded priorities list instead.<sup>11</sup> Not funding that ship would have broken the Navy’s multiyear contract and forced the Navy to pay \$33 million financial penalties.<sup>12</sup> As the Government Accountability Office pointed out, “the Navy was not required to explain this decision to Congress, leading to the concerns that it was engaging in budgetary maneuvers that impede congressional oversight and decision-making.”<sup>13</sup>

DoD’s use of these post-budget unfunded priorities lists are distorting the budget process. The Department’s annual budget submissions must include the Future Years Defense Program, which

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<sup>7</sup> 10 U.S.C. § 222a.

<sup>8</sup> DOD FY23 Compiled UPL List [On file with the office of Senator Warren].

<sup>9</sup> Huffington Post, “Elizabeth Warren Delivers National Security Address Focused on Civilian Casualties,” Ryan Grim, February 27, 2014, [https://www.huffpost.com/entry/elizabeth-warren-national-security\\_n\\_4861778](https://www.huffpost.com/entry/elizabeth-warren-national-security_n_4861778); Office of U.S. Senator Elizabeth Warren, “Senator Elizabeth Warren and Rep. Khanna Introduce the Protection of Civilians in Military Operations Act,” press release, June 10, 2020, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-rep-khanna-introduce-the-protection-of-civilians-in-military-operations-act>; Office of U.S. Senator Elizabeth Warren, “Sen. Warren, Reps. Khanna, Crow, Jacobs, Malinowski Lead Colleagues to Introduce Bicameral Legislation to Overhaul Prevention and Transparency of Civilian Harm from U.S. Military Operations,” press release April 28, 2022, <https://www.warren.senate.gov/newsroom/press-releases/sen-warren-reps-khanna-crow-jacobs-malinowski-lead-colleagues-to-introduce-bicameral-legislation-to-overhaul-prevention-and-transparency-of-civilian-harm-from-us-military-operations>.

<sup>10</sup> Roll Call, “Bipartisan Criticism for Army’s Housing Budget,” Andrew Clevenger, May 5, 2022, <https://rollcall.com/2022/05/05/bipartisan-criticism-for-armys-housing-budget/>.

<sup>11</sup> Breaking Defense, “House Appropriators Carve Out \$1.5B for DDG Navy Failed to Fund,” Justin Katz, July 12, 2021, <https://breakingdefense.com/2021/07/house-appropriators-carve-out-1-5b-for-ddg-navy-failed-to-fund/>.

<sup>12</sup> Breaking Defense, “House Appropriators Carve Out \$1.5B for DDG Navy Failed to Fund,” Justin Katz, July 12, 2021, <https://breakingdefense.com/2021/07/house-appropriators-carve-out-1-5b-for-ddg-navy-failed-to-fund/>.

<sup>13</sup> Government Accountability Office, “Multiyear Procurement: Navy Should Provide Congress More Complete Information on Budget Request Decisions,” August 8, 2022, <https://www.gao.gov/products/gao-22-105966>.

projects the funding, manpower, and force structure needed over a five-year look-ahead period.<sup>14</sup> There is no similar requirement for unfunded priorities,<sup>15</sup> which obscures the long term cost of adding these programs to the budget. As the Congressional Budget Office pointed out regarding similar practices through the Overseas Contingency Operations account, this results in “lower priority, more expensive or less-than-optimal solutions getting funded that wouldn’t ordinarily.”<sup>16</sup> In order to increase budget discipline at DoD, I filed bipartisan amendments to the National Defense Authorization Act for fiscal year 2023 that would eliminate the statutory requirement to provide these lists<sup>17</sup> and require the Department to find offsets for any proposed spending increases.<sup>18</sup>

I also remain deeply concerned that DoD contractors will use concerns about inflation to price-gouge – with help from the Department’s latest unfunded priorities request. I had been encouraged by a letter I received last month from Under Secretary of Defense William LaPlante confirming the Department had no plans to adjust contracts for inflation.<sup>19</sup> There is no reason to rewrite contracts that private companies willingly signed with DoD, and no analytical justification has been provided for doing so. DoD has repeatedly asked contractors to provide evidence of the need for adjustments, and they have not done so.<sup>20</sup> Asking Congress to provide an additional \$19 billion in funds through back-channel budget requests threatens to facilitate these contractors’ raid of taxpayer funds.<sup>21</sup>

These games must stop. As the Secretary of Defense, you have the authority and responsibility to end DoD’s misuse of the congressional budget processes and eliminate taxpayer waste.<sup>22</sup> Your predecessor, Secretary Robert Gates, demonstrated how leadership can curtail this practice significantly. He required the services to brief him personally on their unfunded requirements lists,<sup>23</sup> which led to cuts to those lists of nearly 90 percent.<sup>24</sup>

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<sup>14</sup> Congressional Research Service, “Defense Primer: Future Years Defense Program (FYDP),” December 15, 2021, p. 1, <https://sgp.fas.org/crs/natsec/IF10831.pdf>.

<sup>15</sup> 10 U.S.C. § 222a.

<sup>16</sup> CQ, “Senate Budget Committee Holds Hearing on Budget Control and Spending,” February 27, 2019, <https://plus.cq.com/doc/congressionaltranscripts-5473045?0>.

<sup>17</sup> S. Amdt. 6160 to S.Admt. 5499, <https://www.congress.gov/117/crec/2022/09/29/168/158/CREC-2022-09-29-pt1-PgS5572.pdf>.

<sup>18</sup> S. Amdt. 6162 to S.Admt. 5499, <https://www.congress.gov/117/crec/2022/09/29/168/158/CREC-2022-09-29-pt1-PgS5572.pdf>.

<sup>19</sup> Letter from Under Secretary of Defense for Sustainment and Acquisition William LaPlante to Senator Warren, October 19, 2022, <https://www.warren.senate.gov/imo/media/doc/Letter%20-%20Dr%20LaPlante.pdf>.

<sup>20</sup> Defense News, “Senate to vote on Pentagon contract adjustments amid inflation,” Bryant Harris and Joe Gould, November 8, 2022, <https://www.defensenews.com/congress/budget/2022/11/08/senate-to-vote-on-pentagon-contract-adjustments-amid-inflation/>; Defense News, “Defense industry to launch inflation relief push in Congress,” Joe Gould, September 1, 2022, <https://www.defensenews.com/pentagon/2022/09/01/defense-industry-to-launch-inflation-relief-push-in-congress/>; PoliticoPro Morning Defense, “AFA Finale Today,” Bryan Bender, September 21, 2022.

<sup>21</sup> Bloomberg, “F-35 Jet Funding is Running \$1.4 Billion Short, Pentagon Tells Congress,” Anthony Capaccio and Roxana Tiron, November 15, 2022, <https://www.bloomberg.com/news/articles/2022-11-15/f-35-jet-funding-is-running-1-4-billion-short-pentagon-tells-congress?leadSource=uverify%20wall>.

<sup>22</sup> 10 U.S.C. § 113.

<sup>23</sup> Reuters, “Gates tells top brass: Talk to me before Congress,” Reuters Staff, May 7, 2009, <https://www.reuters.com/article/us-obama-budget-secrecy/gates-tells-top-brass-talk-to-me-before-congress-idUSTRE5464YA20090507>.

If DoD wants to demonstrate to the American people that they are responsible stewards of taxpayer dollars, you must ensure the Department significantly improves its budget and financial management practices. That starts with significantly reducing the size of unfunded priorities lists.

Sincerely,



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Elizabeth Warren  
United States Senator

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<sup>24</sup> Time, "Gates Takes Aim at the Military's Spending Wish Lists," Mark Thompson, July 17, 2009, <http://content.time.com/time/nation/article/0,8599,1911152,00.html>.