AMENDMENT NO._________ Calendar No._______

Purpose: To provide for auditable financial statements for the Department of Defense.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 1197

To authorize the Comptroller General of the United States to conduct an independent audit of the Department of Defense.

AMENDMENT NO. 2155

By: Coburn

To: S. 1197

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GPO: 3012 77-329 (mar)

AMENDMENT intended to be proposed by Mr. Coburn (for himself, Mr. Manchin, Mr. Grassley, Mr. Paul, Mr. Chambliss, Mr. Johnson of Wisconsin, Mr. Cornyn, and Ms. Ayotte)

Viz:

1. At the end of division A, add the following:

2. TITLE XVI—AUDIT OF THE DEPARTMENT OF DEFENSE

3. SEC. 1601. SHORT TITLE.

4. This title may be cited as the “Audit the Pentagon Act of 2013”.

5. SEC. 1602. FINDINGS.

6. Congress makes the following findings:
(1) Section 9 of Article I of the Constitution of the United States requires all agencies of the Federal Government, including the Department of Defense, to publish "a regular statement and account of the receipts and expenditures of all public money".

(2) Section 3515 of title 31, United States Code, requires the agencies of the Federal Government, including the Department of Defense, to present auditable financial statements beginning not later than March 1, 1997. The Department has not complied with this law.

(3) The Federal Financial Management Improvement Act of 1996 (31 U.S.C. 3512 note) requires financial systems acquired by the Federal Government, including the Department of Defense, to be able to provide information to leaders to manage and control the cost of Government. The Department has not complied with this law.

(4) The financial management of the Department of Defense has been on the "High-Risk" list of the Government Accountability Office, which means that the Department is not consistently able to "control costs; ensure basic accountability; anticipate future costs and claims on the budget; measure
performance; maintain funds control; [and] prevent and detect fraud, waste, and abuse.”

(5) The National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) requires the Secretary of Defense to report to Congress annually on the reliability of the financial statements of the Department of Defense, to minimize resources spent on producing unreliable financial statements, and to use resources saved to improve financial management policies, procedures, and internal controls.

(6) In 2005, the Department of Defense created a Financial Improvement and Audit Readiness (FIAR) Plan, overseen by a directorate within the office of the Under Secretary of Defense (Comptroller), to improve Department business processes with the goal of producing timely, reliable, and accurate financial information that could generate an audit-ready annual financial statement. In December 2005, that directorate, known as the FIAR Directorate, issued the first of a series of semiannual reports on the status of the Financial Improvement and Audit Readiness Plan.

and Audit Readiness Plan described in paragraph (6), and codified as a statutory requirement the goal of the Plan in ensuring that Department of Defense financial statements are validated as ready for audit not later than September 30, 2017. In addition, the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239) requires that the statement of budgetary resources of the Department of Defense be validated as ready for audit by not later than September 30, 2014.

(8) At a September 2010 hearing of the Senate, the Government Accountability Office stated that past expenditures by the Department of Defense of $5,800,000,000 to improve financial information, and billions of dollars more of anticipated expenditures on new information technology systems for that purpose, may not suffice to achieve full audit readiness of the financial statement of the Department. At that hearing, the Government Accountability Office could not predict when the Department would achieve full audit readiness of such statements.

(9) At a 2013 hearing of the Senate, Secretary of Defense Chuck Hagel affirmed his commitment to audit-ready budget statements for the Department
of Defense by the end of 2014, and stated that he
“will do everything he can to fulfill this commit-
ment”. At that hearing, Secretary Hagel noted that
auditable financial statements were essential to the
Department not only for improving the quality of its
financial information, but also for reassuring the
public and Congress that it is a good steward of
public funds.

SEC. 1603. CESSION OF APPLICABILITY OF REPORTING
REQUIREMENTS REGARDING THE FINANCIAL
STATEMENTS OF THE DEPARTMENT OF DE-
FENSE.

(a) CESSION OF APPLICABILITY.—

(1) MILITARY DEPARTMENTS.—The financial
statements of a military department shall cease to
be covered by the reporting requirements specified in
subsection (b) upon the issuance of an unqualified
audit opinion on such financial statements.

(2) DEPARTMENT OF DEFENSE.—The reporting
requirements specified in subsection (b) shall cease
to be effective when an unqualified audit opinion is
issued on the financial statements of the Depart-
ment of Defense, including each of the military de-
partments and the other reporting entities defined
by the Office of Management and Budget.
(b) REPORTING REQUIREMENTS.—The reporting requirements specified in this subsection are the following:


SEC. 1604. ENHANCED REPROGRAMMING AUTHORITY FOLLOWING ACHIEVEMENT BY DEPARTMENT OF DEFENSE AND MILITARY DEPARTMENTS OF AUDIT WITH UNQUALIFIED OPINION OF STATEMENT OF BUDGETARY RESOURCES FOR FISCAL YEARS AFTER FISCAL YEAR 2014.

(a) Department of Defense Generally.—Subject to section 1606(1), if the Department of Defense obtains an audit with an unqualified opinion on its statement of budgetary resources for any fiscal year after fiscal year 2014, the limitation on the total amount of authorizations that the Secretary of Defense may transfer pursuant to general transfer authority available to the Secretary in the national interest in the succeeding fiscal year shall be $8,000,000,000.

(b) Military Departments, Defense Agencies, and Defense Field Activities.—Subject to section 1607(a), if a military department, Defense Agency, or defense field activity obtains an audit with an unqualified opinion on its statement of budgetary resources for any fiscal year after fiscal year 2014, the thresholds for reprogramming of funds of such military department, Defense Agency, or defense field activity, as the case may be, without prior notice to Congress for the succeeding fiscal year shall be deemed to be the thresholds as follows:
(1) In the case of an increase or decrease to the program base amount for a procurement program, $60,000,000.

(2) In the case of an increase or decrease to the program base amount for a research program, $30,000,000.

(3) In the case of an increase or decrease to the amount for a budget activity for operation and maintenance, $45,000,000.

(4) In the case of an increase or decrease to the amount for a budget activity for military personnel, $30,000,000.

(e) CONSTRUCTION.—Nothing in this section shall be construed to alter or revise any requirement (other than a threshold amount) for notice to Congress on transfers covered by subsection (a) or reprogrammings covered by subsection (b) under any other provision of law.

(d) DEFINITIONS.—In this section, the terms “program base amount”, “procurement program”, “research program”, and “budget activity” have the meanings given such terms in chapter 6 of volume 3 of the Financial Management Regulation of the Department of Defense (DoD 7000.14R), dated March 2011, or any successor document.
SEC. 1605. FAILURE TO OBTAIN AUDITS WITH UNQUALIFIED OPINION OF FISCAL YEAR 2015 GENERAL FUND STATEMENT OF BUDGETARY RESOURCES OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—If the Department of Defense fails to obtain an audit with an unqualified opinion on its general fund statement of budgetary resources for fiscal year 2015 by December 31, 2015, the following shall take effect on January 1, 2016:

(1) ADDITIONAL QUALIFICATIONS AND DUTIES OF USD (COMPTROLLER).—

(A) QUALIFICATIONS.—Any individual nominated for appointment to the position of Under Secretary of Defense (Comptroller) under section 135 of title 10, United States Code, shall be an individual who has served—

(i) as the chief financial officer or equivalent position of a Federal or State agency that has received an audit with an unqualified opinion on such agency’s financial statements during the time of such individual’s service; or

(ii) as the chief financial officer or equivalent position of a public company that has received an audit with an unquali-
fied opinion on such company's financial
statements during the time of such individ-
ual's service.

(B) DUTIES AND POWERS.—The duties
and powers of the individual serving as Under
Secretary of Defense (Comptroller) shall in-
clude, in addition to the duties and powers
specified in section 135(c) of title 10, United
States Code, such duties and powers with re-
spect to the financial management of the De-
partment of Defense as the Deputy Secretary of
Defense (acting in the capacity of Chief Man-
agement Officer of the Department of Defense)
or a successor official in the Department of De-
fense (acting in such capacity) may prescribe.

(2) ADDITIONAL QUALIFICATIONS AND RESPO-
sIBILITIES OF ASA FOR FINANCIAL MANAGEMENT.—

(A) QUALIFICATIONS.—Any individual
nominated for appointment to the position of
Assistant Secretary of the Army for Financial
Management under section 3016 of title 10,
United States Code, shall be an individual who
has served—

(i) as the chief financial officer or
equivalent position of a Federal or State
agency that has received an audit with an unqualified opinion on such agency’s financial statements during the time of such individual’s service; or

(ii) as the chief financial officer or equivalent position of a public company that has received an audit with an unqualified opinion on such company’s financial statements during the time of such individual’s service.

(B) RESPONSIBILITIES.—The responsibilities of the individual serving as Assistant Secretary of the Army for Financial Management shall include, in addition to the responsibilities specified in section 3016(b)(4) of title 10, United States Code, such responsibilities as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) may prescribe.

(3) ADDITIONAL QUALIFICATIONS AND RESPONSIBILITIES OF ASN FOR FINANCIAL MANAGEMENT.—

(A) QUALIFICATIONS.—Any individual nominated for appointment to the position of
Assistant Secretary of the Navy for Financial Management under section 5016 of title 10, United States Code, shall be an individual who has served—

(i) as the chief financial officer or equivalent position of a Federal or State agency that has received an audit with an unqualified opinion on such agency’s financial statements during the time of such individual’s service; or

(ii) as the chief financial officer or equivalent position of a public company that has received an audit with an unqualified opinion on such company’s financial statements during the time of such individual’s service.

(B) RESPONSIBILITIES.—The responsibilities of the individual serving as Assistant Secretary of the Navy for Financial Management shall include, in addition to the responsibilities specified in section 5016(b)(4) of title 10, United States Code, such responsibilities as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in
the Department of Defense (acting in such ca-
capacity) may prescribe.

(4) ADDITIONAL QUALIFICATIONS AND RESPO-
SIBILITIES OF ASAF FOR FINANCIAL MANAGE-
MENT.—

(A) QUALIFICATIONS.—Any individual
nominated for appointment to the position of
Assistant Secretary of the Air Force for Finan-
cial Management under section 8016 of title 10,
United States Code, shall be an individual who
has served—

(i) as the chief financial officer or
equivalent position of a Federal or State
agency that has received an audit with an
unqualified opinion on such agency’s finan-
cial statements during the time of such in-
dividual’s service; or

(ii) as the chief financial officer or
equivalent position of a public company
that has received an audit with an unquali-
fied opinion on such company’s financial
statements during the time of such individ-
ual’s service.

(B) RESPONSIBILITIES.—The responsibil-
ities of the individual serving as Assistant See-
retary of the Air Force for Financial Management shall include, in addition to the responsibilities specified in section 8016(b)(4) of title 10, United States Code, such responsibilities as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) may prescribe.

(b) PUBLIC COMPANY DEFINED.—In this section, the term "public company" has the meaning given the term "issuer" in section 2(a)(7) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)(7)).

SEC. 1606. FAILURE OF THE DEPARTMENT OF DEFENSE TO OBTAIN AUDITS WITH UNQUALIFIED OPINION OF FISCAL YEAR 2018 FINANCIAL STATEMENTS.

If the Department of Defense fails to obtain an audit with an unqualified opinion on its general fund statement of budgetary resources for fiscal year 2018 by December 31, 2018:

(1) PERMANENT CESSATION OF ENHANCED GENERAL TRANSFER AUTHORITY.—Effective as of January 1, 2019, the authority in section 1604(a) shall cease to be available to the Department of De-
fense for fiscal year 2018 and any fiscal year there-
after.

(2) **Reorganization of Responsibilities of**
Chief Management Officer.—Effective as of
April 1, 2019:

(A) **Position of Chief Management Of-
fi cer.**—Section 132a of title 10, United States
Code, is amended to read as follows:

**§ 132a. Chief Management Officer**

“(a) **In General.**—(1) There is a Chief Manage-
ment Officer of the Department of Defense, appointed
from civilian life by the President, by and with the advice
and consent of the Senate.

“(2) Any individual nominated for appointment as
Chief Management Officer shall be an individual who
has—

“(A) extensive executive level leadership and
management experience in the public or private sec-
tor;

“(B) strong leadership skills;

“(C) a demonstrated ability to manage large
and complex organizations; and

“(D) a proven record in achieving positive oper-
ational results.
“(b) POWERS AND DUTIES.—The Chief Management
Officer shall perform such duties and exercise such powers
as the Secretary of Defense may prescribe.

“(c) SERVICE AS CHIEF MANAGEMENT OFFICER.—
(1) The Chief Management Officer is the Chief Manage-
ment Officer of the Department of Defense.

“(2) In serving as the Chief Management Officer of
the Department of Defense, the Chief Management Offi-
cer shall be responsible for the management and adminis-
tration of the Department of Defense with respect to the
following:

“(A) The expenditure of funds, accounting, and
finance.

“(B) Procurement, including procurement of
any enterprise resource planning (ERP) system and
any information technology (IT) system that is a fi-
nancial feeder system, human resources system, or
logistics system.

“(C) Facilities, property, nonmilitary equip-
ment, and other resources.

“(D) Strategic planning, annual performance
planning, and identification and tracking of perform-
ance measures.
“(E) Internal audits and management analyses of the programs and activities of the Department, including the Defense Contract Audit Agency.

“(F) Such other areas or matters as the Secretary of Defense may designate.

“(3) The head of the Defense Contract Audit Agency shall be under the supervision of, and shall report directly to, the Chief Management Officer.

“(d) PRECEDENCE.—The Chief Management Officer takes precedence in the Department of Defense after the Secretary of Defense and the Deputy Secretary of Defense.”.

(B) CONFORMING AMENDMENTS.—

(i) Section 131(b) of title 10, United States Code, is amended—

(I) by striking paragraph (3);

(II) by redesignating paragraph (2) as paragraph (3); and

(III) by inserting after paragraph (1) the following new paragraph (2):

“(2) The Chief Management Officer of the Department of Defense.”.

(ii) Section 132 of such title is amended—
(I) by striking subsection (c);

and

(II) by redesignating subsections
d) and (e) as subsections (c) and (d),

respectively.

(iii) Section 133(c)(1) of such title is
amended by striking “and the Deputy Sec-
retary of Defense” and inserting “, the
Deputy Secretary of Defense, and the
Chief Management Officer of the Depart-
ment of Defense”.

(iv) Such title is further amended by
inserting “the Chief Management Officer
of the Department of Defense,” after “the
Deputy Secretary of Defense,” each place
it appears in the provisions as follows:

(I) Section 133(c)(2).

(II) Section 134(c).

(v) Section 137a(d) of such title is
amended by striking “the Secretaries of
the military departments,” and all that fol-
 lows and inserting “the Chief Management
Officer of the Department of Defense, the
Secretaries of the military departments,
and the Under Secretaries of Defense.”.
(vi) Section 138(d) of such title is amended by striking "the Secretaries of the military departments," and all that follows through the period and inserting "the Chief Management Officer of the Department of Defense, the Secretaries of the military departments, the Under Secretaries of Defense, and the Director of Defense Research and Engineering."

(C) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 4 of such title is amended by striking the item relating to section 132a and inserting the following new item:

"132a. Chief Management Officer."

(D) EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"Chief Management Officer of the Department of Defense."

(E) REFERENCE IN LAW.—Any reference in any provision of law to the Chief Management Officer of the Department of Defense shall be deemed to refer to the Chief Management Officer of the Department of Defense
under section 132a of title 10, United States Code (as amended by this paragraph).

(3) JURISDICTION OF DFAS.—Effective as of April 1, 2019:

(A) TRANSFER TO DEPARTMENT OF THE TREASURY.—Jurisdiction of the Defense Finance and Accounting Service (DFAS) is transferred from the Department of Defense to the Department of the Treasury.

(B) ADMINISTRATION.—The Secretary of the Treasury shall administer the Defense Finance and Accounting Service following transfer under this paragraph through the Financial Management Service of the Department of the Treasury.

(C) MEMORANDUM OF UNDERSTANDING.—The Secretary of Defense and the Secretary of the Treasury shall jointly enter into a memorandum of understanding regarding the transfer of jurisdiction of the Defense Finance and Accounting Service under this paragraph. The memorandum of understanding shall provide for the transfer of the personnel and other resources of the Service to the Department of the Treasury and for the assumption of responsi-
bility for such personnel and resources by the
Department of the Treasury.

(D) CONSTRUCTION.—Nothing in this
paragraph shall be construed as terminating, al-
tering, or revising any responsibilities or au-
thorities of the Defense Finance and Account-
ing Service (other than responsibilities and au-
thorities in connection with the exercise of ju-
risdiction of the Service following transfer
under this paragraph).

SEC. 1607. FAILURE OF THE MILITARY DEPARTMENTS TO
OBTAIN AUDITS WITH UNQUALIFIED OPINION
OF FINANCIAL STATEMENTS FOR FISCAL
YEARS AFTER FISCAL YEAR 2017.

(a) PERMANENT CESSATION OF AUTHORITIES ON
REPROGRAMMING OF FUNDS.—If a military department
fails to obtain an audit with an unqualified opinion on its
financial statements for fiscal year 2018 by December 31,
2018, effective as of January 1, 2019, the authorities in
section 1604(b) shall cease to be available to the military
department for fiscal year 2018 and any fiscal year there-
after.

(b) ANNUAL PROHIBITION ON EXPENDITURE OF
FUNDS FOR CERTAIN MDAPs PAST MILESTONE B IN
CONNECTION WITH FAILURE.—
(1) PROHIBITION.—Effective for fiscal years after fiscal year 2017, if a military department fails to obtain an audit with an unqualified opinion on its financial statements for any fiscal year, effective as of the date of the issuance of the opinion on such audit, amounts available to the military department for the following fiscal year may not be obligated by the military department for a weapon or weapon system or platform being acquired as a major defense acquisition program for any activity beyond Milestone B approval unless such program has already achieved Milestone B approval of the date of the issuance of the opinion on such audit.

(2) DEFINITIONS.—In this subsection:

(A) The term “major defense acquisition program” has the meaning given that term in section 2430 of title 10, United States Code.

(B) The term “Milestone B approval” has the meaning given that term in section 2366(e)(7) of title 10, United States Code.

SEC. 1608. ENTERPRISE RESOURCE PLANNING.

The Secretary of Defense shall amend the acquisition guidance of the Department of Defense to provide for the following:
(1) The Defense Business System Management Committee may not approve procurement of any Enterprise Resource Planning (ERP) business system that is independently estimated to take longer than three years to procure from initial obligation of funds to full deployment and sustainment.

(2) Any contract for the acquisition of an Enterprise Resource Planning business system shall include a provision authorizing termination of the contract at no cost to the Government if procurement of the system takes longer than three years from initial obligation of funds to full deployment and sustainment.

(3) Any implementation of an Enterprise Resource Planning system shall comply with each of the following:

   (A) The current Business Enterprise Architecture established by the Chief Management Officer of the Department of Defense.

   (B) The provisions of section 2222 of title 10, United States Code.

(4) The Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity)
shall have the authority to replace any program manager (whether in a military department or a Defense Agency) for the procurement of an Enterprise Resource Planning business system if procurement of the system takes longer than three years from initial obligation of funds to full deployment and sustainment.

(5) Any integrator contract for the implementation of an Enterprise Resource Planning business system shall only be awarded to companies that have a history of successful implementation of other Enterprise Resource Planning business systems for the Federal Government (whether with the Department of Defense or another department or agency of the Federal Government), including meeting cost and schedule goals.