



February 2022

FORCED LABOR

Actions Needed to Better Prevent the Availability of At-Risk Goods in DOD's Commissaries and Exchanges

GAO Highlights

Highlights of [GAO-22-105056](#), a report to congressional committees

Why GAO Did This Study

The U.S. government and others have raised concerns about the use of forced labor in the production of goods. DOD operates almost 3,000 commissaries and exchanges worldwide to enhance the quality of life of service members, their families, and retirees by providing reduced-priced groceries and retail goods.

The National Defense Authorization Act for Fiscal Year 2021 included a provision for GAO to review DOD's efforts to prevent the resale of goods produced by forced labor in commissaries and exchanges. This report evaluates the extent to which (1) DeCA and the military service exchanges have established policies and processes for preventing the resale of goods produced by forced labor, (2) OSD monitors DeCA's and the exchanges' compliance with their policies and processes, and (3) opportunities exist for DeCA and the exchanges to use information from other federal agencies to inform their efforts.

GAO analyzed DOD policies and processes related to the resale of goods that may be produced by forced labor and interviewed DOD and other federal agency officials.

What GAO Recommends

GAO is making four recommendations, including that DOD establish an overarching policy and consistent processes to better prevent the availability of goods produced by forced labor, establish an oversight mechanism to monitor implementation, and use available federal information to identify risks. DOD concurred with these recommendations.

View [GAO-22-105056](#). For more information, contact Elizabeth A. Field at (202) 512-2775 or fielde1@gao.gov, or Kimberly Gianopoulos at (202) 512-8612 or gianopoulosk@gao.gov.

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What GAO Found

The Department of Defense (DOD) has some policies and processes in place to prevent the resale of goods produced through forced labor in its commissaries and exchanges. However, despite their generally common business of providing reduced-priced groceries and retail goods to their patrons, the Defense Commissary Agency (DeCA) and the military service exchanges have varying policies and inconsistent processes. These inconsistencies result in a fragmented approach to forced labor at DOD's resale organizations. For example, while DeCA is subject to procurement regulations that cover all categories of goods, guidance governing the exchanges focuses only on certain resale goods such as those directly imported from overseas. Establishing an overarching policy and consistent processes would help DOD have reasonable assurance that goods produced by forced labor are not available for purchase within the commissaries and exchanges.

DOD Commissary



Source: Defense Commissary Agency. | GAO-22-105056

GAO found that the Office of the Secretary of Defense (OSD) has not monitored DeCA's and the exchanges' compliance with policies for preventing the resale of goods produced with forced labor. In addition, the military exchanges have not consistently implemented all requirements related to resale goods that may have been produced by forced labor. For example, GAO found that the exchanges have not consistently followed the requirement to have periodic assessments of their programs related to forced labor prevention. Without a mechanism to monitor efforts by DeCA and the exchanges to prevent the resale of goods produced by forced labor, OSD lacks reasonable assurance that the resale organizations are not purchasing and reselling these goods.

Despite having access to other federal agencies' information on the risks of forced labor in the production of resale goods, officials from DeCA and the exchanges have not used such information. Federal agencies, to include the Department of Labor, publish information about the potential use of forced labor in the production of goods. This information includes lists of goods and countries with increased risks of forced labor. By drawing upon available information from other federal agencies, DeCA and the exchanges would be better positioned to identify, assess, and respond to risks of forced labor.

Contents

Letter		1
	Background	4
	Forced Labor Policies and Prevention Processes Exist, but Are Inconsistent	10
	OSD Does Not Monitor Resale Organizations' Compliance with Policies on Forced Labor	19
	Federal Agency Information Is Not Used or Communicated to Assess Forced Labor Risks	22
	Conclusions	29
	Recommendations for Executive Action	29
	Agency Comments	30
I	Resale of Forced Labor Goods in Commissaries and Exchanges, Laws and Policies	32
II	Objectives, Scope, and Methodology	37
III	Selected Information Related to Forced Labor from Other Federal Agencies	41
IV	Comments from the Department of Defense	50
V	GAO Contacts and Staff Acknowledgments	53
Figures		
	Figure 1: Forced Labor Indicators Identified by the International Labour Organization	5
	Figure 2: Map of China and Xinjiang Uyghur Autonomous Region	6
	Figure 3: Product Types Sold in Department of Defense Commissaries and Exchanges	9
	Figure 4: DeCA's and Exchanges' Funding Types and Policies Governing Acquisition of Resale Goods	12

Figure 5: Department of Labor’s “Sweat and Toil: Child Labor, Forced Labor, and Human Trafficking Around the World” Mobile Application	43
Figure 6: Department of Labor’s “Comply Chain: Business Tools for Labor Compliance in Global Supply Chains” Mobile Application	47

Abbreviations

AAFES	Army and Air Force Exchange Service
CBP	Customs and Border Protection
CTIP	Combating Trafficking in Persons
CTIP Office	DOD’s Combating Trafficking in Persons office
DeCA	Defense Commissary Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
DOL	Department of Labor
FAR	Federal Acquisition Regulation
ILAB	DOL’s Bureau of International Labor Affairs
MCX	Marine Corps Exchange
NEXCOM	Navy Exchange Service Command
OMB	Office of Management and Budget
OSD	Office of the Secretary of Defense
State	Department of State
USD (A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD (P&R)	Under Secretary of Defense for Personnel and Readiness

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February 3, 2022

The Honorable Jack Reed
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Armed Services
House of Representatives

Forced labor is a global problem in which individuals are exploited for the purpose of compelled labor or services. The International Labour Organization estimates that forced labor generates profits of \$150 billion a year globally.¹ Section 307 of the Tariff Act of 1930 prohibits the importation of goods made by forced labor into the U.S.² In 2021, the U.S. Department of Labor’s (DOL) Bureau of International Labor Affairs (ILAB) reported that forced labor or child labor is used in the production of 156 types of goods in 77 countries.³ According to the International Labour Organization, about 25 million people worked in forced labor in 2016, and two-thirds of forced labor victims were located in the Asia-Pacific region. In light of recent concerns regarding the use of forced labor in and linked to China’s Xinjiang Uyghur Autonomous Region, the U.S. government has taken numerous steps to prevent the import of goods from the region, including enacting a December 2021 law restricting imports of goods

¹The International Labour Organization is a United Nations specialized agency that seeks to promote social justice and internationally recognized human and labor rights.

²*Convict-made Goods; Importation Prohibited*, Section 307 of Tariff Act of 1930, codified at 19 U.S.C. § 1307, as amended.

³ILAB maintains a list of goods produced by forced or child labor by country. The list is available at <https://www.dol.gov/agencies/ilab/research-impact-evaluation>, and is current as of June 23, 2021. ILAB also produces bi-annual reports on child and forced labor goods. The most recent is Department of Labor, *2020 List of Goods Produced by Child Labor or Forced Labor* (September 2020).

produced in the region unless there is clear and convincing evidence that they were not produced by forced labor.⁴

In addition to raising humanitarian concerns, forced labor overseas has adverse consequences for the American economy and undermines legitimate trade and competition. The U.S. government and others have raised concerns about the use of forced labor in the production of goods imported and sold in the U.S. The types of goods that have been sold in the U.S. and identified as being produced by forced labor include textiles and clothing; electronics; and numerous agricultural products, such as coffee, tomatoes, palm oil, and seafood, among many others.

In the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Congress included a provision related to whether Department of Defense (DOD) commissaries and exchanges might be vulnerable to the resale of goods produced through forced labor.⁵ DOD operates about 240 commissaries and 2,500 exchange facilities worldwide to enhance the quality of life of uniformed service members, their families, and retirees by providing groceries and retail goods at reduced prices.

To pay for operating costs that exceed revenue generated by the commissaries, Congress has directed that approximately \$1.2 billion annually from fiscal years 2016 through 2021 be made available from amounts appropriated to the Defense Working Capital Fund for the Defense Commissary Agency (DeCA), which manages all commissaries.

⁴Pub. L. No. 117-78 (2021). The Xinjiang Uyghur Autonomous Region in western China is populated by various minority ethnic groups, such as the Uyghurs, ethnic Kazakhs and Kyrgyz, and other traditionally Muslim minority groups. The region is estimated to be the world's fifth largest supplier of cotton. According to the Xinjiang Supply Chain Business Advisory published by multiple federal agencies, Chinese officials have committed rights abuses against minorities in the region, to include mass detention, physical abuse, and forced labor in detention and political reeducation facilities. The U.S. government has taken several steps to prevent the import of goods produced by forced labor in the region, such as sanctions and restrictions on imports. We have previously reported on some of the steps taken by the U.S. government that address human trafficking and forced labor. For example, see GAO, *Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring*, [GAO-21-106](#) (Washington, D.C.: Oct. 27, 2020); *Forced Labor: CBP Should Improve Communication to Strengthen Trade Enforcement*, [GAO-21-259](#) (Washington, D.C.: Mar. 1, 2021); and *Human Trafficking: DOD Should Address Weaknesses in Oversight of Contractors and Reporting of Investigations Related to Contracts*, [GAO-21-546](#) (Washington, D.C.: Aug. 4, 2021).

⁵Pub. L. No. 116-283, § 1078 (2021).

The three military exchanges—the Army and Air Force Exchange Service (AAFES), Navy Exchange Service Command (NEXCOM), and Marine Corps Exchange (MCX)—provide goods and services similar to department or retail stores. In fiscal year 2018, the exchanges generated about \$12 billion in sales revenue, which they use to cover operating expenses and help fund military department morale, welfare, and recreation activities.

The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 included a provision for us to review DOD’s efforts to prevent the purchase of goods produced by forced labor for resale in the commissaries and exchanges, including those imported from areas where forced labor may be used, such as the Xinjiang Uyghur Autonomous Region of China.⁶ This report evaluates the extent to which (1) DeCA and the military service exchanges—AAFES, NEXCOM, and MCX—have established policies and processes for preventing the resale of goods produced by forced labor, (2) the Office of the Secretary of Defense (OSD) monitors DeCA’s and the exchanges’ compliance with their policies and processes for preventing the resale of goods produced by forced labor, and (3) opportunities exist for DeCA and the exchanges to use information from other federal agencies to inform their efforts to prevent the resale of goods produced by forced labor. Additionally, appendix I of this report describes selected laws, regulations, and guidance that govern either the acquisition of goods for resale or the prohibition of goods produced using forced labor—or both—for DOD’s commissaries and exchanges.

To address these three objectives, we reviewed federal and DOD regulations on forced labor and the purchase of goods for resale in commissaries and exchanges. We analyzed relevant documents, such as agency-specific internal contracting guidance, and interviewed relevant officials from DOD and the military services, including DeCA and the three military exchange organizations.⁷ We also interviewed officials from other federal agencies involved in activities related to the issue of forced labor, including within global supply chains and in the import and resale of goods. We compared DOD’s efforts against leading practices in

⁶Pub. L. No. 116-283.

⁷We did not review or sample DOD contracts for resale goods; as such, we did not conduct a compliance audit of contracts for resale goods at DOD’s commissaries and exchanges.

collaboration that can mitigate fragmentation⁸ as well as the *Standards for Internal Control in the Federal Government*—specifically components related to oversight responsibility, risk assessment, and information and communication.⁹ See appendix II for additional information on our objectives, scope, and methodology.

We conducted this performance audit from March 2021 to February 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Forced Labor

The International Labour Organization describes forced labor as all work or service that is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.¹⁰ Workers in forced labor experience various forms of coercion from employers or recruiters that are designed to prevent them from leaving, including threats of violence or nonpayment of wages, actual violence, and threats against family members. The International Labour Organization has identified 11 indicators of forced labor—as shown in figure 1 below—intended to help recognize persons who are possibly trapped in a forced labor situation. These indicators include abusive working and living conditions and withholding of wages, among others.

⁸Fragmentation refers to those circumstances in which more than one organization within an agency is involved in the same broad area and opportunities exist to improve those efforts. See GAO, *2021 Annual Report: New Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions in Financial Benefits*, [GAO-21-455SP](#) (Washington, D.C.: May 12, 2021). With respect to collaboration leading practices, see GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

¹⁰According to the International Labour Organization, a forced labor situation is determined by the nature of the relationship between a person and an employer, and not by the type of activity performed, however hazardous the working conditions may be. See [GAO-21-106](#).

Figure 1: Forced Labor Indicators Identified by the International Labour Organization

Indicators	Description of indicators
Abuse of vulnerability	An employer taking advantage of a worker’s vulnerable position, such as a lack of knowledge of local laws and languages, being part of a minority population, or having few other employment options.
Deception	A failure to deliver what has been promised to a worker; for example, false promises about wages or working conditions.
Restriction of movement	Workers being denied free entry and exit of work premises beyond reasonable restrictions, such as those relating to safety and security at hazardous work sites.
Isolation	Isolation of workers either geographically (e.g., a work site far from habitation with no means of transportation) or through denial of communication (e.g., confiscating cell phones).
Physical and sexual violence	Violent acts against a worker which, in some cases, may be used to force a worker to undertake tasks not part of the initial agreement, such as domestic work in addition to normal duties.
Intimidation and threats	Common threats used against workers can include denunciation to immigration authorities, loss of wages, or worse working conditions.
Retention of identity documents	An employer retaining identity documents or other valuable personal possessions that workers cannot access on demand, and workers feel they cannot leave the job without risking loss of the items.
Withholding of wages	Systematic and deliberate withholding of payment as a means to compel a worker to remain on a job.
Debt bondage	Working for wages to pay off a debt incurred as a condition of employment, such as a recruitment fee or a wage advance. Employers can further exploit debt bondage by undervaluing work performed, inflating interest rates, or charging workers for food and lodging.
Abusive working and living conditions	Degrading or hazardous working environments or substandard living conditions associated with employment.
Excessive overtime	Work hours exceeding limits prescribed by national law or collective agreement, or denial of breaks or days off.

Source: GAO presentation of International Labour organization information. | GAO-22-105056

The U.S. government has found forced labor overseas in a variety of industries such as apparel, manufactured goods, electronics, and fishing, which produce goods that are or are likely to be imported into the United States. For example, Bangladesh’s garment sector has come under increased scrutiny due to reported substandard and unsafe factories, particularly following the 2013 Rana Plaza factory collapse, which killed more than 1,000 workers (see sidebar). Of more recent concern are Chinese factories and suppliers within and outside the Xinjiang Uyghur Autonomous region (hereafter referred to in this report as Xinjiang or the Xinjiang region), which are reportedly using Uyghur forced labor or employing former detainees under coercive conditions (see figure 2). Complex supply chains can impede traceability and make it challenging to verify that goods and services are free of forced labor.¹¹

Figure 2: Map of China and Xinjiang Uyghur Autonomous Region



Source: Adobe Stock. | GAO-22-105056

¹¹Executive Office of the President, *The National Action Plan to Combat Human Trafficking* (December 2021).

Garment Factory Incidents in Bangladesh

Bangladesh plays a significant role in the global textile-industry supply chain. In 2016, Bangladesh's garment sector accounted for over 80 percent (or about \$25 billion) of the country's exports, according to the Congressional Research Service. About \$5.3 billion of those exports went to the United States.

However, the industry has come under increased scrutiny, particularly following the 2013 Rana Plaza factory collapse, which killed more than 1,000 workers. In 2015, Bangladesh police charged the owner of the Rana Plaza factory and 41 others with murder.



Source: Adobe Stock. | GAO-22-105056

According to the Congressional Research Service, many Bangladeshi factories reportedly are substandard and unsafe. Following the Rana Plaza collapse, inspections were conducted as part of the Bangladesh Accord for Fire and Building Safety—an initiative involving over 180 brands and retailers. This collapse, and similar events that have occurred since that time, emphasize the risks of labor abuses in global supply chains.

Source: GAO. | GAO-22-105056

In July 2021, the Office of the U.S. Trade Representative and the Departments of State, Commerce, Labor, the Treasury, and Homeland Security issued a joint *Xinjiang Supply Chain Business Advisory* providing information to businesses and individuals for assessing their risk of exposure to entities engaged in human rights abuses.¹² The advisory recommended that businesses with operations in Xinjiang be aware of the reputational, economic, and legal risks of involvement with entities that engage in human rights abuses, including but not limited to forced labor. As of October 2021, U.S. Customs and Border Protection (CBP) had issued four orders to detain imports of certain goods from the Xinjiang region, including cotton, tomatoes, and their downstream products produced in whole or in part in the region, based on information that reasonably indicates the use of forced labor.¹³ In December 2021, the President signed a law, commonly referred to as the Uyghur Forced Labor Prevention Act, which restricts imports from the Xinjiang region unless there is clear and convincing evidence that the goods were not produced by forced labor.¹⁴

¹²U.S. Departments of State, the Treasury, Commerce, Homeland Security, and Labor; and the Office of the United States Trade Representative, *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China* (July 13, 2021).

¹³CBP, *Withhold Release Order Against Hoshine Silicon Industry Co. Ltd.* (June 24, 2021); *Withhold Release Order Against Cotton Products and Tomato Products Produced in Xinjiang* (Jan. 13, 2021); *Withhold Release Order Against Cotton Products Made by the Xinjiang Production and Construction Corps (XPCC)* (Dec. 2, 2020); and *Withhold Release Order Against Hetian Haolin Hair Accessories Co. Ltd. (Haolin)* (May 1, 2020).

¹⁴Pub. L. No. 117-78 (2021).

Roles and Responsibilities over Defense Commissaries and Exchanges

DOD's resale organizations—DeCA, AAFES, NEXCOM, and MCX—each has its own headquarters, chief executive officer or equivalent, and board of directors.¹⁵ The office of the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) provides oversight and policy direction to DeCA¹⁶ and develops uniform policy and guidance to ensure proper administration of exchange programs and monitor compliance.¹⁷ Within USD (P&R), the Morale, Welfare, and Recreation and Resale Policy Directorate also has responsibility for the policy and management oversight of the commissaries and exchanges, among other things.

In addition, the Defense Executive Resale Board, whose members include the heads of DeCA and the military exchange commands, facilitates organizational collaboration across DOD and the defense resale community, according to a USD (P&R) official. The role and authority of the board is to provide advice to the Assistant Secretary of Defense for Manpower and Reserve Affairs, within USD (P&R). A USD (P&R) official stated that the board can be used to improve the resale community and to cross over organizational boundaries when needed.

DOD policy prohibits DOD personnel, contractors, subcontractors, grantees, and subgrantees from engaging in trafficking in persons or trafficking-related activities, including forced labor.¹⁸ In addition, a number of federal laws and DOD policies and regulations exist to combat trafficking and the potential for trafficking. Many of the laws and regulations specifically addressing forced labor fall within the laws and regulations on human trafficking. Further, DOD has policies and guidance on the acquisition of goods for resale in its commissaries and exchanges. Some of these laws, policies, and guidance also address forced labor. See appendix I for selected laws, regulations, and guidance relevant to the acquisition of goods for resale in DOD's commissaries and exchanges and the prohibition of goods produced using forced labor.

DOD's commissaries and exchanges sell multiple types of goods, including branded products, private label products, and direct import

¹⁵For the purposes of this report, we refer to the Defense Commissary Agency, the Army and Air Force Exchange Service, Navy Exchange Command, and Marine Corps Exchange collectively as DOD's resale organizations.

¹⁶DOD Instruction 1330.17, *DOD Commissary Program* (June 18, 2014) (incorporating change 2, Sept. 14, 2018).

¹⁷DOD Instruction 1330.21, *Armed Services Exchange Regulations* (July 14, 2005).

¹⁸DOD Instruction 2200.01, *Combating Trafficking in Persons (CTIP)* (June 21, 2019).

goods. Branded products are often products with nationally recognized names. Private label products are commonly referred to as “store brands” and are alternatives to—and generally less expensive than—branded products. (See figure 3.) Goods are called “direct import” when a company buys products directly from suppliers in another country, without using another person or organization to make arrangements for them.

Figure 3: Product Types Sold in Department of Defense Commissaries and Exchanges



Source: GAO. | GAO-22-105056

GAO’s Prior Work on Military Exchanges’ Efforts to Identify Working Conditions at Factories

We have previously reported on the military exchanges’ efforts to identify working conditions in overseas factories. In January 2002, we reported that leading retailers—either from a sense of social responsibility, pressure from outside groups, or a desire to protect the reputation of their companies’ product lines—were far more proactive than the military exchanges in identifying working conditions in overseas factories.¹⁹ The government agencies we contacted at that time, including the Departments of State and Labor, expressed a willingness to assist the exchanges in shaping a program that meets the congressional direction to assure that private label exchange merchandise is not produced by child or forced labor. In 2001, the House of Representatives Armed Services Committee directed the Secretary of Defense to ensure that the military exchanges implement a program to assure that their private label merchandise was not produced by child or forced labor.²⁰ In our report, we recommended a framework with six actions for DOD and its exchange services to adopt as they moved to implement the congressionally directed program. DOD implemented our recommendations by amending DOD Instruction 4105.71 *Nonappropriated Fund Procurement Policy*, requiring the military exchanges to, among other things, develop a code

¹⁹GAO, *Defense Management: Industry Practices Can Help Military Exchanges Better Assure That Their Goods Are Not Made by Child or Forced Labor*, [GAO-02-256](#) (Washington, D.C.: Jan. 31, 2002).

²⁰H.R. Rep. No. 107-194, at 293-94 (2001).

of conduct that reflects the values and expectations the exchanges have of their suppliers as part of their program.²¹

Forced Labor Policies and Prevention Processes Exist, but Are Inconsistent

DOD's resale organizations—its commissaries and military exchanges—have policies and processes related to preventing the resale of goods produced by forced labor. However, the resale organization's policies and processes vary and are inconsistent. Limited collaboration has resulted in a fragmented approach across the resale organizations to preventing the availability of goods produced with forced labor.

DeCA and Exchange Policies Related to Forced Labor Vary

DOD guidance specific to resale organizations and their acquisitions provide some direction on avoiding the use of forced labor within supply chains. However, despite their generally common business of providing reduced priced groceries and retail goods to their patrons, the commissaries and exchanges have different policies that govern their efforts to prevent the purchase of goods for resale that may have been produced by forced labor. DOD's counter trafficking instruction states that it is DOD policy to oppose activities contributing to the phenomenon of trafficking in persons, which includes forced labor.²² This broad DOD policy applies to the entire spectrum of DOD missions, functions, programs, and activities, including the defense resale environment, but does not provide comprehensive guidance specifically on forced labor issues related to acquisitions.²³

DeCA is funded in part through appropriated amounts, and its acquisition of goods is subject to the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). The FAR requires that certain clauses related to combating trafficking in persons, which include forced labor, be inserted into contracts for the acquisition of

²¹DOD Instruction 4105.71 was incorporated and canceled by DOD Instruction 4105.67, *Nonappropriated Fund (NAF) Procurement Policy and Procedure* (Feb. 26, 2014) (incorporating change 2, Dec. 1, 2017).

²²DOD Instruction 2200.01.

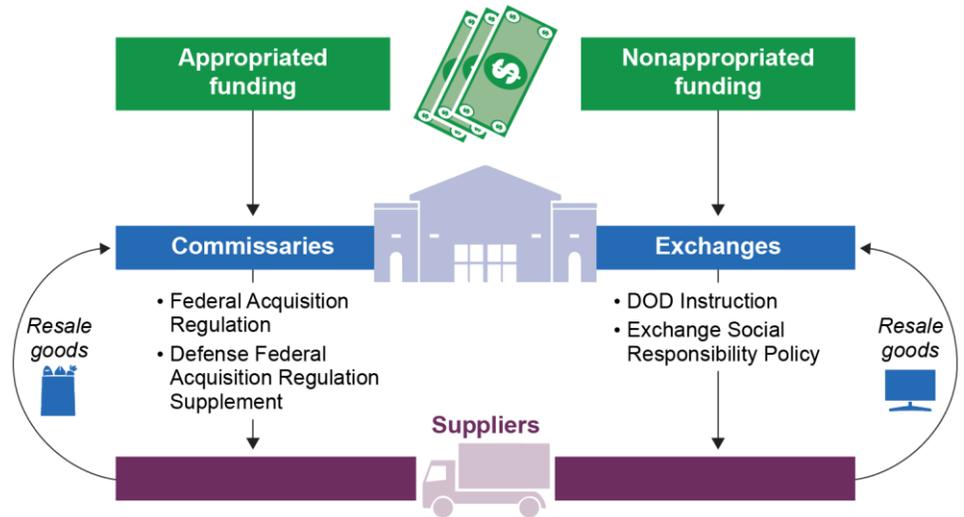
²³Mandatory Combating Trafficking in Persons (CTIP) training is required for acquisition personnel among other specialized DOD populations.

supplies under certain conditions.²⁴ Conversely, the military exchanges operate using nonappropriated funds, and their acquisitions are governed by a DOD instruction on nonappropriated fund procurement.²⁵ This instruction requires that the exchange services implement a program ensuring that private label and nonbranded direct import goods are not produced by forced labor. The military exchanges also signed an agreement on social responsibility policy which, among other items, reiterates this instruction's requirements for private label and direct import goods. Figure 4 illustrates the different funding types and acquisition policies and guidance that govern DeCA's and the exchanges' procurement of resale goods from suppliers.

²⁴The FAR requires all solicitations and contracts to include clause 52.222-50, *Combating Trafficking in Persons* (Oct. 2020). See also 48 C.F.R. § 22.1705, 48 C.F.R. subpart 22.17, *Combating Trafficking in Persons* (Sept. 2021); 48 C.F.R. § 52.222-50, *Combating Trafficking in Persons* (Oct. 2020); 48 C.F.R. § 52.222-19, *Child Labor Cooperation with Authorities and Remedies* (Jan. 2020); 48 C.F.R. § 52.225-13, *Restrictions on Certain Foreign Purchases* (Feb. 2021); DFARS Procedures, Guidance, and Instructions (PGI) § 222.17, *Combating Trafficking in Persons* (June 2015). The Federal Acquisition Regulations System provides policies and procedures for acquisition by all executive agencies. The system consists of the FAR, which is the primary document and agency acquisition regulations that implement or supplement the FAR.

²⁵DOD Instruction 4105.67, *Nonappropriated Fund (NAF) Procurement Policy and Procedure* (Feb. 26, 2014) (incorporating change 2, effective Dec. 1, 2017). The term "appropriated funds" refers to funds provided in a regular annual appropriations act or a law enacting a permanent, indefinite appropriation. Nonappropriated funds would include funds that are not derived from an annual appropriation act or a law enacting a permanent, indefinite appropriation. As such, these funds are generally not subject to the same fiscal controls as appropriations. GAO, *Principles of Federal Appropriations Law*, vol. III, 3rd ed., chap. 15, § c.1.b., [GAO-06-382SP](#) (Washington, D.C.: Feb. 1, 2006).

Figure 4: DeCA's and Exchanges' Funding Types and Policies Governing Acquisition of Resale Goods



Source: GAO analysis of Department of Defense information. | GAO-22-105056

Note: The acquisition regulations for the commissaries apply to all resale goods. The DOD instruction and the exchanges' social responsibility policy include provisions related to forced labor for private label and direct imports.

DeCA. DeCA contracts for goods are required to include a FAR clause prohibiting trafficking in persons.²⁶ The clause includes a definition of and prohibition against forced labor. It also includes a provision requiring a compliance plan that, depending on the contract value, could apply to DeCA's contracts for the purchase of certain goods for resale, including private label, direct import (including nonbranded direct import), and branded goods.

Military Exchanges. Because the three military exchanges fund their operations with the proceeds of sales, rather than appropriations, they are not subject to the FAR. Instead, DOD guidance on nonappropriated fund procurement requires the exchanges to implement a program that ensures that certain resale goods are not produced by forced labor.²⁷ The instruction only applies to private label goods and nonbranded direct

²⁶48 C.F.R. § 52.222-50, *Combating Trafficking in Persons* in all solicitations and contracts for supplies expected to exceed certain thresholds.

²⁷DOD Instruction 4105.67.

import goods, unlike the FAR requirements governing all resale goods procured by DeCA.

DOD's instruction on nonappropriated fund procurement that governs military exchanges also has specific elements that are not reflected in similar DOD guidance for DeCA, including:²⁸

- a code of conduct that reflects the values and expectations the exchange service has of its suppliers;
- an implementation plan for the code of conduct that includes steps to communicate the elements of the code to internal staff, business partners, and factory workers and to train them on these elements; and
- a monitoring effort to ensure the codes of conduct are upheld, among other requirements.

Additionally, DOD's instruction requires the exchanges to use information and insights from government agencies, such as DOL and the Department of State, to facilitate structuring the exchanges' program to assure that private label and nonbranded direct import goods are not produced by child or forced labor. The exchanges are further required to establish ongoing communications with these agencies to help them stay abreast of information that would facilitate their implementation and monitoring efforts to assure that private label and direct import goods are not produced by child or forced labor.²⁹ However, DeCA does not have a similar requirement to use information from other government agencies or to establish ongoing communications with them.

Lastly, in 2002, the three military exchanges jointly signed a social responsibility policy for private label and direct import goods that sets forth broad standards for suppliers to comply with social responsibility and labor requirements, such as not using child or forced labor, which reiterates requirements from the DOD instruction on nonappropriated

²⁸DOD's commissary program is governed through DOD Instruction 1330.17, which does not explicitly address procurement or social responsibility policies. Commissary procurement is subject to the FAR, which does include provisions on forced labor and compliance expectations for contractors. See 48 C.F.R. § 52.222-50, *Combating Trafficking in Persons*.

²⁹[GAO-02-256](#).

fund procurement.³⁰ The joint agreement also instructs that the exchanges are to make periodic assessments of their social responsibility program. However, DeCA is not part of this agreement.

DeCA and Exchanges' Processes to Prevent the Resale of Forced Labor Goods and Requirements for Supplier Information Vary

We found that DeCA has limited processes in place that focus on preventing the resale of goods produced by forced labor, and the three military exchanges have differing processes to prevent the resale of goods produced by forced labor. Further, the resale organizations have varying levels of requirements for their suppliers to provide information about their supply chains and the possible use of forced labor to produce goods for resale.

DeCA. DeCA has limited processes in place to prevent the resale of goods produced by forced labor. These processes rely on the counter trafficking clauses and related requirements within FAR and DFARS.³¹ DeCA officials stated that contracting officers are responsible for incorporating the FAR's counter trafficking clauses, which prohibit the use of forced labor, into contracts. DeCA officials stated that before a contract is awarded, contracting personnel are required to check a federal system for contract management to verify that suppliers are eligible for federal contracts and to ensure suppliers are not barred from working with the federal government for any reason. A supplier could be banned for the identified use of forced labor, although the reason would not be identified specifically in the system. A DeCA official stated he was not aware of any instances in which its suppliers were banned for this reason. However, DeCA officials stated that they do not collect information about their suppliers' adherence to the counter trafficking clauses in their contracts with DeCA.

AAFES. AAFES takes several steps in its efforts to prevent the resale of goods produced with forced labor. First, AAFES has established internal AAFES guidance and procedures that procurement officials are to follow with direct import, private label, and brand name suppliers.³² For example, AAFES guidance directs that the quality assurance department will review

³⁰Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum, *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise* (June 27, 2013).

³¹For a discussion of applicable laws and regulations, see appendix I.

³²AAFES, *The Exchange Social Responsibility Program Policy* (March 2021).

and approve factory certification documents before orders of direct import goods may be placed with a supplier.³³

Second, AAFES has a quality assurance process for the review and approval of documentation submitted by suppliers for direct import and private label goods. The process includes audit or certification documents that attest to suppliers' adherence to elements of the social responsibility policy, such as verifying that suppliers and subcontractors have not used forced labor in the manufacturing of their products.³⁴ AAFES requires audit or certification documents for factories that will supply direct import goods or for private label goods and that are located in countries it deems at risk for forced labor.³⁵

NEXCOM. NEXCOM's *Trading Partner Performance Manual* requires each supplier to complete a form for contractor and subcontractor production facilities, including location, and provide evidence that each current or future production facility for private label goods adheres to the exchanges' joint social responsibility policy.³⁶ Evidence can include certification from a nationally recognized U.S. retailer or brand or one of the military exchanges, among other organizations. Further, the manual requires a yearly update of this information, at a minimum, or whenever there is a change or update to where goods are being manufactured.

MCX. MCX's *Vendor Standards Guide* requires its suppliers of direct imports and private label goods to assess their practices, as well as those of their subcontractors, for compliance with the exchanges' joint social responsibility agreement.³⁷ MCX requires suppliers of private label goods

³³Direct import of branded goods are exempted from AAFES' factory social responsibility audit or certificate document review and approval requirements. Orders from suppliers may be generated without prior approval and the policy disregards whether branded goods are shipped from low or high risk countries.

³⁴According to AAFES' internal social responsibility policy, suppliers can substantiate compliance to its policy by one of three options: (1) the most recent social responsibility audit conducted by a retailer or brand; (2) a certification from an independent social responsibility certifying organization; or (3) hire an independent auditing firm to audit the factory.

³⁵AAFES officials said it uses Amfori's annual *Countries' Risk Classification* to determine risk countries. Amfori is a business association that evaluates and classifies countries through six dimensions of governance identified by the World Bank. These dimensions do not specifically include forced labor indicators.

³⁶Navy Exchange, *Trading Partner Performance Manual* (November 2018).

³⁷Marine Corps Exchange, *Vendor Standards Guide* (July 1, 2020).

to complete a form for each production facility, including their subcontracted facilities. The form includes a questionnaire that asks for the sources of goods, including factory locations, and requires that suppliers self-certify their compliance with the exchanges' joint social responsibility agreement. The form also requires evidence of compliance for non-U.S. facilities. This evidence can include documentation from a compliance program, certain social responsibility programs, a nationally recognized private sector U.S. retailer or brand name company, or one of the three military exchanges. MCX officials stated that it conducts DOD-required annual training on counter trafficking in persons and that this training constitutes its internal policy on forced labor prevention. However, the training informs DOD acquisition personnel about preventing, identifying, and responding to trafficking in persons abuses by people, rather than about preventing the purchase of goods made with forced labor.

Given the varied processes across the resale organizations, we found that:

- **the resale organizations have not consistently outlined steps for their internal procurement staff to follow in preventing the resale of goods produced by forced labor.** For example, according to NEXCOM and MCX officials, they do not have internal guidance—like that used by AAFES—that outlines steps for its procurement staff to follow in preventing the procurement and resale of goods produced by forced labor, separate from the social responsibility agreement signed by all three exchanges.³⁸
- **the amount of information obtained from suppliers about their supply chains varies among the resale organizations.** Officials from DeCA and the exchanges said they generally rely on suppliers to abide by required standards for prevention of forced labor. Further, a USD (P&R) official said that it is incumbent upon the supplier to use due diligence to prevent forced labor from being used in the production of goods resold in commissaries and exchanges. However, AAFES uses social responsibility third-party audits or social responsibility certificates for private label or direct import goods as evidence of compliance with its social responsibility standards. For example, according to AAFES guidance, for private label goods and direct imports from certain countries, suppliers must provide a

³⁸Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum.

factory's most recent social responsibility audit or certificates to the quality assurance department for review and approval.³⁹ Service exchange officials stated that neither NEXCOM nor MCX collects self-assessments, third-party audits, or other evidence of supplier's compliance with social responsibility standards for private label and direct import goods.

For branded goods, the exchanges rely on suppliers to comply with standards but do not conduct further due diligence. NEXCOM officials said that they do not collect or monitor information on the use of forced labor in production of branded goods, but rather expect the suppliers and companies to comply with generally-accepted business standards. AAFES has a similar expectation for branded goods as expressed in their internal guidance.⁴⁰ Further, NEXCOM officials also said they rely on reputable suppliers and follow the media to stay informed about forced labor issues. MCX officials said that they do not have a separate social responsibility requirement or process for collecting information aimed at preventing the procurement of branded goods produced by forced labor.

Limited Collaboration among Resale Organizations Has Led to a Fragmented Approach

Although DOD has established a common goal of seeking to prevent human trafficking, which includes forced labor, the department has not taken steps to ensure collaboration across the resale organizations to establish an overarching policy and consistent processes. Rather, the resale organizations have developed their own policies and processes that have been inconsistent, resulting in fragmentation in the department's efforts to prevent goods produced by forced labor from being available for purchase at its commissaries and exchanges. An OSD official confirmed that there has not been collaboration among the resale organizations on the prevention of the resale of goods produced by forced labor.⁴¹

DOD has recognized the value of greater collaboration among DeCA and the exchanges in improving efficiencies and effectiveness. For example, the resale organizations have entered into a Joint Buying Alliance to

³⁹As discussed earlier, AAFES officials said it uses Amfori's annual *Countries' Risk Classification* to determine risk countries.

⁴⁰AAFES, *The Exchange Social Responsibility Program Policy*.

⁴¹Fragmentation refers to circumstances in which more than one organization within an agency is involved in the same broad area, and opportunities exist to improve those efforts. See GAO, *2021 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions in Financial Benefits*, [GAO-21-455SP](#) (Washington, D.C.: May 12, 2021).

share information about pricing of goods and to negotiate collaboratively with suppliers. They have also established a marketing alliance to cooperate on marketing efforts and shelf stocking and other operational partnerships. In February 2021, DOD formed the Defense Executive Resale Board, which includes senior representatives from OSD, the military services, and the resale organizations. The Board provides a forum to discuss common efforts and concerns. The issue of prevention of the resale of goods produced by forced labor has not arisen at either of the two meetings since the board's creation, according to a USD (P&R) official. However, the official stated that forced labor is a type of concern that the board could include in its deliberations.

While these recent examples of increased collaboration among the resale organizations primarily focused on cost savings measures, DOD and the resale organizations could obtain other types of efficiencies and improvements related to preventing the resale of goods produced by forced labor through increased collaboration and better information sharing. We have previously reported that improved collaboration can address inefficiencies associated with fragmentation.⁴² Specifically, we reported that leading practices for collaboration include defining a common outcome and establishing compatible policies, procedures, and other means to operate across agency boundaries.

Better collaboration among DOD's resale organizations and other key DOD entities to develop and implement an overarching policy for DOD's resale organizations on forced labor that prescribes consistent minimum requirements for each type of resale good could ensure a standard approach that would minimize existing fragmentation in the department's efforts. Similarly, consistent processes and requirements for supplier information could ensure that resale organizations are obtaining better information from suppliers, which could be shared among resale organizations, as appropriate, to better leverage resources and gain efficiencies. Establishing an overarching policy and more consistent processes would help ensure DOD's resale organizations are taking additional actions to prevent the availability of goods produced by forced labor. Further, an overarching policy and consistent processes could help

⁴²GAO-06-15.

provide reasonable assurance that the goods sold in the commissaries and exchanges are not produced by forced labor.

OSD Does Not Monitor Resale Organizations' Compliance with Policies on Forced Labor

We found that OSD does not monitor DeCA's and the exchanges' compliance with policies preventing the resale of goods produced with forced labor or with related processes. In addition, we found that the military exchanges have not consistently implemented all requirements related to resale goods that may be produced by forced labor.

First, officials from USD (P&R) and the Under Secretary of Defense for Acquisition and Sustainment (USD (A&S)) told us that they are not involved in specific activities and processes related to preventing the resale of goods produced by forced labor at DOD commissaries and exchanges. OSD officials further noted that DOD, including the commissaries and exchanges, relies on an expectation that suppliers will exercise due diligence to prevent forced labor from being used in the production of goods. In addition, USD (P&R) and USD (A&S) officials stated they do not specifically monitor commissaries' and exchanges' activities or processes regarding forced labor. For example, while a USD (A&S) official said that the USD (A&S) office monitors the performance of contracts using appropriated funding, including noncompliance with FAR guidance and notifying contractors of noncompliance, it does not review contracts specifically to ensure the commissaries comply with requirements related to forced labor prohibitions. Further, USD (A&S) officials stated that the office does not provide oversight or control of the supply chain for purchases of resale goods at DeCA or the exchanges.

Second, we found that the extent to which the military exchanges have implemented the DOD instruction and joint exchange agreement on social responsibility standards for private label and direct import goods varies and is unclear in some cases.⁴³ Specifically:

- **The exchanges have not used available federal agency information to monitor the potential use of forced labor.** We found that the exchanges have not followed the DOD requirement to use available federal agency information for private label and direct import goods intended for resale at the exchanges. As discussed previously, DOD's instruction on nonappropriated fund procurement and the exchanges' joint social responsibility policy require exchanges to use information and insights from government agencies to facilitate their

⁴³DOD Instruction 4105.67 and Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum.

programs to assure that private label and direct import goods are not produced by child or forced labor. They also require the exchanges to establish ongoing communications with these agencies to help facilitate their implementation and monitoring efforts. However, the exchanges have not followed this guidance.

As discussed in more detail later in this report, DOD, including DeCA and the exchanges, has access to information that other federal agencies publish on their websites, such as lists of goods and countries with increased risks of forced labor.⁴⁴ DOD also receives specific information from other federal agencies, through participating in a government-wide working group on the issue.⁴⁵ However, officials we met with from the three exchanges stated that they had not used information on forced labor from federal agencies, and had not communicated with other federal agencies regarding this issue.⁴⁶ Officials we interviewed from DOL, State, CBP, and the Office of Management and Budget (OMB) confirmed that they had not been in communication with DeCA and the exchanges about forced labor issues.

- **The exchanges have not consistently conducted periodic assessments of their programs aimed at preventing the use of forced labor in goods they procure to resell.** The exchanges' joint social responsibility policy requires that the exchanges periodically assess their social responsibility programs. However, we found that not all exchanges have conducted periodic assessments of their social responsibility programs. In 2018, AAFES audited its private label goods, including whether social responsibility expectations for suppliers were defined and enforced. AAFES officials stated they will audit the social responsibility program every 3 years beginning in

⁴⁴For a list of publicly available information from federal agencies, including resources and tools, see appendix III.

⁴⁵We discuss additional information about this group and DOD participation later in this report.

⁴⁶DeCA officials similarly informed us that they had not used and were not aware of any information on forced labor from federal agencies, and they had not communicated with these agencies about the issue.

2021.⁴⁷ NEXCOM officials stated that, outside of reviewing contract language prohibiting child and forced labor, NEXCOM does not assess its process. However, they added that NEXCOM ensures it works with reputable companies that have robust programs that can handle surprise inspections and certifications. MCX officials stated that MCX does not resell direct import goods, and they confirmed there is no process to ensure that its processes are being followed.

- **The exchanges' enforcement of suppliers and subcontractor requirements regarding forced labor is unclear.** Social responsibility compliance requirements in the exchanges' joint social responsibility policy apply to both suppliers and subcontractors; however, the extent to which the exchanges have enforced this requirement with its suppliers and subcontractors is unclear. NEXCOM and MCX procedures state that suppliers should complete a form or addendum for each facility for both primary supplier and subcontracted facilities used in the production of goods that includes certification that the facility is in compliance with standards and that forced labor is not used. AAFES vendors are not required to fill out forms, but are required to certify compliance with the exchange's joint social responsibility policy. For example, AAFES policy states it uses audit reports and certification reports for primary factories and subcontractors, which AAFES reviews for approval. However, officials from the three exchanges stated that they rely on primary suppliers to ensure that all subcontractors and facilities comply with these requirements.

DOD instructions state that USD (P&R) is responsible for providing oversight and policy direction to DeCA and develops uniform policy and guidance ensuring proper administration of exchange programs and compliance.⁴⁸ Moreover, *Standards for Internal Control in the Federal Government* provide that management should establish an oversight body that oversees management's design, implementation, and operation

⁴⁷According to the AAFES internal audit, AAFES effectively managed private label goods based on strategic objectives and customer base. However, the audit found that private label goods were not always identified consistently within AAFES' systems, which could circumvent verification controls over factory social responsibility. Further, opportunities existed to clarify acceptable evidence of supplier social responsibility, which was resolved during the audit. According to the audit's executive summary, management actions planned or taken in response to recommendations should resolve these and other concerns. Army and Air Force Exchange Service, *Report of Audit: Private Label Merchandise*, No. 2018-02 (June 2018).

⁴⁸DOD Instruction 1330.17 and DOD Instruction 1330.21.

of the entity's internal control system, including overseeing management's assessment of risks to the achievement of objectives.⁴⁹

However, USD (P&R) has not fulfilled its responsibilities with respect to overseeing and monitoring DeCA's and the exchanges' efforts to prevent the resale of goods produced by forced labor because it has not established an oversight mechanism to do so. USD (P&R) has some options available to it for exercising greater oversight. For example, the Defense Executive Resale Board could provide OSD with a forum for overseeing compliance with relevant DOD policies and processes. Likewise, as noted by DOD officials when we discussed the absence of an oversight mechanism with them, the audit functions that are part of each resale organization could conduct regular reviews focused on forced labor and share the results of those reviews with OSD.

Without an oversight mechanism, OSD may not be able to detect instances in which the commissaries and exchanges have not fully complied with existing requirements related to the prevention of the resale of goods produced by forced labor. Additionally, OSD lacks reasonable assurance that any efforts the commissaries and exchanges take to better comply with requirements and strengthen their efforts to prevent the resale of goods produced by forced labor are effective.

Federal Agency Information Is Not Used or Communicated to Assess Forced Labor Risks

DeCA and the Exchanges Are Not Aware of Available Federal Agency Information to Assess Risks of Resale Goods Produced by Forced Labor

Despite having access to other federal agencies' information that could help DeCA and the exchanges identify, assess, and respond to the risks of forced labor in the production of their resale goods, officials from DeCA and the exchanges told us they do not use, and are not aware of, such information. DeCA and the exchanges could use such information to help them identify risks of forced labor, consider steps in their business

⁴⁹[GAO-14-704G](#).

practices to help reduce the potential for resale of goods produced by forced labor, and supplement the information they obtain from suppliers.

Federal agencies with expertise in the area of forced labor have published information that could help any organization, including federal agencies and businesses, assess the risks of goods produced with forced labor. Specifically:

- Some agencies provide information about increased risks of forced labor in the production of certain goods originating from countries of concern. For example, DOL publishes a *List of Products Produced by Forced or Indentured Child Labor*, which is intended to ensure that federal agencies do not procure goods that rely on these types of labor, and CBP's website lists orders it has issued to detain imports of certain goods made with forced labor.
- Federal agencies have also published tools to assist organizations in conducting due diligence to help prevent forced labor. For example, DOL has developed a "Comply Chain: Business Tools for Labor Compliance in Global Supply Chains" website and mobile application. In addition, State funds and helped develop the website www.ResponsibleSourcingTool.org, which, according to State officials, has information on 11 industries and 44 commodities most at risk for forced labor.
- OMB issued an October 2019 memorandum to federal agencies describing best practices for anti-trafficking risk management and mitigation.⁵⁰ The memorandum delineates due diligence practices that agencies' acquisition officials and trafficking in persons experts could take to prevent and mitigate trafficking activities when working with an agency's contractors.

DOL, State, and CBP officials stated that much of the available federal agency information could assist DOD in assessing risks to help prevent forced labor in the production of resale goods at commissaries and the exchanges. See appendix III for a list of information sources and tools available from federal agencies.

DOD's Combating Trafficking in Persons office (CTIP Office), which is responsible for developing DOD's awareness and training on combating trafficking for all DOD components, maintains a publicly available website that refers to some of the federal agencies' tools and resources related to

⁵⁰Office of Management and Budget, *Anti-Trafficking Risk Management Best Practices & Mitigation Considerations*, M-20-01 (Oct. 21, 2019).

forced labor. CTIP Office officials said DOD officials can use its website and listed materials at their discretion. In addition, the CTIP Office has convened quarterly task force meetings in which DOD officials discuss information related to combating trafficking in persons.⁵¹

There is no requirement for DeCA or the exchanges to use relevant federal agency information about the risks of forced labor in production of resale goods that applies to all types of goods sold in the commissaries and exchanges. For this reason, DeCA has not used other federal agencies' information to assess the risks of forced labor in the production of its resale goods. Also for this reason, the exchanges have not used available federal agency information to assess risks of forced labor in the production of their branded or non-direct import goods. In addition, the exchanges have not followed their existing policy requirement to use other agencies' information to assess their private label and nonbranded direct import goods for resale. In part, this is because DOD does not monitor the exchanges' compliance with related policy requirements.

Federal agency information—such as the information referenced above—could help DeCA and the exchanges better identify limitations in and supplement the information they collect from suppliers. We identified two specific instances where the available information would improve efforts to assess the risk of forced labor in the goods for resale. Specifically:

- The exchanges may use information from third-party audit or certification documents that address elements of the social responsibility policy. However, federal agencies have noted that reliance on third-party audits has limitations, particularly in Xinjiang, China, where there are risks of forced labor. According to the *Xinjiang Supply Chain Business Advisory*, third-party audits are not, in and of

⁵¹The CTIP Task Force promotes and facilitates department-wide sharing of lessons learned, best practices, and methodologies to most effectively minimize the possibility of trafficking in persons offenses by DOD personnel. The Task Force also works to improve DOD oversight, identify gaps, and integrate and improve DOD combating trafficking in persons-related processes and procedures. The objective of the task force is to provide a forum to coordinate and collaborate approaches to combating trafficking in persons within DOD and assists in informing and advising stakeholders across the DOD enterprise on combating trafficking in persons-related issues. Department of Defense, *Combating Trafficking in Persons Task Force Charter* (October 16, 2014). According to CTIP Office officials, information about the exposure to labor trafficking in the supply chain within Xinjiang, China, was presented and sent to members of the quarterly task force, including DeCA and the exchanges, in April 2021. However, NEXCOM and MCX were not included in the task force until July 2021.

themselves, a sufficient due diligence program and may not be a credible source of information for indicators of labor abuses in the region for a number of reasons, including that auditors have been detained, harassed, and threatened.⁵² The advisory acknowledged these challenges and noted other sources of information, such as DOL's "Comply Chain: Business Tools for Labor Compliance in Global Supply Chains" website that could help organizations assess risks of forced labor.

- AAFES officials stated they rely on an external organization's publication that classifies countries by risk level, and direct import goods manufactured in low risk countries are automatically exempt from the social responsibility audit requirement.⁵³ However, the risk classification used by AAFES does not specifically factor in forced labor. As a result, AAFES could allow goods from what other federal agencies consider a country of concern for forced labor. For instance, AAFES listed Malaysia as a low risk country as of 2021 and thus exempt from the social responsibility audit requirement.⁵⁴ However, in its 2020 biennial report, DOL's *List of Goods Produced by Child Labor or Forced Labor* showed that the following goods in Malaysia included evidence of their production with forced labor: electronics, garments, palm oil, and rubber gloves.⁵⁵ CBP also issued withhold release orders against palm oil and disposable rubber gloves from Malaysia in

⁵²U.S. Departments of State, the Treasury, Commerce, Homeland Security, and Labor; and the Office of the United States Trade Representative, *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China* (July 13, 2021).

⁵³According to their internal procedures, NEXCOM and MCX do not assign risk classifications to countries or industries of concern. According to AAFES officials, AAFES uses risk classifications developed by Amfori. Amfori BSCI, *Countries' Risk Classification* (2021).

⁵⁴AAFES officials stated that AAFES has not purchased resale goods from Malaysia in the last four years.

⁵⁵Department of Labor, *2020 List of Goods Produced by Child Labor or Forced Labor* (2020).

the September 2020 to December 2021 time period.⁵⁶ Moreover, State's 2021 *Trafficking in Persons* report ranks Malaysia on Tier 3, the lowest ranking, noting that Malaysia does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so, with particular concerns in the palm oil, electronics, garment, and rubber product industries.⁵⁷

Standards for Internal Control in the Federal Government call for agency management to identify, analyze, and respond to risks related to achieving the defined objectives, as well as to use and communicate necessary quality information both internally and externally to achieve the entity's objectives.⁵⁸ Without DOD establishing a requirement for DeCA and the exchanges to use information from other federal agencies for all types of resale goods, DeCA and the exchanges are missing the opportunity to access readily available information that could help them

⁵⁶CBP uses withhold release orders as one of its tools to enforce Section 307 of the Tariff Act of 1930, a law which prohibits the importation of goods made with forced labor. *Convict-made Goods; Importation Prohibited*, Section 307 of Tariff Act of 1930, *codified at* 19 U.S.C. § 1307, *as amended*. CBP may issue a withhold release order when information reasonably but not conclusively indicates that merchandise produced with forced labor is being, or likely to be, imported into the United States. CBP, *Withhold Release Order Against Brightway Holdings Sdn. Bdn* (Dec. 20, 2021); *Withhold Release Order Against Smart Glove Corporation Sdn Bdn* (Nov. 4, 2021); *Withhold Release Order Against Maxter Glove Manufacturing Sdn Bhd, Maxwell Glove Manufacturing Berhad, and Supermax Glove Manufacturing* (Oct. 20, 2021); *Withhold Release Order Against Sime Darby Plantation Berhad and Its Subsidiaries and Joint Ventures* (Dec. 30, 2020); *Withhold Release Order Against FGV Holdings Berhad and Its Subsidiaries and Joint Ventures* (Sept. 30, 2020); *Withhold Release Order Against Top Glove Corporation Bhd.* (July 15, 2020). In addition to issuing withhold release orders against palm oil and disposable rubber gloves from Malaysia, CBP issued a finding—another one of CBP's tools to enforce Section 307 of the Tariff Act of 1930—in March 2021 against a Malaysian company for certain disposable gloves that were produced with the use of forced labor and were being, or likely to be, imported into the United States. *Notice of Finding That Certain Disposable Gloves Produce in Malaysia With the Use of Convict, Forced or Indentured Labor are Being, or Are Likely To Be Imported into the United States*, 86 Fed. Reg. 16,380 (March 29, 2021). In September 2021, based on additional information, CBP declared this finding inactive. *Determination That Maintenance of Finding of March 29, 2021, Pertaining to Certain Disposable Gloves Produced in Malaysia, is No Longer Necessary*, 86 Fed. Reg. 50,725 (Sept. 10, 2021).

⁵⁷U.S. Department of State, *Trafficking in Persons Report* (June 2021). The report shows State's assessment of foreign governments' efforts to meet the Trafficking Victims Protection Act's minimum standards for the elimination of trafficking in persons. According to State officials, the report assesses 188 governments', including the United States', efforts to combat trafficking in persons, including forced labor.

⁵⁸GAO-14-704G.

identify, assess, and respond to the risks of forced labor in the production of their resale goods.

OSD Has Not Communicated to DeCA and the Exchanges Information from Other Federal Agencies about DOD Goods at Risk of Being Produced by Forced Labor

We also found that OSD has received specific information from agencies on goods DOD may have purchased that could be at risk of being produced by forced labor, but did not communicate this information to DeCA and the exchanges. As a result, DeCA and the exchanges could not take steps based on this information, if needed, to prevent the resale of at-risk goods.

DOD is a participating agency in the State-led Senior Policy Operating Group that addresses all aspects of human trafficking, including forced labor, and the Group's Committee on Procurement and Supply Chains, chaired by DOL, State, and OMB.⁵⁹ Officials representing two OSD offices—USD (P&R)'s CTIP Office and USD (A&S)—participate in the committee, according to officials. Since July 2020, the chairs of the committee have periodically identified instances in which specific goods from countries of concern for forced labor may have been procured by agencies, including DOD. According to the State official who served as one of the committee chairs, communication to agencies on goods of heightened risks for forced labor often occurred in conjunction with the issuance of a withhold release order. The committee chairs have shared such information via email with the CTIP Office and USD (A&S) officials who participate in the committee.⁶⁰ Specifically, OMB's email in July 2020 informed DOD's CTIP Office and USD (A&S) officials that CBP issued a withhold release order against a Malaysian rubber glove manufacturer and provided these DOD officials with a list of gloves from Malaysia that DOD may have purchased. In March 2021, OMB provided the same officials with a list of large contracts and associated contractors of DOD-procured goods originating from China. The emails further encouraged DOD to integrate appropriate safeguards, as recommended in OMB's

⁵⁹Pursuant to the Trafficking Victims Protection Act of 2000, the President established the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (PITF), which is a cabinet-level entity that consists of agencies across the federal government—including DOD—responsible for coordinating implementation of the Trafficking Victims Protection Act of 2000, among other activities. Pub. L. No. 106-386, § 105 (2000). The 2003 amendment of the Trafficking Victims Protection Act established the Senior Policy Operating Group, led by the Department of State, which consists of senior officials designated as representatives of the PITF agencies. Pub. L. No. 108-193, § 6(c) (2003).

⁶⁰The OMB official who served as one of the chairs of the Committee on Procurement and Supply Chains explained that he searched the publicly available Federal Procurement Data System to compile information on federally procured goods with increased risks of being produced by forced labor.

memorandum on best practices for anti-trafficking risk management and mitigation. However, CTIP Office and USD (A&S) officials who received the information told us that they did not share the list with DeCA and the exchanges.

Although OSD periodically receives specific information from other federal agencies on potentially at-risk goods, the department has not clearly identified which office or offices should be responsible for communicating this information that could help assess the risk of forced labor in the production of goods sold in DOD's commissaries and exchanges. Officials from both DOD's CTIP and USD (A&S) offices noted that they do not consider their offices responsible for the issue of the potential use of forced labor in the production of resale goods at commissaries and exchanges. The CTIP Office official stated that the office focuses more on trafficking in persons issues for DOD personnel rather than for goods, does not have oversight of DOD's acquisition community, and does not have authority over the commissaries' and exchanges' purchases and sales. The USD (A&S) official said that he has limited involvement and expertise with forced labor issues and that he is responsible for addressing FAR policies that are not applicable to the exchanges.⁶¹

Standards for Internal Control in the Federal Government call for agency management to communicate quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives and addressing risks.⁶² In addition, our prior work has established that agencies can enhance and sustain their collaborative efforts by following key practices for collaboration, which include agreeing on roles and responsibilities.⁶³

Without clarifying which OSD office or offices have the responsibility to communicate other federal agencies' information on potentially at-risk goods to the commissaries and exchanges, the commissaries and exchanges may not be aware of information that could help them identify,

⁶¹In August 2021, we reported on DOD's internal disagreement about which office—the CTIP Office or USD (A&S)—should receive and report contractor trafficking in persons incidents. We recommended that the Secretary of Defense clarify which offices should be involved in receiving and reporting on trafficking in persons incidents involving contractors. According to officials, CTIP and A&S have reached agreement on steps to take to address the recommendation. See [GAO-21-546](#).

⁶²[GAO-14-704G](#).

⁶³[GAO-06-15](#).

assess, and respond to the risks of reselling goods produced by forced labor.

Conclusions

The U.S. government has raised concerns about the use of forced labor in the production of goods for sale in the U.S. and has prohibited the importation of such goods. Meanwhile, DOD operates thousands of stores in the U.S. and abroad—at commissaries and exchanges selling reduced-priced goods for service members and their families—with sales totaling billions of dollars per year. DOD can take actions to better prevent the resale of goods produced by forced labor. Specifically, DOD has the opportunity to establish a consistent, overarching approach on forced labor issues related to resale goods in its commissaries and exchanges. By establishing an overarching policy and consistent processes as well as an oversight mechanism regarding efforts to prevent the resale of goods produced by forced labor, DOD could better ensure that goods produced by forced labor are not available in its commissaries and exchanges.

Moreover, while complex supply chains can make it challenging to verify that goods are not produced by forced labor, federal agencies offer information that DOD could use to better identify, assess, and respond to risks of resale goods being produced by forced labor. By using this available information and determining which offices should communicate it, DOD may better identify, assess, and respond to the risks of reselling goods produced by forced labor.

Recommendations for Executive Action

We are making a total of four recommendations to DOD. Specifically:

The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness, in collaboration with the military departments, DeCA, and military exchanges, establishes an overarching policy and consistent processes to provide reasonable assurance that the goods sold in the commissaries and exchanges are not produced by forced labor. This policy should, at a minimum, for each type of resale good (including branded goods) prescribe (1) consistent minimum requirements for that type of good and (2) the supplier information that is to be collected for that type. (Recommendation 1)

The Secretary of Defense should ensure that the Under Secretary for Defense for Personnel and Readiness establishes an oversight mechanism to assess DeCA's and the military exchanges' compliance with policies and processes designed to prevent the resale of goods produced by forced labor in DOD's commissaries and exchanges. (Recommendation 2)

The Secretary of Defense should ensure the Under Secretary of Defense for Personnel and Readiness, in collaboration with the military departments, establishes a requirement that DeCA and the exchanges use information available from other federal agencies to identify, assess, and respond to risks of forced labor in the production of all types of resale goods. (Recommendation 3)

The Secretary of Defense should clarify which OSD office or offices have the responsibility to communicate other federal agencies' information on potentially at-risk goods to DOD's commissaries and exchanges. (Recommendation 4)

Agency Comments

We provided a draft of this report to DOD for review. In its comments, reproduced in appendix IV, DOD concurred with these recommendations. DOD also provided technical comments, which we incorporated as appropriate. We provided a draft of this report to DHS for technical comment and copies of selected sections of this report to DOL, OMB, and State and made revisions as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Labor, the Secretary of State, the Acting Director of the Office of Management and Budget, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact Elizabeth A. Field at (202) 512-2775 or FieldE1@gao.gov or Kimberly Gianopoulos at (202) 512-8612 or GianopoulosK@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



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I: Resale of Forced Labor Goods in Commissaries and Exchanges, Laws and Policies

The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 included a provision for us to review the laws, regulations, and departmental policies governing the purchase of imported goods by the Department of Defense (DOD) as part of the retail supply chains of the department.¹ The following selected laws, regulations, and guidance are presented because they govern—for DOD’s commissaries and exchanges—either the acquisition of goods for resale or the prohibition of goods produced using forced labor, or both.

Relevant Statutes and Executive Orders

Statutes

- *Victims of Trafficking and Violence Protection Act of 2000*, Pub. L. No. 106-386, div. A (2000), codified at 22 U.S.C. § 7101 et seq. In 2000, Congress enacted the Trafficking Victims Protection Act to combat trafficking in persons. Congress has reauthorized the act six times since its enactment, most recently in 2019. The act, as amended, defines severe forms of trafficking in persons as (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- *Convict-made Goods; Importation Prohibited*, Section 307 of Tariff Act of 1930, codified at 19 U.S.C. § 1307, as amended. The act prohibits the importation of goods made by forced labor, stating that all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

Executive Orders

- Exec. Order No. 13,627, *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, 77 Fed. Reg. 60,029 (Oct. 2, 2012) (Executive Order signed Sept. 25, 2012). In 2012, the President, through Executive Order 13,627, took steps to strengthen protections against trafficking in persons in U.S. government contracting and

¹Pub. L. No. 116-283, § 1078 (2021).

address contractor acts related to trafficking in persons. These steps included expressly prohibiting federal contractors from using misleading or fraudulent recruiting practices, charging employees recruitment fees, denying employees access to their identity documents, or failing to pay for return travel for certain foreign employees, among other things.

- Exec. Order No. 13,126, *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*, 64 Fed. Reg. 32,383 (June 16, 1999) (Executive Order signed June 12, 1999). This executive order states that it is the policy of the United States government that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor. This order also required the Department of Labor to publish a list of products that may have been mined, produced, or manufactured by forced or indentured child labor. The Department of Labor maintains the *List of Goods Produced by Child Labor or Forced Labor* pursuant to this order.
- Exec. Order No. 13,107, *Implementation of Human Rights Treaties*, 63 Fed. Reg. 68,991 (Dec. 15, 1998) (Executive Order signed Dec. 10, 1998). This executive order addresses current and future human rights obligations of the United States pursuant to international treaties. The order states that it is U.S. policy and practice, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party.

Relevant DOD
Department-Wide
Guidance

- DOD Instruction 2200.01, *Combating Trafficking in Persons (CTIP)* (June 21, 2019). This guidance establishes that it is DOD policy to oppose prostitution, forced labor, and any related activities contributing to the phenomenon of trafficking in persons, assigns CTIP responsibilities across DOD, and prescribes training requirements for DOD personnel. For example, the Undersecretary of Defense for Personnel and Readiness develops overall guidance related to personnel policy issues for DOD CTIP; the director of DOD Human Resources Activity is responsible for establishing and overseeing the Combating Trafficking in Persons Program Management Office which among other responsibilities, assesses DOD components' compliance with CTIP guidance and the effectiveness of their CTIP programs; and the Under Secretary of Defense for Acquisition and Sustainment is responsible for

implementing all DOD CTIP policy requirements involving defense contractors in appropriate defense acquisition regulation and policy.

Guidance for Commissaries

DOD Guidance

- DOD Instruction 1330.17, *DOD Commissary Program* (June 18, 2014) (Incorporating Change 2, Sept. 14, 2018). This instruction establishes policy, assigns responsibilities, and prescribes procedures for operating the DOD commissary program.
- DOD Directive 5105.55, *Defense Commissary Agency (DeCA)* (March 12, 2008). This directive reissues the 1990 directive to update the mission, organization and management, responsibilities and functions, relationships, and authorities of DeCA. In particular, the guidance directs that DeCA procuring shall be in accordance with established DOD policies and procedures.

Federal Acquisition Regulations (FAR)

- 48 C.F.R. subpart 22.17, *Combating Trafficking in Persons* (Sept. 10, 2021). This FAR subpart prescribes policy for implementing Executive Order 13,627, *Strengthening Protections Against Trafficking in Persons in Federal Contracts*, dated September 25, 2012. Among other things, it includes a definition of forced labor.
- 48 C.F.R. § 52.225-13, *Restrictions on Certain Foreign Purchases* (Feb. 16, 2021). This provision states that except as authorized by the Office of Foreign Assets Control in the Department of the Treasury, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas.
- 48 C.F.R. § 52.222-50, *Combating Trafficking in Persons* (Dec. 6, 2021). Pursuant to 48 C.F.R. § 22.1705, this clause, which articulates the requirements of contractors, contractor employees and their agents with respect to Combating Trafficking in Persons, is to be included in all government solicitations and contracts when the contract will be performed outside the United States, or if at least \$550,000 of the contract value may be performed outside the United States and the acquisition is not entirely for commercially available off-the-shelf-items.
- 48 C.F.R. § 52.222-19, *Child Labor-Cooperation with Authorities and Remedies* (Jan. 1, 2022). This clause provides remedies for the U.S. government to impose on contractors for specific violations regarding the manufacture or importation of products mined, produced, or

manufactured by forced or indentured child labor. The provision is required to be included in all government solicitations and contracts for acquisitions of supplies expected to exceed certain amount thresholds and when the end product is produced in certain countries.

Military Exchanges

Department-Level Guidance

- DOD Instruction 4105.67, *Nonappropriated Fund (NAF) Procurement Policy and Procedure* (Feb. 26, 2014) (incorporating change 2, Dec. 1, 2017). DOD's instruction on nonappropriated fund procurement establishes policy, assigns responsibilities, and prescribes procedures for procurements using nonappropriated funds. The instruction directs exchange services to implement a program that ensures private label and nonbranded direct-import merchandise is not produced by child or forced labor. This program must include a code of conduct that reflects the values and expectations the exchange service has of their suppliers; an implementation plan for the code of conduct that includes steps to communicate the elements of the code to internal staff, business partners, and factory workers and to train them on these elements; and monitoring effort to ensure the codes of conduct are upheld, among other things. The exchange services are to use other government agencies such as the Department of State and Department of Labor as resources for structuring their program.
- DOD Instruction 1015.15, *Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources* (Oct. 31, 2007) (incorporating change 1, March 20, 2008). This instruction prescribes policy, assigns responsibilities, and sets procedures for the establishment, management, and control of nonappropriated fund instrumentalities, nonappropriated funds, and financial management of resources supporting the nonappropriated fund instrumentalities. It is part of DOD policy that nonappropriated fund instrumentalities programs, such as the exchanges, be operated, maintained, and funded as an integral part of the personnel and readiness program.
- DOD Instruction 1330.09, *Armed Services Exchange Policy* (Dec. 7, 2005). This instruction establishes policy and assigns responsibilities for operating Armed Services exchanges.
- DOD Instruction 1330.21, *Armed Services Exchange Regulations* (July 14, 2005). This instruction implements the *Armed Services Exchange Policy*, prescribes procedures, and assigns responsibilities for operating Armed Services Exchanges.

Service-Level Guidance

- Army Regulation 215-4, *Nonappropriated Fund Contracting* (June 25, 2021)
- Army Regulation 215-8 / Air Force Instruction 34-211(I), *Army and Air Force Exchange Service Operations* (Oct. 5, 2012)
- Air Force Manual 64-302, *Nonappropriated Fund (NAF) Contracting Procedures* (Sept. 26, 2019)
- Chief of Naval Operations Instruction 5450.331A, *Responsibility and Authority for Navy Exchange Operations* (May 6, 2008)
- Chief of Naval Operations Instruction 1700.13C, *Morale, Welfare, and Recreation and Navy Exchange Board of Directors* (April 8, 2016) (incorporating change 1, Feb. 5, 2018)
- Chief of Naval Operations Instruction 1700.7E, *Responsibility for Morale, Welfare and Recreation (MWR) and Navy Exchange (NEX) Programs in the Navy* (Nov. 20, 2006)
- Marine Corps Order 7010.20, *Marine Corps Community Services Nonappropriated Fund Procurement Policy* (Jan. 20, 2015)

Exchange-Level Policies

- Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum, *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise* (June 27, 2013).
- Army and Air Force Exchange Service, *Supplier Requirements Agreement 03-01* (July 2015)
- Army and Air Force Exchange Service, *Exclusive Brand Apparel Supplier Requirements*, current as of November 2021
- Navy Exchange Service, *Trading Partner Performance Manual* (November 2018)
- Navy Exchange Service, *Addendum to General Provisions* (Publication Number 61) (Oct. 4, 2002)
- Marine Corps Exchange, *MCX Terms and Conditions for Resale Merchandise* (July 1, 2021)
- Marine Corps Exchange, *Vendor Standards Guide* (July 1, 2020)

II: Objectives, Scope, and Methodology

The National Defense Authorization Act for Fiscal Year 2021 included a provision for us to review the Department of Defense's (DOD) efforts to prevent the purchase for resale of goods produced by forced labor in commissaries and exchanges, including those imported from areas where forced labor may be used, such as the Xinjiang Uyghur Autonomous Region of China.¹

This report evaluates the extent to which (1) the Defense Commissary Agency (DeCA) and the military service exchanges—the Army and Air Force Exchange Service (AAFES), the Naval Exchange Command (NEXCOM), and the Marine Corps Exchange (MCX)—have established policies and processes for preventing the resale of goods produced by forced labor, (2) the Office of the Secretary of Defense (OSD) monitors DeCA's and the exchanges' compliance with their policies and processes for preventing the resale of goods produced by forced labor, and (3) opportunities exist for DeCA and the exchanges to use information from other federal agencies to inform their efforts to prevent the resale of goods produced by forced labor.

We did not review or sample DOD contracts for resale goods; as such, we did not conduct a compliance audit of contracts for resale goods at DOD's commissaries and exchanges. Additionally, appendix I of this report describes a selection of the laws, regulations, and guidance that govern either the acquisition of goods for resale or the prohibition of goods produced using forced labor—or both—for DOD's commissaries and exchanges.

For our first objective, we reviewed DOD's policies, procedures, and information requirements and compared them to our body of work identifying instances of fragmentation, overlap, and duplication.² Examples of policies, procedures, and information requirements include the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) related to combating trafficking for the Defense Commissaries Agency (DeCA).³ For the three

¹Pub. L. No. 116-283, § 1078 (2021).

²GAO, *2021 Annual Report: New Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions in Financial Benefits*, [GAO-21-455SP](#) (Washington, D.C.: May 12, 2021).

³FAR Subpart 22.17, *Combating Trafficking in Persons*; FAR 52.222-50, *Combating Trafficking in Persons*; DFARS PGI (Procedures, Guidance, and Instruction) 222.17, *Combating Trafficking in Persons*.

military exchanges, we reviewed AAFES' *The Exchange Social Responsibility Program Policy*, NEXCOM's *Trading Partner Performance Manual*, and MCX's *Vendor Standards Guide*.

Having determined that fragmentation was significant to this objective, we reviewed collected evidence against relevant leading practices in collaboration. These leading practices state that collaborative practices generally consist of two or more agencies (1) establishing compatible policies, procedures, and other means to operate across agency boundaries and (2) identifying and addressing needs by leveraging resources.⁴

Further, to determine the policies for DeCA, we interviewed agency officials and reviewed the FAR and DFARS for forced labor prevention requirements. To determine the policies for the three military exchanges—AAFES, NEXCOM, and MCX—we interviewed agency officials and reviewed DOD Instruction 4105.67, *Nonappropriated Fund (NAF) Procurement Policy and Procedure*, and the *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise*.⁵ We reviewed AAFES internal guidance on social responsibility and two business guides—the *Trading Partner Performance Manual* and the *Vendor Standards Guide*—for NEXCOM and MCX, respectively, to identify social responsibility language and forced labor prevention language. Further, we reviewed the *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise* found in the *Trading Partner Performance Manual* to understand the exchanges' policy on branded goods.

In order to determine the processes to prevent the resale of forced labor goods in the commissaries and exchanges, we interviewed agency officials at DeCA and reviewed the FAR and DFARS. We also reviewed documents provided by the three exchanges to understand their efforts to prevent the resale of goods made with forced labor, including identifying a social responsibility manager and collecting information about subcontractors. In order to understand the requirements for suppliers to provide information,

⁴GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

⁵DOD Instruction 4105.67, *Nonappropriated Fund (NAF) Procurement Policy and Procedure* (Feb. 26, 2014) (incorporating change 2, Dec. 1, 2017); and Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum, *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise* (June 27, 2013).

we interviewed DeCA and exchange officials and reviewed documents, such as AAFES' *The Exchange Social Responsibility Program Policy*, NEXCOM's *Private Label Social Compliance Addendum*, and MCX's *Private Label Vendor Profile Addendum* to determine requirements for suppliers to provide information.

For our second objective, we reviewed DOD guidance to determine roles and responsibilities within DOD related to policy direction, oversight, and monitoring regarding DeCA and the military exchanges, as well as procurement of resale goods. We evaluated information from documents and interviews to determine whether DOD used information on forced labor from other federal agencies, as DOD instruction and policy have required of the exchanges for some resale goods. We also interviewed DOD officials about prevention efforts concerning forced labor at DOD's commissaries and exchanges, including officials from the office of the Under Secretary of Defense for Personnel and Readiness (USD (P&R)). Further, we interviewed officials from the three exchanges about the requirements set forth in the *Policy of Social Responsibility and Labor Standards for Private Label and Directly Imported Merchandise*.⁶ We determined that the oversight responsibility component of *Standards for Internal Control in the Federal Government* was significant to this objective, specifically that management should establish an oversight body.⁷ We evaluated DOD information against these standards to determine DOD's oversight structure and activities for preventing the resale of goods produced by forced labor.

For our third objective, we reviewed documents from and interviewed officials representing DOD and other federal agencies that are involved in matters related to goods that may be produced by forced labor. Specifically, we reviewed DOD guidance documents and website information related to forced labor. We also reviewed information on forced labor published and provided by the Departments of State, Labor (DOL), and Homeland Security's Customs and Border Protection (CBP), and the Office of Management and Budget (OMB), including guidance documents, website information, reports, and communications with DOD as part of an interagency group to combat trafficking in persons. In addition, we interviewed DOD officials, including those representing the

⁶Army and Air Force Exchange Service, Navy Exchange Service Command, and Semper Fit and Exchange Service Division Memorandum.

⁷GAO, *Standards for Internal Control in the Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

Combating Trafficking in Persons Program Management Office, USD (P&R), the Under Secretary of Defense for Acquisition and Sustainment, DeCA, AAFES, NEXCOM, and MCX. We interviewed State, DOL, CBP, and OMB officials to determine the information on forced labor these agencies made available to DOD and the extent to which DOD has communicated with the agencies on the topic of forced labor goods.

We determined that two components of *Standards for Internal Control in the Federal Government*—risk assessment and information and communication—were significant to the third objective.⁸ Specifically, agency management should identify, analyze, and respond to risks related to achieving the defined objectives; and communicate internally and externally the necessary quality information to achieve the entity’s objectives, including communicating quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives and addressing risks. We evaluated information from documents and interviews to determine whether DeCA and the exchanges addressed these internal controls standards. Further, we assessed the responsibility of two OSD offices for communicating information to DOD’s resale organizations and compared this against our prior work that found that agencies can enhance and sustain their collaborative efforts by following key practices for collaboration, which include agreeing on roles and responsibilities.⁹

We conducted this performance audit from March 2021 to February 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁸GAO-14-704G.

⁹GAO-06-15.

III: Selected Information Related to Forced Labor from Other Federal Agencies

Federal agencies have published information, including tools and resources, to assist entities in identifying and assessing the risks of the use of forced labor in the production of goods. In our previous work, we have also reported on many of these tools and resources, identified by officials from federal agencies and nonfederal stakeholders—including nongovernmental organizations and private sector entities—to assist the private sector, particularly importers, in complying with laws preventing the import of forced labor goods.¹

Country-Specific Information About Forced Labor

- ***List of Goods Produced by Child Labor or Forced Labor and List of Products Produced by Forced or Indentured Child Labor***, published by the Department of Labor (DOL). DOL's Bureau of International Labor Affairs (ILAB) biennially publishes the *List of Goods Produced by Child Labor or Forced Labor* that shows goods and source countries which ILAB has reason to believe are produced by child labor or forced labor in violation of international standards, as required under the Trafficking Victims Protection Reauthorization Act of 2005.² In our previous work, an official from ILAB told us that the list is a useful resource for companies to learn about the countries and commodities in which forced labor is prevalent. U.S. Customs and Border Protection's (CBP) guidance for importers on informed compliance and reasonable care suggests, among other things, that importers review DOL's *List of Goods Produced by Child Labor or Forced Labor* to familiarize themselves with at-risk country and commodity combinations.³ Similarly, according to DOL's publicly available information, ILAB also maintains the *List of Products Produced by Forced or Indentured Child Labor* and their source countries that it has a reasonable basis to believe are produced by

¹GAO, *Forced Labor: CBP Should Improve Communication to Strengthen Trade Enforcement*, [GAO-21-259](#) (Washington, D.C.: Mar. 1, 2021). We used the list of tools and resources identified in [GAO-21-259](#) as the basis for our list, and included additional tools and resources that we identified through research on the issue of forced labor in goods and as provided by agency officials.

²Pub. L. No. 109-164 (2006).

³CBP, *What Every Member of the Trade Community Should Know: Reasonable Care. An Informed Compliance Publication* (September 2017). This document is part of a series of informed compliance publications advising the public of CBP regulations and procedures and provides guidance on the use of reasonable care in entering merchandise.

forced or indentured child labor, pursuant to Executive Order 13,126.⁴ This list is intended to ensure that U.S. federal agencies and contracted parties do not procure goods made by forced or indentured child labor. Under procurement regulations, federal contractors who supply products on the list must certify that they have made a good faith effort to determine whether forced or indentured child labor was used to produce the items supplied.⁵

- **“Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World” mobile application**, published by DOL. On the basis of the research included in the *List of Goods Produced by Child Labor or Forced Labor* and the *List of Products Produced by Forced or Indentured Child Labor Report*, ILAB’s mobile application provides portable and searchable information about goods produced with child labor or forced labor (see fig. 5).⁶

⁴Exec. Order No. 13,126, *Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*, 64 Fed. Reg. 32,383 (June 16, 1999) (Executive Order signed June 12, 1999).

⁵*Procedures for Acquiring End Products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor*, 48 C.F.R. § 22.1503 (Jan. 1, 2022).

⁶Department of Labor, “Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking around the World,” accessed November 10, 2021, <https://www.dol.gov/general/apps/ilab>.

Figure 5: Department of Labor’s “Sweat and Toil: Child Labor, Forced Labor, and Human Trafficking Around the World” Mobile Application



Source: GAO based on Department of Labor’s Bureau of International Labor Affairs (ILAB) information. | GAO-22-105056

- Trafficking in Persons Report**, published annually by the Department of State. The report compiles information on countries’ actions to combat human trafficking, including forced labor. It assesses governments on their efforts to meet the Trafficking Victims Protection Act’s minimum standards for the elimination of trafficking in persons, and assigns each of them a tier ranking based on that

assessment.⁷ According to State officials who commented on our previous work, the report is based on transparent and public sources to ensure the information is verifiable.⁸

- **Withhold release orders and findings**, published by CBP. CBP uses several tools to enforce Section 307 of the Tariff Act of 1930, which prohibits the importation of goods made with forced labor, including issuing withhold release orders and findings.⁹ CBP may issue a withhold release order when information reasonably but not conclusively indicates that merchandise produced with forced labor is being, or likely to be, imported into the United States.¹⁰ The withhold release order may be for merchandise from a specific manufacturer or for a type of good produced in a particular location, country, or region. In addition, according to CBP officials, CBP may issue a finding when it determines that merchandise is being produced with forced labor. On its website, CBP publishes a list of withhold release orders and findings.¹¹ CBP's informed compliance guidance on reasonable care for the trade community suggests, among other things, that importers review CBP's website, which includes a list of active withhold release orders and findings.¹²
- **Xinjiang Supply Chain Business Advisory**, published by the Departments of State, the Treasury, Commerce, Homeland Security, Labor; and the Office of the U.S. Trade Representative. This document outlines risks that businesses and individuals should consider when assessing business partnerships with, investing in,

⁷ *Victims of Trafficking and Violence Protection Act of 2000, as amended*, Pub. L. No. 106-386, div. A (2000), codified at 22 U.S.C. § 7101 et seq.

⁸For the most recent report, see U.S. Department of State, *Trafficking in Persons Report* (June 2021).

⁹*Convict-made Goods; Importation Prohibited*, Section 307 of Tariff Act of 1930, as amended, codified at 19 U.S.C. § 1307.

¹⁰Findings of Commissioner of CBP, 19 C.F.R. § 12.42 (June 18, 2017).

¹¹CBP, "Withhold Release Orders and Findings List," accessed November 17, 2021, <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings>.

¹²CBP, *What Every Member of the Trade Community Should Know: Reasonable Care. An Informed Compliance Publication* (September 2017). This document is part of a series of informed compliance publications advising the public of CBP regulations and procedures and provides guidance on the use of reasonable care in entering merchandise.

sourcing from, or providing other support to companies operating in Xinjiang, linked to Xinjiang, or with laborers from Xinjiang.¹³

- ***Xinjiang Uyghur Autonomous Region Withhold Release Order Frequently Asked Questions***, issued by CBP. This document includes information on the scope of the withhold release order, proof of admissibility, and due diligence and best practices. As part of due diligence and best practices, CBP recommends that the trade community use a list of federal agencies' resources to better understand and address the risks of forced labor in global supply chains.¹⁴ This appendix includes all of the same resources.

Supply Chain Due Diligence

- ***Memorandum to federal agencies, Anti-Trafficking Risk Management Best Practices & Mitigation Considerations***, published by the Office of Management and Budget (OMB).¹⁵ The memorandum specified its purpose "to enhance the effectiveness of anti-trafficking requirements in federal acquisition while helping contractors manage and reduce the burden associated with meeting these responsibilities." The memorandum further noted that "to achieve these dual goals, this memorandum describes anti-trafficking risk management best practices and mitigation considerations for acquisition officials and agency trafficking in persons experts to take into account when working with the agency's contractors to address their obligations." Furthermore, the memorandum highlights best practices that have been shown to contribute to effective deterrence, and describes mitigation actions that should be given appropriate consideration by contracting officers in evaluating the suitability of steps taken by a contractor that has reported a trafficking incident, among other things.
- **"Comply Chain: Business Tools for Labor Compliance in Global Supply Chains"** website and mobile application, published by

¹³U.S. Departments of State, the Treasury, Commerce, Homeland Security, Labor; and the Office of the United States Trade Representative, *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China* (July 13, 2021).

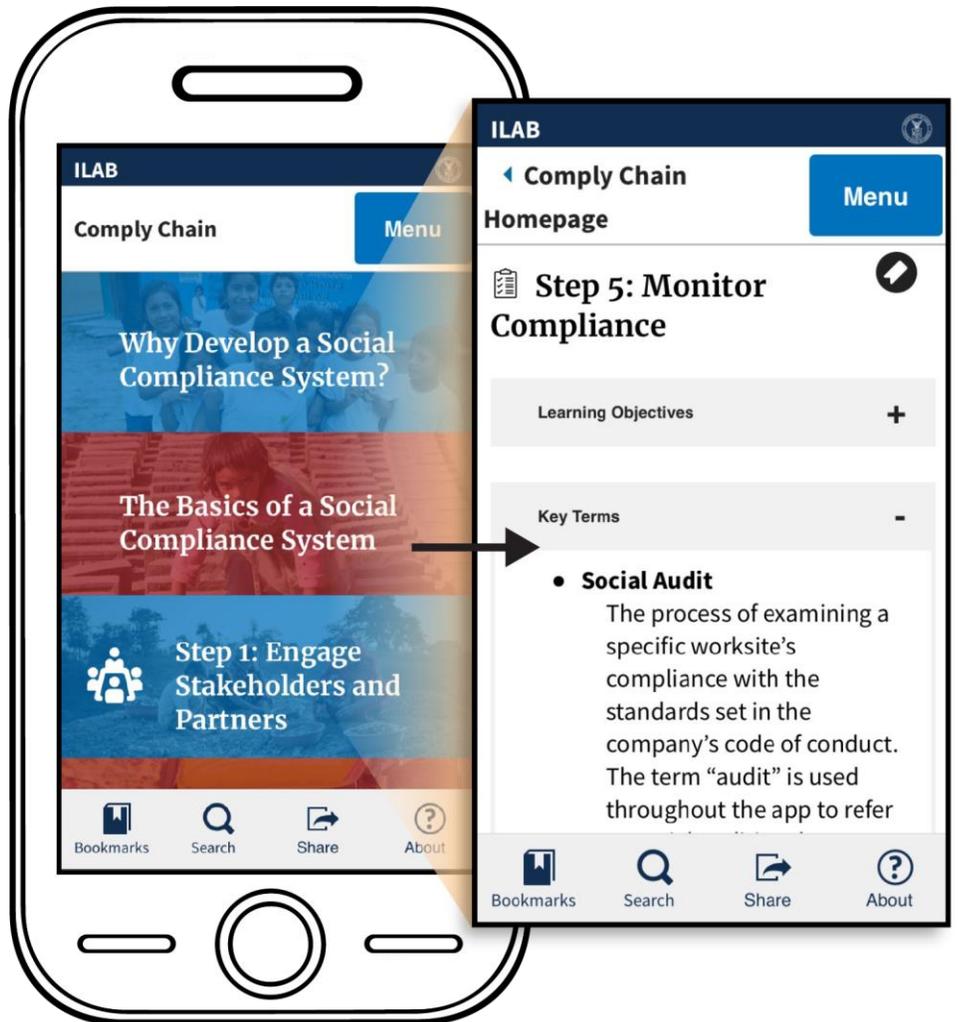
¹⁴CBP, "Xinjiang Uyghur Autonomous Region Withhold Release Order Frequently Asked Questions," (August 2021), accessed October 1, 2021, <https://www.cbp.gov/trade/programs-administration/forced-labor/xinjiang-uyghur-autonomous-region-wro-frequently-asked-questions>.

¹⁵Office of Management and Budget, *Anti-Trafficking Risk Management Best Practices & Mitigation Considerations*, M-20-01 (Oct. 21, 2019).

DOL.¹⁶ This tool is a step-by-step guide on critical elements of a social compliance system, including real-world examples to help businesses and industry groups assess risks and impacts of labor abuse like child labor and forced labor in their global production, according to DOL officials (see fig. 6). The website shares information about the key elements of social compliance systems, guidance on best practices, and tips for assessing the risks and impacts of forced labor. CBP guidance for importers on informed compliance, reasonable care, and responsible business practices suggests that private sector companies review the Comply Chain website to assist with creating a comprehensive and transparent social compliance system.

¹⁶Bureau of International Labor (ILAB), "Comply Chain," accessed November 10, 2021, <https://www.dol.gov/ilab/complychain/>; ILAB "Comply Chain: Business Tools for Labor Compliance in Global Supply Chains," accessed November 10, 2021, <https://www.dol.gov/general/apps/ilab-comply-chain>.

Figure 6: Department of Labor’s “Comply Chain: Business Tools for Labor Compliance in Global Supply Chains” Mobile Application



Source: GAO based on Department of Labor's Bureau of International Labor Affairs (ILAB) information. | GAO-22-105056

- **Better Trade Tool**, published by DOL.¹⁷ This tool is intended to empower users to advance efforts in supply chain transparency as well as sourcing priorities through integrating DOL reporting and U.S. import trade data.
- **Responsible Sourcing Tool website**, maintained and updated by Verité, a nongovernmental organization that works to promote labor rights around the world, with financial support from State. The website aims to help private sector companies and federal contractors identify human trafficking risks in their supply chains.¹⁸ In commenting on our previous work, a Verité official noted that the Responsible Sourcing Tool is the only comprehensive free source of information about human trafficking risks and about actions that companies can and should take to mitigate risk in various circumstances. In its *Fact Sheet: Supply Chain Due Diligence*, CBP identifies the Responsible Sourcing Tool as a source of guidance for companies.
- **Guidelines for Eliminating Child and Forced Labor in Agricultural Supply Chains**, developed by ILAB and the U.S. Department of Agriculture.¹⁹ The guidelines are intended to be used by companies that want to provide reliable assurances that their products are not made with the use of child labor or forced labor, and adoption is voluntary.
- **Guidance on informed compliance, reasonable care, and responsible business practices**, published by CBP. CBP developed several guidance documents for importers that provide information on forced labor risk in the supply chain. For example, CBP's **Supply Chain Due Diligence Fact Sheet** provides resources to assist companies without a comprehensive and transparent social compliance system in place, strengthen systems already in place, or assist with conducting supply chain due diligence. The fact sheet includes information on supply chain ethics, compliance, supply chain audits, CBP's binding rulings program, and informed compliance, among other topics.

¹⁷ILAB, "Better Trade Tools," accessed November 22, 2021, <https://www.dol.gov/agencies/ilab/better-trade-tool>.

¹⁸U.S. Department of State, Verité, Made in a Free World, and the Aspen Institute, "Responsible Sourcing Tool," accessed November 22, 2021, <https://www.responsiblesourcingtool.org/>.

¹⁹Department of Agriculture, *Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products*, 76 Fed. Reg. 20,305 (Apr. 12, 2011).

- ***White House National Action Plan to Combat Human Trafficking.*** This document, as well as the previously mentioned **OMB memorandum to federal agencies on *Anti-Trafficking Risk Management Best Practices & Mitigation Considerations*, *Xinjiang Supply Chain Business Advisory*, and *Xinjiang Uyghur Autonomous Region Withhold Release Order Frequently Asked Questions*** all discuss the risks of forced labor in the supply chain, provide information on actions entities could take to mitigate risks, or make reference to federal resources that organizations could use as part of their due diligence practices.²⁰

²⁰Executive Office of the President, *The National Action Plan to Combat Human Trafficking* (December 2021); Office of Management and Budget, *Anti-Trafficking Risk Management Best Practices & Mitigation Considerations*, M-20-01 (Oct. 21, 2019); U.S. Departments of State, the Treasury, Commerce, Homeland Security, and Labor; and the Office of the United States Trade Representative, *Xinjiang Supply Chain Business Advisory: Risks and Considerations for Businesses and Individuals with Exposure to Entities Engaged in Forced Labor and other Human Rights Abuses linked to Xinjiang, China* (July 13, 2021).

IV: Comments from the Department of Defense



MANPOWER AND
RESERVE AFFAIRS

ASSISTANT SECRETARY OF DEFENSE
1500 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1500

1/18/2022

Ms. Elizabeth A. Field
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Field:

Enclosed is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report GAO 22-105056, "FORCED LABOR: Actions Needed to Better Prevent the Availability of At-Risk Goods in DOD's Commissaries and Exchanges," dated December 1, 2021 (GAO Code 105056).

Should you have any questions, please contact Michael Kelly at Michael.j.kelly51.civ@mail.mil or 703-440-9383.

Sincerely,

PENROD.VIRGINIA.S
TRONG.109140351
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Digitally signed by
PENROD.VIRGINIA.S
03516
Date: 2022.01.18 13:18:08 -0500

Virginia S. Penrod
Acting

Enclosure:
As stated

GAO Draft Report Dated December 1, 2021

GAO-22-105056 (GAO CODE 105056)

“FORCED LABOR: Actions Needed to Better Prevent the Availability of At-Risk Goods in DOD’s Commissaries and Exchanges”

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: The Secretary of Defense should ensure that under the Under Secretary of Defense for Personnel and Readiness, in collaboration with the military departments, Defense Commissary Agency (DeCA), and military exchanges, establish an overarching policy and consistent processes to provide reasonable assurance that the goods sold in the commissaries and exchanges are not produced by forced labor. This policy should, at minimum, for each type of resale good (including branded goods) prescribe (1) consistent minimum requirements for that type of good and (2) the supplier information that is to be collected for that type.

DoD RESPONSE: Concur. The Morale, Welfare, and Recreation (MWR) and Resale Policy Directorate within the Office of the Deputy Assistant Secretary of Defense (Military & Community Policy) will take the lead for developing the overarching policy and consistent processes to provide reasonable assurance that the goods sold in the commissaries and exchanges are not produced by forced labor, as described in the recommendation. While the policy and processes relating to goods produced by forced labor will be consistent, they will not be identical because of the different types of funds used; the commissary procures its goods using appropriated funds and the exchanges procure their goods using nonappropriated funds, which are subject to different acquisition policies and processes.

RECOMMENDATION 2: The Secretary of Defense should ensure that the Under Secretary of Defense for Personnel and Readiness (USD P&R) establishes an oversight mechanism to assess DeCA’s and the military exchanges’ compliance with policies and processes designed to prevent the resale of goods produced by forced labor in DOD’s commissaries and exchanges.

DoD RESPONSE: Concur. The Morale, Welfare, and Recreation (MWR) and Resale Policy Directorate within the Office of the Deputy Assistant Secretary of Defense (Military & Community Policy) will take the lead for developing the oversight mechanism to assess DeCA’s and the military exchanges’ compliance with policies and processes designed to provide reasonable assurance that the goods sold in the commissaries and exchanges are not produced by forced labor. The intention will be to leverage existing capabilities and processes, such as the existing internal audit and inspector general functions of the resale organizations, their respective Boards of Directors and the Defense Executive Resale Board, the required annual status briefings, and the required annual statement of assurance process.

Enclosure

RECOMMENDATION 3: The Secretary of Defense should ensure that the USD P&R, in collaboration with the military departments, establish a requirement that DeCA and the exchanges use information available from other federal agencies to identify, assess, and respond to risks of forced labor in the production of all types of resale goods.

DoD RESPONSE: Concur. The Morale, Welfare, and Recreation (MWR) and Resale Policy Directorate within the Office of the Deputy Assistant Secretary of Defense (Military & Community Policy) will take the lead for establishing the recommended requirement that DeCA and the exchanges use information available from other federal agencies to identify, assess, and respond to risks of forced labor in the production of all types of resale goods.

RECOMMENDATION 4: The Secretary of Defense should clarify which Office of Secretary of Defense office or offices have the responsibility to communicate other federal agencies' information on potentially at-risk goods to DOD's commissaries and exchanges.

DoD RESPONSE: Concur. The Morale, Welfare, and Recreation (MWR) and Resale Policy Directorate within the Office of the Deputy Assistant Secretary of Defense (Military & Community Policy) will take the lead to draft the recommended clarification of the responsibility to communicate other federal agencies' information on potentially at-risk goods to DOD commissaries and exchanges.

V: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to the contacts named above, key contributors to this report were Suzanne M. Perkins and Christina Werth (Assistant Directors), Rebekah J. Boone (Analyst in Charge), Amie Lesser, Victoria Lin, Felicia Lopez, Nancy Santucci, Benjamin Sclafani, Rachel Stoiko, Alex Welsh, and Lillian M. Yob.

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