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WEAPONS ACQUISITION SYSTEM REFORM THROUGH
ENHANCING TECHNICAL KNOWLEDGE AND OVER-
SIGHT ACT OF 2009

R E P O R T

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H.R. 2101

[Including cost estimate of the Congressional Budget Office]



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WEAPONS ACQUISITION SYSTEM REFORM THROUGH EN-
HANCING TECHNICAL KNOWLEDGE AND OVERSIGHT
ACT OF 2009

MAY 12, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. SKELTON, from the Committee on Armed Services,
submitted the following

R E P O R T

[To accompany H.R. 2101]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 2101) to promote reform and independence in the oversight of weapons system acquisition by the Department of Defense, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ACQUISITION ORGANIZATION

- Sec. 101. Independent performance of acquisition oversight functions.
- Sec. 102. Oversight of cost estimation.
- Sec. 103. Oversight of systems engineering.
- Sec. 104. Oversight of performance assessment.
- Sec. 105. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.
- Sec. 106. Role of the commanders of the combatant commands in identifying joint military requirements.

TITLE II—ACQUISITION POLICY

- Sec. 201. Acquisition strategies ensuring competition throughout the lifecycle of major defense acquisition programs.
- Sec. 202. Additional requirements for certain major defense acquisition programs.
- Sec. 203. Requirement for certification of major systems prior to Milestone B.
- Sec. 204. Critical cost growth in major defense acquisition programs.
- Sec. 205. Organizational conflicts of interest in the acquisition of major weapon systems.
- Sec. 206. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

Sec. 207. Consideration of trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.

TITLE I—ACQUISITION ORGANIZATION

SEC. 101. INDEPENDENT PERFORMANCE OF ACQUISITION OVERSIGHT FUNCTIONS.

(a) IN GENERAL.—Chapter 4 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 145. Principal advisors for acquisition oversight functions

“(a) ASSIGNMENT OF ACQUISITION OVERSIGHT FUNCTIONS.—The Secretary of Defense shall designate an official within the Office of the Secretary of Defense as the principal advisor to the Secretary for each acquisition oversight function specified in subsection (c). An official may be designated to perform one or more of such functions. The performance of duties pursuant to a designation under this section shall not limit or otherwise affect the performance of any other duties assigned to such official by the Secretary or by other officers of the Department responsible for the management and direction of such official except as necessary to satisfy the requirements of subsection (b).

“(b) QUALIFICATIONS.—In designating an official for a function pursuant to subsection (a), the Secretary shall ensure that the official reports directly to the Secretary in the performance of such function and is—

- “(1) highly expert in matters relating to the function;
- “(2) assigned the appropriate staff and resources necessary to carry out the function;
- “(3) independent from those engaged in the execution of acquisition programs;
- “(4) free of any undue political influence; and
- “(5) free of any personal conflict of interest.

“(c) ACQUISITION OVERSIGHT FUNCTIONS.—(1) The acquisition oversight functions to be performed by officials designated pursuant to subsection (a) are as follows:

- “(A) Cost estimation.
- “(B) Systems engineering.
- “(C) Performance assessment.
- “(D) Such other acquisition functions as the Secretary considers appropriate.

“(2) Each acquisition oversight function specified in paragraph (1) shall cover all phases of an acquisition program, including setting of requirements, formulation and execution of budgets, and program execution.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“145. Principal advisors for acquisition oversight functions.”

SEC. 102. OVERSIGHT OF COST ESTIMATION.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

“§ 2334. Acquisition oversight: oversight of cost estimation

“(a) ISSUANCE OF POLICIES, PROCEDURES, GUIDANCE, AND COST ESTIMATES.—The official assigned oversight of cost estimation pursuant to section 145 of this title shall issue the following:

“(1) Policies and procedures governing the conduct of cost estimation and cost analysis generally for the acquisition programs of the Department of Defense.

“(2) Guidance relating to cost estimates and cost analyses conducted in connection with major defense acquisition programs under chapter 144 of this title or major automated information system programs under chapter 144A of this title.

“(3) Guidance relating to the proper selection of confidence levels for cost estimates generally, and specifically, for the proper selection of confidence levels for cost estimates for major defense acquisition programs under chapter 144 of this title or major automated information system program under chapter 144A of this title.

“(4) Guidance relating to full consideration of life-cycle management and sustainability costs of major defense acquisition programs under chapter 144 of this title or major automated information system programs under chapter 144A of this title.

“(5) Independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

- “(A) in advance of—

“(i) any certification under section 2366a or 2366b of title 10, United States Code;

“(ii) any decision to enter into low-rate initial production or full-rate production;

“(iii) any certification under section 2433(e)(2) of this title; and

“(iv) any report under section 2445c(f) of this title; and

“(B) at any other time considered necessary by such official or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(b) REVIEW OF COST ESTIMATES, COST ANALYSES, COST INDEXES, AND RECORDS OF THE MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that the official designated for oversight of cost estimation pursuant to section 145 of this title—

“(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments, and all studies conducted by the military departments in connection with such cost estimates and cost analyses, for major defense acquisition programs and major automated information systems of the military departments, and is authorized to comment on such estimates, analyses, and studies; and

“(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the official considers necessary to review in order to carry out any duties under this section.

“(c) PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.—The Secretary of Defense shall ensure that the official designated for oversight of cost estimation pursuant to section 145 of this title is involved in all discussions relating to cost estimation and the estimation of resource levels required for major defense acquisition programs and major automated information systems of the Department of Defense generally at all stages of such programs and may—

“(1) participate in the formulation of study guidance for analyses of alternatives for major defense acquisition programs;

“(2) participate in discussion of resources associated with requirements;

“(3) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department for a major defense acquisition program or major automated information system of the Department of Defense;

“(4) approve or disapprove, at such official’s sole discretion, the confidence level used in establishing a baseline description or budget estimate for a major defense acquisition program or major automated information system of the Department of Defense at any of the events specified in paragraph (5) of subsection (a) of this section;

“(5) concur in the choice of a baseline description or budget estimate for use at any of the events specified in paragraph (5) of subsection (a) of this section; and

“(6) participate in consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

“(d) DISCLOSURE OF CONFIDENCE LEVELS FOR BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION PROGRAMS.—The official designated to perform oversight of cost estimation pursuant to section 145 of this title, in approving a confidence level for use in a major defense acquisition program pursuant to subsection (c)(4), shall—

“(1) disclose the confidence level used in establishing a baseline estimate for the major defense acquisition program, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and

“(2) include the disclosure required by paragraph (1) in any decision documentation approving a baseline estimate for the major defense acquisition program, in the next Selected Acquisition Report pursuant to section 2432 of this title for the major defense acquisition program, and in the next annual report submitted under subsection (f).

“(e) RELATIONSHIP TO COST ANALYSIS IMPROVEMENT GROUP.—The official designated to perform oversight of cost estimation pursuant to section 145 of this title shall be assigned responsibility for the management and oversight of the Cost Analysis Improvement Group of the Department of Defense.

“(f) ANNUAL REPORT.—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of cost estimation pursuant to section 145 of this title shall submit to the congressional defense committees a report on the activities undertaken pursuant to this section during the preceding year. The report shall be in an unclassified form but may include a classified annex.”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2334. Acquisition oversight: oversight of cost estimation.”.

SEC. 103. OVERSIGHT OF SYSTEMS ENGINEERING.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, as amended by section 102, is further amended by adding at the end the following new section:

“§ 2334a. Acquisition oversight: oversight of systems engineering

“(a) ISSUANCE OF POLICIES, PROCEDURES, AND GUIDANCE.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall—

“(1) issue policies, procedures, and guidance for all elements of the Department of Defense concerning—

“(A) the use of systems engineering principles and best practices, generally;

“(B) the use of systems engineering approaches to enhance reliability, availability, and maintainability on major defense acquisition programs;

“(C) the development of systems engineering master plans for major defense acquisition programs, including systems engineering considerations in support of life-cycle management and sustainability;

“(D) the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals;

“(E) the appropriate use of development planning to reduce the time from system development to deployment, to reduce development risk and cost growth, and to provide future benchmarks against which to trade requirements, cost, and schedule;

“(F) developmental test and evaluation generally;

“(G) in coordination with the Director of Operational Test and Evaluation, the integration of developmental test and evaluation with operational test and evaluation;

“(H) in coordination with the Director of Operational Test and Evaluation, the development of test and evaluation master plans for major defense acquisition programs; and

“(I) the use of developmental test and evaluation as part of a coordinated systems engineering approach to system development; and

“(2) provide advocacy, oversight, and direction to elements of the acquisition workforce responsible for functions relating to systems engineering, developmental test and evaluation, and life-cycle management and sustainability.

“(b) PARTICIPATION IN REQUIREMENTS DISCUSSIONS.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall provide input on the inclusion of systems engineering requirements in the process for consideration of joint military requirements by the Joint Requirements Oversight Council pursuant to section 181 of title 10, United States Code, including specific input relating to each capabilities development document.

“(c) ACCESS TO RECORDS OF THE MILITARY DEPARTMENTS.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall have access to any records or data of the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the official considers necessary to review in order to carry out any duties under this section.

“(d) ASSESSMENT OF MILITARY DEPARTMENT CAPABILITIES FOR SYSTEMS ENGINEERING AND DEVELOPMENTAL TEST AND EVALUATION.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall—

“(1) periodically assess the capabilities of the military departments for systems engineering (including development planning) and developmental test and evaluation;

“(2) provide such assessment, along with such recommendations for improvement as the official considers necessary, to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

“(3) include such assessment and recommendations in the annual report required by subsection (g).

“(e) REVIEW AND APPROVAL OF PLANS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall review and approve the following plans with respect to any major defense acquisition program:

“(1) The systems engineering master plan.

“(2) The developmental test and evaluation plan within the test and evaluation master plan.

“(f) REPORTING THROUGH UNDER SECRETARY.—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(g) ANNUAL REPORT.—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of systems engineering pursuant to section 145 of this title shall submit to the congressional defense committees a report on the activities undertaken pursuant to this section during the preceding year. The report shall be in unclassified form but may include a classified annex.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 102, is further amended by adding at the end the following new item:

“2334a. Acquisition oversight: oversight of systems engineering.”.

SEC. 104. OVERSIGHT OF PERFORMANCE ASSESSMENT.

(a) IN GENERAL.—Chapter 137 of title 10, United States Code, as amended by section 103, is further amended by adding at the end the following new section:

“§ 2334b. Acquisition oversight: oversight of performance assessment

“(a) ISSUANCE OF POLICIES, PROCEDURES, AND GUIDANCE FOR PERFORMANCE ASSESSMENTS.—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall be responsible for the issuance of policies, procedures, and guidance governing the conduct of performance assessments for the acquisition programs of the Department of Defense, including assessment of the extent to which acquisition programs—

- “(1) deliver sufficient capability to the warfighter;
- “(2) achieve timely delivery of such capability; and
- “(3) deliver a level of value consistent with resources expended.

“(b) ASSESSMENT OF BASELINE QUALITY.—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall periodically assess the suitability of the baseline descriptions required by section 2435 of title 10, United States Code, of major defense acquisition programs for providing a basis for performance assessment and make such recommendations to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics as the official considers necessary to improve the suitability of baseline descriptions for such purpose.

“(c) EARNED VALUE MANAGEMENT SYSTEM.—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall be responsible for the management and oversight of the records of the earned value management system of the Department of Defense.

“(d) PARTICIPATION IN CERTAIN PROGRAM REVIEWS.—The official designated to perform oversight of performance assessment pursuant to section 145 of this title is authorized to present an assessment of the performance of a major defense acquisition program during—

- “(1) any discussions prior to certification under section 2433(e)(2) of this title;
- “(2) any discussions prior to entry into full-rate production; and
- “(3) consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

“(e) ANNUAL REPORT.—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of performance assessment pursuant to section 145 of this title shall submit to the congressional defense committees a report on the activities undertaken pursuant to this section during the preceding year. The report shall be in unclassified form but may include a classified annex.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 103, is further amended by adding at the end the following new item:

“2334b. Acquisition oversight: oversight of performance assessment.”.

SEC. 105. ASSESSMENT OF TECHNOLOGICAL MATURITY OF CRITICAL TECHNOLOGIES OF MAJOR DEFENSE ACQUISITION PROGRAMS BY THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) ASSESSMENT BY DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.—

(1) IN GENERAL.—Section 139a of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c)(1) The Director of Defense Research and Engineering shall periodically review and assess the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense and report on the findings of such reviews and assessments to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(2) The Director shall submit to the Secretary of Defense and to the congressional defense committees by January 1 of each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense.”

(2) **FIRST ANNUAL REPORT.**—The first annual report under subsection (c)(2) of section 139a of title 10, United States Code (as added by paragraph (1)), shall be submitted to the congressional defense committees not later than March 1, 2011, and shall address the results of reviews and assessments conducted by the Director of Defense Research and Engineering pursuant to subsection (c)(1) of such section (as so added) during the preceding calendar year.

(b) **REPORT ON RESOURCES FOR IMPLEMENTATION.**—Not later than 120 days after the date of the enactment of this Act, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report describing any additional resources that may be required by the Director, and by other research and engineering elements of the Department of Defense, to carry out the following:

- (1) The requirements under the amendment made by subsection (a)(1).
- (2) The technological maturity assessments required by section 2366b(a) of title 10, United States Code.
- (3) The requirements of Department of Defense Instruction 5000, as revised.

SEC. 106. ROLE OF THE COMMANDERS OF THE COMBATANT COMMANDS IN IDENTIFYING JOINT MILITARY REQUIREMENTS.

(a) **IN GENERAL.**—Section 181(d) of title 10, United States Code, is amended—

(1) by inserting “(1)” before “The Under Secretary”; and

(2) by adding at the end the following new paragraph:

“(2) The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b) and in conducting periodic reviews in accordance with the requirements of subsection (e). Such input may include, but is not limited to, an assessment of the following:

“(A) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would inform the assessment of a new joint military requirement.

“(B) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.

“(C) The relative priority of a proposed joint military requirement in comparison with other joint military requirements within the theater of operations of a commander of a combatant command.

“(D) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or the benefit, if any, of a partner nation assisting in development or use of technologies developed to meet the joint military requirement.”

(b) **COMPTROLLER GENERAL OF THE UNITED STATES REVIEW OF IMPLEMENTATION.**—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the implementation of the requirements of (1) subsection (d)(2) of section 181 of title 10, United States Code (as amended by subsection (a)), for the Joint Requirements Oversight Council to solicit and consider input from the commanders of the combatant commands, and (2) subsection (b) of section 181 of title 10, United States Code (as amended by section 942 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 287)). The report shall include, at a minimum, an assessment of the extent to which the Council has effectively sought, and the commanders of the combatant commands have provided, meaningful input on proposed joint military requirements.

TITLE II—ACQUISITION POLICY

SEC. 201. ACQUISITION STRATEGIES ENSURING COMPETITION THROUGHOUT THE LIFECYCLE OF MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) **ACQUISITION STRATEGY ENSURING COMPETITION.**—The Secretary of Defense shall ensure that the acquisition strategy for each major defense acquisition program includes—

- (1) measures to ensure competition, or the option of competition, at both the prime contract level and the subcontract level (at such tier or tiers as are appropriate) of such program throughout the life-cycle of such program as a means to improve contractor performance; and

(2) adequate documentation of the rationale for the selection of the sub-contract tier or tiers under paragraph (1).

(b) MEASURES TO ENSURE COMPETITION.—The measures to ensure competition, or the option of competition, for purposes of subsection (a) may include measures to achieve the following, in appropriate cases if such measures are cost-effective:

- (1) Competitive prototyping.
- (2) Dual-sourcing.
- (3) Unbundling of contracts.
- (4) Funding of a second source for interchangeable, next-generation prototype systems or subsystems.
- (5) Use of modular, open architectures to enable competition for upgrades.
- (6) Use of build-to-print approaches to enable production through multiple sources.
- (7) Acquisition of complete technical data packages.
- (8) Periodic competitions for subsystem upgrades.
- (9) Licensing of additional suppliers.
- (10) Periodic system or program reviews to address long-term competitive effects of program decisions.

(c) CONSIDERATION OF COMPETITION THROUGHOUT OPERATION AND SUSTAINMENT OF MAJOR DEFENSE ACQUISITION PROGRAMS.—In carrying out this section, the Secretary of Defense shall ensure that, with respect to maintenance of a major defense acquisition program, consideration is given to capabilities within the Department of Defense to perform maintenance functions.

SEC. 202. ADDITIONAL REQUIREMENTS FOR CERTAIN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ADDITIONAL REQUIREMENTS RELATING TO MILESTONE B APPROVAL.—Section 2366b of title 10, United States Code, is amended—

(1) in subsection (d)—

- (A) by inserting “(1)” before “The milestone decision authority may”; and
- (B) by striking the second sentence and inserting the following:

“(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

“(A) the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

“(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification components.”;

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following new subsection (e):

“(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all certification components pursuant to subsection (d)(2)(B).”;

(3) in subsection (a)—

- (A) in paragraph (1), by striking “and” at the end;
- (B) by redesignating paragraph (2) as paragraph (3);
- (C) by inserting after paragraph (1) the following new paragraph (2):

“(2) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission or that no preliminary design review is necessary for such program to demonstrate a high likelihood of accomplishing its intended mission; and”;

(D) in paragraph (3), as redesignated by subparagraph (B) of this paragraph—

- (i) in subparagraph (D), by striking the semicolon and inserting “, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and”;
- (ii) by striking subparagraph (E); and
- (ii) by redesignating subparagraph (F) as subparagraph (E).

(b) CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366b OF TITLE 10.—

(1) DETERMINATION.—(A) Except as provided in subparagraph (B), beginning not later than 270 days after the date of the enactment of this Act, for each major defense acquisition program that has not received a Milestone C approval, or Key Decision Point C approval in the case of a space program, the Milestone Decision Authority shall determine whether or not the program satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) of section 2366b of title 10, United States Code.

(B) Subparagraph (A) shall not apply to a major defense acquisition program that has been reviewed pursuant to section 2366b of title 10, United States Code, prior to the date that is 270 days after the date of the enactment of this Act, or a major defense acquisition program that has not yet received Milestone B approval.

(2) ANNUAL REVIEW.—The Milestone Decision Authority shall review any program determined pursuant to paragraph (1) not to satisfy the certification components of subsection (a) of section 2366b of title 10, United States Code, not less often than annually thereafter to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) of such section until such time as the Milestone Decision Authority determines that the program satisfies all such certification components.

(3) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program which the Milestone Decision Authority determines under paragraph (1) does not satisfy the certification components specified in paragraphs (1) and (2) of subsection (a) of section 2366b of title 10, United States Code, shall prominently and clearly indicate that such program has not fully satisfied such certification components until such time as the Milestone Decision Authority makes the determination that such program has satisfied all certification components pursuant to paragraph (2).

(c) REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH.—The official designated to perform oversight of performance assessment pursuant to section 145 of title 10, United States Code, as added by this Act, shall annually review each major defense acquisition program that has been considered pursuant to paragraph (2) of section 2433(e) of title 10, United States Code, and which has been certified as necessary to continue pursuant to such paragraph, to assess the success of the program in achieving adequate program performance after the completion of such consideration. The results of reviews performed pursuant to this subsection shall be included in the next annual report of such official.

SEC. 203. REQUIREMENT FOR CERTIFICATION OF MAJOR SYSTEMS PRIOR TO MILESTONE B.

(a) CERTIFICATION.—Except as provided in subsection (b), beginning not later than 270 days after the date of the enactment of this Act, for each major defense acquisition program that has not received Milestone B approval, or Key Decision Point B approval in the case of a space program, the Milestone Decision Authority shall certify, after consultation with the Joint Requirements Oversight Council on matters relating to program requirements and military needs—

(1) that the program fulfills an approved initial capabilities document;

(2) that the program is being executed by an entity with a relevant core competency as identified by the Secretary of Defense under section 118b of title 10, United States Code;

(3) if the program duplicates a capability already provided by an existing program, the duplication provided by such program is necessary and appropriate;

(4) that a cost estimate for such program has been submitted to the Milestone Decision Authority and that the concurrence of the official designated to perform oversight of cost estimation pursuant to section 145 of title 10, United States Code, has been obtained regarding the choice of a cost estimate; and

(5) that a schedule identifying the time and major activities required to reach Milestone B approval, or Key Decision Point B approval in the case of a space program, has been submitted to the Milestone Decision Authority.

(b) EXCEPTION.—Subsection (a) shall not apply to a major defense acquisition program that has received a certification as required by section 2366a, title 10, United States Code.

(c) REPORTS.—

(1) RELATING TO COST GROWTH OR SCHEDULE DELAY OF PROGRAMS CERTIFIED UNDER SUBSECTION (a).—With respect to a major defense acquisition program

certified by the Milestone Decision Authority under subsection (a), the Milestone Decision Authority shall submit to the congressional defense committees a report in accordance with this subsection if, prior to Milestone B approval—

(A) the projected cost of the program exceeds the cost estimate for the program submitted to the Milestone Decision Authority in accordance with subsection (a)(4) by more than 25 percent; or

(B) the schedule submitted to the Milestone Decision Authority in accordance with subsection (a)(5) is delayed by more than 25 percent.

(2) RELATING TO COST GROWTH OF PROGRAMS CERTIFIED UNDER SECTION 2366a.—With respect to a major defense acquisition program certified by the Milestone Decision Authority under section 2366a of title 10, United States Code, the Milestone Decision Authority shall submit to the congressional defense committees a report in accordance with this subsection if the program manager submits a notification to the Milestone Decision Authority pursuant to section 2366a(b).

(3) MATTERS COVERED.—Any report submitted pursuant to paragraph (1) or (2) shall—

(A) identify the root causes of the cost or schedule growth;

(B) identify appropriate acquisition performance measures for the remainder of the program; and

(C) include one of the following:

(i) A written certification (with a supporting explanation) stating that—

(I) such program is essential to national security;

(II) there are no alternatives to such program that will provide acceptable military capability at less cost;

(III) new estimates of the cost or schedule, as appropriate, are reasonable; and

(IV) the management structure for the program is adequate to manage and control program cost and schedule.

(ii) A plan for terminating the development of the program or withdrawal of Milestone A approval (or Key Decision Point A approval in the case of a space program) if the Milestone Decision Authority determines that such action is in the interest of national defense.

(4) TIME OF SUBMISSION.—A report required by this subsection shall be submitted—

(A) in the case of a report required by paragraph (1), not later than 30 days after the Milestone Decision Authority determines the cost growth or schedule delay described in that paragraph; and

(B) in the case of a report required by paragraph (2), not later than 30 days after the Milestone Decision Authority receives the notification from the program manager described in that paragraph.

(d) DEFINITIONS.—In this section:

(1) MAJOR DEFENSE ACQUISITION PROGRAM.—The term “major defense acquisition program” means the following:

(A) A major defense acquisition program as that term is defined in section 2430 of title 10, United States Code.

(B) An acquisition program of the Department of Defense that the Secretary of Defense expects to become a major defense acquisition program (as defined in such section 2430) upon Milestone B approval, on the basis of the cost estimate submitted in accordance with subsection (a)(4) of this section or subsection (a)(4) of section 2366a of title 10, United States Code.

(2) INITIAL CAPABILITIES DOCUMENT.—The term “initial capabilities document” has the meaning provided by section 2366a (c)(2) of such title.

(3) ENTITY.—The term “entity” has the meaning provided by section 2366a(c)(4) of such title.

(4) MILESTONE B APPROVAL.—The term “Milestone B approval” has the meaning provided by section 2366(e)(7) of such title.

SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL COST GROWTH.—Paragraph (2) of section 2433(e) of title 10, United States Code, is amended to read as follows:

“(2)(A) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

- “(i) determine the root cause or causes of the critical cost growth including the role, if any, of—
- “(I) changes or growth in requirements;
 - “(II) unrealistic baseline estimates;
 - “(III) any design, engineering, manufacturing, or technology integration issues;
 - “(IV) changes in procurement quantities;
 - “(V) inadequate program funding or funding instability;
 - “(VI) poor performance by government or contractor personnel responsible for program management; or
 - “(VII) other causes as identified by the Secretary;
- “(ii) subject to subparagraph (B), determine whether to terminate such program or to restructure such program after assessing—
- “(I) the root causes of cost growth identified pursuant to subparagraph (A);
 - “(II) the validity and urgency of the joint military requirement;
 - “(III) the viability of the acquisition strategy;
 - “(IV) the quality of program management;
 - “(V) a broad range of potential material and non-material alternatives to such program; and
 - “(VI) the need to reduce funding for other programs due to the cost growth on such program;
- “(iii) submit the determination made under clause (ii) to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title; and
- “(iv) if a report under paragraph (1) has been previously submitted to Congress with respect to such program or subprogram for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, submit a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.
- “(B) A program may be restructured pursuant to a determination under subparagraph (A)(ii) only if—
- “(i) a written certification (with a supporting explanation) is submitted along with the determination stating that—
 - “(I) such program is essential to national security;
 - “(II) there are no alternatives to such program which will provide acceptable military capability at less cost;
 - “(III) new estimates of the program acquisition unit cost or procurement unit cost are reasonable;
 - “(IV) the program is a higher priority than programs whose funding must be reduced to accommodate cost growth on such program; and
 - “(V) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost; and
 - “(ii) the most recent milestone decision is revisited and results in the approval of such restructured program.”
- (b) **TOTAL EXPENDITURE FOR PROCUREMENT RESULTING IN TREATMENT AS MAJOR DEFENSE ACQUISITION PROGRAM.**—Section 2430(a)(2) of such title is amended by inserting “, including all planned increments or spirals,” after “an eventual total expenditure for procurement”.
- (c) **REQUIREMENT TO INCLUDE COST GROWTH FUNDING CHANGES IN REPORT.**—When a program is restructured under paragraph (2) of section 2433(e) of title 10, United States Code, the next Selected Acquisition Report for such program submitted pursuant to section 2432 of such title occurring after the submission of the budget for the fiscal year following the fiscal year in which the program was restructured shall contain a description of all funding changes included in the budget for that fiscal year as a result of the cost growth on such program, including reductions made in the budgets of other programs to accommodate such cost growth.
- (d) **CONFORMING AMENDMENTS.**—Section 2433(e)(3) of such title is amended—
- (1) in subparagraph (A), by striking “or (2)(B)” and inserting “or (2)(A)(iii);” and
 - (2) in subparagraph (B)—
 - (A) by striking “or (2)(B)” and inserting “or (2)(A)(iii);” and
 - (B) by striking “paragraph (2)(A)” and inserting “paragraph (2)(B)”.

SEC. 205. ORGANIZATIONAL CONFLICTS OF INTEREST IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

- (a) **REQUIREMENT FOR PANEL TO PRESENT RECOMMENDATIONS.**—Not later than one year after the date of the enactment of this Act, the Panel on Contracting Integ-

ity established pursuant to section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2320) shall present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in the acquisition of major weapons systems.

(b) REVISED REGULATIONS REQUIRED.—Not later than 180 days after receiving recommendations pursuant to subsection (a), the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to address organizational conflicts of interest by contractors in the acquisition of major weapon systems.

(c) POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST.—The organizational conflicts of interest considered during the preparation of the recommendations required pursuant to subsection (a) shall include conflicts that could arise as a result of any of the following:

(1) Lead system integrator contracts on major defense acquisition programs and contracts that follow lead system integrator contracts on such programs, particularly contracts for production.

(2) The ownership of business units performing systems engineering and technical assistance functions, professional services, or management support services in relation to major defense acquisition programs by contractors who simultaneously own business units competing to perform as either the prime contractor or the supplier of a major subsystem or component for such programs.

(3) The award of major subsystem contracts by a prime contractor for a major defense acquisition program to business units or other affiliates of the same parent corporate entity, and particularly the award of subcontracts for software integration or the development of a proprietary software system architecture.

(4) The performance by, or assistance of, contractors in technical evaluations on major defense acquisition programs.

(d) EXTENSION OF PANEL ON CONTRACTING INTEGRITY.—Subsection (e) of section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2321) is amended to read as follows:

“(e) TERMINATION.—(1) Subject to the restriction in paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been fully mitigated.

“(2) The panel shall continue to serve at least until December 31, 2011.”.

SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF PRODUCTS AND SERVICES.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall commence carrying out a program to recognize excellent performance by individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense in the acquisition of products and services for the Department of Defense.

(b) ELEMENTS.—The program required by subsection (a) shall include the following:

(1) Procedures for the nomination by the personnel of the military departments and the Defense Agencies of individuals and teams of members of the Armed Forces and civilian personnel of the Department of Defense for eligibility for recognition under the program.

(2) Procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise, and are appointed in such manner, as the Secretary shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Secretary may award to any individual recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.

SEC. 207. CONSIDERATION OF TRADE-OFFS AMONG COST, SCHEDULE, AND PERFORMANCE IN THE ACQUISITION OF MAJOR WEAPON SYSTEMS.

(a) REVIEW OF MECHANISMS FOR CONSIDERING TRADE-OFFS.—The Comptroller General shall review the use by the Department of Defense of certain mechanisms for considering trade-offs among cost, schedule, and performance in the acquisition of major weapon systems.

(b) MECHANISMS INCLUDED.—The mechanisms reviewed pursuant to subsection (a) shall include—

(1) the Tri-Chair Committee, as defined in section 817 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 122 Stat. 225);

(2) Configuration Steering Boards as established pursuant to section 814 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4528);

(3) any mechanism that is used or that may potentially be used by the Office of the Under Secretary of Defense (Comptroller) for considering trade-offs among cost, schedule, and performance in the acquisition of major weapon systems; and

(4) any other mechanisms identified as allowing for the consideration of trade-offs in the report on investment strategies for major defense acquisition programs required by section 817 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181).

(c) ASSESSMENT OF MECHANISMS.—The review shall describe and evaluate the effectiveness of the mechanisms identified in subsection (b).

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the review and assessment performed pursuant to this section. The report shall include such recommendations as the Comptroller General considers appropriate on the matters reviewed, including recommendations to improve the effectiveness of the mechanisms included in the report.

PURPOSE AND BACKGROUND

The purpose of H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009, is to amend title 10, United States Code, and to establish other new statutory requirements, to improve efficiency and the quality of outcomes in the acquisition of major weapons systems of the Department of Defense.

The Government Accountability Office performs an annual assessment of the major defense acquisition programs of the Department. The latest assessment, released on March 30, 2009, reported that the Department estimates that its total costs for 96 major defense acquisition programs will exceed initial estimates for those programs by \$296.0 billion in constant fiscal year 2009 dollars. While these expenses will be incurred over an extended period of time, the total is greater than two years' worth of salaries and health care expenses incurred for all members of the armed forces in fiscal year 2009. The Government Accountability Office's analysis of the Department's cost overruns, however, measure only one symptom of a larger problem. They measure only the performance of the Department in fulfilling its acquisition plans. They do not measure the extent to which the Department's acquisition plans will allow it to fulfill the national military strategy, or the extent to which they are consistent with the likely level of budgetary resources available to the Department in future fiscal years. While there are no clear measures of the Department's performance against these benchmarks, it is the committee's view that a more complete assessment would reveal that the Department's approach to the acquisition and lifecycle sustainability of major weapons systems faces greater challenges than cost growth alone.

The committee has worked for decades to improve the acquisition of major weapons systems. In 1982, the committee created a definition for major defense acquisition programs, and required the Department to submit selected acquisition reports and unit cost reports on these programs. In 1989, the committee established a requirement for the review of major defense acquisition programs experiencing certain levels of cost growth, an event commonly known

as a Nunn-McCurdy breach. More recently, beginning in the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) and continuing in each subsequent fiscal year, the committee has devoted a subtitle of each national defense authorization act to provisions relating to major defense acquisition programs. As part of this subtitle, the committee has enacted legislation reforming the processes by which the Department manages major defense acquisition programs including how the Department: establishes and maintains program baselines; reviews programs at critical points in the acquisition process; manages program contractors; acquires commercial items for use on programs; acquires program technical data; trains and certifies the workforce executing programs; and requests authority for multiyear procurement. The committee utilized the experience gained in these legislative efforts, along with the hearing testimony received as described in the section in this report on hearings, to formulate its recommendations on H.R. 2101. In addition, on March 18, 2009, the committee organized a special oversight panel on defense acquisition reform to examine the defense acquisition system and possible ways to improve the system's outcomes. While the panel's efforts are continuing, the panel's input contributed greatly to the committee's consideration of the bill.

This bill seeks to improve the efficiency and quality of outcomes in major weapons system acquisition using four primary mechanisms. It focuses additional oversight on the early stages of major defense acquisition programs, during which time more than 70 percent of total program costs are determined. It also focuses oversight on programs that demonstrate lack of performance: either by failing to satisfy the statutory criteria for entering into development for production or by experiencing a Nunn-McCurdy breach. It promotes greater use of competition. And it promotes and enables the consideration of trade-offs between cost, schedule, and performance. The bill requires the Secretary of Defense to designate an official or officials to perform three critical oversight functions: cost estimation, systems engineering, and performance assessment. These officials will assist the Secretary in implementing the mechanisms the bill establishes. The bill makes other organizational improvements in the Department by increasing the role of the combatant commanders in setting requirements for major defense acquisition programs, requiring the Department to address potential organizational conflicts of interest of contractors, and rewarding excellence in acquisition. The committee believes that in addition to improving the operation of the Department, the bill will result in the development and submission of more accurate and more objective information to support the committee's review of major defense acquisition programs.

LEGISLATIVE HISTORY

H.R. 2101 was introduced on April 27, 2009, and referred to the Committee on Armed Services.

On May 7, 2009, the Committee on Armed Services held a markup session to consider H.R. 2101, as introduced. The committee, a quorum being present, ordered reported H.R. 2101, as amended, to the House with a favorable recommendation by a record vote of 59-0.

HEARINGS

Committee consideration of the matters contained in H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009, was informed by multiple committee hearings. Several hearings were held on matters that relate to the acquisition of major weapons systems including: a hearing with the Honorable Robert M. Gates, Secretary of Defense, on the priorities of the Department of Defense in the new Administration conducted on January 27, 2009; a hearing with Mr. Gene Dodaro, the Acting Comptroller General, entitled “The Department of Defense at High Risk: Recommendations of the Comptroller General for Improving Departmental Management” on March 12, 2009; a hearing of the panel on defense acquisition reform with Mr. David G. Ahern, the Director of Portfolio Systems Acquisition, Department of Defense, and Mr. Michael J. Sullivan, Director for Acquisitions and Sourcing Management, Government Accountability Office, entitled “Measuring Value and Efficiency: How to Assess the Performance of the Defense Acquisition System” on April 1; a hearing of the panel on defense acquisition reform with Ms. Laura Baldwin, Director for the Resource Management Program, RAND, Mr. William M. Solis, Director for Defense Capabilities and Management, Government Accountability Office, Mr. John P. Hutton, Director for Acquisitions and Sourcing Management, Government Accountability Office, and Mr. Jeffrey P. Parsons, Executive Director, U.S. Army Contracting Command, entitled “Measuring Value and Risk in Service Contracting” on April 23; and a hearing of the oversight and investigations subcommittee with Mr. Shay Assad, Acting Deputy Under Secretary of Defense for Acquisition and Technology, Lieutenant General Ross Thompson, Military Deputy to the Assistant Secretary of the Army for Acquisition Logistics, and Technology, Mr. James Thomsen, Principal Civilian Deputy to the Assistant Secretary of the Navy for the Acquisition Workforce, Lieutenant General Mark Shackelford, Military Deputy to the Assistant Secretary of the Air Force for Acquisition, and Mr. John K. Needham, Director for Acquisition and Sourcing Management, Government Accountability Office, entitled “Acquisition Workforce: Merely a Business Expense or a Force Multiplier for the Warfighter” on April 28, 2009. In addition, two hearings were held on the bill and related matters after its introduction including: a hearing with the Honorable Rudy deLeon, Senior Vice President, Center for American Progress, former Deputy Secretary of Defense, the Honorable David Chu, former Under Secretary of Defense for Personnel and Readiness and former Director for Program Analysis and Evaluation, Department of Defense, Mr. David Berteau, Director of the Defense Industrial Initiatives Group, Center for Strategic and International Studies, and Mr. Paul Francis, Director for Acquisitions and Sourcing Management, Government Accountability Office, entitled “Reform of Major Weapons Systems Acquisition and Related Legislative Proposals” on April 30, 2009; and a hearing with the Honorable Bill Lynn, Deputy Secretary of Defense, entitled “Department of Defense at High Risk: the Chief Management Officer’s Recommendations for Acquisition Reform and Related High Risk Areas” on May 6, 2009.

SECTION-BY-SECTION ANALYSIS

The following is a section-by-section analysis of those sections of H.R. 2101, as amended, by the Committee on Armed Services.

Section 1—Short Title; Table of Contents

This section would establish the short title of the bill as the “Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009.”

TITLE I—ACQUISITION ORGANIZATION

LEGISLATIVE PROVISIONS

Section 101—Independent Performance of Acquisition Oversight Functions

This section would require the Secretary of Defense to designate officials within the Office of the Secretary of Defense as the principal advisors to the Secretary for each of the following acquisition oversight functions: cost estimation, systems engineering, and performance assessment. This section would allow an official to perform one or more of such functions. This section would require the Secretary to select officials for these assignments who are: highly expert in the function; assigned the appropriate staff and resources to carry out the function; independent; and free of undue political influence or personal conflict of interest. The officials designated under this section would advise the Secretary on these functions during the setting of requirements, formulation and execution of budgets, and program execution.

Section 102—Oversight of Cost Estimation

This section would require the official responsible for cost estimation to establish policies and procedures governing the conduct of cost estimation and cost analysis in general, and in particular for major defense acquisition programs (MDAP) and major automated information systems (MAIS). It would require the official to issue guidance on the selection of confidence levels for cost estimates and guidance relating to the consideration of lifecycle management and sustainability costs for MDAPs and MAISs. This section would require the official to issue independent cost estimates for MDAPs and MAISs at milestone A, milestone B, entry into low-rate initial production, entry into full-rate production, and after a breach of the significant or critical cost growth thresholds (Nunn-McCurdy breach).

This section would authorize the official to promptly receive the results of all cost estimates for MDAPs and MAISs conducted by the military departments and to comment on them. The official would also have access to all records of the military departments that the official deems necessary. The official would participate in formulating study guidance for an analysis of alternatives for a MDAP, discussions of resources associated with requirements, and discussions regarding a decision to request multi-year procurement authority for a MDAP. The official would have the sole authority to select the confidence level used in establishing a baseline description or budget estimate for a MDAP. The baseline description

or budget estimate used at critical points in the acquisition process for a MDAP could be selected only with the official's concurrence. The official would be required to disclose the confidence level selected for a MDAP, the rationale for such confidence level, and justify the decision if the confidence level is less than 80 percent. The official would be responsible for the Department's Cost Analysis Improvement Group. This section would require the official to submit an annual activities report to the congressional defense committees by March 1 each year in unclassified form with a classified annex if necessary.

Section 103—Oversight of Systems Engineering

This section would require the official responsible for systems engineering to issue policies, procedures, and guidance on: the use of systems engineering principles and best practices in the Department of Defense; the use of systems engineering to enhance reliability, availability, and maintainability of major defense acquisition programs (MDAP); the development of systems engineering master plans (to include consideration of lifecycle management and sustainability) and test and evaluation master plans for MDAPs; the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals; the appropriate use of development planning; developmental test and evaluation in general; the integration of developmental and operational testing; and the use of developmental test and evaluation as part of a coordinated systems engineering approach. This section would also require the official to provide advocacy, oversight, and guidance to the elements of the acquisition workforce responsible for systems engineering, developmental test and evaluation, and lifecycle management and sustainment. This section would require the official to provide the congressional defense committees with an annual activities report by March 1 each year in unclassified form with a classified annex if necessary.

This section would authorize the official to participate in requirements discussions and would provide the official access to all records of the military departments that the official deems necessary to perform assigned duties. The official would be required to periodically assess the capabilities of the military departments for systems engineering (including development planning) and developmental test and evaluation and to provide such recommendations for improvement in such capabilities as the official deems necessary to the Secretary of Defense. The official would be authorized to review and approve the systems engineering master plan and the developmental test and evaluation plan within the test and evaluation master plans for all MDAPs. The official would report to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology, and Logistics.

Section 104—Oversight of Performance Assessment

This section would require the official responsible for performance assessment to issue policies, procedures, and guidance for assessing the acquisition programs of the Department of Defense including the extent to which they deliver sufficient capability to the warfighter, achieve timely delivery of such capability, and deliver

a level of value consistent with resources expended. This section would require the official to periodically assess the suitability of the baseline descriptions of major defense acquisition programs (MDAP) for providing a basis for such performance assessment and to make recommendations for their improvement to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics.

This section would make the official responsible for the records of the Department's earned value management system. It would also authorize the participation of the official in reviews of MDAPs at a Nunn-McCurdy breach, entry into full-rate production, or any decision to request multi-year procurement authority. This section would require the official to provide the congressional defense committees with an annual activities report by March 1 each year in unclassified form with a classified annex if necessary.

Section 105—Assessment of Technological Maturity of Critical Technologies of Major Defense Acquisition Programs by the Director of Defense Research and Engineering

This section would require the Director of Defense Research and Engineering to periodically review and assess the technological maturity and integration risk of critical technologies for major defense acquisition programs and submit any related findings to the Under Secretary of Defense for Acquisition, Technology, and Logistics. This section would require the Director to report annually to the Secretary of Defense and to the congressional defense committees on the maturity and risk of such technologies. It would also require the Director to report to the congressional defense committees on any additional resources required to implement this section, certain requirements applicable at milestone B, and the requirements of Department of Defense Instruction 5000.

Section 106—Role of the Commanders of the Combatant Commands in Identifying Joint Military Requirements

This section would require the Joint Requirements Oversight Council to seek and consider input from the commanders of the unified combatant commands in formulating and reviewing joint military requirements. The input would include: current or projected missions or threats in the theater of operations of a combatant commander; the necessity and sufficiency of a proposed requirement; the relative priority of a proposed requirement; and the ability of partner nations in the combatant commander's theater of operations to assist in meeting, developing, or using technologies to meet the requirement. This section would also require the Comptroller General, within two years after the date of enactment of this Act, to submit a report to the Senate Committee on Armed Services and the House of Representatives Committee on Armed Services on the implementation of the requirements of this section and of the requirements established by section 942 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181), and to include in the report an assessment of the effectiveness of the input provided pursuant to such requirements.

TITLE II—ACQUISITION POLICY

LEGISLATIVE PROVISIONS

Section 201—Acquisition Strategies Ensuring Competition Throughout the Lifecycle of Major Defense Acquisition Programs

This section would require the Secretary of Defense to ensure that the acquisition strategy for each major defense acquisition program includes measures to ensure competition, or the option of competition, at both the prime contract and subcontract level (at certain subcontract tiers) throughout the lifecycle of each program. This section would require consideration of such measures as competitive prototyping, dual-sourcing, unbundling of contracts, developing second sources, use of modular open architectures, use of build to print approaches, acquisition of complete technical data packages, periodic competitions for subsystem upgrades, licensing of additional suppliers, and periodic system reviews to address the long-term competitive effects of program decisions. This section would also require that the Department of Defense's organic capabilities be considered for the performance of maintenance support functions.

Section 202—Additional Requirements for Certain Major Defense Acquisition Programs

This section would require the milestone decision authority to annually review any major defense acquisition program (MDAP) that received milestone B approval due to a waiver of one or more of the requirements for certification at milestone B required by section 2366b of title 10, United States Code, until such time as the program satisfies all of the requirements for such certification. This section would require a one-time review of MDAPs that received milestone B approval prior to the adoption of the current certification requirements, and that have not yet received milestone C approval, to determine the extent to which they currently comply with such certification requirements. MDAPs that are determined during the one-time review not to satisfy such certification requirements would be subject to annual review by the milestone decision authority until such time as they achieve compliance. This section would require the Secretary of Defense to ensure that any budget request, budget justification material, budget display, reprogramming request, selected acquisition report, or other budget documentation or performance report submitted to the President regarding a program that does not yet fully satisfy the certification requirements of milestone B clearly indicate the program's certification status.

This section would require annual reviews of MDAPs that have been restructured after a critical Nunn-McCurdy breach by the official responsible for performance assessment to determine the extent to which the restructured program is achieving adequate cost and schedule performance. This section also would amend section 2366b of title 10, United States Code, to require MDAPs to have successfully completed a preliminary design review prior to receiving milestone B approval unless a preliminary design review is determined to be unnecessary.

Section 203—Requirement for Certification of Major Systems Prior to Milestone B

This section would require the milestone decision authority for major defense acquisition programs (MDAP) to review programs currently between milestone A and milestone B consistent with the requirements of section 2366a of title 10, United States Code, relating to the requirements for milestone A approval, unless the program has already been subject to a review under that section. This section would also require the milestone decision authority to submit a report to the congressional defense committees within 30 days if a MDAP experiences cost growth of 25 percent or more or schedule delay of more than 25 percent prior to milestone B approval. The report would: identify the root causes of the cost or schedule growth for any such MDAP; identify appropriate metrics for the assessment of the program going forward; and certify the need to continue the program. The certification would: determine that the program is essential to national security; that there are no alternatives to the program that will provide acceptable capability at less cost; that new estimates of cost and schedule are reasonable; and that the management of the program is adequate. This section would require the milestone decision authority to terminate the program or rescind milestone A approval if the milestone decision authority determined that such action is in the interest of national defense.

Section 204—Critical Cost Growth in Major Defense Acquisition Programs

This section would amend section 2433 of title 10, United States Code, to modify the requirements for review of major defense acquisition programs (MDAP) that experience critical Nunn-McCurdy breaches. This section would require the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, to determine the root cause or causes of the cost growth experienced by such program and determine whether to terminate or restructure the program. This section would require the Secretary to submit such determination to Congress, and if the program is restructured, to certify that: the program as restructured is essential to national security; there are no alternatives to such program that will provide acceptable military capability at less cost; new cost estimates are reasonable; the program is a higher priority than programs whose funding must be reduced to accommodate the program's cost growth; and that the management structure for the program is adequate.

This section would require that, after a program is restructured under Nunn-McCurdy, the next selected acquisition report for the program submitted after a new budget is transmitted to Congress contain a description of all funding changes included in the budget as a result of the cost growth on the program including reductions made in the budgets of other programs. This section would further require the milestone decision authority for the program to return the program to the last milestone decision point for review of the program as restructured. This section would also amend section 2430 of title 10, United States Code, to require unit cost reports under such section to include all planned increments or spirals of

the program in the calculation of total expenditure for procurement of such program.

Section 205—Organizational Conflicts of Interest in the Acquisition of Major Weapons Systems

This section would require the Panel on Contracting Integrity of the Department of Defense to present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in the acquisition of major weapons systems within one year after the date of enactment of this Act. The specific areas that the Panel would be required to review for potential organizational conflicts of interest include: lead system integrator contracts; systems engineering and technical assistance contracts; the award of major subcontracts to a prime's own business units; and contractor performance of technical evaluations. This section would further require the Secretary of Defense to revise the Defense Supplement to the Federal Acquisition Regulations to address organizational conflicts of interest by contractors within 180 days after receiving the recommendations of the Panel. This section would also extend the existence of the Panel on Contracting Integrity until December 30, 2011, or a date that is 18 months after the Secretary of Defense notifies the congressional defense committees of an intention to terminate the Panel, whichever is later.

Section 206—Awards for Department of Defense Personnel for Excellence in the Acquisition of Products and Services

This section would require the Secretary of Defense to carry out a program to recognize excellent performance by individuals and teams of members of the armed forces and Department of Defense civilian personnel in the acquisition of products and services. This section would allow the Secretary to award cash bonuses as part of the program established under this section if such bonuses are authorized under any other provision of law.

Section 207—Consideration of Trade-Offs Among Cost, Schedule, and Performance in the Acquisition of Major Weapon Systems

This section would require the Comptroller General to review the use of certain mechanisms within the Department of Defense to consider trade-offs among cost, schedule, and performance in the acquisition of major weapons systems. This section would require the review to consider mechanisms including: the Tri-Chair Committee, a committee consisting of the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Vice Chairman of the Joint Chiefs of Staff, and the Director of Program Analysis and Evaluation; configuration steering boards; any mechanism that is used, or that may potentially be used, by the Under Secretary of Defense Comptroller; and any other relevant mechanisms identified in the report on investment strategies for major defense acquisition programs required by section 817 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). The review would assess the effectiveness of these mechanisms and include such recommendations as the Comptroller General deems necessary to increase the effectiveness of such mechanisms.

COMMITTEE POSITION

On May 7, 2009, the Committee on Armed Services, a quorum being present, ordered reported H.R. 2101, as amended, to the House with a favorable recommendation by a record vote of 59–0.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2009.

Hon. IKE SKELTON,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jason Wheelock and Kent Christensen.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 2101. Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009

Summary: H.R. 2101 would make several changes to the Department of Defense's (DoD's) acquisition procedures and regulations for Major Defense Acquisition Programs (MDAPs). In addition, the bill would require the Secretary of Defense to designate officials to serve as the principal advisors within the Office of the Secretary of Defense (OSD) on the acquisition functions of cost estimation, systems engineering, and performance assessment.

CBO estimates that implementing H.R. 2101 would cost \$55 million over the 2010–2014 period, assuming the appropriation of the necessary funds. CBO's estimate reflects the direct costs of implementing H.R. 2101. Although H.R. 2101 might yield improvements in the efficiency and effectiveness of DoD's acquisition system for MDAPs over time, CBO has no basis for determining whether such improvements would occur or to what extent they might result in net savings to the government. Enacting the bill would not affect direct spending or revenues.

H.R. 2101 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2101 is shown in the following table. The costs

of this legislation fall within budget function 050 (national defense).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Technology Readiness Assessments:						
Estimated Authorization Level	7	7	7	7	8	36
Estimated Outlays	7	7	7	7	8	36
Oversight of Cost Estimation:						
Estimated Authorization Level	4	4	4	4	4	20
Estimated Outlays	3	4	4	4	4	19
Total Changes:						
Estimated Authorization Level	11	11	11	11	12	56
Estimated Outlays	10	11	11	11	12	55

Basis of estimate: For this estimate, CBO assumes that H.R. 2101 will be enacted in fiscal year 2009, and that the estimated authorizations will be appropriated starting in fiscal year 2010.

Title I—Acquisition Organization

Title I would require the Secretary of Defense to designate officials to serve as the principal advisors on the acquisition functions of cost estimation, systems engineering, and performance assessment. The bill would allow such officials to serve other duties that they might be assigned. In addition, title I would encourage OSD to conduct technology readiness assessments and to expand the use of independent cost estimates early in the acquisition process. CBO estimates that implementing title I would cost \$10 million in 2010 and \$55 million over the 2010–2014 period.

Technology Readiness Assessments. Section 105 would require the Director of Defense Research and Engineering (DDR&E) to periodically review the technological maturity and integration risk of technologies critical to the success of DoD's major defense acquisition programs and report the findings to the Under Secretary of Defense, Acquisition, Technology, and Logistics (USD AT&L). Such reviews currently take place at Milestones B and C in the defense acquisition process. According to DoD, although the language in section 105 would provide latitude in deciding when to conduct such reviews, it might lead to increased emphasis on conducting such reviews earlier in the acquisition process and updating such assessments on a more regular basis.

Assuming readiness assessments for all MDAPs also were done early in the acquisition process (Milestone A) and updates were done every three years, the number of assessments conducted annually by the DDR&E would increase from 20 to 70. The costs of conducting those assessments would be incurred by both the DDR&E and the services. According to DoD, approximately 10 additional staff would be required to assist the DDR&E in conducting these assessments, which CBO estimates would cost approximately \$2 million on an annual basis. The costs incurred by the services for conducting such assessments can vary from approximately \$50,000 to \$300,000 depending on the number of critical technologies that are under review during an assessment; the average cost of such assessments is approximately \$100,000. Based on this information, CBO anticipates the annual cost to the services would increase by about \$5 million. In total, CBO estimates that imple-

menting section 105 would cost \$7 million in 2010 and \$36 million over the 2010–2014 period.

Oversight of Cost Estimation. Section 101 would require the Secretary of Defense to designate an official within OSD to be the principal advisor to the Secretary on cost estimation. The designated official would be responsible for prescribing DoD policies on cost estimation and analysis, monitoring, and reviewing cost estimates within the department, and conducting independent cost estimates of programs for which the USD AT&L is responsible for advancing through the acquisition process.

Section 102 would require the official designated as the principal advisor on cost estimation to issue independent cost estimates in various circumstances, including in support of program reviews at Milestone A. Independent cost estimates in support of milestone reviews—which are conducted by the Cost Analysis Improvement Group (CAIG)—are currently required later in the acquisition process (for example, at Milestones B and C). Section 102 also would require additional reporting on cost estimation. Based upon information from DoD, CBO anticipates that conducting additional cost estimates and preparing reports as required by section 102 would require 15 additional employees within OSD, and some additional contracting support. Based upon this information, CBO estimates that implementing section 102 would cost \$3 million in 2010 and about \$20 million over the 2010–2014 period.

Title II—Acquisition Policy

Title II would modify a number of the procedures used by DoD to develop and acquire weapons systems and programs. Based on information from DoD, CBO estimates that implementing title II would not significantly increase administrative costs of the department beyond the amounts reflected for title I above. If, however, the administrative burden associated with implementing title II proves greater than anticipated, the resulting increase in costs arising from H.R. 2101 would be greater than amounts shown in the table.

The modifications to the acquisition processes mandated by title II, combined with the organizational changes contained in title I, might improve the efficiency and effectiveness of DoD’s acquisition system for MDAPs. However, CBO has no basis for determining whether such improvements would result in net savings to the government; realizing any such savings would require reductions in future appropriations.

Intergovernmental and private-sector impact: H.R. 2101 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On May 6, 2009, CBO transmitted a cost estimate for S. 454, the Weapons System Reform Act of 2009, as reported by the Senate Committee on Armed Services. The differences in the estimates reflect differences in the bills. In particular, S. 454 contains a provision not included in H.R. 2101 that would require DoD to reestablish the position of Developmental Testing and Evaluation. In addition, section 104 of S. 454 would require the creation of a Director of Independent Cost Assessment, and would transfer the staff and resources of the CAIG from its

current location within OSD's Program Analysis and Evaluation (PA&E). Although section 101 of H.R. 2101 would require the appointment of a principal advisor to the Secretary of Defense on cost estimation, H.R. 2101 would not transfer the staff and resources of the CAIG outside of PA&E; and therefore, CBO does not anticipate PA&E would be required to add personnel to perform cost estimation and analysis as would be required under S. 454.

Estimate prepared by: Federal Costs: Jason Wheelock and Kent Christensen. Impact on State, Local, and Tribal Governments: Burke Doherty. Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee generally concurs with the estimate as contained in the report of the Congressional Budget Office.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI, H.R. 2101, the Weapons Acquisition System Reform Through Enhancing Technical Knowledge and Oversight Act of 2009, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill does not authorize specific program funding.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goals and objectives of H.R. 2101 are to improve the efficiency and quality of outcomes in the acquisition of major weapons systems by controlling cost growth and promoting independent oversight. With respect to the outcome related goal of controlling cost growth in major defense acquisition programs, the objective of this legislation is to: (1) require additional oversight on major defense acquisition programs in the early stages of development when most costs are determined; (2) require additional oversight of programs which have demonstrated poor performance; (3) promote the use of competitive acquisition strategies; and (4) promote and enable consideration of trade-offs between cost, schedule, and performance. With respect to the outcome related goal of pro-

moting independence in the oversight of acquisition, the objective of this legislation is to: (1) require the Secretary of Defense to designate an official within the Department of Defense to serve as the principal advisor throughout the process of setting requirements, formulating and executing budgets, and during program execution for cost estimation, systems engineering, and performance assessment; (2) require the review of technological maturity on major defense acquisition programs by the Director of Defense Research and Engineering; (3) require input from the commanders of combatant commands in establishing joint military requirements; (4) require the Secretary of Defense to address the potential organizational conflicts of interest of defense contractors; and (5) award excellence in acquisition.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, Section 8 of the United States Constitution.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the bill provides no unfunded federal intergovernmental mandates.

RECORD VOTE

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, a record vote was taken with respect to the committee's consideration of H.R. 2101. The record of this vote is included in this report.

The committee ordered reported H.R. 2101, as amended, to the House with a favorable recommendation by a record vote of 59–0, a quorum being present.

**COMMITTEE ON ARMED SERVICES
111TH CONGRESS
ROLL CALL**

Amendment #

Date: May 7, 2009

Description: Final Passage of H.R. 2101,
as amended, ordering to
be reported favorably

Rep.	Aye	No	Present	Rep.	Aye	No	Present
Mr. Skelton	x			Mr. McHugh	x		
Mr. Spratt	x			Mr. Bartlett	x		
Mr. Ortiz	x			Mr. McKeon	x		
Mr. Taylor	x			Mr. Thornberry			
Mr. Abercrombie	x			Mr. Jones	x		
Mr. Reyes	x			Mr. Akin	x		
Dr. Snyder	x			Mr. Forbes	x		
Mr. Smith	x			Mr. Miller	x		
Ms. Sanchez	x			Mr. Wilson	x		
Mr. McIntyre	x			Mr. LoBiondo	x		
Ms. Tauscher	x			Mr. Bishop	x		
Mr. Brady	x			Mr. Turner	x		
Mr. Andrews	x			Mr. Kline	x		
Mrs. Davis	x			Mr. Rogers	x		
Mr. Langevin	x			Mr. Franks	x		
Mr. Larsen	x			Mr. Shuster	x		
Mr. Cooper	x			Mrs. McMorris Rodgers	x		
Mr. Marshall	x			Mr. Conaway	x		
Ms. Bordallo	x			Mr. Lamborn	x		
Mr. Elsworth	x			Mr. Wittman	x		
Mr. Murphy (PA)	x			Ms. Fallon	x		
Mr. Johnson	x			Mr. Hunter	x		
Ms. Shea-Porter	x			Dr. Fleming	x		
Mr. Courtney	x			Mr. Coffman	x		
Mr. Loeb sack	x			Mr. Rooney	x		
Mr. Sestak							
Ms. Giffords	x						
Ms. Tsongas	x						
Mr. Nye	x						
Ms. Pingree	x						
Mr. Kissell	x						
Mr. Heinrich	x						
Mr. Kratovil							
Mr. Massa	x						
Mr. Bright	x						
Mr. Murphy (NY)	x						
Mr. Boren	x						

Roll Call Vote Total: 59 Ayes Noes Present

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

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Subtitle A—General Military Law

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PART I—ORGANIZATION AND GENERAL MILITARY POWERS

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CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.

131. Office of the Secretary of Defense.

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145. *Principal advisors for acquisition oversight functions.*

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§ 139a. Director of Defense Research and Engineering

(a) * * *

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(c)(1) The Director of Defense Research and Engineering shall periodically review and assess the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense and report on the findings of such reviews and assessments to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Director shall submit to the Secretary of Defense and to the congressional defense committees by January 1 of each year a report on the technological maturity and integration risk of critical technologies of the major defense acquisition programs of the Department of Defense.

* * * * *

§ 145. Principal advisors for acquisition oversight functions

(a) ASSIGNMENT OF ACQUISITION OVERSIGHT FUNCTIONS.—The Secretary of Defense shall designate an official within the Office of the Secretary of Defense as the principal advisor to the Secretary for each acquisition oversight function specified in subsection (c). An official may be designated to perform one or more of such functions. The performance of duties pursuant to a designation under this section shall not limit or otherwise affect the performance of any other duties assigned to such official by the Secretary or by other officers of the Department responsible for the management and direction of

such official except as necessary to satisfy the requirements of subsection (b).

(b) *QUALIFICATIONS.*—In designating an official for a function pursuant to subsection (a), the Secretary shall ensure that the official reports directly to the Secretary in the performance of such function and is—

- (1) highly expert in matters relating to the function;
- (2) assigned the appropriate staff and resources necessary to carry out the function;
- (3) independent from those engaged in the execution of acquisition programs;
- (4) free of any undue political influence; and
- (5) free of any personal conflict of interest.

(c) *ACQUISITION OVERSIGHT FUNCTIONS.*—(1) The acquisition oversight functions to be performed by officials designated pursuant to subsection (a) are as follows:

- (A) Cost estimation.
- (B) Systems engineering.
- (C) Performance assessment.
- (D) Such other acquisition functions as the Secretary considers appropriate.

(2) Each acquisition oversight function specified in paragraph (1) shall cover all phases of an acquisition program, including setting of requirements, formulation and execution of budgets, and program execution.

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CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

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§ 181. Joint Requirements Oversight Council

(a) * * *

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(d) *ADVISORS.*—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics, the Under Secretary of Defense (Comptroller), and the Director of the Office of Program Analysis and Evaluation shall serve as advisors to the Council on matters within their authority and expertise.

(2) *The Council shall seek and consider input from the commanders of the combatant commands in carrying out its mission under paragraphs (1) and (2) of subsection (b) and in conducting periodic reviews in accordance with the requirements of subsection (e). Such input may include, but is not limited to, an assessment of the following:*

- (A) Any current or projected missions or threats in the theater of operations of the commander of a combatant command that would inform the assessment of a new joint military requirement.
- (B) The necessity and sufficiency of a proposed joint military requirement in terms of current and projected missions or threats.
- (C) The relative priority of a proposed joint military requirement in comparison with other joint military requirements

within the theater of operations of a commander of a combatant command.

(D) The ability of partner nations in the theater of operations of the commander of a combatant command to assist in meeting the joint military requirement or the benefit, if any, of a partner nation assisting in development or use of technologies developed to meet the joint military requirement.

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PART IV—SERVICE, SUPPLY, AND PROCUREMENT

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CHAPTER 137—PROCUREMENT GENERALLY

Sec.

2302. Definitions.

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2334. *Acquisition oversight: oversight of cost estimation.*

2334a. *Acquisition oversight: oversight of systems engineering.*

2334b. *Acquisition oversight: oversight of performance assessment.*

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§2334. Acquisition oversight: oversight of cost estimation

(a) ISSUANCE OF POLICIES, PROCEDURES, GUIDANCE, AND COST ESTIMATES.—The official assigned oversight of cost estimation pursuant to section 145 of this title shall issue the following:

(1) Policies and procedures governing the conduct of cost estimation and cost analysis generally for the acquisition programs of the Department of Defense.

(2) Guidance relating to cost estimates and cost analyses conducted in connection with major defense acquisition programs under chapter 144 of this title or major automated information system programs under chapter 144A of this title.

(3) Guidance relating to the proper selection of confidence levels for cost estimates generally, and specifically, for the proper selection of confidence levels for cost estimates for major defense acquisition programs under chapter 144 of this title or major automated information system program under chapter 144A of this title.

(4) Guidance relating to full consideration of life-cycle management and sustainability costs of major defense acquisition programs under chapter 144 of this title or major automated information system programs under chapter 144A of this title.

(5) Independent cost estimates and cost analyses for major defense acquisition programs and major automated information system programs for which the Under Secretary of Defense for Acquisition, Technology, and Logistics is the Milestone Decision Authority—

(A) in advance of—

(i) any certification under section 2366a or 2366b of title 10, United States Code;

(ii) any decision to enter into low-rate initial production or full-rate production;

(iii) any certification under section 2433(e)(2) of this title; and

(iv) any report under section 2445c(f) of this title; and

(B) at any other time considered necessary by such official or upon the request of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) **REVIEW OF COST ESTIMATES, COST ANALYSES, COST INDEXES, AND RECORDS OF THE MILITARY DEPARTMENTS.**—The Secretary of Defense shall ensure that the official designated for oversight of cost estimation pursuant to section 145 of this title—

(1) promptly receives the results of all cost estimates and cost analyses conducted by the military departments, and all studies conducted by the military departments in connection with such cost estimates and cost analyses, for major defense acquisition programs and major automated information systems of the military departments, and is authorized to comment on such estimates, analyses, and studies; and

(2) has timely access to any records and data in the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the official considers necessary to review in order to carry out any duties under this section.

(c) **PARTICIPATION, CONCURRENCE, AND APPROVAL IN COST ESTIMATION.**—The Secretary of Defense shall ensure that the official designated for oversight of cost estimation pursuant to section 145 of this title is involved in all discussions relating to cost estimation and the estimation of resource levels required for major defense acquisition programs and major automated information systems of the Department of Defense generally at all stages of such programs and may—

(1) participate in the formulation of study guidance for analyses of alternatives for major defense acquisition programs;

(2) participate in discussion of resources associated with requirements;

(3) participate in the discussion of any discrepancies between an independent cost estimate and the cost estimate of a military department for a major defense acquisition program or major automated information system of the Department of Defense;

(4) approve or disapprove, at such official's sole discretion, the confidence level used in establishing a baseline description or budget estimate for a major defense acquisition program or major automated information system of the Department of Defense at any of the events specified in paragraph (5) of subsection (a) of this section;

(5) concur in the choice of a baseline description or budget estimate for use at any of the events specified in paragraph (5) of subsection (a) of this section; and

(6) participate in any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

(d) **DISCLOSURE OF CONFIDENCE LEVELS FOR BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION PROGRAMS.**—The official designated to perform oversight of cost estimation pursuant to section 145 of this title, in approving a confidence level for use in a

major defense acquisition program pursuant to subsection (c)(4), shall—

(1) disclose the confidence level used in establishing a baseline estimate for the major defense acquisition program, the rationale for selecting such confidence level, and, if such confidence level is less than 80 percent, the justification for selecting a confidence level of less than 80 percent; and

(2) include the disclosure required by paragraph (1) in any decision documentation approving a baseline estimate for the major defense acquisition program, in the next Selected Acquisition Report pursuant to section 2432 of this title for the major defense acquisition program, and in the next annual report submitted under subsection (f).

(e) **RELATIONSHIP TO COST ANALYSIS IMPROVEMENT GROUP.**—The official designated to perform oversight of cost estimation pursuant to section 145 of this title shall be assigned responsibility for the management and oversight of the Cost Analysis Improvement Group of the Department of Defense.

(f) **ANNUAL REPORT.**—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of cost estimation pursuant to section 145 of this title shall submit to the congressional defense committees a report on the activities undertaken pursuant to this section during the preceding year. The report shall be in an unclassified form but may include a classified annex.

§2334a. Acquisition oversight: oversight of systems engineering

(a) **ISSUANCE OF POLICIES, PROCEDURES, AND GUIDANCE.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall—

(1) issue policies, procedures, and guidance for all elements of the Department of Defense concerning—

(A) the use of systems engineering principles and best practices, generally;

(B) the use of systems engineering approaches to enhance reliability, availability, and maintainability on major defense acquisition programs;

(C) the development of systems engineering master plans for major defense acquisition programs, including systems engineering considerations in support of life-cycle management and sustainability;

(D) the inclusion of provisions relating to systems engineering and reliability growth in requests for proposals;

(E) the appropriate use of development planning to reduce the time from system development to deployment, to reduce development risk and cost growth, and to provide future benchmarks against which to trade requirements, cost, and schedule;

(F) developmental test and evaluation generally;

(G) in coordination with the Director of Operational Test and Evaluation, the integration of developmental test and evaluation with operational test and evaluation;

(H) in coordination with the Director of Operational Test and Evaluation, the development of test and evaluation master plans for major defense acquisition programs; and

(I) the use of developmental test and evaluation as part of a coordinated systems engineering approach to system development; and

(2) provide advocacy, oversight, and direction to elements of the acquisition workforce responsible for functions relating to systems engineering, developmental test and evaluation, and life-cycle management and sustainability.

(b) **PARTICIPATION IN REQUIREMENTS DISCUSSIONS.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall provide input on the inclusion of systems engineering requirements in the process for consideration of joint military requirements by the Joint Requirements Oversight Council pursuant to section 181 of title 10, United States Code, including specific input relating to each capabilities development document.

(c) **ACCESS TO RECORDS OF THE MILITARY DEPARTMENTS.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall have access to any records or data of the Department of Defense (including the records and data of each military department and including classified and proprietary information as appropriate) that the official considers necessary to review in order to carry out any duties under this section.

(d) **ASSESSMENT OF MILITARY DEPARTMENT CAPABILITIES FOR SYSTEMS ENGINEERING AND DEVELOPMENTAL TEST AND EVALUATION.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall—

(1) periodically assess the capabilities of the military departments for systems engineering (including development planning) and developmental test and evaluation;

(2) provide such assessment, along with such recommendations for improvement as the official considers necessary, to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics; and

(3) include such assessment and recommendations in the annual report required by subsection (g).

(e) **REVIEW AND APPROVAL OF PLANS FOR MAJOR DEFENSE ACQUISITION PROGRAMS.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall review and approve the following plans with respect to any major defense acquisition program:

(1) The systems engineering master plan.

(2) The developmental test and evaluation plan within the test and evaluation master plan.

(f) **REPORTING THROUGH UNDER SECRETARY.**—The official designated to perform oversight of systems engineering pursuant to section 145 of this title shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(g) **ANNUAL REPORT.**—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of systems engineering pursuant to section 145 of this title shall submit to the congressional defense committees a report on the ac-

activities undertaken pursuant to this section during the preceding year. The report shall be in unclassified form but may include a classified annex.

§2334b. Acquisition oversight: oversight of performance assessment

(a) *ISSUANCE OF POLICIES, PROCEDURES, AND GUIDANCE FOR PERFORMANCE ASSESSMENTS.*—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall be responsible for the issuance of policies, procedures, and guidance governing the conduct of performance assessments for the acquisition programs of the Department of Defense, including assessment of the extent to which acquisition programs—

- (1) deliver sufficient capability to the warfighter;
- (2) achieve timely delivery of such capability; and
- (3) deliver a level of value consistent with resources expended.

(b) *ASSESSMENT OF BASELINE QUALITY.*—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall periodically assess the suitability of the baseline descriptions required by section 2435 of title 10, United States Code, of major defense acquisition programs for providing a basis for performance assessment and make such recommendations to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics as the official considers necessary to improve the suitability of baseline descriptions for such purpose.

(c) *EARNED VALUE MANAGEMENT SYSTEM.*—The official designated to perform oversight of performance assessment pursuant to section 145 of this title shall be responsible for the management and oversight of the records of the earned value management system of the Department of Defense.

(d) *PARTICIPATION IN CERTAIN PROGRAM REVIEWS.*—The official designated to perform oversight of performance assessment pursuant to section 145 of this title is authorized to present an assessment of the performance of a major defense acquisition program during—

- (1) any discussions prior to certification under section 2433(e)(2) of this title;
- (2) any discussions prior to entry into full-rate production; and
- (3) consideration of any decision to request authorization of a multiyear procurement contract for a major defense acquisition program.

(e) *ANNUAL REPORT.*—Not later than March 1 of each year, beginning on March 1, 2010, the official designated to perform oversight of performance assessment pursuant to section 145 of this title shall submit to the congressional defense committees a report on the activities undertaken pursuant to this section during the preceding year. The report shall be in unclassified form but may include a classified annex.

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CHAPTER 139—RESEARCH AND DEVELOPMENT

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§ 2366b. Major defense acquisition programs: certification required before Milestone B or Key Decision Point B approval

(a) CERTIFICATION.—A major defense acquisition program may not receive Milestone B approval, or Key Decision Point B approval in the case of a space program, until the milestone decision authority—

(1) has received a business case analysis and certifies on the basis of the analysis that—

(A) * * *

* * * * *

(D) funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made, consistent with the estimates described in subparagraph (C) for the program; **[and]**

(2) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission or that no preliminary design review is necessary for such program to demonstrate a high likelihood of accomplishing its intended mission; and

[(2)] (3) further certifies that—

(A) * * *

* * * * *

(D) the technology in the program has been demonstrated in a relevant environment**[(;)]**, *as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and*

[(E)] the program demonstrates a high likelihood of accomplishing its intended mission; and**]**

[(F)] *(E)* the program complies with all relevant policies, regulations, and directives of the Department of Defense.

* * * * *

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1) or (2) of subsection (a)) of the certification requirement if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives. **[Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.]**

(2) Whenever the milestone decision authority makes such a determination and authorizes such a waiver—

(A) the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized; and

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification components specified in paragraphs (1) and (2) of subsection (a) until such time as the milestone decision authority determines that the program satisfies all such certification components.

(e) DESIGNATION OF CERTIFICATION STATUS IN BUDGET DOCUMENTATION.—Any budget request, budget justification material, budget display, reprogramming request, Selected Acquisition Report, or other budget documentation or performance report submitted by the Secretary of Defense to the President regarding a major defense acquisition program receiving a waiver pursuant to subsection (d) shall prominently and clearly indicate that such program has not fully satisfied the certification requirements of this section until such time as the milestone decision authority makes the determination that such program has satisfied all certification components pursuant to subsection (d)(2)(B).

[(e)] (f) NONDELEGATION.—The milestone decision authority may not delegate the certification requirement under subsection (a) or the authority to waive any component of such requirement under subsection (d).

[(f)] (g) DEFINITIONS.—In this section:

(1) * * *

* * * * *

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

* * * * *

§ 2430. Major defense acquisition program defined

(a) In this chapter, the term “major defense acquisition program” means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) * * *

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than \$300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement, including all planned increments or spirals, of more than \$1,800,000,000 (based on fiscal year 1990 constant dollars).

* * * * *

§ 2433. Unit cost reports

(a) * * *

* * * * *

(e)(1) * * *

[(2) If program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

[(A) carry out an assessment of—

[(i) any design, engineering, manufacturing, or technology integration issues that contributed significantly to the cost growth of the program;

[(ii) the projected cost of completing the program if current requirements are not modified;

[(iii) the projected cost of completing the program based on reasonable modification of such requirements; and

[(iv) the rough order of magnitude of the costs of any reasonable alternative system or capability;

[(B) submit to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title, a written certification (with a supporting explanation) stating that—

[(i) such acquisition program is essential to the national security;

[(ii) there are no alternatives to such acquisition program which will provide equal or greater military capability at less cost;

[(iii) the new estimates of the program acquisition unit cost or procurement unit cost are reasonable; and

[(iv) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost; and

[(C) if a report under paragraph (1) has been previously submitted to Congress with respect to such program for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.】

(2)(A) If the program acquisition unit cost or procurement unit cost of a major defense acquisition program or designated major subprogram (as determined by the Secretary under subsection (d)) increases by a percentage equal to or greater than the critical cost growth threshold for the program or subprogram, the Secretary of Defense, after consultation with the Joint Requirements Oversight Council regarding program requirements, shall—

(i) determine the root cause or causes of the critical cost growth including the role, if any, of—

(I) changes or growth in requirements;

(II) unrealistic baseline estimates;

(III) any design, engineering, manufacturing, or technology integration issues;

(IV) changes in procurement quantities;

(V) inadequate program funding or funding instability;

- (VI) poor performance by government or contractor personnel responsible for program management; or
 - (VII) other causes as identified by the Secretary;
- (ii) subject to subparagraph (B), determine whether to terminate such program or to restructure such program after assessing—
- (I) the root causes of cost growth identified pursuant to subparagraph (A);
 - (II) the validity and urgency of the joint military requirement;
 - (III) the viability of the acquisition strategy;
 - (IV) the quality of program management;
 - (V) a broad range of potential material and non-material alternatives to such program; and
 - (VI) the need to reduce funding for other programs due to the cost growth on such program;
- (iii) submit the determination made under clause (ii) to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title; and
- (iv) if a report under paragraph (1) has been previously submitted to Congress with respect to such program or subprogram for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, submit a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.
- (B) A program may be restructured pursuant to a determination under subparagraph (A)(ii) only if—
- (i) a written certification (with a supporting explanation) is submitted along with the determination stating that—
 - (I) such program is essential to national security;
 - (II) there are no alternatives to such program which will provide acceptable military capability at less cost;
 - (III) new estimates of the program acquisition unit cost or procurement unit cost are reasonable;
 - (IV) the program is a higher priority than programs whose funding must be reduced to accommodate cost growth on such program; and
 - (V) the management structure for the program is adequate to manage and control program acquisition unit cost or procurement unit cost; and
 - (ii) the most recent milestone decision is revisited and results in the approval of such restructured program.
- (3) If a determination of an increase by a percentage equal to or greater than the significant cost growth threshold is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase by a percentage equal to or greater than the critical cost growth threshold is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military

construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) **or (2)(B)** *or (2)(A)(iii)* with respect to that program, in the case of a determination of an increase by a percentage equal to or greater than the significant cost growth threshold (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) **or (2)(B)** *or (2)(A)(iii)* and the certification of the Secretary of Defense under **paragraph (2)(A)** *paragraph (2)(B)* with respect to that program, in the case of an increase by a percentage equal to or greater than the critical cost growth threshold (as determined under subsection (d)).

* * * * *

SECTION 813 OF THE JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

SEC. 813. ESTABLISHMENT OF PANEL ON CONTRACTING INTEGRITY.

(a) * * *

* * * * *

[(e) TERMINATION.—The panel shall terminate on December 31, 2009.]

(e) TERMINATION.—(1) Subject to the restriction in paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been fully mitigated.

(2) The panel shall continue to serve at least until December 31, 2011.

ADDITIONAL AND DISSENTING VIEWS

Clause 3(a) of rule XIII requires that the report include all supplemental, minority, or additional views that have been submitted. None have been submitted by the time of the filing of the report.