

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2101
OFFERED BY MR. SKELTON OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Weapons Acquisition System Reform Through Enhanc-
4 ing Technical Knowledge and Oversight Act of 2009”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 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.

1 **TITLE I—ACQUISITION**
2 **ORGANIZATION**

3 **SEC. 101. INDEPENDENT PERFORMANCE OF ACQUISITION**
4 **OVERSIGHT FUNCTIONS.**

5 (a) IN GENERAL.—Chapter 4 of title 10, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 145. Principal advisors for acquisition oversight**
9 **functions**

10 “(a) ASSIGNMENT OF ACQUISITION OVERSIGHT
11 FUNCTIONS.—The Secretary of Defense shall designate
12 an official within the Office of the Secretary of Defense
13 as the principal advisor to the Secretary for each acquisi-
14 tion oversight function specified in subsection (c). An offi-
15 cial may be designated to perform one or more of such
16 functions. The performance of duties pursuant to a des-
17 igation under this section shall not limit or otherwise af-
18 fect the performance of any other duties assigned to such
19 official by the Secretary or by other officers of the Depart-
20 ment responsible for the management and direction of
21 such official except as necessary to satisfy the require-
22 ments of subsection (b).

23 “(b) QUALIFICATIONS.—In designating an official for
24 a function pursuant to subsection (a), the Secretary shall

1 ensure that the official reports directly to the Secretary
2 in the performance of such function and is—

3 “(1) highly expert in matters relating to the
4 function;

5 “(2) assigned the appropriate staff and re-
6 sources necessary to carry out the function;

7 “(3) independent from those engaged in the
8 execution of acquisition programs;

9 “(4) free of any undue political influence; and

10 “(5) free of any personal conflict of interest.

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

14 “(A) Cost estimation.

15 “(B) Systems engineering.

16 “(C) Performance assessment.

17 “(D) Such other acquisition functions as the
18 Secretary considers appropriate.

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

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

“145. Principal advisors for acquisition oversight functions.”.

1 **SEC. 102. OVERSIGHT OF COST ESTIMATION.**

2 (a) IN GENERAL.—Chapter 137 of title 10, United
3 States Code, is amended by adding at the end the fol-
4 lowing new section:

5 **“§ 2334. Acquisition oversight: oversight of cost esti-
6 mation**

7 “(a) ISSUANCE OF POLICIES, PROCEDURES, GUID-
8 ANCE, AND COST ESTIMATES.—The official assigned over-
9 sight of cost estimation pursuant to section 145 of this
10 title shall issue the following:

11 “(1) Policies and procedures governing the con-
12 duct of cost estimation and cost analysis generally
13 for the acquisition programs of the Department of
14 Defense.

15 “(2) Guidance relating to cost estimates and
16 cost analyses conducted in connection with major de-
17 fense acquisition programs under chapter 144 of this
18 title or major automated information system pro-
19 grams under chapter 144A of this title.

20 “(3) Guidance relating to the proper selection
21 of confidence levels for cost estimates generally, and
22 specifically, for the proper selection of confidence
23 levels for cost estimates for major defense acquisi-
24 tion programs under chapter 144 of this title or
25 major automated information system program under
26 chapter 144A of this title.

1 “(4) Independent cost estimates and cost anal-
2 yses for major defense acquisition programs and
3 major automated information system programs for
4 which the Under Secretary of Defense for Acquisi-
5 tion, Technology, and Logistics is the Milestone De-
6 cision Authority—

7 “ (A) in advance of—

8 “(i) any certification under section
9 2366a or 2366b of title 10, United States
10 Code;

11 “(ii) any decision to enter into low-
12 rate initial production or full-rate produc-
13 tion;

14 “(iii) any certification under section
15 2433(e)(2) of this title; and

16 “(iv) any report under section
17 2445c(f) of this title; and

18 “(B) at any other time considered nec-
19 essary by such official or upon the request of
20 the Under Secretary of Defense for Acquisition,
21 Technology, and Logistics.

22 “(b) REVIEW OF COST ESTIMATES, COST ANALYSES,
23 COST INDEXES, AND RECORDS OF THE MILITARY DE-
24 PARTMENTS.—The Secretary of Defense shall ensure that

1 the official designated for oversight of cost estimation pur-
2 suant to section 145 of this title—

3 “(1) promptly receives the results of all cost es-
4 timates and cost analyses conducted by the military
5 departments, and all studies conducted by the mili-
6 tary departments in connection with such cost esti-
7 mates and cost analyses, for major defense acquisi-
8 tion programs and major automated information
9 systems of the military departments, and is author-
10 ized to comment on such estimates, analyses, and
11 studies; and

12 “(2) has timely access to any records and data
13 in the Department of Defense (including the records
14 and data of each military department and including
15 classified and proprietary information as appro-
16 priate) that the official considers necessary to review
17 in order to carry out any duties under this section.

18 “(c) PARTICIPATION, CONCURRENCE, AND APPROVAL
19 IN COST ESTIMATION.—The Secretary of Defense shall
20 ensure that the official designated for oversight of cost es-
21 timation pursuant to section 145 of this title is involved
22 in all discussions relating to cost estimation and the esti-
23 mation of resource levels required for major defense acqui-
24 sition programs and major automated information systems

1 of the Department of Defense generally at all stages of
2 such programs and may—

3 “(1) participate in the formulation of study
4 guidance for analyses of alternatives for major de-
5 fense acquisition programs;

6 “(2) participate in discussion of resources asso-
7 ciated with requirements;

8 “(3) participate in the discussion of any dis-
9 crepancies between an independent cost estimate and
10 the cost estimate of a military department for a
11 major defense acquisition program or major auto-
12 mated information system of the Department of De-
13 fense;

14 “(4) approve or disapprove, at such official’s
15 sole discretion, the confidence level used in estab-
16 lishing a baseline description or budget estimate for
17 a major defense acquisition program or major auto-
18 mated information system of the Department of De-
19 fense at any of the events specified in paragraph (4)
20 of subsection (a) of this section;

21 “(5) concur in the choice of a baseline descrip-
22 tion or budget estimate for use at any of the events
23 specified in paragraph (4) of subsection (a) of this
24 section; and

1 “(6) participate in any decision to request au-
2 thorization of a multiyear procurement contract for
3 a major defense acquisition program.

4 “(d) RELATIONSHIP TO COST ANALYSIS IMPROVE-
5 MENT GROUP.—The official designated to perform over-
6 sight of cost estimation pursuant to section 145 of this
7 title shall be assigned responsibility for the management
8 and oversight of the Cost Analysis Improvement Group
9 of the Department of Defense.

10 “(e) ANNUAL REPORT.—Not later than March 1 of
11 each year, beginning on March 1, 2010, the official des-
12 ignated to perform oversight of cost estimation pursuant
13 to section 145 of this title shall submit to the congres-
14 sional defense committees a report on the activities under-
15 taken pursuant to this section during the preceding year.
16 The report shall be in an unclassified form but may in-
17 clude a classified annex.”.

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

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

21 **SEC. 103. OVERSIGHT OF SYSTEMS ENGINEERING.**

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

1 **“§ 2334a. Acquisition oversight: oversight of systems**
2 **engineering**

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

7 “(1) issue policies, procedures, and guidance for
8 all elements of the Department of Defense con-
9 cerning—

10 “(A) the use of systems engineering prin-
11 ciples and best practices, generally;

12 “(B) the use of systems engineering ap-
13 proaches to enhance reliability, availability, and
14 maintainability on major defense acquisition
15 programs;

16 “(C) the development of systems engineer-
17 ing master plans for major defense acquisition
18 programs;

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

22 “(E) developmental test and evaluation
23 generally;

24 “(F) in coordination with the Director of
25 Operational Test and Evaluation, the integra-

1 tion of developmental test and evaluation with
2 operational test and evaluation;

3 “(G) in coordination with the Director of
4 Operational Test and Evaluation, the develop-
5 ment of test and evaluation master plans for
6 major defense acquisition programs; and

7 “(H) the use of developmental test and
8 evaluation as part of a coordinated systems en-
9 gineering approach to system development; and

10 “(2) provide advocacy, oversight, and direction
11 to elements of the acquisition workforce responsible
12 for systems engineering and developmental test and
13 evaluation functions.

14 “(b) PARTICIPATION IN REQUIREMENTS DISCUS-
15 SIONS.—The official designated to perform oversight of
16 systems engineering pursuant to section 145 of this title
17 shall provide input on the inclusion of systems engineering
18 requirements in the process for consideration of joint mili-
19 tary requirements by the Joint Requirements Oversight
20 Council pursuant to section 181 of title 10, United States
21 Code, including specific input relating to each capabilities
22 development document.

23 “(c) ACCESS TO RECORDS OF THE MILITARY DE-
24 PARTMENTS.—The official designated to perform over-
25 sight of systems engineering pursuant to section 145 of

1 this title shall have access to any records or data of the
2 Department of Defense (including the records and data
3 of each military department and including classified and
4 proprietary information as appropriate) that the official
5 considers necessary to review in order to carry out any
6 duties under this section.

7 “(d) ASSESSMENT OF MILITARY DEPARTMENT CA-
8 PABILITIES FOR SYSTEMS ENGINEERING AND DEVELOP-
9 MENTAL TEST AND EVALUATION.—The official des-
10 igned to perform oversight of systems engineering pur-
11 suant to section 145 of this title shall—

12 “(1) periodically assess the capabilities of the
13 military departments for systems engineering and
14 developmental test and evaluation;

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

20 “(3) include such assessment and recommenda-
21 tions in the annual report required by subsection
22 (g).

23 “(e) REVIEW AND APPROVAL OF PLANS FOR MAJOR
24 DEFENSE ACQUISITION PROGRAMS.—The official des-
25 igned to perform oversight of systems engineering pur-

1 suant to section 145 of this title shall review and approve
2 the following plans with respect to any major defense ac-
3 quisition program:

4 “(1) The systems engineering master plan.

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

7 “(f) REPORTING THROUGH UNDER SECRETARY.—

8 The official designated to perform oversight of systems en-
9 gineering pursuant to section 145 of this title shall report
10 to the Secretary of Defense through the Under Secretary
11 of Defense for Acquisition, Technology, and Logistics.

12 “(g) ANNUAL REPORT.—Not later than March 1 of
13 each year, beginning on March 1, 2010, the official des-
14 igned to perform oversight of systems engineering pur-
15 suant to section 145 of this title shall submit to the con-
16 gressional defense committees a report on the activities
17 undertaken pursuant to this section during the preceding
18 year. The report shall be in unclassified form but may in-
19 clude a classified annex.”.

20 “(b) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of such chapter, as amended by section
22 102, is further amended by adding at the end the following
23 new item:

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

1 **SEC. 104. OVERSIGHT OF PERFORMANCE ASSESSMENT.**

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

5 **“§ 2334b. Acquisition oversight: oversight of perform-**
6 **ance assessment**

7 “(a) ISSUANCE OF POLICIES, PROCEDURES, AND
8 GUIDANCE FOR PERFORMANCE ASSESSMENTS.—The offi-
9 cial designated to perform oversight of performance as-
10 sessment pursuant to section 145 of this title shall be re-
11 sponsible for the issuance of policies, procedures, and
12 guidance governing the conduct of performance assess-
13 ments for the acquisition programs of the Department of
14 Defense, including assessment of the extent to which ac-
15 quisition programs—

16 “(1) deliver sufficient capability to the
17 warfighter;

18 “(2) achieve timely delivery of such capability;
19 and

20 “(3) deliver a level of value consistent with re-
21 sources expended.

22 “(b) ASSESSMENT OF BASELINE QUALITY.—The of-
23 ficial designated to perform oversight of performance as-
24 sessment pursuant to section 145 of this title shall periodi-
25 cally assess the suitability of the baseline descriptions re-
26 quired by section 2435 of title 10, United States Code,

1 of major defense acquisition programs for providing a
2 basis for performance assessment and make such rec-
3 ommendations to the Secretary of Defense and the Under
4 Secretary of Defense for Acquisition, Technology, and Lo-
5 gistics as the official considers necessary to improve the
6 suitability of baseline descriptions for such purpose.

7 “(c) EARNED VALUE MANAGEMENT SYSTEM.—The
8 official designated to perform oversight of performance as-
9 sessment pursuant to section 145 of this title shall be re-
10 sponsible for the management and oversight of the records
11 of the earned value management system of the Depart-
12 ment of Defense.

13 “(d) PARTICIPATION IN CERTAIN PROGRAM RE-
14 VIEW.—The official designated to perform oversight of
15 performance assessment pursuant to section 145 of this
16 title is authorized to present an assessment of the per-
17 formance of a major defense acquisition program during—

18 “(1) any discussions prior to certification under
19 section 2433(e)(2) of this title;

20 “(2) any discussions prior to entry into full-rate
21 production; and

22 “(3) consideration of any decision to request
23 authorization of a multiyear procurement contract
24 for a major defense acquisition program.

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

9 (b) CLERICAL AMENDMENT.—The table of sections
10 at the beginning of such chapter, as amended by section
11 103, is further amended by adding at the end the following
12 new item:

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

13 **SEC. 105. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**
14 **CRITICAL TECHNOLOGIES OF MAJOR DE-**
15 **FENSE ACQUISITION PROGRAMS BY THE DI-**
16 **RECTOR OF DEFENSE RESEARCH AND ENGI-**
17 **NEERING.**

18 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-
19 SEARCH AND ENGINEERING.—

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

23 “(c)(1) The Director of Defense Research and Engi-
24 neering shall periodically review and assess the techno-
25 logical maturity and integration risk of critical tech-

1 nologies of the major defense acquisition programs of the
2 Department of Defense and report on the findings of such
3 reviews and assessments to the Under Secretary of De-
4 fense for Acquisition, Technology, and Logistics.

5 “(2) The Director shall submit to the Secretary of
6 Defense and to the congressional defense committees by
7 January 1 of each year a report on the technological matu-
8 rity and integration risk of critical technologies of the
9 major defense acquisition programs of the Department of
10 Defense.”.

11 (2) FIRST ANNUAL REPORT.—The first annual
12 report under subsection (c)(2) of section 139a of
13 title 10, United States Code (as added by paragraph
14 (1)), shall be submitted to the congressional defense
15 committees not later than March 1, 2011, and shall
16 address the results of reviews and assessments con-
17 ducted by the Director of Defense Research and En-
18 gineering pursuant to subsection (c)(1) of such sec-
19 tion (as so added) during the preceding calendar
20 year.

21 (b) REPORT ON RESOURCES FOR IMPLEMENTA-
22 TION.—Not later than 120 days after the date of the en-
23 actment of this Act, the Director of Defense Research and
24 Engineering shall submit to the congressional defense
25 committees a report describing any additional resources

1 that may be required by the Director, and by other re-
2 search and engineering elements of the Department of De-
3 fense, to carry out the following:

4 (1) The requirements under the amendment
5 made by subsection (a)(1).

6 (2) The technological maturity assessments re-
7 quired by section 2366b(a) of title 10, United States
8 Code.

9 (3) The requirements of Department of Defense
10 Instruction 5000, as revised.

11 **SEC. 106. ROLE OF THE COMMANDERS OF THE COMBATANT**
12 **COMMANDS IN IDENTIFYING JOINT MILITARY**
13 **REQUIREMENTS.**

14 Section 181(d) of title 10, United States Code, is
15 amended—

16 (1) by inserting “(1)” before “The Under Sec-
17 retary”; and

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

20 “(2) The Council shall seek and consider input from
21 the commanders of the combatant commands in carrying
22 out its mission under paragraphs (1) and (2) of subsection
23 (b) and in conducting periodic reviews in accordance with
24 the requirements of subsection (e).”.

1 **TITLE II—ACQUISITION POLICY**

2 **SEC. 201. ACQUISITION STRATEGIES ENSURING COMPETI-**
3 **TION THROUGHOUT THE LIFECYCLE OF**
4 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

5 (a) ACQUISITION STRATEGY ENSURING COMPETI-
6 TION.—The Secretary of Defense shall ensure that the ac-
7 quisition strategy for each major defense acquisition pro-
8 gram includes—

9 (1) measures to ensure competition, or the op-
10 tion of competition, at both the prime contract level
11 and the subcontract level (at such tier or tiers as are
12 appropriate) of such program throughout the life-
13 cycle of such program as a means to improve con-
14 tractor performance; and

15 (2) adequate documentation of the rationale for
16 the selection of the subcontract tier or tiers under
17 paragraph (1).

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

23 (1) Competitive prototyping.

24 (2) Dual-sourcing.

1 (3) Funding of a second source for interchange-
2 able, next-generation prototype systems or sub-
3 systems.

4 (4) Use of modular, open architectures to en-
5 able competition for upgrades.

6 (5) Use of build-to-print approaches to enable
7 production through multiple sources.

8 (6) Acquisition of complete technical data pack-
9 ages.

10 (5) Periodic competitions for subsystem up-
11 grades.

12 (6) Licensing of additional suppliers.

13 (7) Periodic system or program reviews to ad-
14 dress long-term competitive effects of program deci-
15 sions.

16 **SEC. 202. ADDITIONAL REQUIREMENTS FOR CERTAIN**
17 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

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

21 (1) in subsection (d)—

22 (A) by inserting “(1)” before “The mile-
23 stone decision authority may”; and

24 (B) by striking the second sentence and in-
25 serting the following:

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

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

8 “(B) the milestone decision authority shall re-
9 view the program not less often than annually to de-
10 termine the extent to which such program currently
11 satisfies the certification components specified in
12 paragraphs (1) and (2) of subsection (a) until such
13 time as the milestone decision authority determines
14 that the program satisfies all such certification com-
15 ponents.”;

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

19 “(e) DESIGNATION OF CERTIFICATION STATUS IN
20 BUDGET DOCUMENTATION.—Any budget request, budget
21 justification material, budget display, reprogramming re-
22 quest, Selected Acquisition Report, or other budget docu-
23 mentation or performance report submitted by the Sec-
24 retary of Defense to the President regarding a major de-
25 fense acquisition program receiving a waiver pursuant to

1 subsection (d) shall prominently and clearly indicate that
2 such program has not fully satisfied the certification re-
3 quirements of this section until such time as the milestone
4 decision authority makes the determination that such pro-
5 gram has satisfied all certification components pursuant
6 to subsection (d)(2)(B).”;

7 (3) in subsection (a)—

8 (A) in paragraph (1), by striking “and” at
9 the end;

10 (B) by redesignating paragraph (2) as
11 paragraph (3);

12 (C) by inserting after paragraph (1) the
13 following new paragraph (2):

14 “(2) has received a preliminary design review
15 and conducted a formal post-preliminary design re-
16 view assessment, and certifies on the basis of such
17 assessment that the program demonstrates a high
18 likelihood of accomplishing its intended mission or
19 that no preliminary design review is necessary for
20 such program to demonstrate a high likelihood of ac-
21 complishing its intended mission; and”;

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

24 (i) in subparagraph (D), by striking
25 the semicolon and inserting “, as deter-

1 mined by the Milestone Decision Authority
2 on the basis of an independent review and
3 assessment by the Director of Defense Re-
4 search and Engineering; and”;

5 (ii) by striking subparagraph (E); and

6 (ii) by redesignating subparagraph
7 (F) as subparagraph (E).

8 (b) CERTIFICATION AND REVIEW OF PROGRAMS EN-
9 TERING DEVELOPMENT PRIOR TO ENACTMENT OF SEC-
10 TION 2366B OF TITLE 10.—

11 (1) DETERMINATION.—(A) Except as provided
12 in subparagraph (B), beginning not later than 270
13 days after the date of the enactment of this Act, for
14 each major defense acquisition program that has not
15 received a Milestone C approval, or Key Decision
16 Point C approval in the case of a space program, the
17 Milestone Decision Authority shall determine wheth-
18 er or not the program satisfies the certification com-
19 ponents specified in paragraphs (1) and (2) of sub-
20 section (a) of section 2366b of title 10, United
21 States Code.

22 (B) Subparagraph (A) shall not apply to a
23 major defense acquisition program that has been re-
24 viewed pursuant to section 2366b of title 10, United
25 States Code, prior to the date that is 270 days after

1 the date of the enactment of this Act, or a major de-
2 fense acquisition program that has not yet received
3 Milestone B approval.

4 (2) ANNUAL REVIEW.—The Milestone Decision
5 Authority shall review any program determined pur-
6 suant to paragraph (1) not to satisfy the certifi-
7 cation components of subsection (a) of section 2366b
8 of title 10, United States Code, not less often than
9 annually thereafter to determine the extent to which
10 such program currently satisfies the certification
11 components specified in paragraphs (1) and (2) of
12 subsection (a) of such section until such time as the
13 Milestone Decision Authority determines that the
14 program satisfies all such certification components.

15 (3) DESIGNATION OF CERTIFICATION STATUS
16 IN BUDGET DOCUMENTATION.—Any budget request,
17 budget justification material, budget display, re-
18 programming request, Selected Acquisition Report,
19 or other budget documentation or performance re-
20 port submitted by the Secretary of Defense to the
21 President regarding a major defense acquisition pro-
22 gram which the Milestone Decision Authority deter-
23 mines under paragraph (1) does not satisfy the cer-
24 tification components specified in paragraphs (1)
25 and (2) of subsection (a) of section 2366b of title

1 10, United States Code, shall prominently and clear-
2 ly indicate that such program has not fully satisfied
3 such certification components until such time as the
4 Milestone Decision Authority makes the determina-
5 tion that such program has satisfied all certification
6 components pursuant to paragraph (2).

7 (c) **REVIEWS OF PROGRAMS RESTRUCTURED AFTER**
8 **EXPERIENCING CRITICAL COST GROWTH.**—The official
9 designated to perform oversight of performance assess-
10 ment pursuant to section 145 of title 10, United States
11 Code, as added by this Act, shall annually review each
12 major defense acquisition program that has been consid-
13 ered pursuant to paragraph (2) of section 2433(e) of title
14 10, United States Code, and which has been certified as
15 necessary to continue pursuant to such paragraph, to as-
16 sess the success of the program in achieving adequate pro-
17 gram performance after the completion of such consider-
18 ation. The results of reviews performed pursuant to this
19 subsection shall be included in the next annual report of
20 such official.

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

23 (a) **CERTIFICATION.**—Except as provided in sub-
24 section (b), beginning not later than 270 days after the
25 date of the enactment of this Act, for each major defense

1 acquisition program that has not received Milestone B ap-
2 proval, or Key Decision Point B approval in the case of
3 a space program, the Milestone Decision Authority shall
4 certify, after consultation with the Joint Requirements
5 Oversight Council on matters relating to program require-
6 ments and military needs—

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

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

13 (3) if the program duplicates a capability al-
14 ready provided by an existing program, the duplica-
15 tion provided by such program is necessary and ap-
16 propriate;

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

23 (5) that a schedule identifying the time and
24 major activities required to reach Milestone B ap-
25 proval, or Key Decision Point B approval in the case

1 of a space program, has been submitted to the Mile-
2 stone Decision Authority.

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

7 (c) REPORTS.—

8 (1) RELATING TO COST GROWTH OR SCHEDULE
9 DELAY OF PROGRAMS CERTIFIED UNDER SUB-
10 SECTION (A).—With respect to a major defense ac-
11 quisition program certified by the Milestone Decision
12 Authority under subsection (a), the Milestone Deci-
13 sion Authority shall submit to the congressional de-
14 fense committees a report in accordance with this
15 subsection if, prior to Milestone B approval—

16 (A) the projected cost of the program ex-
17 ceeds the cost estimate for the program sub-
18 mitted to the Milestone Decision Authority in
19 accordance with subsection (a)(4) by more than
20 25 percent; or

21 (B) the schedule submitted to the Mile-
22 stone Decision Authority in accordance with
23 subsection (a)(5) is delayed by more than 25
24 percent.

1 (2) RELATING TO COST GROWTH OF PROGRAMS
2 CERTIFIED UNDER SECTION 2366A.—With respect to
3 a major defense acquisition program certified by the
4 Milestone Decision Authority under section 2366a of
5 title 10, United States Code, the Milestone Decision
6 Authority shall submit to the congressional defense
7 committees a report in accordance with this sub-
8 section if the program manager submits a notifica-
9 tion to the Milestone Decision Authority pursuant to
10 section 2366a(b).

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

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

15 (B) identify appropriate acquisition per-
16 formance measures for the remainder of the
17 program; and

18 (C) include one of the following:

19 (i) A written certification (with a sup-
20 porting explanation) stating that—

21 (I) such program is essential to
22 national security;

23 (II) there are no alternatives to
24 such program that will provide accept-
25 able military capability at less cost;

1 (III) new estimates of the cost or
2 schedule, as appropriate, are reason-
3 able; and

4 (IV) the management structure
5 for the program is adequate to man-
6 age and control program cost and
7 schedule.

8 (ii) A plan for terminating the devel-
9 opment of the program or withdrawal of
10 Milestone A approval (or Key Decision
11 Point A approval in the case of a space
12 program) if the Milestone Decision Author-
13 ity determines that such action is in the in-
14 terest of national defense.

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

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

22 (B) in the case of a report required by
23 paragraph (2), not later than 30 days after the
24 Milestone Decision Authority receives the notifi-

1 cation from the program manager described in
2 that paragraph.

3 (d) DEFINITIONS.—In this section:

4 (1) MAJOR DEFENSE ACQUISITION PROGRAM.—

5 The term “major defense acquisition program”
6 means the following:

7 (A) A major defense acquisition program
8 as that term is defined in section 2430 of title
9 10, United States Code.

10 (B) An acquisition program of the Depart-
11 ment of Defense that the Secretary of Defense
12 expects to become a major defense acquisition
13 program (as defined in such section 2430) upon
14 Milestone B approval, on the basis of the cost
15 estimate submitted in accordance with sub-
16 section (a)(4) of this section or subsection
17 (a)(4) of section 2366a of title 10, United
18 States Code.

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

22 (3) ENTITY.—The term “entity” has the mean-
23 ing provided by section 2366a(c)(4) of such title.

1 (4) MILESTONE B APPROVAL.—The term “Mile-
2 stone B approval” has the meaning provided by sec-
3 tion 2366(e)(7) of such title.

4 **SEC. 204. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**
5 **QUISITION PROGRAMS.**

6 (a) AUTHORIZED ACTIONS IN EVENT OF CRITICAL
7 COST GROWTH.—Paragraph (2) of section 2433(e) of title
8 10, United States Code, is amended to read as follows:

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

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

19 “(I) changes or growth in requirements;

20 “(II) unrealistic baseline estimates;

21 “(III) any design, engineering, manufac-
22 turing, or technology integration issues;

23 “(IV) changes in procurement quantities;

24 “(V) inadequate program funding or fund-
25 ing instability;

1 “(VI) poor performance by government or
2 contractor personnel responsible for program
3 management; or

4 “(VII) other causes as identified by the
5 Secretary;

6 “(ii) subject to subparagraph (B), determine
7 whether to terminate such program or to restructure
8 such program after assessing—

9 “(I) the root causes of cost growth identi-
10 fied pursuant to subparagraph (A);

11 “(II) the validity and urgency of the joint
12 military requirement;

13 “(III) the viability of the acquisition strat-
14 egy;

15 “(IV) the quality of program management;

16 “(V) a broad range of potential material
17 and non-material alternatives to such program;

18 “(iii) submit the determination made under
19 clause (ii) to Congress, before the end of the 60-day
20 period beginning on the day the Selected Acquisition
21 Report containing the information described in sub-
22 section (g) is required to be submitted under section
23 2432(f) of this title; and

24 “(iv) if a report under paragraph (1) has been
25 previously submitted to Congress with respect to

1 such program or subprogram for the current fiscal
2 year but was based upon a different unit cost report
3 from the program manager to the service acquisition
4 executive designated by the Secretary concerned,
5 submit a further report containing the information
6 described in subsection (g), determined from the
7 time of the previous report to the time of the cur-
8 rent report.

9 “(B) A program may be restructured pursuant to a
10 determination under subparagraph (A)(ii) only if—

11 “(i) a written certification (with a supporting
12 explanation) is submitted along with the determina-
13 tion stating that—

14 “(I) such program is essential to national
15 security;

16 “(II) there are no alternatives to such pro-
17 gram which will provide acceptable military ca-
18 pability at less cost;

19 “(III) new estimates of the program acqui-
20 sition unit cost or procurement unit cost are
21 reasonable; and

22 “(IV) the management structure for the
23 program is adequate to manage and control
24 program acquisition unit cost or procurement
25 unit cost; and

1 Warner National Defense Authorization Act for Fiscal
2 Year 2007 (Public Law 109-364; 120 Stat. 2320) shall
3 present recommendations to the Secretary of Defense on
4 measures to eliminate or mitigate organizational conflicts
5 of interest in the acquisition of major weapons systems.

6 (b) REVISED REGULATIONS REQUIRED.—Not later
7 than 180 days after receiving recommendations pursuant
8 to subsection (a), the Secretary of Defense shall revise the
9 Defense Supplement to the Federal Acquisition Regula-
10 tion to address organizational conflicts of interest by con-
11 tractors in the acquisition of major weapon systems.

12 (c) EXTENSION OF PANEL ON CONTRACTING INTEG-
13 RITY.—Subsection (e) of section 813 of the John Warner
14 National Defense Authorization Act (Public Law 109-
15 364; 120 Stat. 2321) is amended to read as follows:

16 “(e) TERMINATION.—(1) Subject to the restriction in
17 paragraph (2), the panel shall continue to serve until the
18 date that is 18 months after the date on which the Sec-
19 retary of Defense notifies the congressional defense com-
20 mittees of an intention to terminate the panel based on
21 a determination that the activities of the panel no longer
22 justify its continuation and that concerns about con-
23 tracting integrity have been fully mitigated.

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

1 **SEC. 206. AWARDS FOR DEPARTMENT OF DEFENSE PER-**
2 **SONNEL FOR EXCELLENCE IN THE ACQUI-**
3 **SITION OF PRODUCTS AND SERVICES.**

4 (a) **IN GENERAL.**—Not later than 180 days after the
5 date of the enactment of this Act, the Secretary of Defense
6 shall commence carrying out a program to recognize excel-
7 lent performance by individuals and teams of members of
8 the Armed Forces and civilian personnel of the Depart-
9 ment of Defense in the acquisition of products and serv-
10 ices for the Department of Defense.

11 (b) **ELEMENTS.**—The program required by sub-
12 section (a) shall include the following:

13 (1) Procedures for the nomination by the per-
14 sonnel of the military departments and the Defense
15 Agencies of individuals and teams of members of the
16 Armed Forces and civilian personnel of the Depart-
17 ment of Defense for eligibility for recognition under
18 the program.

19 (2) Procedures for the evaluation of nomina-
20 tions for recognition under the program by one or
21 more panels of individuals from the Government,
22 academia, and the private sector who have such ex-
23 pertise, and are appointed in such manner, as the
24 Secretary shall establish for purposes of the pro-
25 gram.

1 (c) AWARD OF CASH BONUSES.—As part of the pro-
2 gram required by subsection (a), the Secretary may award
3 to any individual recognized pursuant to the program a
4 cash bonus authorized by any other provision of law to
5 the extent that the performance of such individual so rec-
6 ognized warrants the award of such bonus under such pro-
7 vision of law.

8 **SEC. 207. CONSIDERATION OF TRADE-OFFS AMONG COST,**
9 **SCHEDULE, AND PERFORMANCE IN THE AC-**
10 **QUISITION OF MAJOR WEAPON SYSTEMS.**

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

16 (b) MECHANISMS INCLUDED.—The mechanisms re-
17 viewed pursuant to subsection (a) shall include—

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

22 (2) Configuration Steering Boards as estab-
23 lished pursuant to section 814 of the Duncan
24 Hunter National Defense Authorization Act for Fis-

1 cal Year 2009 (Public Law 110–417; 122 Stat.
2 4528); and

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

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

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



