

HOUSE OF REPRESENTATIVES OFFICIAL COPY

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111TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } 111-____

WEAPON SYSTEM ACQUISITION REFORM ACT OF 2009

_____, 2009.—Ordered to be printed

Mr. Skelton, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 454]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 454), to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Weapon Systems Acquisition Reform Act of 2009”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—ACQUISITION ORGANIZATION

Sec. 101. Cost assessment and program evaluation.

Sec. 102. Directors of Developmental Test and Evaluation and Systems Engineering.

Sec. 103. Performance assessments and root cause analyses for major defense acquisition programs.

Sec. 104. Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering.

Sec. 105. Role of the commanders of the combatant commands in identifying joint military requirements.

TITLE II—ACQUISITION POLICY

Sec. 201. Consideration of trade-offs among cost, schedule, and performance objectives in Department of Defense acquisition programs.

Sec. 202. Acquisition strategies to ensure competition throughout the lifecycle of major defense acquisition programs.

Sec. 203. Prototyping requirements for major defense acquisition programs.

Sec. 204. Actions to identify and address systemic problems in major defense acquisition programs prior to Milestone B approval.

Sec. 205. Additional requirements for certain major defense acquisition programs.

Sec. 206. Critical cost growth in major defense acquisition programs.

Sec. 207. Organizational conflicts of interest in major defense acquisition programs.

TITLE III—ADDITIONAL ACQUISITION PROVISIONS

Sec. 301. Awards for Department of Defense personnel for excellence in the acquisition of products and services.

Sec. 302. Earned value management.

Sec. 303. Expansion of national security objectives of the national technology and industrial base.

Sec. 304. Comptroller General of the United States reports on costs and financial information regarding major defense acquisition programs.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) The term “congressional defense commit-
4 tees” has the meaning given that term in section
5 101(a)(16) of title 10, United States Code.

6 (2) The term “major defense acquisition pro-
7 gram” has the meaning given that term in section
8 2430 of title 10, United States Code.

9 (3) The term “major weapon system” has the
10 meaning given that term in section 2379(d) of title
11 10, United States Code.

12 **TITLE I—ACQUISITION**
13 **ORGANIZATION**

14 **SEC. 101. COST ASSESSMENT AND PROGRAM EVALUATION.**

15 (a) **DIRECTOR OF COST ASSESSMENT AND PROGRAM**
16 **EVALUATION.—**

17 (1) **IN GENERAL.—**Chapter 4 of title 10, United
18 States Code, is amended by inserting after section
19 139b the following new section:

20 **“§ 139c. Director of Cost Assessment and Program**
21 **Evaluation**

22 **“(a) APPOINTMENT.—**There is a Director of Cost As-
23 sessment and Program Evaluation in the Department of
24 Defense, appointed by the President, by and with the ad-
25 vice and consent of the Senate.

1 “(b) INDEPENDENT ADVICE TO SECRETARY OF DE-
2 FENSE.—(1) The Director of Cost Assessment and Pro-
3 gram Evaluation is the principal advisor to the Secretary
4 of Defense and other senior officials of the Department
5 of Defense, and shall provide independent analysis and ad-
6 vice to such officials, on the following matters:

7 “(A) Matters assigned to the Director pursuant
8 to this section and section 2334 of this title.

9 “(B) Matters assigned to the Director by the
10 Secretary pursuant to section 113 of this title.

11 “(2) The Director may communicate views on mat-
12 ters within the responsibility of the Director directly to
13 the Secretary of Defense and the Deputy Secretary of De-
14 fense without obtaining the approval or concurrence of any
15 other official within the Department of Defense.

16 “(c) DEPUTY DIRECTORS.—There are two Deputy
17 Directors within the Office of the Director of Cost Assess-
18 ment and Program Evaluation, as follows:

19 “(1) The Deputy Director for Cost Assessment.

20 “(2) The Deputy Director for Program Evalua-
21 tion.

22 “(d) RESPONSIBILITIES.—The Director of Cost As-
23 sessment and Program Evaluation shall serve as the prin-
24 cipal official within the senior management of the Depart-
25 ment of Defense for the following:

1 “(1) Cost estimation and cost analysis for ac-
2 quisition programs of the Department of Defense,
3 and carrying out the duties assigned pursuant to
4 section 2334 of this title.

5 “(2) Analysis and advice on matters relating to
6 the planning and programming phases of the Plan-
7 ning, Programming, Budgeting and Execution sys-
8 tem, and the preparation of materials and guidance
9 for such system, as directed by the Secretary of De-
10 fense, working in coordination with the Under Sec-
11 retary of Defense (Comptroller).

12 “(3) Analysis and advice for resource discus-
13 sions relating to requirements under consideration in
14 the Joint Requirements Oversight Council pursuant
15 to section 181 of this title.

16 “(4) Formulation of study guidance for anal-
17 yses of alternatives for major defense acquisition
18 programs and performance of such analyses, as di-
19 rected by the Secretary of Defense

20 “(5) Review, analysis, and evaluation of pro-
21 grams for executing approved strategies and policies,
22 ensuring that information on programs is presented
23 accurately and completely, and assessing the effect
24 of spending by the Department of Defense on the
25 United States economy.

1 “(6) Assessments of special access and com-
2 partmented intelligence programs, in coordination
3 with the Under Secretary of Defense for Acquisition,
4 Technology, and Logistics and the Under Secretary
5 of Defense for Intelligence and in accordance with
6 applicable policies.

7 “(7) Assessments of alternative plans, pro-
8 grams, and policies with respect to the acquisition
9 programs of the Department of Defense.

10 “(8) Leading the development of improved ana-
11 lytical skills and competencies within the cost assess-
12 ment and program evaluation workforce of the De-
13 partment of Defense and improved tools, data, and
14 methods to promote performance, economy, and effi-
15 ciency in analyzing national security planning and
16 the allocation of defense resources.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of chapter 4 of such title is
19 amended by inserting after the item relating to sec-
20 tion 139b the following new item:

“139c. Director of Cost Assessment and Program Evaluation.”.

21 (3) EXECUTIVE SCHEDULE LEVEL IV.—Section
22 5315 of title 5, United States Code, is amended by
23 inserting after the item relating to the Director of
24 Operational Test and Evaluation, Department of
25 Defense the following new item:

1 of the Defense Agencies with respect to cost esti-
2 mation in the Department of Defense in general and
3 with respect to specific cost estimates and cost anal-
4 yses to be conducted in connection with a major de-
5 fense acquisition program under chapter 144 of this
6 title or a major automated information system pro-
7 gram under chapter 144A of this title;

8 “(3) issue guidance relating to the proper selec-
9 tion of confidence levels in cost estimates generally,
10 and specifically, for the proper selection of con-
11 fidence levels in cost estimates for major defense ac-
12 quisition programs and major automated informa-
13 tion system programs;

14 “(4) issue guidance relating to full consider-
15 ation of life-cycle management and sustainability
16 costs in major defense acquisition programs and
17 major automated information system programs;

18 “(5) review all cost estimates and cost analyses
19 conducted in connection with major defense acquisi-
20 tion programs and major automated information
21 system programs;

22 “(6) conduct independent cost estimates and
23 cost analyses for major defense acquisition programs
24 and major automated information system programs
25 for which the Under Secretary of Defense for Acqui-

1 sition, Technology, and Logistics is the Milestone
2 Decision Authority—

3 “(A) in advance of—

4 “(i) any certification under section
5 2366a or 2366b of this title;

6 “(ii) any decision to enter into low-
7 rate initial production or full-rate produc-
8 tion;

9 “(iii) any certification under section
10 2433a of this title; and

11 “(iv) any report under section
12 2445c(f) of this title; and

13 “(B) at any other time considered appro-
14 priate by the Director or upon the request of
15 the Under Secretary of Defense for Acquisition,
16 Technology, and Logistics; and

17 “(7) periodically assess and update the cost in-
18 dexes used by the Department to ensure that such
19 indexes have a sound basis and meet the Depart-
20 ment’s needs for realistic cost estimation.

21 “(b) REVIEW OF COST ESTIMATES, COST ANALYSES,
22 AND RECORDS OF THE MILITARY DEPARTMENTS AND
23 DEFENSE AGENCIES.—The Secretary of Defense shall en-
24 sure that the Director of Cost Assessment and Program
25 Evaluation—

1 “(1) promptly receives the results of all cost es-
2 timates and cost analyses conducted by the military
3 departments and Defense Agencies, and all studies
4 conducted by the military departments and Defense
5 Agencies in connection with such cost estimates and
6 cost analyses, for major defense acquisition pro-
7 grams and major automated information system pro-
8 grams of the military departments and Defense
9 Agencies; and

10 “(2) has timely access to any records and data
11 in the Department of Defense (including the records
12 and data of each military department and Defense
13 Agency and including classified and proprietary in-
14 formation) that the Director considers necessary to
15 review in order to carry out any duties under this
16 section.

17 “(c) PARTICIPATION, CONCURRENCE, AND APPROVAL
18 IN COST ESTIMATION.—The Director of Cost Assessment
19 and Program Evaluation may—

20 “(1) participate in the discussion of any dis-
21 crepancies between an independent cost estimate and
22 the cost estimate of a military department or De-
23 fense Agency for a major defense acquisition pro-
24 gram or major automated information system pro-
25 gram of the Department of Defense;

1 “(2) comment on deficiencies in the method-
2 ology or execution of any cost estimate or cost anal-
3 ysis developed by a military department or Defense
4 Agency for a major defense acquisition program or
5 major automated information system program;

6 “(3) concur in the choice of a cost estimate
7 within the baseline description or any other cost esti-
8 mate (including the confidence level for any such
9 cost estimate) for use at any event specified in sub-
10 section (a)(6); and

11 “(4) participate in the consideration of any de-
12 cision to request authorization of a multiyear pro-
13 curement contract for a major defense acquisition
14 program.

15 “(d) DISCLOSURE OF CONFIDENCE LEVELS FOR
16 BASELINE ESTIMATES OF MAJOR DEFENSE ACQUISITION
17 PROGRAMS.—The Director of Cost Assessment and Pro-
18 gram Evaluation, and the Secretary of the military depart-
19 ment concerned or the head of the Defense Agency con-
20 cerned (as applicable), shall each—

21 “(1) disclose in accordance with paragraph (2)
22 the confidence level used in establishing a cost esti-
23 mate for a major defense acquisition program or
24 major automated information system program, the
25 rationale for selecting such confidence level, and, if

1 such confidence level is less than 80 percent, the jus-
2 tification for selecting a confidence level of less than
3 80 percent; and

4 “(2) include the disclosure required by para-
5 graph (1)—

6 “(A) in any decision documentation ap-
7 proving a cost estimate within the baseline de-
8 scription or any other cost estimate for use at
9 any event specified in subsection (a)(6); and

10 “(B) in the next Selected Acquisition Re-
11 port pursuant to section 2432 of this title in
12 the case of a major defense acquisition pro-
13 gram, or the next quarterly report pursuant to
14 section 2445c of this title in the case of a major
15 automated information system program.

16 “(e) ANNUAL REPORT ON COST ASSESSMENT AC-
17 TIVITIES.—(1) The Director of Cost Assessment and Pro-
18 gram Evaluation shall prepare an annual report summa-
19 rizing the cost estimation and cost analysis activities of
20 the Department of Defense during the previous year and
21 assessing the progress of the Department in improving the
22 accuracy of its cost estimates and analyses. Each report
23 shall include, for the year covered by such report, an as-
24 sessment of—

1 “(A) the extent to which each of the military
2 departments and Defense Agencies have complied
3 with policies, procedures, and guidance issued by the
4 Director with regard to the preparation of cost esti-
5 mates for major defense acquisition programs and
6 major automated information systems;

7 “(B) the overall quality of cost estimates pre-
8 pared by each of the military departments and De-
9 fense Agencies for major defense acquisition pro-
10 grams and major automated information system pro-
11 grams; and

12 “(C) any consistent differences in methodology
13 or approach among the cost estimates prepared by
14 the military departments, the Defense Agencies, and
15 the Director.

16 “(2) Each report under this subsection shall be sub-
17 mitted concurrently to the Secretary of Defense, the
18 Under Secretary of Defense for Acquisition, Technology,
19 and Logistics, the Under Secretary of Defense (Comp-
20 troller), and the congressional defense committees not
21 later than 10 days after the transmittal to Congress of
22 the budget of the President for the next fiscal year (as
23 submitted pursuant to section 1105 of title 31).

24 “(3)(A) Each report submitted to the congressional
25 defense committees under this subsection shall be sub-

1 mitted in unclassified form, but may include a classified
2 annex.

3 “(B) The Director shall ensure that a report sub-
4 mitted under this subsection does not include any informa-
5 tion, such as proprietary or source selection sensitive in-
6 formation, that could undermine the integrity of the acqui-
7 sition process.

8 “(C) The unclassified version of each report sub-
9 mitted to the congressional defense committees under this
10 subsection shall be posted on an Internet website of the
11 Department of Defense that is available to the public.

12 “(4) The Secretary of Defense may comment on any
13 report of the Director to the congressional defense com-
14 mittees under this subsection.

15 “(f) STAFF.—The Secretary of Defense shall ensure
16 that the Director of Cost Assessment and Program Eval-
17 uation has sufficient professional staff of military and ci-
18 vilian personnel to enable the Director to carry out the
19 duties and responsibilities of the Director under this sec-
20 tion.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of chapter 137 of such title
23 is amended by adding at the end the following new
24 item:

“2334. Independent cost estimation and cost analysis.”.

25 (c) TRANSFER OF PERSONNEL AND FUNCTIONS.—

1 (1) TRANSFER OF FUNCTIONS.—The functions
2 of the Office of Program Analysis and Evaluation of
3 the Department of Defense, including the functions
4 of the Cost Analysis Improvement Group, are hereby
5 transferred to the Office of the Director of Cost As-
6 sessment and Program Evaluation.

7 (2) TRANSFER OF PERSONNEL TO DEPUTY DI-
8 RECTOR FOR INDEPENDENT COST ASSESSMENT.—
9 The personnel of the Cost Analysis Improvement
10 Group are hereby transferred to the Deputy Director
11 for Cost Assessment in the Office of the Director of
12 Cost Assessment and Program Evaluation.

13 (3) TRANSFER OF PERSONNEL TO DEPUTY DI-
14 RECTOR FOR PROGRAM ANALYSIS AND EVALUA-
15 TION.—The personnel (other than the personnel
16 transferred under paragraph (2)) of the Office of
17 Program Analysis and Evaluation are hereby trans-
18 ferred to the Deputy Director for Program Evalua-
19 tion in the Office of the Director of Cost Assessment
20 and Program Evaluation.

21 (d) CONFORMING AMENDMENTS.—

22 (1) Section 181(d) of title 10, United States
23 Code, is amended by striking “Director of the Office
24 of Program Analysis and Evaluation” and inserting

1 “Director of Cost Assessment and Program Evalua-
2 tion”.

3 (2) Section 2306b(i)(1)(B) of such title is
4 amended by striking “Cost Analysis Improvement
5 Group of the Department of Defense” and inserting
6 “Director of Cost Assessment and Program Anal-
7 ysis”.

8 (3) Section 2366a(a)(4) of such title is amend-
9 ed by inserting “, with the concurrence of the Direc-
10 tor of Cost Assessment and Program Evaluation,”
11 after “has been submitted”.

12 (4) Section 2366b(a)(1)(C) of such title is
13 amended by inserting “, with the concurrence of the
14 Director of Cost Assessment and Program Evalua-
15 tion,” after “have been developed to execute”.

16 (5) Subparagraph (A) of section 2434(b)(1) of
17 such title is amended to read as follows:

18 “(A) be prepared or approved by the Director of Cost
19 Assessment and Program Evaluation; and”.

20 (6) Section 2445c(f)(3) of such title is amended
21 by striking “are reasonable” and inserting “have
22 been determined, with the concurrence of the Direc-
23 tor of Cost Assessment and Program Evaluation, to
24 be reasonable”.

1 (e) REPORT ON MONITORING OF OPERATING AND
2 SUPPORT COSTS FOR MAJOR DEFENSE ACQUISITION
3 PROGRAMS.—

4 (1) REPORT TO SECRETARY OF DEFENSE.—Not
5 later than one year after the date of the enactment
6 of this Act, the Director of Cost Assessment and
7 Program Evaluation under section 139c of title 10
8 United States Code (as added by subsection (a)),
9 shall review existing systems and methods of the De-
10 partment of Defense for tracking and assessing op-
11 erating and support costs on major defense acqui-
12 sition programs and submit to the Secretary of De-
13 fense a report on the finding and recommendations
14 of the Director as a result of the review, including
15 an assessment by the Director of the feasibility and
16 advisability of establishing baselines for operating
17 and support costs under section 2435 of title 10,
18 United States Code.

19 (2) TRANSMITTAL TO CONGRESS.—Not later
20 than 30 days after receiving the report required by
21 paragraph (1), the Secretary shall transmit the re-
22 port to the congressional defense committees, to-
23 gether with any comments on the report the Sec-
24 retary considers appropriate.

1 **SEC. 102. DIRECTORS OF DEVELOPMENTAL TEST AND**
2 **EVALUATION AND SYSTEMS ENGINEERING.**

3 (a) IN GENERAL.—

4 (1) ESTABLISHMENT OF POSITIONS.—Chapter
5 4 of title 10, United States Code, as amended by
6 section 101(a) of this Act, is further amended by in-
7 serting after section 139c the following new section:

8 **“§ 139d. Director of Developmental Test and Evalua-**
9 **tion; Director of Systems Engineering:**
10 **joint guidance**

11 “(a) DIRECTOR OF DEVELOPMENTAL TEST AND
12 EVALUATION.—

13 “(1) APPOINTMENT.—There is a Director of
14 Developmental Test and Evaluation, who shall be
15 appointed by the Secretary of Defense from among
16 individuals with an expertise in test and evaluation.

17 “(2) PRINCIPAL ADVISOR FOR DEVELOPMENTAL
18 TEST AND EVALUATION.—The Director shall be the
19 principal advisor to the Secretary of Defense and the
20 Under Secretary of Defense for Acquisition, Tech-
21 nology, and Logistics on developmental test and
22 evaluation in the Department of Defense.

23 “(3) SUPERVISION.—The Director shall be sub-
24 ject to the supervision of the Under Secretary of De-
25 fense for Acquisition, Technology, and Logistics and
26 shall report to the Under Secretary.

1 “(4) COORDINATION WITH DIRECTOR OF SYS-
2 TEMS ENGINEERING.—The Director of Develop-
3 mental Test and Evaluation shall closely coordinate
4 with the Director of Systems Engineering to ensure
5 that the developmental test and evaluation activities
6 of the Department of Defense are fully integrated
7 into and consistent with the systems engineering and
8 development planning processes of the Department.

9 “(5) DUTIES.—The Director shall—

10 “(A) develop policies and guidance for—

11 “(i) the conduct of developmental test
12 and evaluation in the Department of De-
13 fense (including integration and develop-
14 mental testing of software);

15 “(ii) in coordination with the Director
16 of Operational Test and Evaluation, the in-
17 tegration of developmental test and evalua-
18 tion with operational test and evaluation;

19 “(iii) the conduct of developmental
20 test and evaluation conducted jointly by
21 more than one military department or De-
22 fense Agency;

23 “(B) review and approve the developmental
24 test and evaluation plan within the test and
25 evaluation master plan for each major defense

1 acquisition program of the Department of De-
2 fense;

3 “(C) monitor and review the developmental
4 test and evaluation activities of the major de-
5 fense acquisition programs;

6 “(D) provide advocacy, oversight, and
7 guidance to elements of the acquisition work-
8 force responsible for developmental test and
9 evaluation;

10 “(E) periodically review the organizations
11 and capabilities of the military departments
12 with respect to developmental test and evalua-
13 tion and identify needed changes or improve-
14 ments to such organizations and capabilities,
15 and provide input regarding needed changes or
16 improvements for the test and evaluation stra-
17 tegic plan developed in accordance with section
18 196(d) of this title; and

19 “(F) perform such other activities relating
20 to the developmental test and evaluation activi-
21 ties of the Department of Defense as the Under
22 Secretary of Defense for Acquisition, Tech-
23 nology, and Logistics may prescribe.

24 “(6) ACCESS TO RECORDS.—The Secretary of
25 Defense shall ensure that the Director has access to

1 all records and data of the Department of Defense
2 (including the records and data of each military de-
3 partment and including classified and propriety in-
4 formation, as appropriate) that the Director con-
5 siders necessary in order to carry out the Director's
6 duties under this subsection.

7 “(7) CONCURRENT SERVICE AS DIRECTOR OF
8 DEPARTMENT OF DEFENSE TEST RESOURCES MAN-
9 AGEMENT CENTER.—The individual serving as the
10 Director of Developmental Test and Evaluation may
11 also serve concurrently as the Director of the De-
12 partment of Defense Test Resource Management
13 Center under section 196 of this title.

14 “(b) DIRECTOR OF SYSTEMS ENGINEERING.—

15 “(1) APPOINTMENT.—There is a Director of
16 Systems Engineering, who shall be appointed by the
17 Secretary of Defense from among individuals with
18 an expertise in systems engineering and development
19 planning.

20 “(2) PRINCIPAL ADVISOR FOR SYSTEMS ENGI-
21 NEERING AND DEVELOPMENT PLANNING.—The Di-
22 rector shall be the principal advisor to the Secretary
23 of Defense and the Under Secretary of Defense for
24 Acquisition, Technology, and Logistics on systems

1 engineering and development planning in the De-
2 partment of Defense.

3 “(3) SUPERVISION.—The Director shall be sub-
4 ject to the supervision of the Under Secretary of De-
5 fense for Acquisition, Technology, and Logistics and
6 shall report to the Under Secretary.

7 “(4) COORDINATION WITH DIRECTOR OF DE-
8 VELOPMENTAL TEST AND EVALUATION.—The Direc-
9 tor of Systems Engineering shall closely coordinate
10 with the Director of Developmental Test and Eval-
11 uation to ensure that the developmental test and
12 evaluation activities of the Department of Defense
13 are fully integrated into and consistent with the sys-
14 tems engineering and development planning proc-
15 esses of the Department.

16 “(5) DUTIES.—The Director shall—

17 “(A) develop policies and guidance for—

18 “(i) the use of systems engineering
19 principles and best practices, generally;

20 “(ii) the use of systems engineering
21 approaches to enhance reliability, avail-
22 ability, and maintainability on major de-
23 fense acquisition programs;

24 “(iii) the development of systems engi-
25 neering master plans for major defense ac-

1 quisition programs including systems engi-
2 neering considerations in support of
3 lifecycle management and sustainability;
4 and

5 “(iv) the inclusion of provisions relat-
6 ing to systems engineering and reliability
7 growth in requests for proposals;

8 “(B) review and approve the systems engi-
9 neering master plan for each major defense ac-
10 quisition program;

11 “(C) monitor and review the systems engi-
12 neering and development planning activities of
13 the major defense acquisition programs;

14 “(D) provide advocacy, oversight, and
15 guidance to elements of the acquisition work-
16 force responsible for systems engineering, devel-
17 opment planning, and lifecycle management and
18 sustainability functions;

19 “(E) provide input on the inclusion of sys-
20 tems engineering requirements in the process
21 for consideration of joint military requirements
22 by the Joint Requirements Oversight Council
23 pursuant to section 181 of this title, including
24 specific input relating to each capabilities devel-
25 opment document;

1 “(F) periodically review the organizations
2 and capabilities of the military departments
3 with respect to systems engineering, develop-
4 ment planning, and lifecycle management and
5 sustainability, and identify needed changes or
6 improvements to such organizations and capa-
7 bilities; and

8 “(G) perform such other activities relating
9 to the systems engineering and development
10 planning activities of the Department of De-
11 fense as the Under Secretary of Defense for Ac-
12 quisition, Technology, and Logistics may pre-
13 scribe.

14 “(6) ACCESS TO RECORDS.—The Director shall
15 have access to any records or data of the Depart-
16 ment of Defense (including the records and data of
17 each military department and including classified
18 and proprietary information as appropriate) that the
19 Director considers necessary to review in order to
20 carry out the Director’s duties under this subsection.

21 “(c) JOINT ANNUAL REPORT.—Not later than March
22 31 each year, beginning in 2010, the Director of Develop-
23 mental Test and Evaluation and the Director of Systems
24 Engineering shall jointly submit to the congressional de-
25 fense committees a report on the activities undertaken

1 pursuant to subsections (a) and (b) during the preceding
2 year. Each report shall include a section on activities relat-
3 ing to the major defense acquisition programs which shall
4 set forth, at a minimum, the following:

5 “(1) A discussion of the extent to which the
6 major defense acquisition programs are fulfilling the
7 objectives of their systems engineering master plans
8 and developmental test and evaluation plans.

9 “(2) A discussion of the waivers of and devi-
10 ations from requirements in test and evaluation
11 master plans, systems engineering master plans, and
12 other testing requirements that occurred during the
13 preceding year with respect to such programs, any
14 concerns raised by such waivers or deviations, and
15 the actions that have been taken or are planned to
16 be taken to address such concerns.

17 “(3) An assessment of the organization and ca-
18 pabilities of the Department of Defense for systems
19 engineering, development planning, and develop-
20 mental test and evaluation with respect to such pro-
21 grams.

22 “(4) Any comments on such report that the
23 Secretary of Defense considers appropriate.

24 “(d) JOINT GUIDANCE.—The Director of Develop-
25 mental Test and Evaluation and the Director of Systems

1 Engineering shall jointly, in coordination with the official
2 designated by the Secretary of Defense under section 103
3 of the Weapon Systems Acquisition Reform Act of 2009,
4 issue guidance on the following:

5 “(1) The development and tracking of detailed
6 measurable performance criteria as part of the sys-
7 tems engineering master plans and the develop-
8 mental test and evaluation plans within the test and
9 evaluation master plans of major defense acquisition
10 programs.

11 “(2) The use of developmental test and evalua-
12 tion to measure the achievement of specific perform-
13 ance objectives within a systems engineering master
14 plan.

15 “(3) A system for storing and tracking informa-
16 tion relating to the achievement of the performance
17 criteria and objectives specified pursuant to this sub-
18 section.

19 “(e) MAJOR DEFENSE ACQUISITION PROGRAM DE-
20 FINED.—In this section, the term ‘major defense acquisi-
21 tion program’ has the meaning given that term in section
22 2430 of this title.”.

23 (2) CLERICAL AMENDMENT.—The table of sec-
24 tions at the beginning of chapter 4 of such title, as
25 amended by section 101(a) of this Act, is further

1 amended by inserting after the item relating to sec-
2 tion 139c the following new item:

“139d. Director of Developmental Test and Evaluation; Director of Systems En-
gineering: joint guidance.”.

3 (b) DEVELOPMENTAL TEST AND EVALUATION AND
4 SYSTEMS ENGINEERING IN THE MILITARY DEPART-
5 MENTS AND DEFENSE AGENCIES.—

6 (1) PLANS.—The service acquisition executive
7 of each military department and each Defense Agen-
8 cy with responsibility for a major defense acquisition
9 program shall develop and implement plans to en-
10 sure the military department or Defense Agency
11 concerned has provided appropriate resources for
12 each of the following:

13 (A) Developmental testing organizations
14 with adequate numbers of trained personnel in
15 order to—

16 (i) ensure that developmental testing
17 requirements are appropriately addressed
18 in the translation of operational require-
19 ments into contract specifications, in the
20 source selection process, and in the prepa-
21 ration of requests for proposals on all
22 major defense acquisition programs;

23 (ii) participate in the planning of de-
24 velopmental test and evaluation activities,

1 including the preparation and approval of
2 a developmental test and evaluation plan
3 within the test and evaluation master plan
4 for each major defense acquisition pro-
5 gram; and

6 (iii) participate in and oversee the
7 conduct of developmental testing, the anal-
8 ysis of data, and the preparation of evalua-
9 tions and reports based on such testing.

10 (B) Development planning and systems en-
11 gineering organizations with adequate numbers
12 of trained personnel in order to—

13 (i) support key requirements, acquisi-
14 tion, and budget decisions made for each
15 major defense acquisition program prior to
16 Milestone A approval and Milestone B ap-
17 proval through a rigorous systems analysis
18 and systems engineering process;

19 (ii) include a robust program for im-
20 proving reliability, availability, maintain-
21 ability, and sustainability as an integral
22 part of design and development within the
23 systems engineering master plan for each
24 major defense acquisition program; and

1 (iii) identify systems engineering re-
2 quirements, including reliability, avail-
3 ability, maintainability, and lifecycle man-
4 agement and sustainability requirements,
5 during the Joint Capabilities Integration
6 Development System process, and incor-
7 porate such systems engineering require-
8 ments into contract requirements for each
9 major defense acquisition program.

10 (2) REPORTS BY SERVICE ACQUISITION EXECU-
11 TIVES.—Not later than 180 days after the date of
12 the enactment of this Act, the service acquisition ex-
13 ecutive of each military department and each De-
14 fense Agency with responsibility for a major defense
15 acquisition program shall submit to the Director of
16 Developmental Test and Evaluation and the Direc-
17 tor of Systems Engineering a report on the extent
18 to which—

19 (A) such military department or Defense
20 Agency has implemented, or is implementing,
21 the plan required by paragraph (1); and

22 (B) additional authorities or resources are
23 needed to attract, develop, retain, and reward
24 developmental test and evaluation personnel
25 and systems engineers with appropriate levels of

1 hands-on experience and technical expertise to
2 meet the needs of such military department or
3 Defense Agency.

4 (3) ASSESSMENT OF REPORTS BY DIRECTORS
5 OF DEVELOPMENTAL TEST AND EVALUATION AND
6 SYSTEMS ENGINEERING.—The first annual report
7 submitted to Congress by the Director of Develop-
8 mental Test and Evaluation and the Director of Sys-
9 tems Engineering under section 139d(c) of title 10,
10 United States Code (as added by subsection (a)),
11 shall include an assessment by the Directors of the
12 reports submitted by the service acquisition execu-
13 tives to the Directors under paragraph (2).

14 **SEC. 103. PERFORMANCE ASSESSMENTS AND ROOT CAUSE**
15 **ANALYSES FOR MAJOR DEFENSE ACQUISI-**
16 **TION PROGRAMS.**

17 (a) DESIGNATION OF SENIOR OFFICIAL RESPONSIBI-
18 LITY FOR PERFORMANCE ASSESSMENTS AND ROOT
19 CAUSE ANALYSES.—

20 (1) IN GENERAL.—The Secretary of Defense
21 shall designate a senior official in the Office of the
22 Secretary of Defense as the principal official of the
23 Department of Defense responsible for conducting
24 and overseeing performance assessments and root

1 cause analyses for major defense acquisition pro-
2 grams.

3 (2) NO PROGRAM EXECUTION RESPONSIBI-
4 BILITY.—The Secretary shall ensure that the senior
5 official designated under paragraph (1) is not re-
6 sponsible for program execution.

7 (3) STAFF AND RESOURCES.—The Secretary
8 shall assign to the senior official designated under
9 paragraph (1) appropriate staff and resources nec-
10 essary to carry out official's function under this sec-
11 tion.

12 (b) RESPONSIBILITIES.—The senior official des-
13 igned under subsection (a) shall be responsible for the
14 following:

15 (1) Carrying out performance assessments of
16 major defense acquisition programs in accordance
17 with the requirements of subsection (c) periodically
18 or when requested by the Secretary of Defense, the
19 Under Secretary of Defense for Acquisition, Tech-
20 nology and Logistics, the Secretary of a military de-
21 partment, or the head of a Defense Agency.

22 (2) Conducting root cause analyses for major
23 defense acquisition programs in accordance with the
24 requirements of subsection (d) when required by sec-
25 tion 2433a(a)(1) of title 10, United States Code (as

1 added by section 206(a) of this Act), or when re-
2 requested by the Secretary of Defense, the Under Sec-
3 retary of Defense for Acquisition, Technology and
4 Logistics, the Secretary of a military department, or
5 the head of a Defense Agency.

6 (3) Issuing policies, procedures, and guidance
7 governing the conduct of performance assessments
8 and root cause analyses by the military departments
9 and the Defense Agencies.

10 (4) Evaluating the utility of performance
11 metrics used to measure the cost, schedule, and per-
12 formance of major defense acquisition programs,
13 and making such recommendations to the Secretary
14 of Defense as the official considers appropriate to
15 improve such metrics.

16 (5) Advising acquisition officials on perform-
17 ance issues regarding a major defense acquisition
18 program that may arise—

19 (A) prior to certification under section
20 2433a of title 10, United States Code (as so
21 added);

22 (B) prior to entry into full-rate production;

23 or

1 (C) in the course of consideration of any
2 decision to request authorization of a multiyear
3 procurement contract for the program.

4 (c) PERFORMANCE ASSESSMENTS.—For purposes of
5 this section, a performance assessment with respect to a
6 major defense acquisition program is an evaluation of the
7 following:

8 (1) The cost, schedule, and performance of the
9 program, relative to current metrics, including per-
10 formance requirements and baseline descriptions.

11 (2) The extent to which the level of program
12 cost, schedule, and performance predicted relative to
13 such metrics is likely to result in the timely delivery
14 of a level of capability to the warfighter that is con-
15 sistent with the level of resources to be expended
16 and provides superior value to alternative ap-
17 proaches that may be available to meet the same
18 military requirement.

19 (d) ROOT CAUSE ANALYSES.—For purposes of this
20 section and section 2433a of title 10, United States Code
21 (as so added), a root cause analysis with respect to a
22 major defense acquisition program is an assessment of the
23 underlying cause or causes of shortcomings in cost, sched-
24 ule, or performance of the program, including the role, if
25 any, of—

1 (1) unrealistic performance expectations;

2 (2) unrealistic baseline estimates for cost or
3 schedule;

4 (3) immature technologies or excessive manu-
5 facturing or integration risk;

6 (4) unanticipated design, engineering, manufac-
7 turing, or technology integration issues arising dur-
8 ing program performance;

9 (5) changes in procurement quantities;

10 (6) inadequate program funding or funding in-
11 stability;

12 (7) poor performance by government or con-
13 tractor personnel responsible for program manage-
14 ment; or

15 (8) any other matters.

16 (e) SUPPORT OF APPLICABLE CAPABILITIES AND EX-
17 PERTISE.—The Secretary of Defense shall ensure that the
18 senior official designated under subsection (a) has the sup-
19 port of other Department of Defense officials with relevant
20 capabilities and expertise needed to carry out the require-
21 ments of this section.

22 (f) ANNUAL REPORT.—Not later than March 1 each
23 year, beginning in 2010, the official responsible for con-
24 ducting and overseeing performance assessments and root
25 cause analyses for major defense acquisition programs

1 shall submit to the congressional defense committees a re-
2 port on the activities undertaken under this section during
3 the preceding year.

4 **SEC. 104. ASSESSMENT OF TECHNOLOGICAL MATURITY OF**
5 **CRITICAL TECHNOLOGIES OF MAJOR DE-**
6 **FENSE ACQUISITION PROGRAMS BY THE DI-**
7 **RECTOR OF DEFENSE RESEARCH AND ENGI-**
8 **NEERING.**

9 (a) ASSESSMENT BY DIRECTOR OF DEFENSE RE-
10 SEARCH AND ENGINEERING.—

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

14 “(e)(1) The Director of Defense Research and Engi-
15 neering, in consultation with the Director of Develop-
16 mental Test and Evaluation, shall periodically review and
17 assess the technological maturity and integration risk of
18 critical technologies of the major defense acquisition pro-
19 grams of the Department of Defense and report on the
20 findings of such reviews and assessments to the Under
21 Secretary of Defense for Acquisition, Technology, and Lo-
22 gistics.

23 “(2) The Director shall submit to the Secretary of
24 Defense and to the congressional defense committees by
25 March 1 of each year a report on the technological matu-

1 rity and integration risk of critical technologies of the
2 major defense acquisition programs of the Department of
3 Defense.”.

4 (2) FIRST ANNUAL REPORT.—The first annual
5 report under subsection (c)(2) of section 139a of
6 title 10, United States Code (as added by paragraph
7 (1)), shall be submitted to the congressional defense
8 committees not later than March 1, 2010, and shall
9 address the results of reviews and assessments con-
10 ducted by the Director of Defense Research and En-
11 gineering pursuant to subsection (c)(1) of such sec-
12 tion (as so added) during the preceding calendar
13 year.

14 (b) REPORT ON RESOURCES FOR IMPLEMENTA-
15 TION.—Not later than 120 days after the date of the en-
16 actment of this Act, the Director of Defense Research and
17 Engineering shall submit to the congressional defense
18 committees a report describing any additional resources
19 that may be required by the Director, and by other re-
20 search and engineering elements of the Department of De-
21 fense, to carry out the following:

22 (1) The requirements under the amendment
23 made by subsection (a)(1).

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

3 “(2) The Council shall seek and consider input from
4 the commanders of the combatant commands in carrying
5 out its mission under paragraphs (1) and (2) of subsection
6 (b) and in conducting periodic reviews in accordance with
7 the requirements of subsection (e).”.

8 (b) INPUT FROM COMMANDERS OF COMBATANT
9 COMMANDS.—The Joint Requirements Oversight Council
10 in the Department of Defense shall seek and consider
11 input from the commanders of combatant commands, in
12 accordance with section 181(d) of title 10, United States
13 Code (as amended by subsection (a)). Such input may in-
14 clude, but is not limited to, an assessment of the following:

15 (1) Any current or projected missions or threats
16 in the theater of operations of the commander of a
17 combatant command that would inform the assess-
18 ment of a new joint military requirement.

19 (2) The necessity and sufficiency of a proposed
20 joint military requirement in terms of current and
21 projected missions or threats.

22 (3) The relative priority of a proposed joint
23 military requirement in comparison with other joint
24 military requirements within the theater of oper-
25 ations of the commander of a combatant command.

1 (4) The ability of partner nations in the theater
2 of operations of the commander of a combatant com-
3 mand to assist in meeting the joint military require-
4 ment or the benefit, if any, of a partner nation as-
5 sisting in development or use of technologies devel-
6 oped to meet the joint military requirement.

7 (c) COMPTROLLER GENERAL OF THE UNITED
8 STATES REVIEW OF IMPLEMENTATION.—

9 (1) REQUIREMENT.—Not later than two years
10 after the date of the enactment of this Act, the
11 Comptroller General of the United States shall sub-
12 mit to the Committees on Armed Services of the
13 Senate and the House of Representatives a report on
14 the implementation of the requirements of—

15 (A) subsection (d)(2) of section 181 of title
16 10, United States Code (as amended by sub-
17 section (a)), for the Joint Requirements Over-
18 sight Council to solicit and consider input from
19 the commanders of the combatant commands;

20 (B) the amendments to subsection (b) of
21 section 181 of title 10, United States Code,
22 made by section 942 of the National Defense
23 Authorization Act for Fiscal Year 2008 (Public
24 Law 110–181; 122 Stat. 287) and by section
25 201(b) of this Act; and

1 (C) the requirements of section 201(e) of
2 this Act.

3 (2) MATTERS COVERED.—The report shall in-
4 clude, at a minimum, an assessment of—

5 (A) the extent to which the Council has ef-
6 fectively sought, and the commanders of the
7 combatant commands have provided, meaning-
8 ful input on proposed joint military require-
9 ments;

10 (B) the quality and effectiveness of efforts
11 to estimate the level of resources needed to ful-
12 fill joint military requirements; and

13 (C) the extent to which the Council has
14 considered trade-offs among cost, schedule, and
15 performance objectives.

16 **TITLE II—ACQUISITION POLICY**

17 **SEC. 201. CONSIDERATION OF TRADE-OFFS AMONG COST,** 18 **SCHEDULE, AND PERFORMANCE OBJECTIVES** 19 **IN DEPARTMENT OF DEFENSE ACQUISITION** 20 **PROGRAMS.**

21 (a) CONSIDERATION OF TRADE-OFFS.—

22 (1) IN GENERAL.—The Secretary of Defense
23 shall ensure that mechanisms are developed and im-
24 plemented to require consideration of trade-offs
25 among cost, schedule, and performance objectives as

1 part of the process for developing requirements for
2 Department of Defense acquisition programs.

3 (2) ELEMENTS.—The mechanisms required
4 under this subsection shall ensure, at a minimum,
5 that—

6 (A) Department of Defense officials re-
7 sponsible for acquisition, budget, and cost esti-
8 mating functions are provided an appropriate
9 opportunity to develop estimates and raise cost
10 and schedule matters before performance objec-
11 tives are established for capabilities for which
12 the Chairman of the Joint Requirements Over-
13 sight Council is the validation authority; and

14 (B) the process for developing require-
15 ments is structured to enable incremental, evo-
16 lutionary, or spiral acquisition approaches, in-
17 cluding the deferral of technologies that are not
18 yet mature and capabilities that are likely to
19 significantly increase costs or delay production
20 until later increments or spirals.

21 (b) DUTIES OF JOINT REQUIREMENTS OVERSIGHT
22 COUNCIL.—Section 181(b) of title 10, United States
23 Code, is amended—

24 (1) in paragraph (1)—

1 (A) by striking “and” at the end of sub-
2 paragraph (A);

3 (B) by inserting “and” at the end of sub-
4 paragraph (B) after the semicolon; and

5 (C) by adding at the end the following new
6 subparagraph:

7 “(C) in ensuring the consideration of
8 trade-offs among cost, schedule, and perform-
9 ance objectives for joint military requirements
10 in consultation with the advisors specified in
11 subsection (d);”.

12 (2) in paragraph (3)—

13 (A) by inserting “, in consultation with the
14 Under Secretary of Defense (Comptroller), the
15 Under Secretary of Defense for Acquisition,
16 Technology, and Logistics, and the Director of
17 Cost Assessment and Performance Evaluation,”
18 after “assist the Chairman”; and

19 (B) by striking “and” after the semicolon
20 at the end;

21 (3) in paragraph (4), by striking the period at
22 the end and inserting “; and”; and

23 (4) by adding at the end the following new
24 paragraph:

1 “(5) assist the Chairman, in consultation with
2 the commanders of the combatant commands and
3 the Under Secretary of Defense for Acquisition,
4 Technology, and Logistics, in establishing an objec-
5 tive for the overall period of time within which an
6 initial operational capability should be delivered to
7 meet each joint military requirement.”.

8 (c) REVIEW OF JOINT MILITARY REQUIREMENTS.—

9 The Secretary of Defense shall ensure that each new joint
10 military requirement recommended by the Joint Require-
11 ments Oversight Council is reviewed to ensure that the
12 Joint Requirements Oversight Council has, in making
13 such recommendation—

14 (1) taken appropriate action to seek and con-
15 sider input from the commanders of the combatant
16 commands, in accordance with the requirements of
17 section 181(d) of title 10, United States Code (as
18 amended by section 105(a) of this Act);

19 (2) engaged in consideration of trade-offs
20 among cost, schedule, and performance objectives in
21 accordance with the requirements of section
22 181(b)(1)(C) of title 10, United States Code (as
23 added by subsection (b)); and

24 (3) engaged in consideration of issues of joint
25 portfolio management, including alternative material

1 and non-material solutions, as provided in Depart-
2 ment of Defense instructions for the development of
3 joint military requirements.

4 (d) STUDY GUIDANCE FOR ANALYSES OF ALTER-
5 NATIVES.—The Director of Cost Assessment and Program
6 Evaluation shall take the lead in the development of study
7 guidance for an analysis of alternatives for each joint mili-
8 tary requirement for which the Chairman of the Joint Re-
9 quirements Oversight Council is the validation authority.
10 In developing the guidance, the Director shall solicit the
11 advice of appropriate officials within the Department of
12 Defense and ensure that the guidance requires, at a min-
13 imum—

14 (1) full consideration of possible trade-offs
15 among cost, schedule, and performance objectives for
16 each alternative considered; and

17 (2) an assessment of whether or not the joint
18 military requirement can be met in a manner that
19 is consistent with the cost and schedule objectives
20 recommended by the Joint Requirements Oversight
21 Council.

22 (e) ANALYSIS OF ALTERNATIVES IN CERTIFICATION
23 FOR MILESTONE A.—Section 2366a(a) of title 10, United
24 States Code, as amended by section 101(d)(3) of this Act,
25 is further amended—

1 (1) by striking “and” at the end of paragraph
2 (3);

3 (2) by redesignating paragraph (4) as para-
4 graph (5); and

5 (3) by inserting after paragraph (3) the fol-
6 lowing new paragraph (4):

7 “(4) that an analysis of alternatives has been
8 performed consistent with study guidance developed
9 by the Director of Cost Assessment and Program
10 Evaluation; and”.

11 (f) DUTIES OF MILESTONE DECISION AUTHORITY.—
12 Section 2366b(a)(1)(B) of such title is amended by insert-
13 ing “appropriate trade-offs among cost, schedule, and per-
14 formance objectives have been made to ensure that” before
15 “the program is affordable”.

16 **SEC. 202. ACQUISITION STRATEGIES TO ENSURE COMPETI-**
17 **TION THROUGHOUT THE LIFECYCLE OF**
18 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

19 (a) ACQUISITION STRATEGIES TO ENSURE COMPETI-
20 TION.—The Secretary of Defense shall ensure that the ac-
21 quisition strategy for each major defense acquisition pro-
22 gram includes—

23 (1) measures to ensure competition, or the op-
24 tion of competition, at both the prime contract level
25 and the subcontract level (at such tier or tiers as are

1 appropriate) of such program throughout the life-
2 cycle of such program as a means to improve con-
3 tractor performance; and

4 (2) adequate documentation of the rationale for
5 the selection of the subcontract tier or tiers under
6 paragraph (1).

7 (b) MEASURES TO ENSURE COMPETITION.—The
8 measures to ensure competition, or the option of competi-
9 tion, for purposes of subsection (a)(1) may include meas-
10 ures to achieve the following, in appropriate cases if such
11 measures are cost-effective:

12 (1) Competitive prototyping.

13 (2) Dual-sourcing.

14 (3) Unbundling of contracts.

15 (4) Funding of next-generation prototype sys-
16 tems or subsystems.

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

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

21 (7) Acquisition of complete technical data pack-
22 ages.

23 (8) Periodic competitions for subsystem up-
24 grades.

25 (9) Licensing of additional suppliers.

1 (10) Periodic system or program reviews to ad-
2 dress long-term competitive effects of program deci-
3 sions.

4 (c) ADDITIONAL MEASURES TO ENSURE COMPETI-
5 TION AT SUBCONTRACT LEVEL.—The Secretary shall take
6 actions to ensure fair and objective “make-buy” decisions
7 by prime contractors on major defense acquisition pro-
8 grams by—

9 (1) requiring prime contractors to give full and
10 fair consideration to qualified sources other than the
11 prime contractor for the development or construction
12 of major subsystems and components of major weap-
13 on systems;

14 (2) providing for government surveillance of the
15 process by which prime contractors consider such
16 sources and determine whether to conduct such de-
17 velopment or construction in-house or through a
18 subcontract; and

19 (3) providing for the assessment of the extent
20 to which a contractor has given full and fair consid-
21 eration to qualified sources other than the contractor
22 in sourcing decisions as a part of past performance
23 evaluations.

24 (d) CONSIDERATION OF COMPETITION THROUGHOUT
25 OPERATION AND SUSTAINMENT OF MAJOR WEAPON SYS-

1 TEMS.—Whenever a decision regarding source of repair
2 results in a plan to award a contract for performance of
3 maintenance and sustainment of a major weapon system,
4 the Secretary shall take actions to ensure that, to the max-
5 imum extent practicable and consistent with statutory re-
6 quirements, contracts for such maintenance and
7 sustainment are awarded on a competitive basis and give
8 full consideration to all sources (including sources that
9 partner or subcontract with public or private sector repair
10 activities).

11 (e) APPLICABILITY.—

12 (1) STRATEGY AND MEASURES TO ENSURE
13 COMPETITION.—The requirements of subsections (a)
14 and (b) shall apply to any acquisition plan for a
15 major defense acquisition program that is developed
16 or revised on or after the date that is 60 days after
17 the date of the enactment of this Act.

18 (2) ADDITIONAL ACTIONS.—The actions re-
19 quired by subsections (c) and (d) shall be taken
20 within 180 days after the date of the enactment of
21 this Act.

22 **SEC. 203. PROTOTYPING REQUIREMENTS FOR MAJOR DE-**
23 **FENSE ACQUISITION PROGRAMS.**

24 (a) COMPETITIVE PROTOTYPING.—Not later than 90
25 days after the date of the enactment of this Act, the Sec-

1 retary of Defense shall modify the guidance of the Depart-
2 ment of Defense relating to the operation of the acquisi-
3 tion system with respect to competitive prototyping for
4 major defense acquisition programs to ensure the fol-
5 lowing:

6 (1) That the acquisition strategy for each major
7 defense acquisition program provides for competitive
8 prototypes before Milestone B approval (or Key De-
9 cision Point B approval in the case of a space pro-
10 gram) unless the Milestone Decision Authority for
11 such program waives the requirement pursuant to
12 paragraph (2).

13 (2) That the Milestone Decision Authority may
14 waive the requirement in paragraph (1) only—

15 (A) on the basis that the cost of producing
16 competitive prototypes exceeds the expected life-
17 cycle benefits (in constant dollars) of producing
18 such prototypes, including the benefits of im-
19 proved performance and increased technological
20 and design maturity that may be achieved
21 through competitive prototyping; or

22 (B) on the basis that, but for such waiver,
23 the Department would be unable to meet crit-
24 ical national security objectives.

1 (3) That whenever a Milestone Decision Au-
2 thority authorizes a waiver pursuant to paragraph
3 (2), the Milestone Decision Authority—

4 (A) shall require that the program produce
5 a prototype before Milestone B approval (or
6 Key Decision Point B approval in the case of
7 a space program) if the expected life-cycle bene-
8 fits (in constant dollars) of producing such pro-
9 TOTYPE exceed its cost and its production is con-
10 sistent with achieving critical national security
11 objectives; and

12 (B) shall notify the congressional defense
13 committees in writing not later than 30 days
14 after the waiver is authorized and include in
15 such notification the rationale for the waiver
16 and the plan, if any, for producing a prototype.

17 (4) That prototypes may be required under
18 paragraph (1) or (3) for the system to be acquired
19 or, if prototyping of the system is not feasible, for
20 critical subsystems of the system.

21 (b) COMPROLLER GENERAL REVIEW OF CERTAIN
22 WAIVERS.—

23 (1) NOTICE TO COMPROLLER GENERAL.—
24 Whenever a Milestone Decision Authority authorizes
25 a waiver of the requirement for prototypes pursuant

1 to paragraph (2) of subsection (a) on the basis of
2 excessive cost, the Milestone Decision Authority shall
3 submit the notification of the waiver, together with
4 the rationale, to the Comptroller General of the
5 United States at the same time it is submitted to
6 the congressional defense committees.

7 (2) COMPTROLLER GENERAL REVIEW.—Not
8 later than 60 days after receipt of a notification of
9 a waiver under paragraph (1), the Comptroller Gen-
10 eral shall—

11 (A) review the rationale for the waiver; and

12 (B) submit to the congressional defense
13 committees a written assessment of the ration-
14 ale for the waiver.

15 **SEC. 204. ACTIONS TO IDENTIFY AND ADDRESS SYSTEMIC**
16 **PROBLEMS IN MAJOR DEFENSE ACQUISITION**
17 **PROGRAMS PRIOR TO MILESTONE B AP-**
18 **PROVAL.**

19 (a) MODIFICATION TO CERTIFICATION REQUIRE-
20 MENT.—Subsection (a) of section 2366a of title 10,
21 United States Code, is amended by striking “may not re-
22 ceive Milestone A approval, or Key Decision Point A ap-
23 proval in the case of a space program,” and inserting
24 “may not receive Milestone A approval, or Key Decision
25 Point A approval in the case of a space program, or other-

1 wise be initiated prior to Milestone B approval, or Key
2 Decision Point B approval in the case of a space pro-
3 gram,”.

4 (b) MODIFICATION TO NOTIFICATION REQUIRE-
5 MENT.—Subsection (b) of such section is amended—

6 (1) by inserting “(1)” before “With respect to”;

7 (2) in paragraph (1), as so designated, by strik-
8 ing “by at least 25 percent,” and inserting “by at
9 least 25 percent, or the program manager deter-
10 mines that the period of time required for the deliv-
11 ery of an initial operational capability is likely to ex-
12 ceed the schedule objective established pursuant to
13 section 181(b)(5) of this title by more than 25 per-
14 cent,”; and

15 (3) by adding at the end the following new
16 paragraph:

17 “(2) Not later than 30 days after a program manager
18 submits a notification to the Milestone Decision Authority
19 pursuant to paragraph (1) with respect to a major defense
20 acquisition program, the Milestone Decision Authority
21 shall submit to the congressional defense committees a re-
22 port that—

23 “(A) identifies the root causes of the cost or
24 schedule growth in accordance with applicable poli-
25 cies, procedures, and guidance;

1 “(B) identifies appropriate acquisition perform-
2 ance measures for the remainder of the development
3 of the program; and

4 “(C) includes one of the following:

5 “(i) A written certification (with a sup-
6 porting explanation) stating that—

7 “(I) the program is essential to na-
8 tional security;

9 “(II) there are no alternatives to the
10 program that will provide acceptable mili-
11 tary capability at less cost;

12 “(III) new estimates of the develop-
13 ment cost or schedule, as appropriate, are
14 reasonable; and

15 “(IV) the management structure for
16 the program is adequate to manage and
17 control program development cost and
18 schedule.

19 “(ii) A plan for terminating the develop-
20 ment of the program or withdrawal of Milestone
21 A approval, or Key Decision Point A approval
22 in the case of a space program, if the Milestone
23 Decision Authority determines that such action
24 is in the interest of national defense.”.

25 (c) APPLICATION TO ONGOING PROGRAMS.—

1 (1) IN GENERAL.—Each major defense acquisi-
2 tion program described in paragraph (2) shall be
3 certified in accordance with the requirements of sec-
4 tion 2366a of title 10, United States Code (as
5 amended by this section), within one year after the
6 date of the enactment of this Act.

7 (2) COVERED PROGRAMS.—The requirement in
8 paragraph (1) shall apply to any major defense ac-
9 quisition program that—

10 (A) was initiated before the date of the en-
11 actment of this Act; and

12 (B) as of the date of certification under
13 paragraph (1) has not otherwise been certified
14 pursuant to either section 2366a (as so amend-
15 ed) or 2366b of title 10, United States Code.

16 **SEC. 205. 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 waiv-
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 such certification components.”; and

6 (3) in subsection (a)—

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

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

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

13 “(2) has received a preliminary design review
14 and conducted a formal post-preliminary design re-
15 view assessment, and certifies on the basis of such
16 assessment that the program demonstrates a high
17 likelihood of accomplishing its intended mission;
18 and”; and

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

21 (i) in subparagraph (D), by striking
22 the semicolon and inserting “, as deter-
23 mined by the Milestone Decision Authority
24 on the basis of an independent review and

1 assessment by the Director of Defense Re-
2 search and Engineering; and”;

3 (ii) by striking subparagraph (E); and
4 (iii) by redesignating subparagraph
5 (F) as subparagraph (E).

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

9 (1) DETERMINATION.—Not later than 270 days
10 after the date of the enactment of this Act, for each
11 major defense acquisition program that received
12 Milestone B approval before January 6, 2006, and
13 has not received Milestone C approval, and for each
14 space program that received Key Decision Point B
15 approval before January 6, 2006, and has not re-
16 ceived Key Decision Point C approval, the Milestone
17 Decision Authority shall determine whether or not
18 such program satisfies all of the certification compo-
19 nents specified in paragraphs (1) and (2) of sub-
20 section (a) of section 2366b of title 10, United
21 States Code (as amended by subsection (a) of this
22 section).

23 (2) ANNUAL REVIEW.—The Milestone Decision
24 Authority shall review any program determined pur-
25 suant to paragraph (1) not to satisfy any of the cer-

1 tification components of subsection (a) of section
2 2366b of title 10, United States Code (as so amend-
3 ed), not less often than annually thereafter to deter-
4 mine the extent to which such program currently
5 satisfies such certification components until such
6 time as the Milestone Decision Authority determines
7 that such program satisfies all such certification
8 components.

9 (3) DESIGNATION OF CERTIFICATION STATUS
10 IN BUDGET DOCUMENTATION.—Any budget request,
11 budget justification material, budget display, re-
12 programming request, Selected Acquisition Report,
13 or other budget documentation or performance re-
14 port submitted by the Secretary of Defense to the
15 President regarding a major defense acquisition pro-
16 gram which the Milestone Decision Authority deter-
17 mines under paragraph (1) does not satisfy all of the
18 certification components of subsection (a) of section
19 2366b of title 10, United States Code, (as so amend-
20 ed) shall prominently and clearly indicate that such
21 program has not fully satisfied such certification
22 components until such time as the Milestone Deci-
23 sion Authority makes the determination that such
24 program has satisfied all such certification compo-
25 nents.

1 (c) REVIEWS OF PROGRAMS RESTRUCTURED AFTER
2 EXPERIENCING CRITICAL COST GROWTH.—The official
3 designated to perform oversight of performance assess-
4 ment pursuant to section 103 of this Act, shall assess the
5 performance of each major defense acquisition program
6 that has exceeded critical cost growth thresholds estab-
7 lished pursuant to section 2433(e) of title 10, United
8 States Code, but has not been terminated in accordance
9 with section 2433a of such title (as added by section
10 206(a) of this Act) not less often than semi-annually until
11 one year after the date on which such program receives
12 a new milestone approval, in accordance with section
13 2433a(e)(3) of such title (as so added). The results of re-
14 views performed under this subsection shall be reported
15 to the Under Secretary of Defense for Acquisition, Tech-
16 nology, and Logistics and summarized in the next annual
17 report of such designated official.

18 **SEC. 206. CRITICAL COST GROWTH IN MAJOR DEFENSE AC-**
19 **QUISITION PROGRAMS.**

20 (a) ACTIONS FOLLOWING CRITICAL COST
21 GROWTH.—

22 (1) IN GENERAL.—Chapter 144 of title 10,
23 United States Code, is amended by inserting after
24 section 2433 the following new section:

1 **“§ 2433a. Critical cost growth in major defense acqui-**
2 **sition programs**

3 “(a) REASSESSMENT OF PROGRAM.—If the program
4 acquisition unit cost or procurement unit cost of a major
5 defense acquisition program or designated subprogram (as
6 determined by the Secretary under section 2433(d) of this
7 title) increases by a percentage equal to or greater than
8 the critical cost growth threshold for the program or sub-
9 program, the Secretary of Defense, after consultation with
10 the Joint Requirements Oversight Council regarding pro-
11 gram requirements, shall—

12 “(1) determine the root cause or causes of the
13 critical cost growth in accordance with applicable
14 statutory requirements and Department of Defense
15 policies, procedures, and guidance; and

16 “(2) in consultation with the Director of Cost
17 Assessment and Program Evaluation, carry out an
18 assessment of—

19 “(A) the projected cost of completing the
20 program if current requirements are not modi-
21 fied;

22 “(B) the projected cost of completing the
23 program based on reasonable modification of
24 such requirements;

1 “(C) the rough order of magnitude of the
2 costs of any reasonable alternative system or
3 capability; and

4 “(D) the need to reduce funding for other
5 programs due to the growth in cost of the pro-
6 gram.

7 “(b) PRESUMPTION OF TERMINATION.—(1) After
8 conducting the reassessment required by subsection (a)
9 with respect to a major defense acquisition program, the
10 Secretary shall terminate the program unless the Sec-
11 retary submits to Congress, before the end of the 60-day
12 period beginning on the day the Selected Acquisition Re-
13 port containing the information described in section
14 2433(g) of this title is required to be submitted under sec-
15 tion 2432(f) of this title, a written certification in accord-
16 ance with paragraph (2).

17 “(2) A certification described by this paragraph with
18 respect to a major defense acquisition program is a writ-
19 ten certification that—

20 “(A) the continuation of the program is essen-
21 tial to the national security;

22 “(B) there are no alternatives to the program
23 which will provide acceptable capability to meet the
24 joint military requirement (as defined in section
25 181(g)((1) of this title) at less cost;

1 “(C) the new estimates of the program acquisi-
2 tion unit cost or procurement unit cost have been
3 determined by the Director of Cost Assessment and
4 Program Evaluation to be reasonable;

5 “(D) the program is a higher priority than pro-
6 grams whose funding must be reduced to accommo-
7 date the growth in cost of the program; and

8 “(E) the management structure for the pro-
9 gram is adequate to manage and control program
10 acquisition unit cost or procurement unit cost.

11 “(3) A written certification under paragraph (2) shall
12 be accompanied by a report presenting the root cause
13 analysis and assessment carried out pursuant to sub-
14 section (a) and the basis for each determination made in
15 accordance with subparagraphs (A) through (E) of para-
16 graph (2), together with supporting documentation.

17 “(c) ACTIONS IF PROGRAM NOT TERMINATED.—(1)
18 If the Secretary elects not to terminate a major defense
19 acquisition program pursuant to subsection (b), the Sec-
20 retary shall—

21 “(A) restructure the program in a manner that
22 addresses the root cause or causes of the critical
23 cost growth, as identified pursuant to subsection (a),
24 and ensures that the program has an appropriate

1 management structure as set forth in the certifi-
2 cation submitted pursuant to subsection (b)(2)(E);

3 “(B) rescind the most recent Milestone ap-
4 proval, or Key Decision Point approval in the case
5 of a space program, for the program and withdraw
6 any associated certification under section 2366a or
7 2366b of this title;

8 “(C) require a new Milestone approval, or Key
9 Decision Point approval in the case of a space pro-
10 gram, for the program before taking any contract
11 action to enter a new contract, exercise an option
12 under an existing contract, or otherwise extend the
13 scope of an existing contract under the program, ex-
14 cept to the extent determined necessary by the Mile-
15 stone Decision Authority, on a non-delegable basis,
16 to ensure that the program can be restructured as
17 intended by the Secretary without unnecessarily
18 wasting resources;

19 “(D) include in the report specified in para-
20 graph (2) a description of all funding changes made
21 as a result of the growth in cost of the program, in-
22 cluding reductions made in funding for other pro-
23 grams to accommodate such cost growth; and

24 “(E) conduct regular reviews of the program in
25 accordance with the requirements of section 205 of

1 the Weapon Systems Acquisition Reform Act of
2 2009.

3 “(2) For purposes of paragraph (1)(D), the report
4 specified in this paragraph is the first Selected Acquisition
5 Report for the program submitted pursuant to section
6 2432 of this title after the President submits a budget
7 pursuant to section 1105 of title 31, in the calendar year
8 following the year in which the program was restructured.

9 “(d) ACTIONS IF PROGRAM TERMINATED.—If a
10 major defense acquisition program is terminated pursuant
11 to subsection (b), the Secretary shall submit to Congress
12 a written report setting forth—

13 “(1) an explanation of the reasons for termi-
14 nating the program;

15 “(2) the alternatives considered to address any
16 problems in the program; and

17 “(3) the course the Department plans to pursue
18 to meet any continuing joint military requirements
19 otherwise intended to be met by the program.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions at the beginning of chapter 144 of such title
22 is amended by inserting after the item relating to
23 section 2433 the following new item:

“2433a. Critical cost growth in major defense acquisition programs.”.

1 (3) CONFORMING AMENDMENT.—Paragraph (2)
2 of section 2433(e) of such title 10 is amended to
3 read as follows:

4 “(2) If the program acquisition unit cost or procure-
5 ment unit cost of a major defense acquisition program or
6 designated major subprogram (as determined by the Sec-
7 retary under subsection (d)) increases by a percentage
8 equal to or greater than the critical cost growth threshold
9 for the program or subprogram, the Secretary of Defense
10 shall take actions consistent with the requirements of sec-
11 tion 2433a of this title.”.

12 (b) TREATMENT AS MDAP.—Section 2430 of such
13 title is amended—

14 (1) in subsection (a)(2), by inserting “, includ-
15 ing all planned increments or spirals,” after “an
16 eventual total expenditure for procurement”; and

17 (2) by adding at the end the following new sub-
18 section:

19 “(c) For purposes of subsection (a)(2), the Secretary
20 shall consider, as applicable, the following:

21 “(1) The estimated level of resources required
22 to fulfill the relevant joint military requirement, as
23 determined by the Joint Requirements Oversight
24 Council pursuant to section 181 of this title.

1 “(2) The cost estimate referred to in section
2 2366a(a)(4) of this title.

3 “(3) The cost estimate referred to in section
4 2366b(a)(1)(C) of this title.

5 “(4) The cost estimate within a baseline de-
6 scription as required by section 2435 of this title.”.

7 **SEC. 207. ORGANIZATIONAL CONFLICTS OF INTEREST IN**
8 **MAJOR DEFENSE ACQUISITION PROGRAMS.**

9 (a) **REVISED REGULATIONS REQUIRED.**—Not later
10 than 270 days after the date of the enactment of this Act,
11 the Secretary of Defense shall revise the Defense Supple-
12 ment to the Federal Acquisition Regulation to provide uni-
13 form guidance and tighten existing requirements for orga-
14 nizational conflicts of interest by contractors in major de-
15 fense acquisition programs.

16 (b) **ELEMENTS.**—The revised regulations required by
17 subsection (a) shall, at a minimum—

18 (1) address organizational conflicts of interest
19 that could arise as a result of—

20 (A) lead system integrator contracts on
21 major defense acquisition programs and con-
22 tracts that follow lead system integrator con-
23 tracts on such programs, particularly contracts
24 for production;

1 (B) the ownership of business units per-
2 forming systems engineering and technical as-
3 sistance functions, professional services, or
4 management support services in relation to
5 major defense acquisition programs by contrac-
6 tors who simultaneously own business units
7 competing to perform as either the prime con-
8 tractor or the supplier of a major subsystem or
9 component for such programs;

10 (C) the award of major subsystem con-
11 tracts by a prime contractor for a major de-
12 fense acquisition program to business units or
13 other affiliates of the same parent corporate en-
14 tity, and particularly the award of subcontracts
15 for software integration or the development of
16 a proprietary software system architecture; or

17 (D) the performance by, or assistance of,
18 contractors in technical evaluations on major
19 defense acquisition programs;

20 (2) ensure that the Department of Defense re-
21 ceives advice on systems architecture and systems
22 engineering matters with respect to major defense
23 acquisition programs from federally funded research
24 and development centers or other sources inde-
25 pendent of the prime contractor;

1 (3) require that a contract for the performance
2 of systems engineering and technical assistance
3 functions for a major defense acquisition program
4 contains a provision prohibiting the contractor or
5 any affiliate of the contractor from participating as
6 a prime contractor or a major subcontractor in the
7 development or construction of a weapon system
8 under the program; and

9 (4) establish such limited exceptions to the re-
10 quirement in paragraphs (2) and (3) as may be nec-
11 essary to ensure that the Department of Defense
12 has continued access to advice on systems architec-
13 ture and systems engineering matters from highly-
14 qualified contractors with domain experience and ex-
15 pertise, while ensuring that such advice comes from
16 sources that are objective and unbiased.

17 (c) CONSULTATION IN REVISION OF REGULA-
18 TIONS.—

19 (1) RECOMMENDATIONS OF PANEL ON CON-
20 TRACTING INTEGRITY.—Not later than 90 days after
21 the date of the enactment of this Act, the Panel on
22 Contracting Integrity established pursuant to section
23 813 of the John Warner National Defense Author-
24 ization Act for Fiscal Year 2007 (Public Law 109-
25 364; 120 Stat. 2320) shall present recommendations

1 to the Secretary of Defense on measures to eliminate
2 or mitigate organizational conflicts of interest in
3 major defense acquisition programs.

4 (2) CONSIDERATION OF RECOMMENDATIONS.—
5 In developing the revised regulations required by
6 subsection (a), the Secretary shall consider the fol-
7 lowing:

8 (A) The recommendations presented by the
9 Panel on Contracting Integrity pursuant to
10 paragraph (1).

11 (B) Any findings and recommendations of
12 the Administrator for Federal Procurement Pol-
13 icy and the Director of the Office of Govern-
14 ment Ethics pursuant to section 841(b) of the
15 Duncan Hunter National Defense Authorization
16 Act for Fiscal Year 2009 (Public Law 110-417;
17 122 Stat. 4539).

18 (d) EXTENSION OF PANEL ON CONTRACTING INTEG-
19 RITY.—Subsection (e) of section 813 of the John Warner
20 National Defense Authorization Act for Fiscal Year 2007
21 is amended to read as follows:

22 “(e) TERMINATION.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
24 the panel shall continue to serve until the date that
25 is 18 months after the date on which the Secretary

1 of Defense notifies the congressional defense com-
2 mittees of an intention to terminate the panel based
3 on a determination that the activities of the panel no
4 longer justify its continuation and that concerns
5 about contracting integrity have been mitigated.

6 “(2) MINIMUM CONTINUING SERVICE.—The
7 panel shall continue to serve at least until December
8 31, 2011.”.

9 **TITLE III—ADDITIONAL** 10 **ACQUISITION PROVISIONS**

11 **SEC. 301. AWARDS FOR DEPARTMENT OF DEFENSE PER-** 12 **SONNEL FOR EXCELLENCE IN THE ACQUI-** 13 **SION OF PRODUCTS AND SERVICES.**

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of the enactment of this Act, the Secretary of Defense
16 shall commence carrying out a program to recognize excel-
17 lent performance by individuals and teams of members of
18 the Armed Forces and civilian personnel of the Depart-
19 ment of Defense in the acquisition of products and serv-
20 ices for the Department of Defense.

21 (b) ELEMENTS.—The program required by sub-
22 section (a) shall include the following:

23 (1) Procedures for the nomination by the per-
24 sonnel of the military departments and the Defense
25 Agencies of individuals and teams of members of the

1 Armed Forces and civilian personnel of the Depart-
2 ment of Defense for eligibility for recognition under
3 the program.

4 (2) Procedures for the evaluation of nomina-
5 tions for recognition under the program by one or
6 more panels of individuals from the Government,
7 academia, and the private sector who have such ex-
8 pertise, and are appointed in such manner, as the
9 Secretary shall establish for purposes of the pro-
10 gram.

11 (c) AWARD OF CASH BONUSES.—As part of the pro-
12 gram required by subsection (a), the Secretary may award
13 to any individual recognized pursuant to the program a
14 cash bonus authorized by any other provision of law to
15 the extent that the performance of such individual so rec-
16 ognized warrants the award of such bonus under such pro-
17 vision of law.

18 **SEC. 302. EARNED VALUE MANAGEMENT.**

19 (a) MODIFICATION OF ELEMENTS IN REPORT ON IM-
20 PLEMENTATION.—Subsection (a) of section 887 of the
21 Duncan Hunter National Defense Authorization Act for
22 Fiscal Year 2009 (Public Law 110–417; 122 Stat. 4562)
23 is amended by striking paragraph (7) and inserting the
24 following new paragraphs:

1 “(7) A discussion of the methodology used to
2 establish appropriate baselines for earned value
3 management at the award of a contract or com-
4 mencement of a program, whichever is earlier.

5 “(8) A discussion of the manner in which the
6 Department ensures that personnel responsible for
7 administering and overseeing earned value manage-
8 ment systems have the training and qualifications
9 needed to perform that responsibility.

10 “(9) A discussion of mechanisms to ensure that
11 contractors establish and use approved earned value
12 management systems, including mechanisms such as
13 the consideration of the quality of contractor earned
14 value management performance in past performance
15 evaluations.

16 “(10) Recommendations for improving earned
17 value management and its implementation within the
18 Department, including—

19 “(A) a discussion of the merits of possible
20 alternatives; and

21 “(B) a plan for implementing any improve-
22 ments the Secretary determines to be appro-
23 priate.”.

24 (b) MODIFICATION OF REPORT DATE.—Subsection
25 (b) of such section is amended by striking “270 days after

1 the date of the enactment of this Act” and inserting “Oc-
2 tober 14, 2009”.

3 **SEC. 303. EXPANSION OF NATIONAL SECURITY OBJECTIVES**
4 **OF THE NATIONAL TECHNOLOGY AND INDUS-**
5 **TRIAL BASE.**

6 (a) IN GENERAL.—Section 2501(a) of title 10,
7 United States Code, is amended by adding at the end the
8 following new paragraph:

9 “(6) Maintaining critical design skills to ensure
10 that the armed forces are provided with systems ca-
11 pable of ensuring technological superiority over po-
12 tential adversaries.”.

13 (b) ASSESSMENT OF EFFECT OF TERMINATION OF
14 MAJOR DEFENSE ACQUISITION PROGRAMS ON TECH-
15 NOLOGY AND INDUSTRIAL CAPABILITIES.—Section
16 2505(b) of such title is amended—

17 (1) in paragraph (2), by striking “and” at the
18 end;

19 (2) in paragraph (3), by striking the period at
20 the end and inserting “; and”; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(4) consider the effects of the termination of
24 major defense acquisition programs (as the term is
25 defined in section 2430 of this title) in the previous

1 fiscal year on the sectors and capabilities in the as-
2 sessment.”.

3 **SEC. 304. COMPTROLLER GENERAL OF THE UNITED**
4 **STATES REPORTS ON COSTS AND FINANCIAL**
5 **INFORMATION REGARDING MAJOR DEFENSE**
6 **ACQUISITION PROGRAMS.**

7 (a) REVIEW OF OPERATING AND SUPPORT COSTS OF
8 MAJOR WEAPON SYSTEMS.—

9 (1) IN GENERAL.—Not later than one year
10 after the date of the enactment of this Act, the
11 Comptroller General of the United States shall sub-
12 mit to the congressional defense committees a report
13 on growth in operating and support costs for major
14 weapon systems.

15 (2) ELEMENTS.—In preparing the report re-
16 quired by paragraph (1), the Comptroller General
17 shall, at a minimum—

18 (A) identify the original estimates for oper-
19 ating and support costs for major weapon sys-
20 tems selected by the Comptroller General for
21 purposes of the report;

22 (B) assess the actual operating and sup-
23 port costs for such major weapon systems;

1 (C) analyze the rate of growth for oper-
2 ating and support costs for such major weapon
3 systems;

4 (D) for such major weapon systems that
5 have experienced the highest rate of growth in
6 operating and support costs, assess the factors
7 contributing to such growth;

8 (E) assess measures taken by the Depart-
9 ment of Defense to reduce operating and sup-
10 port costs for major weapon systems; and

11 (F) make such recommendations as the
12 Comptroller General considers appropriate.

13 (b) REVIEW OF FINANCIAL INFORMATION RELATING
14 TO MAJOR DEFENSE ACQUISITION PROGRAMS.—

15 (1) REVIEW.—The Comptroller General of the
16 United States shall perform a review of weaknesses
17 in operations affecting the reliability of financial in-
18 formation on the systems and assets to be acquired
19 under major defense acquisition programs.

20 (2) ELEMENTS.—The review required under
21 paragraph (1) shall—

22 (A) identify any weaknesses in operations
23 under major defense acquisition programs that
24 hinder the capacity to assemble reliable finan-
25 cial information on the systems and assets to be

1 acquired under such programs in accordance
2 with applicable accounting standards;

3 (B) identify any mechanisms developed by
4 the Department of Defense to address weak-
5 nesses in operations under major defense acqui-
6 sition programs identified pursuant to subpara-
7 graph (A); and

8 (C) assess the implementation of the mech-
9 anisms set forth pursuant to subparagraph (B),
10 including—

11 (i) the actions taken, or planned to be
12 taken, to implement such mechanisms;

13 (ii) the schedule for carrying out such
14 mechanisms; and

15 (iii) the metrics, if any, instituted to
16 assess progress in carrying out such mech-
17 anisms.

18 (3) CONSULTATION.—In performing the review
19 required by paragraph (1), the Comptroller General
20 shall seek and consider input from each of the fol-
21 lowing:

22 (A) The Chief Management Officer of the
23 Department of Defense.

24 (B) The Chief Management Officer of the
25 Department of the Army.

1 (C) The Chief Management Officer of the
2 Department of the Navy.

3 (D) The Chief Management Officer of the
4 Department of the Air Force.

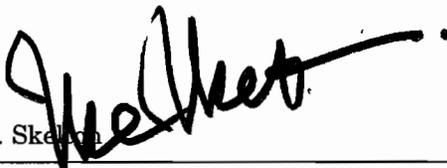
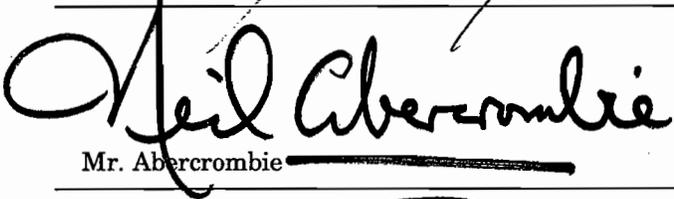
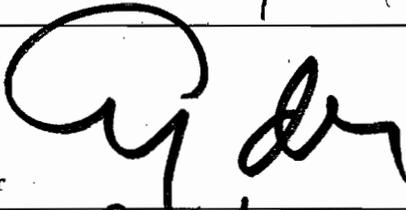
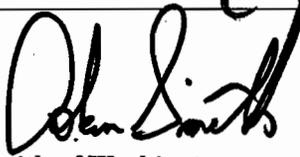
5 (4) REPORT.—Not later than one year after the
6 date of enactment of this Act, the Comptroller Gen-
7 eral shall submit to the congressional defense com-
8 mittees a report on the results of the review required
9 by paragraph (1).



HLC

And the House agree to the same.

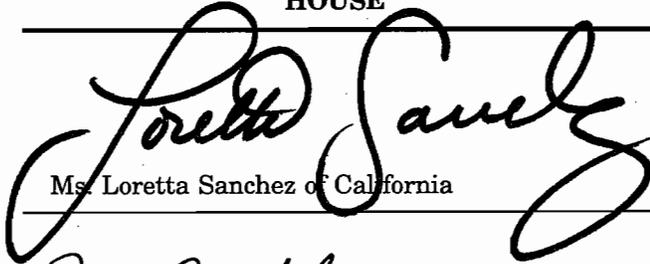
S. 454

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
 Mr. Skelton	
 Mr. Spratt	
 Mr. Ortiz	
 Mr. Taylor	
 Mr. Abercrombie	
 Mr. Reyes	
 Mr. Snyder	
 Mr. Smith of Washington	

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*Managers on the part of the
HOUSE*

*Managers on the part of the
SENATE*



Ms. Loretta Sanchez of California



Mr. McIntyre



Mrs. Tauscher

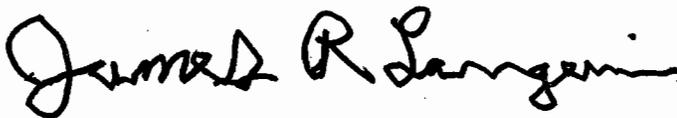
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Mr. Andrews



Mrs. Davis of California

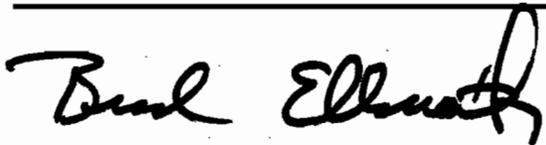
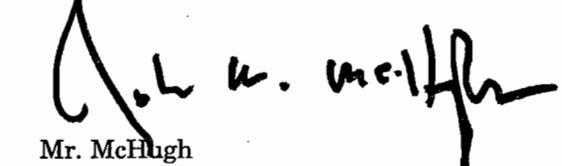
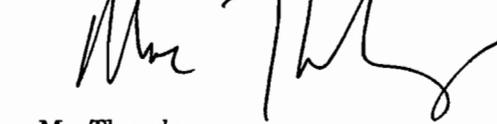
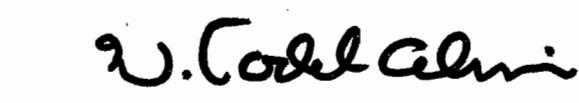


Mr. Langevin

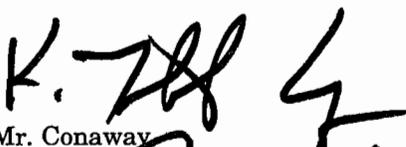
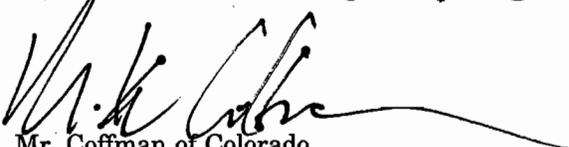


Mr. Cooper

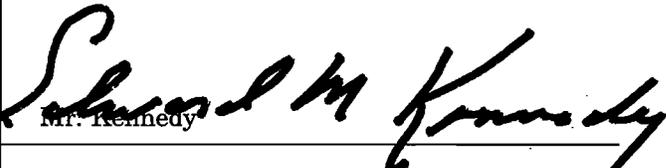
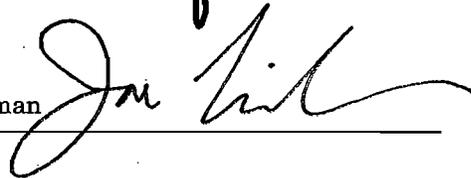
S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
 Mr. Ellsworth	
 Mr. Sestak	
 Mr. McHugh	
 Mr. Bartlett of Maryland	
 Mr. McKeon	
 Mr. Thornberry	
 Mr. Jones	
 Mr. Akin	

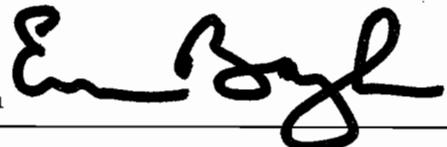
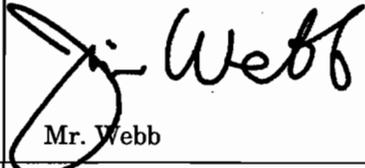
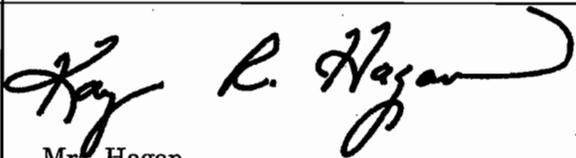
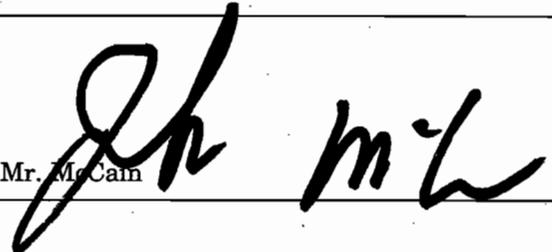
S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
<p>Mr. Forbes </p>	
<p> Mr. Miller of Florida</p>	
<p> Mr. Wilson of South Carolina</p>	
<p> Mr. Conaway</p>	
<p> Mr. Hunt</p>	
<p> Mr. Coffman of Colorado</p>	*

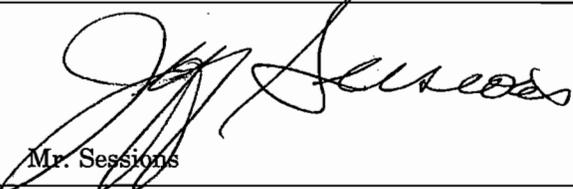
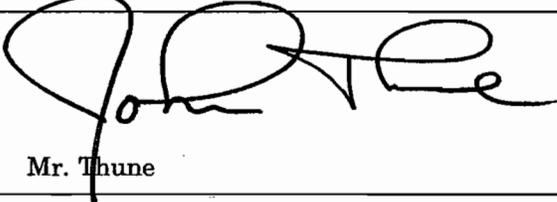
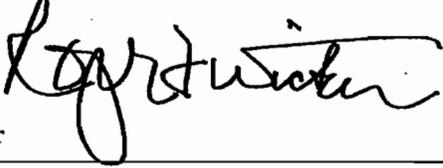
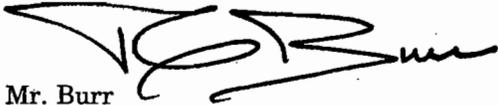
S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Levin
	 Mr. Kennedy
	 Mr. Byrd
	 Mr. Lieberman
	 Mr. Reed
	 Mr. Akaka
	 Mr. Nelson of Florida
	 Mr. Nelson of Nebraska

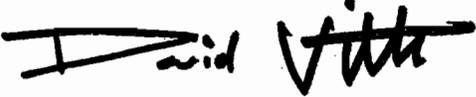
S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Bayh
	 Mr. Webb
	 Mrs. McCaskill
	 Mr. Udall of Colorado
	 Mrs. Hagan
	 Mr. Begich
	 Mr. Burris
	 Mr. McCain

S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Inhofe
	 Mr. Sessions
	 Mr. Chambliss
	 Mr. Graham
	 Mr. Thune
	 Mr. Martinez
	 Mr. Wicker
	 Mr. Burr

S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Vitter
	 Ms. Collins

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 454), to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment that is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Weapon Systems Acquisition Reform Act of 2009

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

TITLE I-ACQUISITION ORGANIZATION

Cost assessment and program evaluation (sec. 101)

The Senate bill contained a provision (sec. 104) that would establish a Director of Independent Cost Assessment in the Department of Defense (DOD) to ensure that cost estimates for major defense acquisition programs and major automated information system programs are fair, reliable, and unbiased.

The House amendment contained a provision (sec. 102) that would require the Secretary of Defense to designate an official within the Office of the Secretary of Defense to perform this function.

The House recedes with an amendment that would establish a Director of Cost Assessment and Performance Evaluation, who would be responsible for ensuring that cost estimates are fair, reliable, and unbiased, and for performing program analysis and evaluation functions currently performed by the Director of Program Analysis and Evaluation. The provision would also codify the cost estimating requirements from the Senate bill and the House amendment in a new section 2334 of title 10, United States Code.

Directors of Developmental Test and Evaluation and Systems Engineering (sec. 102)

The Senate bill contained a provision (sec. 101) that would require certain reports on systems engineering capabilities of the Department of Defense. The Senate bill also contained a provision (sec. 102) that would establish the position of Director of Developmental Test and Evaluation.

The House amendment contained provisions (sec. 101 and 103) that would require the Secretary of Defense to appoint senior officials to carry out acquisition oversight functions,

including systems engineering and developmental testing.

The Senate recedes with an amendment that would establish the positions of Director of Developmental Test and Evaluation and Director of Systems Engineering and establish requirements on the issuance of guidance and reports on systems engineering and developmental testing. The amendment would further require the service acquisition executive of each military department and defense agency to implement and report on plans to ensure that the military departments and defense agencies have appropriate developmental test, systems engineering, and development planning resources.

The Defense Science Board Task Force on Developmental Test and Evaluation reported in May 2008 that the Army has essentially eliminated its developmental testing component, while the Navy and the Air Force have cut their testing workforce by up to 60 percent in some organizations. As a result, "[a] significant amount of developmental testing is currently performed without a needed degree of government involvement or oversight and in some cases, with limited government access to contractor data."

Similarly, the Committee on Pre-Milestone A and Early-Phase Systems Engineering of Air Force Studies Board of the National Research Council reported that "in recent years the depth of systems engineering (SE) talent in the Air Force has declined owing to policies within the Department of Defense (DOD) that shifted the oversight of SE functions increasingly to outside contractors, as well as to the decline of in-house development planning capabilities in the Air Force The result is that there are no longer enough experienced systems engineers to fill the positions in programs that need them, particularly within the government."

The conferees expect the Director of Developmental Test and Evaluation and the Director of Systems Engineering to work with the military departments and defense agencies to ensure that they rebuild these capabilities and perform the developmental testing and systems engineering functions necessary to ensure the successful execution of major defense acquisition programs. In particular, the conferees expect the military departments to conduct developmental testing early in the execution of a major defense acquisition program, to validate that a system's design is demonstrating appropriate progress toward technological maturity and toward meeting system performance requirements.

Performance assessments and root cause analyses for major defense acquisition programs (sec. 103)

The House amendment contained a provision (sec. 104) that would require the Secretary of Defense to designate a senior

official in the Office of the Secretary of Defense as the principal Department of Defense official responsible for issuing policies, procedures, and guidance governing the conduct of performance assessments for major defense acquisition programs.

The Senate bill contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to designate a senior official responsible for conducting and overseeing performance assessments and root cause analyses for major defense acquisition programs.

Assessment of technological maturity of critical technologies of major defense acquisition programs by the Director of Defense Research and Engineering (sec. 104)

The Senate bill contained a provision (sec. 103) that would require the Director of Defense Research and Engineering, in consultation with the Director of Developmental Test and Evaluation, to periodically review and assess the technological maturity and integration risk of critical technologies on major defense acquisition programs.

The House amendment contained a similar provision (sec. 105).

The Senate recedes with an amendment that would combine the two provisions. The conferees note that the technological maturity standard for major defense acquisition programs at the time of Milestone B approval (or Key Decision Point B approval in the case of space programs) is established by statute in section 2366b of title 10, United States Code. The conferees expect the Director of Defense Research and Engineering to establish appropriate knowledge-based standards for technological maturity at other key points in the acquisition process, as well as appropriate standards for integration risk.

Role of the commanders of the combatant commands in identifying joint military requirements (sec. 105)

The Senate bill contained a provision (sec. 105) that would clarify the role of the commanders of the combatant commands in identifying joint military requirements.

The House amendment contained a similar provision (sec. 106).

The Senate recedes with an amendment to ensure that the Comptroller General review required by the provision would address the full range of issues raised by recent legislative changes to the process for the identification of joint military requirements.

LEGISLATIVE PROVISION NOT ADOPTED

Clarification of submittal of certification of adequacy of budgets by the Director of the Department of Defense Test Resource Management Center

The Senate bill contained a provision (sec. 106) that would clarify the impact of organizational changes made in the Senate bill on the requirement for the Director of the Department of Defense Test Resource Management Center to certify the adequacy of budgets to the Secretary of Defense.

The House amendment contained no similar provision.

The Senate recedes. The provision is unnecessary, because the organizational changes to the Defense Test Resource Management Center that required the clarification are not included in the conference report.

TITLE II--ACQUISITION POLICY

Consideration of trade-offs among cost, schedule, and performance objectives in Department of Defense acquisition programs (sec. 201)

The Senate bill contained a provision (sec. 201) that would require the Department of Defense to implement mechanisms to ensure that trade-offs among cost, schedule, and performance objectives are considered early in the process of developing requirements for major weapon systems.

The House amendment contained a provision (sec. 207) that would require the Comptroller General to review and report to Congress on mechanisms used by the Department to make such trade-offs.

The House recedes with an amendment clarifying the required mechanisms. The conference amendment includes a requirement for the Secretary of Defense to review proposed joint military requirements to ensure that the Joint Requirements Oversight Council has given appropriate consideration to trade-offs between cost, schedule, and performance objectives. The Secretary would have flexibility to determine how best to conduct the required review.

Acquisition strategies to ensure competition throughout the lifecycle of major defense acquisition programs (sec. 202)

The Senate bill contained a provision (sec. 203) that 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 level and the subcontract level. The Senate provision would also establish certain requirements for

the use of prototypes on major defense acquisition programs.

The House amendment contained a similar provision (sec. 201), but did not include requirements for the use of prototypes.

The House recedes with an amendment combining elements from the Senate bill and the House amendment. The Senate language on prototypes is addressed in a separate section.

Prototyping requirements for major defense acquisition programs (sec. 203)

The Senate bill contained a provision (sec. 203(c) and (d)) that would establish prototyping requirements for major defense acquisition programs.

The House amendment contained no similar provision.

The House recedes with an amendment that would simplify the requirement.

Actions to identify and address systemic problems in major defense acquisition programs prior to Milestone B approval (sec. 204)

The House amendment contained a provision (sec. 203) that would enhance requirements for the Department of Defense to identify and address systemic problems in major defense acquisition programs before Milestone B approval, while such programs are still in the technology development phase.

The Senate bill contained no similar provision.

The Senate recedes with a clarifying amendment. The conferees agree that greater investment of time and resources in the technology development phase is likely to result in better overall program performance and lower overall program costs. For this reason, increased time or expenditures for early testing and development should not alone be taken as an indication that a program is troubled and needs to be terminated or restructured.

Additional requirements for certain major defense acquisition programs (sec. 205)

The Senate bill contained a provision (sec. 202) that would establish certain requirements relating to preliminary design review and critical design review for major defense acquisition programs.

The House amendment contained a provision (sec. 202) that would establish new procedures for programs that fail to meet all of the requirements for Milestone B certification under section 2366b of title 10, United States Code, and would establish requirements relating to preliminary design review for major defense acquisition programs.

The Senate recedes with a clarifying amendment. The conference amendment does not include the Senate provision regarding critical design review, because this requirement is already addressed in Department of Defense Instruction 5000.02 (December 2008 revision). The conferees view this requirement as a key step in a knowledge-based approach to acquisition, and expect to revisit this issue if the current requirement for critical design review is discontinued or is not enforced.

Critical cost growth in major defense acquisition programs (sec. 206)

The Senate bill contained a provision (sec. 204) that would strengthen the so-called "Nunn-McCurdy" requirements in section 2433(e)(2) of title 10, United States Code, for major defense acquisition programs that experience excessive cost growth.

The House amendment contained a similar provision (sec. 204).

The House recedes with an amendment combining elements from the Senate bill and the House amendment. The conference amendment would also recodify these requirements in a new section 2433a of title 10, United States Code.

Organizational conflicts of interest in major defense acquisition programs (sec. 207)

The Senate bill contained a provision (sec. 205) that would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to issue regulations addressing organizational conflicts of interest by contractors in the acquisition of major weapon systems.

The House amendment contained a similar provision (sec. 205).

The House recedes with an amendment combining elements from the Senate bill and the House amendment. Existing Department of Defense regulations leave it up to individual elements of the Department to determine on a case-by-case basis whether or not organizational conflicts of interest can be mitigated, and if so, what mitigation measures are required. The conferees agree that additional guidance is required to tighten existing requirements, provide consistency throughout the Department, and ensure that advice provided by contractors is objective and unbiased. In developing the regulations required by this section for cases in which mitigation is determined to be appropriate, the conferees expect the Secretary to give consideration to strengthened measures of organizational separation of the type included in the Senate bill.

TITLE III—ADDITIONAL ACQUISITION PROVISIONS

Awards for Department of Defense personnel for excellence in the acquisition of products and services (sec. 301)

The Senate bill contained a provision (sec. 206) that would direct the Secretary of Defense to establish a program to recognize excellent performance by individuals and teams in the acquisition of products and services for the Department of Defense.

The House amendment contained an identical provision (sec. 206). The conference report includes this provision.

Earned value management (sec. 302)

The Senate bill contained a provision (sec. 207) that would require the Under Secretary of Defense for Acquisition, Technology, and Logistics to review and improve guidance governing the implementation of Earned Value Management (EVM) systems for Department of Defense (DOD) contracts.

The House amendment contained no similar provision.

The House recedes with an amendment that would incorporate the requirements of the Senate provision into section 887 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417), which requires the Secretary of Defense to identify and address shortcomings in EVM systems for DOD contracts.

Expansion of national security objectives of the national technology and industrial base (sec. 303)

The Senate bill contained a provision (sec. 208) that would amend section 2501 of title 10, United States Code, to address critical design skills in the national technology and industrial base and require reports on the termination of major defense acquisition programs.

The House amendment contained no similar provision.

The House recedes with an amendment requiring that defense capability assessments performed pursuant to section 2505 of title 10, United States Code, consider the effects of the termination of major defense acquisition programs. The outcome of this assessment would be incorporated into the annual reports required by section 2504 of title 10, United States Code.

Comptroller General of the United States reports on costs and financial information regarding major defense acquisition programs (sec. 304)

The Senate bill contained two provisions (sec. 104(b) and sec. 209) that would require reports by the Government

Accountability Office on: (1) operating and support costs of major weapon systems; and (2) financial information relating to major defense acquisition programs.

The House amendment contained no similar provision.

The House recedes with an amendment incorporating the two reporting requirements into a single provision.

COMPLIANCE WITH SENATE AND HOUSE RULES

Compliance with rules of the Senate and the House of Representatives regarding earmarks and congressionally directed spending items

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives and Rule XLIV(3) of the Standing Rules of the Senate, neither this conference report nor the accompanying joint statement of managers contains any congressional earmarks, congressionally directed spending items, limited tax benefits, or limited tariff benefits, as defined in such rules.

S. 454

Managers on the part of the HOUSE

Managers on the part of the SENATE

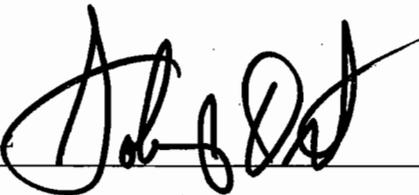
Mr. Skelton



Mr. Spratt



Mr. Ortiz



Mr. Taylor



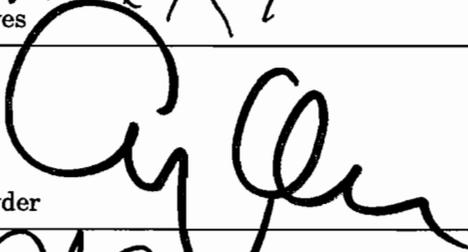
Mr. Abernombie



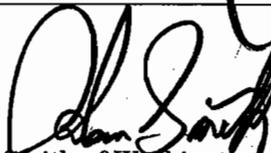
Mr. Reyes



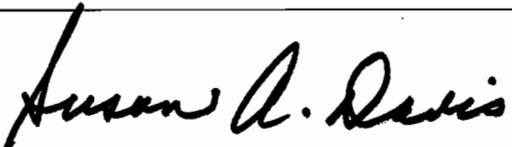
Mr. Snyder



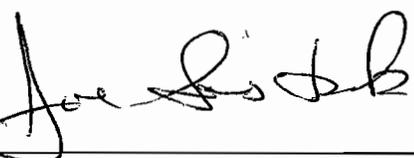
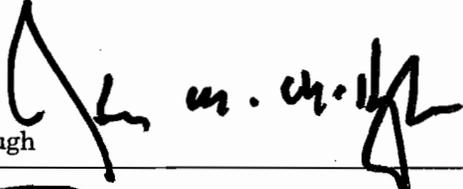
Mr. Smith of Washington



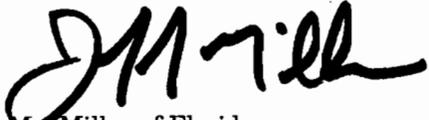
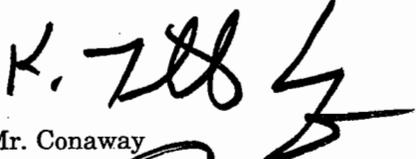
S. 454—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
 Mr. Loretta Sanchez of California	
 Mr. McIntyre	
 Mrs. Tauscher	
	
 Mr. Andrews	
 Mrs. Davis of California	
 Mr. Langevin	
 Mr. Cooper	

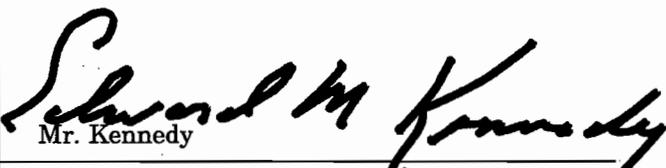
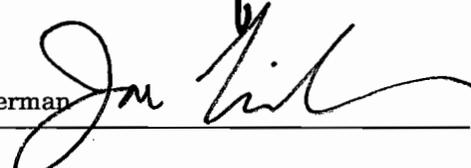
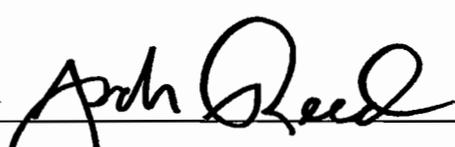
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Mr. Sestak 	
Mr. McHugh 	
 Mr. Bartlett of Maryland	
Howard "Buck" McKeon  Mr. McKeon	
Mac Thornberry  Mr. Thornberry	
Walter B. Jones  Mr. Jones	
W. Todd Akin  Mr. Akin	

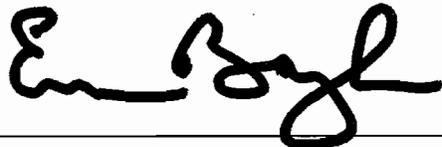
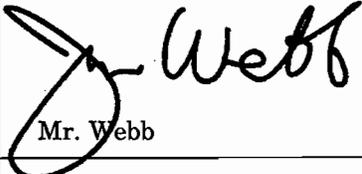
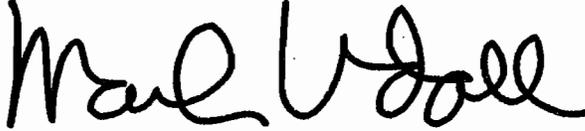
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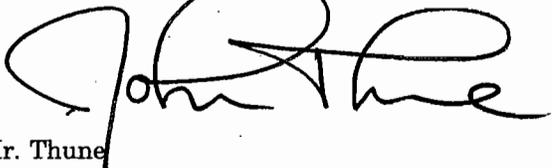
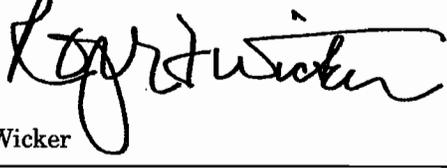
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	 Mr. Nelson of Florida
	 Mr. Nelson of Nebraska

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	 Ms. Collins