

after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense shall issue guidance implementing the amendments made by subsections (a) and (b) [amending this section and section 2366b of this title], and subsection (c) [set out above], in a manner that is consistent across the Department of Defense.”

#### APPLICATION TO ONGOING PROGRAMS

Pub. L. 111-23, title II, §204(c), May 22, 2009, 123 Stat. 1723, as amended by Pub. L. 111-383, div. A, title VIII, §813(c), Jan. 7, 2011, 124 Stat. 4265, which related to application of the requirements of this section to certain major defense acquisition programs initiated before May 22, 2009, was repealed by Pub. L. 112-81, div. A, title VIII, §819(a), Dec. 31, 2011, 125 Stat. 1501.

#### REVIEW OF DEPARTMENT OF DEFENSE ACQUISITION DIRECTIVES

Pub. L. 110-181, div. A, title IX, §943(b), Jan. 28, 2008, 122 Stat. 289, as amended by Pub. L. 110-417, [div. A], title VIII, §813(e)(2)(A), Oct. 14, 2008, 122 Stat. 4528, which provided for review of Department of Defense Directive 5000.1 and associated guidance, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(32), Aug. 13, 2018, 132 Stat. 1849.

### § 2366b. Major defense acquisition programs: certification required before Milestone B approval

(a) CERTIFICATIONS AND DETERMINATION REQUIRED.—A major defense acquisition program may not receive Milestone B approval until the milestone decision authority—

(1) has received a preliminary design review and conducted a formal post-preliminary design review assessment, and certifies on the basis of such assessment that the program demonstrates a high likelihood of accomplishing its intended mission;

(2) further certifies that the technology in the program has been demonstrated in a relevant environment, as determined by the milestone decision authority on the basis of an independent review and technical risk assessment conducted under section 2448b of this title;

(3) determines in writing that—

(A) the program is affordable when considering the ability of the Department of Defense to accomplish the program’s mission using alternative systems;

(B) appropriate trade-offs among cost, schedule, technical feasibility, and performance objectives have been made to ensure that the program is affordable when considering the per unit cost and the total life-cycle cost;

(C) reasonable cost and schedule estimates have been developed to execute, with the concurrence of the Director of Cost Assessment and Program Evaluation, the product development and production plan under the program;

(D) the estimated procurement unit cost for the program and the estimated date for initial operational capability for the baseline description for the program (established under section 2435) do not exceed the program cost and fielding targets established under section 2448a(a) of this title, or, if such estimated cost is higher than the program cost targets or if such estimated date is later than the fielding target, the program

cost targets have been increased or the fielding target has been delayed by the milestone decision authority;

(E) funding is expected to be available to execute the product development and production plan for the program, consistent with the estimates described in subparagraph (C) for the program;

(F) appropriate market research has been conducted prior to technology development to reduce duplication of existing technology and products;

(G) the Department of Defense has completed an analysis of alternatives with respect to the program;

(H) the Joint Requirements Oversight Council has accomplished its duties with respect to the program pursuant to section 181(b) of this title, including an analysis of the operational requirements for the program;

(I) life-cycle sustainment planning, including corrosion prevention and mitigation planning, has identified and evaluated relevant sustainment costs throughout development, production, operation, sustainment, and disposal of the program, and any alternatives, and that such costs are reasonable and have been accurately estimated;

(J) an estimate has been made of the requirements for core logistics capabilities and the associated sustaining workloads required to support such requirements;

(K) there is a plan to mitigate and account for any costs in connection with any anticipated de-certification of cryptographic systems and components during the production and procurement of the major defense acquisition program to be acquired;

(L) the program complies with all relevant policies, regulations, and directives of the Department of Defense;

(M) the Secretary of the military department concerned and the Chief of the armed force concerned concur in the trade-offs made in accordance with subparagraph (B);

(N) the requirements of section 2446b(e) of this title are met; and

(O) appropriate actions have been taken to negotiate and enter into a contract or contract options for the technical data required to support the program;

(4) in the case of a space system, performs a cost benefit analysis for any new or follow-on satellite system using a dedicated ground control system instead of a shared ground control system, except that no cost benefit analysis is required to be performed under this paragraph for any Milestone B approval of a space system after December 31, 2019; and

(5) in the case of a naval vessel program, certifies compliance with the requirements of section 8669b of this title.

(b) CHANGES TO CERTIFICATIONS OR DETERMINATION.—(1) The program manager for a major defense acquisition program that has received certifications or a determination under subsection (a) shall immediately notify the milestone decision authority of any changes to the program or a designated major subprogram of such program that—

(A) alter the substantive basis for the certifications or determination of the milestone decision authority relating to any component of such certifications or determination specified in paragraph (1), (2), or (3) of subsection (a); or

(B) otherwise cause the program or subprogram to deviate significantly from the material provided to the milestone decision authority in support of such certifications or determination.

(2) Upon receipt of information under paragraph (1), the milestone decision authority may withdraw the certifications or determination concerned or rescind Milestone B approval if the milestone decision authority determines that such certifications, determination, or approval are no longer valid.

(c) SUBMISSIONS TO CONGRESS ON MILESTONE B.—

(1) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone B approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following elements:

(A) The program cost and fielding targets established under section 2448a(a) of this title.

(B) The estimated cost and schedule for the program established by the military department concerned, including—

(i) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(C) The independent estimated cost for the program established pursuant to section 2334(a)(6) of this title, and any independent estimated schedule for the program, including—

(i) the dollar values and ranges estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(ii) the planned dates for each program milestone, initial operational test and evaluation, and initial operational capability.

(D) A summary of the technical and manufacturing risks associated with the program, as determined by the military department concerned, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(E) A summary of the independent technical risk assessment conducted or approved under section 2448b of this title, including identification of any critical technologies or manufacturing processes that have not been successfully demonstrated in a relevant environment.

(F) A statement of whether a modular open system approach is being used for the program.

(G) An assessment of the sufficiency of developmental test and evaluation plans, including the use of automated data analytics or modeling and simulation tools and methodologies.

(H) Any other information the milestone decision authority considers relevant.

(2) CERTIFICATIONS AND DETERMINATIONS.—

(A) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

(B) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

(3) ADDITIONAL INFORMATION.—(A) At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program or further information or underlying documentation for the information in a brief summary report submitted under paragraph (1), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that paragraph.

(B) The explanation or information shall be submitted in unclassified form, but may include a classified annex.

(d) WAIVER FOR NATIONAL SECURITY.—(1) The milestone decision authority may, at the time of Milestone B approval or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval pursuant to subsection (b)(2), waive the applicability to a major defense acquisition program of one or more components (as specified in paragraph (1), (2), or (3) of subsection (a)) of the certification and determination requirements if the milestone decision authority determines that, but for such a waiver, the Department would be unable to meet critical national security objectives.

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

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

(B) the milestone decision authority shall review the program not less often than annually to determine the extent to which such program currently satisfies the certification and determination components specified in paragraphs (1), (2), and (3) of subsection (a) until such time as the milestone decision au-

thority determines that the program satisfies all such certification and determination components.

(3) The requirement in paragraph (2)(B) shall not apply to a program for which a certification was required pursuant to section 2433a(c) of this title if the milestone decision authority—

(A) determines in writing that—

(i) the program has reached a stage in the acquisition process at which it would not be practicable to meet the certification component that was waived; and

(ii) the milestone decision authority has taken appropriate alternative actions to address the underlying purposes of such certification component; and

(B) submits the written determination, and an explanation of the basis for the determination, to the congressional defense committees.

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

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

(g) DEFINITIONS.—In this section:

(1) The term “major defense acquisition program” means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title.

(2) The term “designated major subprogram” means a major subprogram of a major defense acquisition program designated under section 2430a(a)(1) of this title.

(3) The term “milestone decision authority”, with respect to a major defense acquisition program, means the official within the Department of Defense designated with the overall responsibility and authority for acquisition decisions for the program, including authority to approve entry of the program into the next phase of the acquisition process.

(4) The term “Milestone B approval” has the meaning provided that term in section 2366(e)(7) of this title.

(5) The term “core logistics capabilities” means the core logistics capabilities identified under section 2464(a) of this title.

(6) The term “fielding target” has the meaning given that term in section 2448a(a) of this title.

(7) The term “major system component” has the meaning given that term in section 2446a(b)(3) of this title.

(8) The term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 109–163, div. A, title VIII, §801(a), Jan. 6, 2006, 119 Stat. 3366, §2366a; amended Pub. L. 109–364, div. A, title VIII, §805, Oct. 17, 2006, 120 Stat. 2314; Pub. L. 110–181, div. A, title VIII, §812, Jan. 28, 2008, 122 Stat. 219; renumbered §2366b, Pub. L. 110–417, [div. A], title VIII, §813(a), (b), Oct. 14, 2008, 122 Stat. 4527; Pub. L. 111–23, title I, §101(d)(4), title II, §§201(f), 205(a), May 22, 2009, 123 Stat. 1710, 1720, 1724; Pub. L. 111–383, div. A, title VIII, §§813(d)(1), 814(c), title IX, §901(j)(4), title X, §1075(k)(1), Jan. 7, 2011, 124 Stat. 4265, 4266, 4324, 4378; Pub. L. 112–81, div. A, title VIII, §§801(b), (e)(2), 819(b), Dec. 31, 2011, 125 Stat. 1483, 1484, 1501; Pub. L. 112–239, div. A, title III, §322(e)(2), title IX, §904(e)(2), Jan. 2, 2013, 126 Stat. 1695, 1867; Pub. L. 113–66, div. A, title VIII, §§821(a), 822(a), title X, §1091(b)(1), Dec. 26, 2013, 127 Stat. 809, 876; Pub. L. 114–92, div. A, title VIII, §824(a), Nov. 25, 2015, 129 Stat. 903; Pub. L. 114–328, div. A, title VIII, §§805(a)(3), 807(e), 808(b), 843, Dec. 23, 2016, 130 Stat. 2255, 2262, 2263, 2290; Pub. L. 115–91, div. A, title VIII, §§835(b)(1), 838(a)(1), Dec. 12, 2017, 131 Stat. 1471, 1474; Pub. L. 115–232, div. A, title VIII, §831(b)(3), Aug. 13, 2018, 132 Stat. 1857; Pub. L. 116–92, div. A, title VIII, §833, Dec. 20, 2019, 133 Stat. 1494.)

#### PRIOR PROVISIONS

A prior section 2366b was renumbered section 2366a of this title.

#### AMENDMENTS

2019—Subsec. (a)(5). Pub. L. 116–92 added par. (5).

2018—Subsec. (a)(3)(D). Pub. L. 115–232, §831(b)(3)(A), struck out “Secretary of Defense after a request for such increase or delay by the” before “milestone decision authority”.

Subsec. (c)(1)(A). Pub. L. 115–232, §831(b)(3)(B), struck out “by the Secretary of Defense” after “established”.

2017—Subsec. (a)(3)(O). Pub. L. 115–91, §835(b)(1), added subpar. (O).

Subsec. (c)(1)(G), (H). Pub. L. 115–91, §838(a)(1), added subpar. (G) and redesignated former subpar. (G) as (H).

2016—Subsec. (a)(2). Pub. L. 114–328, §807(e)(1), substituted “technical risk assessment conducted under section 2448b of this title” for “assessment by the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation”.

Subsec. (a)(3)(B). Pub. L. 114–328, §843(1), substituted “life-cycle cost;” for “acquisition cost in the context of the total resources available during the period covered by the future-years defense program submitted during the fiscal year in which the certification is made;”.

Subsec. (a)(3)(C). Pub. L. 114–328, §807(e)(2)(A), struck out “and” at end.

Subsec. (a)(3)(D). Pub. L. 114–328, §807(e)(2)(C), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(3)(E). Pub. L. 114–328, §843(2), which directed amendment of subpar. (D) by substituting “funding is expected to be available to execute the product development and production plan for the program,” for “funding is” and all that followed through “made,” was executed by making the substitution for “funding is available to execute the product development and production plan under the program, through the period covered by the future-years defense program submitted during the fiscal year in which the certification is made,” in subpar. (E), to reflect the probable intent of Congress and the amendment by Pub. L. 114–328, §807(e)(2)(B). See below.

Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(3)(F) to (L). Pub. L. 114-328, §807(e)(2)(B), redesignated subpars. (E) to (K) as (F) to (L), respectively. Former subpar. (L) redesignated (M).

Subsec. (a)(3)(M). Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (L) as (M). Former subpar. (M) redesignated (N).

Pub. L. 114-328, §805(a)(3), added subpar. (M).

Subsec. (a)(3)(N). Pub. L. 114-328, §807(e)(2)(B), redesignated subpar. (M) as (N).

Subsec. (c). Pub. L. 114-328, §808(b)(1), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) The certifications and determination under subsection (a) with respect to a major defense acquisition program shall be submitted to the congressional defense committees with the first Selected Acquisition Report submitted under section 2432 of this title after completion of the certification.

“(2) The milestone decision authority shall retain records of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a).

“(3) At the request of any of the congressional defense committees, the Secretary of Defense shall submit to the committee an explanation of the basis for the certifications and determination under paragraphs (1), (2), and (3) of subsection (a) with respect to a major defense acquisition program. The explanation shall be submitted in unclassified form, but may include a classified annex.”

Subsec. (g)(6) to (8). Pub. L. 114-328, §808(b)(2), added pars. (6) to (8).

2015—Pub. L. 114-92 amended section generally. Prior to amendment, section related to certification required before Milestone B approval of major defense acquisition programs.

2013—Subsec. (a)(3)(D). Pub. L. 112-239, §904(e)(2), substituted “the Assistant Secretary of Defense for Research and Engineering, in consultation with the Deputy Assistant Secretary of Defense for Developmental Test and Evaluation” for “the Assistant Secretary of Defense for Research and Engineering”.

Subsec. (a)(3)(F). Pub. L. 112-239, §322(e)(2), as amended by Pub. L. 113-66, §1091(b)(1), substituted “core logistics capabilities” for “core depot-level maintenance and repair capabilities, as well as the associated logistics capabilities”.

Subsec. (a)(3)(G), (H). Pub. L. 113-66, §821(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(4). Pub. L. 113-66, §822(a), added par. (4).

2011—Pub. L. 112-81, §801(e)(2)(A), struck out “or Key Decision Point B” after “Milestone B” in section catchline.

Subsec. (a). Pub. L. 112-81, §801(e)(2)(B), struck out “, or Key Decision Point B approval in the case of a space program,” after “Milestone B approval” in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 111-383, §901(j)(4), substituted “Assistant Secretary of Defense for Research and Engineering” for “Director of Defense Research and Engineering”.

Subsec. (a)(3)(E) to (G). Pub. L. 112-81, §801(b)(1), added subpars. (E) and (F) and redesignated former subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 111-383, §814(c)(1)(A), substituted “any changes to the program or a designated major subprogram of such program” for “any changes to the program” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 111-383, §814(c)(1)(B), substituted “otherwise cause the program or subprogram” for “otherwise cause the program”.

Subsec. (b)(2). Pub. L. 112-81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval”.

Subsec. (d)(1). Pub. L. 112-81, §801(e)(2)(C), struck out “(or Key Decision Point B approval in the case of a space program)” after “Milestone B approval” in two places.

Pub. L. 111-383, §813(d)(1)(A), substituted “(as specified in paragraph (1), (2), or (3) of subsection (a))” for “(as specified in paragraph (1) or (2) of subsection (a))”.

Subsec. (d)(2)(B). Pub. L. 111-383, §1075(k)(1), which directed amendment of directory language of Pub. L. 111-23, §205(a)(1)(B), resulting in substitution of “paragraphs (1), (2), and (3)” for “paragraphs (1) and (2)” in text, was not executed because of the prior identical amendment by Pub. L. 111-383, §813(d)(1)(B). See below.

Pub. L. 111-383, §813(d)(1)(B), substituted “specified in paragraphs (1), (2), and (3) of subsection (a)” for “specified in paragraphs (1) and (2) of subsection (a)”.

Subsec. (d)(3). Pub. L. 112-81, §819(b), added par. (3).

Subsec. (g)(2) to (4). Pub. L. 111-383, §814(c)(2), added par. (2) and redesignated former pars. (2) and (3) as (4) and (3), respectively. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 112-81, §801(b)(2), added par. (5) and struck out former par. (5) which read as follows: “The term ‘Key Decision Point B’ means the official program initiation of a National Security Space program of the Department of Defense, which triggers a formal review to determine maturity of technology and the program’s readiness to begin the preliminary system design.”

Pub. L. 111-383, §814(c)(2)(A), redesignated par. (4) as (5).

2009—Subsec. (a)(1)(B). Pub. L. 111-23, §201(f), inserted “appropriate trade-offs among cost, schedule, and performance objectives have been made to ensure that” before “the program is affordable”.

Subsec. (a)(1)(C). Pub. L. 111-23, §101(d)(4), inserted “, with the concurrence of the Director of Cost Assessment and Program Evaluation,” before “the product”.

Subsec. (a)(1)(D). Pub. L. 111-23, §205(a)(3)(A), struck out “and” at end.

Subsec. (a)(2), (3). Pub. L. 111-23, §205(a)(3)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3)(D). Pub. L. 111-23, §205(a)(3)(D)(i), substituted “, as determined by the Milestone Decision Authority on the basis of an independent review and assessment by the Director of Defense Research and Engineering; and” for semicolon.

Subsec. (a)(3)(E), (F). Pub. L. 111-23, §205(a)(3)(D)(ii), (iii), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: “the program demonstrates a high likelihood of accomplishing its intended mission; and”.

Subsec. (d). Pub. L. 111-23, §205(a)(1), designated existing provisions as par. (1) and substituted par. (2) for “Whenever the milestone decision authority makes such a determination and authorizes such a waiver, the waiver, the determination, and the reasons for the determination shall be submitted in writing to the congressional defense committees within 30 days after the waiver is authorized.”

Subsecs. (e) to (g). Pub. L. 111-23, §205(a)(2), added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2008—Pub. L. 110-417, §813(a), (b), renumbered section 2366a of this title as this section.

Subsec. (a). Pub. L. 110-181, §812(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (10) relating to required certifications by milestone decision authority for major defense acquisition program to receive Milestone B approval, or Key Decision Point B approval in the case of a space program.

Subsec. (b). Pub. L. 110-181, §812(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110-181, §812(4), designated existing provisions as par. (1) and added par. (2).

Pub. L. 110-181, §812(2), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-181, §812(5), substituted “authority may, at the time of Milestone B approval (or Key Decision Point B approval in the case of a space program) or at the time that such milestone decision authority withdraws a certification or rescinds Milestone B approval (or Key Decision Point B approval in the case of a space program) pursuant to subsection

(b)(2), waive” for “authority may waive” and “paragraph (1) or (2)” for “paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (9)”.

Pub. L. 110–181, § 812(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 110–181, § 812(6), substituted “subsection (d)” for “subsection (c)”.

Pub. L. 110–181, § 812(2), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 110–181, § 812(2), redesignated subsec. (e) as (f).

2006—Subsec. (a)(1) to (7). Pub. L. 109–364, § 805(a)(1)–(3), added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively. Former par. (7) redesignated (10).

Subsec. (a)(8), (9). Pub. L. 109–364, § 805(a)(4), (5), added pars. (8) and (9).

Subsec. (a)(10). Pub. L. 109–364, § 805(a)(1), redesignated par. (7) as (10).

Subsec. (c). Pub. L. 109–364, § 805(b), substituted “(5), (6), (7), (8), or (9)” for “(5), or (6)”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–91, div. A, title VIII, § 835(b)(2), Dec. 12, 2017, 131 Stat. 1471, provided that: “Section 2366b(a)(3)(O) of title 10, United States Code, as added by paragraph (1), shall apply with respect to any major defense acquisition program receiving Milestone B approval on or after the date occurring one year after the date of the enactment of this Act [Dec. 12, 2017].”

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113–66, div. A, title VIII, § 821(b), Dec. 26, 2013, 127 Stat. 809, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 26, 2013], and shall apply with respect to major defense acquisition programs which are subject to Milestone B approval on or after the date occurring six months after the date of the enactment of this Act.”

Pub. L. 113–66, div. A, title X, § 1091(b), Dec. 26, 2013, 127 Stat. 876, provided in part that the amendment made by section 1091(b)(1) is effective as of Jan. 2, 2013, and as if included in Pub. L. 112–239 as enacted.

Amendment by section 322(e)(2) of Pub. L. 112–239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112–81, see section 322(f) of Pub. L. 112–239, set out as an note under section 2366a of this title.

#### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title VIII, § 813(d)(1), Jan. 7, 2011, 124 Stat. 4265, provided that the amendment made by section 813(d)(1) is effective as of May 22, 2009.

Amendment by section 901(j)(4) of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of this title.

Pub. L. 111–383, div. A, title X, § 1075(k), Jan. 7, 2011, 124 Stat. 4378, provided that the amendment made by section 1075(k)(1) is effective as of May 22, 2009, and as if included in Pub. L. 111–23 as enacted.

#### RESPONSIBILITY FOR CONDUCTING ASSESSMENTS

Pub. L. 115–91, div. A, title VIII, § 838(a)(3), Dec. 12, 2017, 131 Stat. 1474, provided that: “For purposes of the sufficiency assessments required by section 2366b(c)(1) and section 2366c(a)(4) of such title [meaning title 10, United States Code], as added by paragraphs (1) and (2), with respect to a major defense acquisition program—

“(A) if the milestone decision authority for the program is the service acquisition executive of the military department that is managing the program, the sufficiency assessment shall be conducted by the senior official within the military department with responsibility for developmental testing; and

“(B) if the milestone decision authority for the program is the Under Secretary of Defense for Acquisition and Sustainment, the sufficiency assessment shall be conducted by the senior Department of Defense official with responsibility for developmental testing.”

#### GUIDANCE

Pub. L. 115–91, div. A, title VIII, § 838(a)(4), Dec. 12, 2017, 131 Stat. 1475, provided that: “Within one year after the date of the enactment of this Act [Dec. 12, 2017], the senior Department of Defense official with responsibility for developmental testing shall develop guidance for the sufficiency assessments required by section 2366b(c)(1) and section 2366c(a)(4) of title 10, United States Code, as added by paragraphs (1) and (2). At a minimum, the guidance shall require—

“(A) for the sufficiency assessment required by section 2366b(c)(1) of such title, that the assessment address the sufficiency of—

“(i) the developmental test and evaluation plan;

“(ii) the developmental test and evaluation schedule, including a comparison to historic analogous systems;

“(iii) the developmental test and evaluation resources (facilities, personnel, test assets, data analytics tools, and modeling and simulation capabilities);

“(iv) the risks of developmental test and production concurrency; and

“(v) the developmental test criteria for entering the production phase; and

“(B) for the sufficiency assessment required by section 2366c(a)(4) of such title, that the assessment address—

“(i) the sufficiency of the developmental test and evaluation completed;

“(ii) the sufficiency of the plans and resources available for remaining developmental test and evaluation;

“(iii) the risks identified during developmental testing to the production and deployment phase;

“(iv) the sufficiency of the plans and resources for remaining developmental test and evaluation; and

“(v) the readiness of the system to perform scheduled initial operational test and evaluation.”

#### MILESTONE B DECISIONS

Pub. L. 114–92, div. A, title VIII, § 802(d)(3), Nov. 25, 2015, 129 Stat. 880, provided that: “The Chief of the Armed Force concerned shall advise the milestone decision authority for a major defense acquisition program of the Chief’s views on cost, schedule, technical feasibility, and performance trade-offs that have been made with regard to the program, as provided in section 2366b(b)(3) of title 10, United States Code, as amended by section 824 of this Act, prior to a Milestone B decision on the program.”

#### CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10

Pub. L. 111–23, title II, § 205(b), May 22, 2009, 123 Stat. 1725, as amended by Pub. L. 111–383, div. A, title VIII, § 813(d)(2), Jan. 7, 2011, 124 Stat. 4266, which related to certification and review of programs entering development prior to enactment of section 2366b of this title, was repealed by Pub. L. 112–239, div. A, title VIII, § 814, Jan. 2, 2013, 126 Stat. 1830.

#### FORMAL REVIEW PROCESS FOR BANDWIDTH REQUIREMENTS

Pub. L. 110–417, [div. A], title X, § 1047(d), Oct. 14, 2008, 122 Stat. 4603, as amended by Pub. L. 111–84, div. A, title X, § 1033, Oct. 28, 2009, 123 Stat. 2449; Pub. L. 115–232, div. A, title VIII, § 813(c), Aug. 13, 2018, 132 Stat. 1851, provided that: “The Secretary of Defense and the Director of National Intelligence shall, as part of the Milestone B or Key Decision Point B approval process for any major defense acquisition program or major system acquisition program, establish a formal review process to ensure that—

“(A) the bandwidth requirements needed to support such program are or will be met; and

“(B) a determination will be made with respect to how to meet the bandwidth requirements for such program.”

**§ 2366c. Major defense acquisition programs: sub-  
missions to Congress on Milestone C**

(a) BRIEF SUMMARY REPORT.—Not later than 15 days after granting Milestone C approval for a major defense acquisition program, the milestone decision authority for the program shall provide to the congressional defense committees and, in the case of intelligence or intelligence-related activities, the congressional intelligence committees a brief summary report that contains the following:

(1) The estimated cost and schedule for the program established by the military department concerned, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(2) The independent estimated cost for the program established pursuant to section 2334(a)(6) of this title, and any independent estimated schedule for the program, including—

(A) the dollar values estimated for the program acquisition unit cost, average procurement unit cost, and total life-cycle cost; and

(B) the planned dates for initial operational test and evaluation and initial operational capability.

(3) A summary of any production, manufacturing, and fielding risks associated with the program.

(4) An assessment of the sufficiency of the developmental test and evaluation completed, including the use of automated data analytics or modeling and simulation tools and methodologies.

(b) ADDITIONAL INFORMATION.—At the request of any of the congressional defense committees or, in the case of intelligence or intelligence-related activities, the congressional intelligence committees, the milestone decision authority shall submit to the committee further information or underlying documentation for the information in a brief summary report submitted under subsection (a), including the independent cost and schedule estimates and the independent technical risk assessments referred to in that subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” has the meaning given that term in section 437(c) of this title.

(Added Pub. L. 114-328, div. A, title VIII, § 808(c)(1), Dec. 23, 2016, 130 Stat. 2265; amended Pub. L. 115-91, div. A, title VIII, § 838(a)(2), Dec. 12, 2017, 131 Stat. 1474.)

AMENDMENTS

2017—Subsec. (a)(4). Pub. L. 115-91 added par. (4).

RESPONSIBILITY FOR CONDUCTING ASSESSMENTS;  
GUIDANCE

For provisions designating officials responsible for conducting assessments and provisions requiring guidance for assessments under subsec. (a)(4) of this section, see section 838(a)(3), (4) of Pub. L. 115-91, set out as notes under section 2366b of this title.

**§ 2367. Use of federally funded research and development centers**

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term “head of an agency” has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOAD EFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99-500, § 101(c) [title X, § 912(a)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-146, and Pub. L. 99-591, § 101(c) [title X, § 912(a)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-146; Pub. L. 99-661, div. A, title IX, formerly title IV, § 912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102-190, div. A, title II, § 256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104-106, div. A, title XV, § 1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107-314, div. A, title X, § 1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107-314, § 1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: “In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Depart-