

of materiel and non-materiel, to satisfy one or more specific capability gaps;

(B) details the information necessary to develop an increment of militarily useful, logistically supportable, and technically mature capability, including key performance parameters; or

(C) identifies production attributes required for a single increment of a program.

(3) The term “program capability document” has the meaning provided in section 4401(b)(5) of this title.

(Added Pub. L. 111–383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4289, §2547; amended Pub. L. 112–239, div. A, title IX, §951(c), Jan. 2, 2013, 126 Stat. 1891; Pub. L. 114–92, div. A, title VIII, §802(b), Nov. 25, 2015, 129 Stat. 879; Pub. L. 114–328, div. A, title VIII, §807(c), Dec. 23, 2016, 130 Stat. 2261; Pub. L. 115–91, div. A, title VIII, §833, Dec. 12, 2017, 131 Stat. 1468; Pub. L. 115–232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116–92, div. A, title XVII, §1731(a)(52), Dec. 20, 2019, 133 Stat. 1815; renumbered §3104 and amended Pub. L. 116–283, div. A, title IX, §924(b)(32), title XVIII, §1808(a)(2), (b)(2), Jan. 1, 2021, 134 Stat. 3825, 4159, 4160.)

Editorial Notes

CODIFICATION

In addition to being transferred to this section as part of the renumbering of section 2547 of this title, subsec. (b) of section 2547 of this title had also been directed to be transferred to section 4274 of this title and redesignated as subsec. (a) of that section by Pub. L. 116–283, div. A, title XVIII, §1847(e)(4)(B), Jan. 1, 2021, 134 Stat. 4257. Section 1847(e)(4)(B) of Pub. L. 116–283 was repealed by Pub. L. 117–81, div. A, title XVII, §1701(r)(1)(B), Dec. 27, 2021, 135 Stat. 2149, effective as if included in title XVIII of Pub. L. 116–283.

AMENDMENTS

2021—Pub. L. 116–283, §1808(a)(2), renumbered section 2547 of this title as this section.

Subsec. (a). Pub. L. 116–283, §924(b)(32), substituted “the Commandant of the Marine Corps, and the Chief of Space Operations” for “and the Commandant of the Marine Corps”.

Subsec. (b)(1). Pub. L. 116–283, §1808(b)(2)(A), substituted “section 4271(a)” for “section 2448a(a)”.

Subsec. (b)(2)(B). Pub. L. 116–283, §1808(b)(2)(B), substituted “section 4251” for “section 2366a”.

Subsec. (b)(2)(C). Pub. L. 116–283, §1808(b)(2)(C), substituted “section 4252” for “section 2366b”.

Subsec. (d)(3). Pub. L. 116–283, §1808(b)(2)(D), substituted “section 4401(b)(5)” for “section 2446a(b)(5)”.

2019—Subsec. (b)(2)(A). Pub. L. 116–92 substituted “materiel” for “material” and “Materiel” for “Material” in two places.

2018—Subsec. (c). Pub. L. 115–232 substituted “section 7014(c)(1)(A), section 8014(c)(1)(A), or section 9014(c)(1)(A)” for “section 3014(c)(1)(A), section 5014(c)(1)(A), or section 8014(c)(1)(A)”.

2017—Subsec. (b). Pub. L. 115–91 designated existing provisions as par. (1) and added par. (2).

2016—Subsecs. (b), (c). Pub. L. 114–328, §807(c)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 114–328, §807(c)(1), redesignated subsec. (c) as (d).

Subsec. (d)(3). Pub. L. 114–328, §807(c)(3), added par. (3).

2015—Subsec. (a)(2) to (5). Pub. L. 114–92, §802(b)(1), (2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 114–92, §802(b)(1), (3), redesignated par. (5) as (6) and substituted “The development and management” for “The development”. Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 114–92, §802(b)(1), redesignated par. (6) as (7).

2013—Subsec. (a)(1). Pub. L. 112–239, §951(c)(1), substituted “of requirements for equipping the armed force concerned” for “of requirements relating to the defense acquisition system”.

Subsec. (a)(3) to (6). Pub. L. 112–239, §951(c)(2), (3), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 1808(a)(2), (b)(2) of Pub. L. 116–283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116–283, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

§3105. Elements of the defense acquisition system: performance assessments

(a) PERFORMANCE ASSESSMENTS REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Sustainment, the Director of Procurement and Acquisition Policy, and the Director of the Office of Performance Assessment and Root Cause Analysis, shall issue guidance, with detailed implementation instructions, for the Department of Defense to provide for periodic independent performance assessments of elements of the defense acquisition system for the purpose of—

(1) determining the extent to which such elements of the defense acquisition system deliver value to the Department of Defense, taking into consideration the performance elements identified in subsection (b);

(2) assisting senior officials of the Department of Defense in identifying and developing lessons learned from best practices and shortcomings in the performance of such elements of the defense acquisition system; and

(3) assisting senior officials of the Department of Defense in developing acquisition workforce excellence under section 1701a of this title.

(b) AREAS CONSIDERED IN PERFORMANCE ASSESSMENTS.—(1) Each performance assessment conducted pursuant to subsection (a) shall consider, at a minimum—

(A) the extent to which acquisitions conducted by the element of the defense acquisition system under review meet applicable cost, schedule, and performance objectives; and

(B) the staffing and quality of the acquisition workforce and the effectiveness of the management of the acquisition workforce, including workforce incentives and career paths.

(2) The Secretary of Defense shall ensure that the performance assessments required by this

section are appropriately tailored to reflect the diverse nature of the work performed by each element of the defense acquisition system. In addition to the mandatory areas under paragraph (1), a performance assessment may consider, as appropriate, specific areas of acquisition concern, such as—

(A) the selection of contractors, including—

(i) the extent of competition and the use of exceptions to competition requirements;

(ii) compliance with Department of Defense policies regarding the participation of small business concerns and various categories of small business concerns, including the use of contract bundling and the availability of non-bundled contract vehicles;

(iii) the quality of market research;

(iv) the effective consideration of contractor past performance; and

(v) the number of bid protests, the extent to which such bid protests have been successful, and the reasons for such success;

(B) the negotiation of contracts, including—

(i) the appropriate application of sections 3701 through 3708 of this title (relating to truth in negotiations);

(ii) the appropriate use of contract types appropriate to specific procurements;

(iii) the appropriate use of performance requirements;

(iv) the appropriate acquisition of technical data and other rights and assets necessary to support long-term sustainment and follow-on procurement; and

(v) the timely definitization of any undefinitized contract actions; and

(C) the management of contractor performance, including—

(i) the assignment of appropriately qualified contracting officer representatives and other contract management personnel;

(ii) the extent of contract disputes, the reasons for such disputes, and the extent to which they have been successfully addressed;

(iii) the appropriate consideration of long-term sustainment and energy efficiency objectives; and

(iv) the appropriate use of integrated testing.

(c) CONTENTS OF GUIDANCE.—The guidance issued pursuant to subsection (a) shall ensure that each element of the defense acquisition system is subject to a performance assessment under this section not less often than once every four years, and shall address, at a minimum—

(1) the designation of elements of the defense acquisition system that are subject to performance assessment at an organizational level that ensures such assessments can be performed in an efficient and integrated manner;

(2) the frequency with which such performance assessments should be conducted;

(3) goals, standards, tools, and metrics for use in conducting performance assessments;

(4) the composition of the teams designated to perform performance assessments;

(5) any phase-in requirements needed to ensure that qualified staff are available to perform performance assessments;

(6) procedures for tracking the implementation of recommendations made pursuant to performance assessments;

(7) procedures for developing and disseminating lessons learned from performance assessments; and

(8) procedures for ensuring that information from performance assessments are retained electronically and are provided in a timely manner to the Under Secretary of Defense for Acquisition and Sustainment and the Director of the Office of Performance Assessment and Root Cause Analysis as needed to assist them in performing their responsibilities under this section.

(Added Pub. L. 111-383, div. A, title VIII, §861(a), Jan. 7, 2011, 124 Stat. 4289, §2548; amended Pub. L. 112-239, div. A, title X, §1076(d)(5), (f)(30), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115-91, div. A, title X, §1081(a)(41), Dec. 12, 2017, 131 Stat. 1596; Pub. L. 116-92, div. A, title IX, §902(79), Dec. 20, 2019, 133 Stat. 1553; renumbered §3105 and amended Pub. L. 116-283, div. A, title XVIII, §1808(a)(2), (b)(3), (c)(1)(A), (2), Jan. 1, 2021, 134 Stat. 4159, 4160.)

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1808(a)(2), (c)(2), renumbered section 2548 of this title as this section and substituted “Elements of the defense acquisition system: performance assessments” for “Performance assessments of the defense acquisition system” in section catchline.

Subsec. (b)(2)(B)(i). Pub. L. 116-283, §1808(b)(3), substituted “sections 3701 through 3708” for “section 2306a”.

Subsecs. (d), (e). Pub. L. 116-283, §1808(c)(1)(A), transferred subsecs. (d) and (e) of this section to section 3106 of this title.

2019—Subsecs. (a), (c)(8). Pub. L. 116-92 substituted “Under Secretary of Defense for Acquisition and Sustainment” for “Under Secretary of Defense for Acquisition, Technology, and Logistics”.

2017—Subsec. (e). Pub. L. 115-91 substituted “Requirement” for “Requirements” in heading, struck out introductory provisions “Beginning with fiscal year 2012—”, substituted “The annual report prepared by the Secretary” for “(1) the annual report prepared by the Secretary”, and struck out par. (2) which read as follows: “the annual report prepared by the Director of the Office of Performance Assessment and Root Cause Analysis pursuant to section 2438(f) of this title shall include information on the activities undertaken by the Department pursuant to such section, including a summary of significant findings or recommendations arising out of performance assessments.”

2013—Subsec. (a). Pub. L. 112-239, §1076(f)(30)(A)(i), substituted “The Secretary” for “Not later than 180 days after the date of the enactment of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, the Secretary” in introductory provisions.

Subsec. (a)(3). Pub. L. 112-239, §1076(f)(30)(A)(ii), inserted period at end.

Subsec. (d). Pub. L. 112-239, §1076(f)(30)(B), inserted “and” after “Government Performance” in heading and substituted “The” for “Beginning with fiscal year 2012, the” in text.

Subsec. (e)(1). Pub. L. 112-239, §1076(f)(30)(C), struck out “, United States Code,” after “title 31”.

Subsec. (e)(2). Pub. L. 112-239, §1076(d)(5), substituted “section 2438(f) of this title” for “section 103(f) of the Weapon Systems Acquisition Reform Act of 2009 (10 U.S.C. 2430 note),”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as a note preceding section 3001 of this title.

§ 3106. Elements of the defense acquisition system: performance goals

(a) PERFORMANCE GOALS UNDER GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993.—The annual performance plan prepared by the Department of Defense pursuant to section 1115 of title 31 shall include appropriate performance goals for elements of the defense acquisition system.

(b) REPORTING REQUIREMENT.—The annual report prepared by the Secretary of Defense pursuant to section 1116 of title 31 shall address the Department's success in achieving performance goals established pursuant to such section for elements of the defense acquisition system.

(Added and amended Pub. L. 116-283, div. A, title XVIII, § 1808(c)(1), Jan. 1, 2021, 134 Stat. 4160.)

Editorial Notes

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (a), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

CODIFICATION

The text of subsecs. (d) and (e) of section 2548 of this title, which were transferred first to section 3105(d) and (e) of this title and then to this section, redesignated as subsecs. (a) and (b), respectively, and amended by Pub. L. 116-283, § 1808(a)(2), (c)(1), was based on Pub. L. 111-383, div. A, title VIII, § 861(a), Jan. 7, 2011, 124 Stat. 4289; amended Pub. L. 112-239, div. A, title X, § 1076(d)(5), (f)(30)(B), (C), Jan. 2, 2013, 126 Stat. 1951, 1953; Pub. L. 115-91, div. A, title X, § 1081(a)(41), Dec. 12, 2017, 131 Stat. 1596.

AMENDMENTS

2021—Pub. L. 116-283, § 1808(c)(1)(B), redesignated subsecs. (d) and (e) of section 3105 of this title as subsecs. (a) and (b), respectively, of this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section and amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of Pub. L. 116-283, set out as an Effective Date of 2021 Amendment note preceding section 3001 of this title.

CHAPTER 207—BUDGETING AND APPROPRIATIONS

Sec.

3131. Availability of appropriations.
3132. Availability of appropriations for procurement of technical military equipment and supplies.

Sec.

3133. Contracts for periods crossing fiscal years: severable service contracts; leases of real or personal property.
3134. Allocation of appropriations.
3135. Comparable budgeting for common procurement weapon systems.
3136. Defense Modernization Account.
3137. Procurement of contract services: specification of amounts requested in budget.¹
3138. Obligations for contract services: reporting in budget object classes.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 207 “BUDGETING AND APPROPRIATIONS MATTERS”, as added by Pub. L. 115-232, div. A, title VIII, § 801(a), Aug. 13, 2018, 132 Stat. 1826, and consisting of reserved section 3101, was repealed by Pub. L. 116-283, div. A, title XVIII, § 1809(a), Jan. 1, 2021, 134 Stat. 4160.

§ 3131. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 4141 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97-258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100-370, § 1(g)(1), July 19, 1988, 102 Stat. 846; renumbered § 3131 and amended Pub. L. 116-283, div. A, title XVIII, §§ 1809(b), 1883(b)(2), Jan. 1, 2021, 134 Stat. 4161, 4294; Pub. L. 117-81, div. A, title XVII, § 1701(d)(1), Dec. 27, 2021, 135 Stat. 2136.)

HISTORICAL AND REVISION NOTES

1982 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 2361 | 31:649c(2). | Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92-156, § 201(b), 85 Stat. 424. |

The words “Unless otherwise provided in the appropriation Act concerned” are omitted as unnecessary and for consistency. The word “Funds” is substituted for “moneys” for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.
Subsection (b) is based on Pub. L. 99-190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, § 1809(b), renumbered section 2351 of this title as this section.

Subsec. (b)(1). Pub. L. 117-81, which directed the substitution of “section 4141” for “section 2353”, could not

¹Section omitted by Pub. L. 117-81 without corresponding amendment of chapter analysis.