

Par. (3). Pub. L. 116-283, §1812(e)(2)(B), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)”.

### 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.

### § 3225. Discussion of risk in cost estimates

The Director of Cost Assessment and Program Evaluation, and the Secretary of the military department concerned or the head of the Defense Agency concerned (as applicable), shall each—

(1) issue guidance requiring a discussion of risk, the potential impacts of risk on program costs, and approaches to mitigate risk in cost estimates for major defense acquisition programs and major subprograms;

(2) ensure that cost estimates are developed, to the extent practicable, based on historical actual cost information that is based on demonstrated contractor and Government performance and that such estimates provide a high degree of confidence that the program or subprogram can be completed without the need for significant adjustment to program budgets; and

(3) include the information required in the guidance under paragraph (1)—

(A) in any decision documentation approving a cost estimate within the baseline description or any other cost estimate for use at any event specified in section 3221(b)(6) of this title; and

(B) in the next Selected Acquisition Report pursuant to section 4351 of this title in the case of a major defense acquisition program or major subprogram, or the next quarterly report pursuant to section 2445c<sup>1</sup> of this title in the case of a major automated information system program.

(Added and amended Pub. L. 116-283, div. A, title XVIII, §1812(a), (f), Jan. 1, 2021, 134 Stat. 4174, 4176; Pub. L. 117-81, div. A, title XVII, §1701(o)(6)(A)(ii), Dec. 27, 2021, 135 Stat. 2147.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 2445c of this title, referred to in par. (3)(B), was repealed by Pub. L. 114-328, div. A, title VIII, §846(1), Dec. 23, 2016, 130 Stat. 2292.

#### CODIFICATION

The text of subsec. (e) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116-283, §1812(f), was based on Pub. L. 111-23, title I, §101(b)(1), May 22, 2009, 123 Stat. 1706; Pub. L. 111-383, div. A, title VIII, §811(1), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 114-328, div. A, title VIII, §842(a)(3), (6), (b)(5), Dec. 23, 2016, 130 Stat. 2288-2290.

#### PRIOR PROVISIONS

A prior section 3225, act Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 96-513, title V, §502(7), Dec. 12, 1980, 94

Stat. 2909; Pub. L. 100-456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to authorized strength of Army National Guard and Army National Guard of United States, exclusive of members on active duty, prior to repeal by Pub. L. 103-337, div. A, title XVI, §§1662(a)(3), 1691, Oct. 5, 1994, 108 Stat. 2988, 3026, effective Dec. 1, 1994. See section 12002 of this title.

#### AMENDMENTS

2021—Pub. L. 116-283, §1812(f)(1), (2)(A), transferred subsec. (e) of section 2334 of this title to this section and struck out subsec. (e) designation and heading “Discussion of Risk in Cost Estimates” at beginning.

Par. (3)(A). Pub. L. 116-283, §1812(f)(2)(B), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)”.

Par. (3)(B). Pub. L. 116-283, §1812(f)(2)(C), as amended by Pub. L. 117-81, §1701(o)(6)(A)(ii), substituted “section 4351” for “section 2432”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applicable as if included in the enactment of title XVIII of Pub. L. 116-283 as enacted, see section 1701(a)(2) of Pub. L. 117-81, set out in a note preceding section 3001 of this title and Effective Date note below.

#### 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.

### § 3226. Estimates for program baseline and analyses and targets for contract negotiation purposes

(a) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The policies, procedures, and guidance issued by the Director of Cost Assessment and Program Evaluation in accordance with the requirements of section 3221 of this title shall provide that cost estimates developed for baseline descriptions and other program purposes conducted pursuant to subsection (b)(6) of such section are not to be used for the purpose of contract negotiations or the obligation of funds.

(b) COST ESTIMATES DEVELOPED FOR SPECIFIED PURPOSES NOT TO BE USED FOR CONTRACT NEGOTIATIONS OR OBLIGATION OF FUNDS.—The Under Secretary of Defense for Acquisition and Sustainment shall, in consultation with the Director of Cost Assessment and Program Evaluation, develop policies, procedures, and guidance to ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are based on the Government’s reasonable expectation of successful contractor performance in accordance with the contractor’s proposal and previous experience.

(c) PROGRAM MANAGER AND CONTRACTING OFFICER.—The program manager and contracting officer for each major defense acquisition program and major subprogram shall ensure that cost analyses and targets developed for the purpose of contract negotiations and the obligation of funds are carried out in accordance with the requirements of subsection (a) and the policies, procedures, and guidance issued by the Under

<sup>1</sup> See References in Text note below.

Secretary of Defense for Acquisition and Sustainment under subsection (b).

(d) AVAILABILITY OF EXCESS FUNDS.—

(1) Funds that are made available for a major defense acquisition program or major subprogram in accordance with a cost estimate conducted pursuant to section 3221(b)(6) of this title, but are excess to a cost analysis or target developed pursuant to subsection (b), shall remain available for obligation in accordance with the terms of applicable authorization and appropriations Acts.

(2) Funds described in paragraph (1)—

(A) may be used—

(i) to cover any increased program costs identified by a revised cost analysis or target developed pursuant to subsection (b);

(ii) to acquire additional end items in accordance with the requirements of section 3069 of this title; or

(iii) to cover the cost of risk reduction and process improvements; and

(B) may be reprogrammed, in accordance with established procedures, only if determined to be excess to program needs on the basis of a cost estimate developed with the concurrence of the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1812(a), (g), Jan. 1, 2021, 134 Stat. 4174, 4176.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (f) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1812(g), was based on Pub. L. 111–383, div. A, title VIII, §811(3), Jan. 7, 2011, 124 Stat. 4263; Pub. L. 112–81, div. A, title VIII, §833, Dec. 31, 2011, 125 Stat. 1506; Pub. L. 114–328, div. A, title VIII, §842(a)(3), (b)(3), (6), Dec. 23, 2016, 130 Stat. 2288–2290; Pub. L. 116–92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1812(g)(1), (2)(A), (B), redesignated subsec. (f) of section 2334 of this title as subsec. (a) of this section, substituted “Cost Estimates Developed for Specified Purposes Not to Be Used for Contract Negotiations or Obligation of Funds” for “Estimates for Program Baseline and Analyses and Targets for Contract Negotiation Purposes” in heading, struck out par. (1) designation before “The policies,” and substituted “section 3221 of this title” for “subsection (a)” and “subsection (b)(6) of such section” for “subsection (a)(6)”. Pars. (2), (3), (4), and (5) of subsec. (a) redesignated subsecs. (b), (c), (d)(1), and (d)(2), respectively.

Subsec. (b). Pub. L. 116–283, §1812(g)(2)(C), redesignated subsec. (a)(2) as (b) and inserted heading.

Subsec. (c). Pub. L. 116–283, §1812(g)(2)(D), redesignated subsec. (a)(3) as (c), inserted heading, and substituted “The program manager” for “The Program Manager”, “subsection (a)” for “paragraph (1)”, and “subsection (b)” for “paragraph (2)”.

Subsec. (d). Pub. L. 116–283, §1812(g)(2)(E)(i), (iii), redesignated subsec. (a)(4) and (5) as (d)(1) and (2), respectively, inserted subsec. heading, and realigned margin of par. (2).

Subsec. (d)(1). Pub. L. 116–283, §1812(g)(2)(E)(ii), substituted “section 3221(b)(6) of this title” for “subsection (a)(6)” and “subsection (b)” for “paragraph (2)”.

Subsec. (d)(2). Pub. L. 116–283, §1812(g)(2)(E)(iv), substituted “paragraph (1)” for “paragraph (4)” in intro-

ductory provisions, “subsection (b)” for “paragraph (2)” in subpar. (A)(i), and “section 3069” for “section 2308” in subpar. (A)(ii).

#### 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.

#### § 3227. Guidelines and collection method for acquisition of cost data

(a) DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD.—The Director of Cost Assessment and Program Evaluation shall, in consultation with the Under Secretary of Defense for Acquisition and Sustainment, develop policies, procedures, guidance, and a collection method to ensure that quality acquisition cost data are collected to facilitate cost estimation and comparison across acquisition programs.

(b) APPLICABILITY TO ACQUISITION PROGRAMS IN AMOUNT GREATER THAN SPECIFIED THRESHOLD.—The program manager and contracting officer for each acquisition program in an amount greater than \$100,000,000, in consultation with the cost estimating component of the relevant military department or Defense Agency, shall ensure that cost data are collected in accordance with the requirements of subsection (a).

(c) LIMITATION ON WAIVER AUTHORITY.—The requirement under subsection (a) may be waived only by the Director of Cost Assessment and Program Evaluation.

(Added and amended Pub. L. 116–283, div. A, title XVIII, §1812(a), (h), Jan. 1, 2021, 134 Stat. 4174, 4177.)

#### Editorial Notes

##### CODIFICATION

The text of subsec. (g) of section 2334 of this title, which was transferred to this section and amended by Pub. L. 116–283, §1812(h), was based on Pub. L. 114–328, div. A, title VIII, §842(a)(7), Dec. 23, 2016, 130 Stat. 2289; Pub. L. 116–92, div. A, title IX, §902(53), Dec. 20, 2019, 133 Stat. 1549.

##### PRIOR PROVISIONS

A prior section 3230, added Pub. L. 85–861, §1(69)(B), Sept. 2, 1958, 72 Stat. 1464, provided that members of Army who are detailed for duty with agencies of United States outside Department of Defense on a reimbursable basis not be counted in computing strengths under any law, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

##### AMENDMENTS

2021—Subsec. (a). Pub. L. 116–283, §1812(h)(1), (2)(A), redesignated subsec. (g) of section 2334 of this title as subsec. (a) of this section, substituted “DIRECTOR OF CAPE TO DEVELOP GUIDELINES AND COLLECTION METHOD” for “GUIDELINES AND COLLECTION OF COST DATA” in heading, and struck out par. (1) designation before “The Director”. Amendment striking heading was executed to reflect the probable intent of Congress notwithstanding error in formatting of text. Pars. (2) and (3) of subsec. (a) redesignated subsecs. (b) and (c), respectively.