SEC. 811 . REPEAL OF APPLICATION OF REQUIREMENT TO REVIEW ONGOING PROGRAMS INITIATED PRIOR TO CERTIFICATION UNDER SECTION 2366B OF TITLE 10, UNITED STATES CODE.

Subsection (b) of section 205 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 123 Stat. 1725; 10 U.S.C. 2366b note) is repealed.

Section-by-Section Analysis

Section 205(b) of the Weapon Systems Acquisition Reform Act of 2009 (WSARA) (Public Law 111-23; 123 Stat. 1725) required the Department of Defense to review those major defense programs that had entered Milestone B prior to the enactment of the certification requirements at section 2366b of title 10, United States Code , and that have not otherwise been certified pursuant to that section to determine whether such programs satisfy the certification components specified in that section In large part this requirement overlapped with the requirement under section 204(c) of WSARA to certify programs initiated prior to enactment of WSARA that had not previously been certified in accordance with the standards of section 2366a or 2366b or title 10, United States Code. The Department's practice had been to certify these programs under 2366b as so called "catch-up" certifications, which necessarily would also establish certifiability under section 205 and allow for compliance with that latter section's requirement. However, section 819 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012 repealed the catch-up certification requirement in section 204 of WSARA. The continuing obligation to conduct a review as to certifiability under section 205 renders meaningless the repeal of the section 204 catch-up certification requirement, as the Department would still need to fulfill the section 205(b) requirements, thereby frustrating all the policy reasons that led to the repeal of the section 204 catch-up requirement. The essentially redundant obligation under section 205(b) should also be repealed in order to effectuate all the same considerations underlying section 819 of the FY 12 NDAA.

Budget Implications: There are no quantifiable budget implications associated with this proposal.

Changes to Existing Law: The proposal would make the following change to section 205 of the Weapon Systems Acquisition Reform Act of 2009 (Public Law 111-23; 123 Stat. 1723):

SEC. 205. ADDITIONAL REQUIREMENTS FOR CERTAIN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) ADDITIONAL REQUIREMENTS RELATING TO MILESTONE B APPROVAL.--Section 2366b of title 10, United States Code, is amended--

[amendments omitted]

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~~(b) CERTIFICATION AND REVIEW OF PROGRAMS ENTERING DEVELOPMENT PRIOR TO ENACTMENT OF SECTION 2366B OF TITLE 10.--~~

~~(1) DETERMINATION.--Not later than 270 days after the date of the enactment of this Act, for each major defense acquisition program that received Milestone B approval before January 6, 2006, and has not received Milestone C approval, and for each space program that received Key Decision Point B approval before January 6, 2006, and has not received Key Decision Point C approval, the Milestone Decision Authority shall determine whether or not such program satisfies all of the certification components specified in paragraphs (1) and (2) of subsection (a) of section 2366b of title 10, United States Code (as amended by subsection (a) of this section).~~

~~(2) ANNUAL REVIEW.--The Milestone Decision Authority shall review any program determined pursuant to paragraph (1) not to satisfy any of the certification components of subsection (a) of section 2366b of title 10, United States Code (as so amended), not less often than annually thereafter to determine the extent to which such program currently satisfies such certification components until such time as the Milestone Decision Authority determines that such program satisfies all such certification components.~~

~~(3) 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 which the Milestone Decision Authority determines under paragraph (1) does not satisfy all of the certification components of subsection (a) of section 2366b of title 10, United States Code, (as so amended) shall prominently and clearly indicate that such program has not fully satisfied such certification components until such time as the Milestone Decision Authority makes the determination that such program has satisfied all such certification components.~~

(c) REVIEWS OF PROGRAMS RESTRUCTURED AFTER EXPERIENCING CRITICAL COST GROWTH.—The official designated to perform oversight of performance assessment pursuant to section 103 of this Act, shall assess the performance of each major defense acquisition program that has exceeded critical cost growth thresholds established pursuant to section 2433(e) of title 10, United States Code, but has not been terminated in accordance with section 2433a of such title (as added by section 206(a) of this Act) not less often than semi-annually until one year after the date on which such program receives a new milestone approval, in accordance with section 2433a(c)(3) of such title (as so added). The results of reviews performed under this subsection shall be reported to the Under Secretary of Defense for Acquisition, Technology, and Logistics and summarized in the next annual report of such designated official.