SEC. 807. TREATMENT OF REVIEWS OF PROGRAMS EXPERIENCING CRITICAL COST GROWTH WHEN COST GROWTH IS PRIMARILY DUE TO QUANTITY CHANGES.

Section 2433a(c)(3)(A) of title 10, United States Code, is amended by striking "subparagraphs (B) and (C)" and inserting "subparagraphs (B), (C), and (E)".

Section-by-Section Analysis

This proposal would revise section 2433a of title 10, United States Code, as amended by section 831 of the National Defense Authorization Act for Fiscal Year 2012, and further reduce the statutory requirements for critical Nunn-McCurdy breaches caused primarily by quantity changes, as already partially reduced by section 831.

The subparagraph to be deleted here, subparagraph (E), requires the official designated to perform oversight of performance assessment pursuant to section 103 of WSARA to 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, 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 currently specified by statutory and regulatory requirements, the Director of Performance Assessments and Root Cause Analyses would be required to perform a root cause analysis to substantiate the causal effects of the unit cost increase. If this root cause analysis substantiates that the cause of the unit cost breach is a change in quantity, and not poor program performance or management, there is little or no value in having a subsequent review by the same official.

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

Changes to Existing Law: This proposal would make the following changes to 10 USC 2433a(c)(3)(A):

§2433a. Critical cost growth in major defense acquisition programs

(a) ***

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(c) ACTIONS IF PROGRAM NOT TERMINATED. - (1) If the Secretary elects not to terminate a major defense acquisition program pursuant to subsection (b), the Secretary shall -

(A) restructure the program in a manner that addresses the root cause or causes of the critical cost growth, as identified pursuant to subsection (a), and ensures that the program has an appropriate management structure as set forth in the certification submitted pursuant to subsection (b)(2)(E);

(B) rescind the most recent Milestone approval for the program and withdraw any associated certification under section 2366a or 2366b of this title;

(C) require a new Milestone approval for the program before taking any contract action to enter a new contract, exercise an option under an existing contract, or otherwise extend the scope of an existing contract under the program, except to the extent determined necessary by the Milestone Decision Authority, on a non-delegable basis, to ensure that the program can be restructured as intended by the Secretary without unnecessarily wasting resources;

(D) include in the report specified in paragraph (2) a description of all funding changes made as a result of the growth in cost of the program, including reductions made in funding for other programs to accommodate such cost growth; and

(E) conduct regular reviews of the program in accordance with the requirements of section 205 of the Weapon Systems Acquisition Reform Act of 2009.

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

(3)(A) The requirements of ~~subparagraphs (B) and (C)~~ <u>subparagraphs (B), (C), and (E)</u> of paragraph (1) shall not apply to a program or subprogram if--

(i) the Milestone Decision Authority determines in writing, on the basis of a cost assessment and root cause analysis conducted pursuant to subsection (a), that--

(I) but for a change in the quantity of items to be purchased under the program or subprogram, the program acquisition unit cost or procurement unit cost for the program or subprogram would not have increased by a percentage equal to or greater than the cost growth thresholds for the program or subprogram set forth in subparagraph (B); and

(II) the change in quantity of items described in subclause (I) was not made as a result of an increase in program cost, a delay in the program, or a problem meeting program requirements;

(ii) the Secretary determines in writing that the cost to the Department of Defense of complying with such requirements is likely to exceed the benefits to the Department of complying with such requirements; and

(iii) the Secretary submits to Congress, before the end of the 60-day period beginning on the day the Selected Acquisition Report containing the information described in section 2433(g) of this title is required to be submitted under section 2432(f) of this title--

(I) a copy of the written determination under clause (i) and an explanation of the basis for the determination; and

(II) a copy of the written determination under clause (ii) and an explanation of the basis for the determination.

(B) The cost growth thresholds specified in this subparagraph are as follows:

(i) In the case of a major defense acquisition program or designated major defense subprogram, a percentage increase in the program acquisition unit cost for the program or subprogram of--

(I) 5 percent over the program acquisition unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the program acquisition unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

(ii) In the case of a major defense acquisition program or designated major defense subprogram that is a procurement program, a percentage increase in the procurement unit cost for the program or subprogram of--

(I) 5 percent over the procurement unit cost for the program or subprogram as shown in the current Baseline Estimate for the program or subprogram; and

(II) 10 percent over the procurement unit cost for the program or subprogram as shown in the original Baseline Estimate for the program or subprogram.

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