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[Report No. 111–179]

To amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2009

Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

MAY 5, 2010

Reported by Mr. LIEBERMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments,

to reward excellence in information technology acquisition, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009".~~

~~SEC. 2. FINDINGS.~~

~~Congress finds the following:~~

~~(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.~~

~~(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.~~

~~(3) The Office of Management and Budget has made significant progress overseeing information technology investments made by Federal agencies but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.~~

~~(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency infor-~~

~~mation technology investments and has difficulty providing the necessary oversight.~~

~~(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—~~

~~(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and~~

~~(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.~~

~~SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.~~

~~Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting the following: "~~, ~~including establishing a Website, updating the Website on a quarterly basis, and including on the Website, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment~~

~~Oversight Enhancement and Waste Prevention Act of 2009—~~

~~"(1) the cost, schedule, and performance of all major information technology investments using earned-value management data based on the ANSI EIA–748–B standard;~~

~~"(2) accurate quarterly information since the commencement of the project;~~

~~"(3) a graphical depiction of trend information since the commencement of the project;~~

~~"(4) a clear delineation of investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment;~~

~~"(5) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and~~

~~"(6) the number of times investments were rebaselined and the dates on which such rebaselines occurred.".~~

~~SEC. 4. IT INVESTMENT PROJECTS.~~

~~(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:~~

~~"SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.~~

~~"(a) DEFINITIONS.—In this subchapter:~~

~~"(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.~~

~~"(2) ANSI EIA–748–B STANDARD.—The term 'ANSI EIA–748–B Standard' means the measurement tool jointly developed by the American National Standards Institute and the Electronic Industries Alliance to analyze Earned Value Management systems.~~

~~"(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—~~

~~"(A) the Committee on Homeland Security and Governmental Affairs of the Senate;~~

~~"(B) the Committee on Oversight and Government Reform of the House of Representatives;~~

~~"(C) the Committee on Appropriations of the Senate;~~

~~"(D) the Committee on Appropriations of the House of Representatives; and~~

~~"(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.~~

~~"(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Federal agency that is primarily responsible for the IT investment project under review.~~

~~"(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).~~

~~"(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.~~

~~"(7) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, performance, and schedule data used to determine project status and developed in accordance with the ANSI EIA–748–B Standard.~~

~~"(8) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance vari-~~

~~ance that is at least 40 percent from the Original Baseline.~~

~~"(9) INDEPENDENT GOVERNMENT COST ESTIMATE.—The term 'independent government cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of an IT investment project, which—~~

~~"(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;~~

~~"(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;~~

~~"(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA–748–B standard; and~~

~~"(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.~~

~~"(10) IT INVESTMENT PROJECT.—The terms 'IT investment project' and 'project' mean an information technology system or information technology acquisition that—~~

~~"(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;~~

~~"(B) is for financial management and obligates more than $500,000 annually;~~

~~"(C) has significant program or policy implications;~~

~~"(D) has high executive visibility;~~

~~"(E) has high development, operating, or maintenance costs;~~

~~"(F) is funded through other than direct appropriations; or~~

~~"(G) is defined as major by the agency's capital planning and investment control process.~~

~~"(11) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.~~

~~"(12) ORIGINAL BASELINE.—~~

1 ~~"(A) IN GENERAL.—Except as provided~~
2 ~~under subparagraph (B), the term 'Original~~
3 ~~Baseline' means the ANSI EIA–748–B Stand-~~
4 ~~ard-compliant Earned Value Management~~
5 ~~benchmark established at the commencement of~~
6 ~~an IT investment project.~~
7 ~~"(B) GROSSLY DEVIATED PROJECT.—If an~~
8 ~~IT investment project grossly deviates from its~~
9 ~~Original Baseline (as defined in subparagraph~~
10 ~~(A)), the term 'Original Baseline' means the~~
11 ~~ANSI EIA–748–B Standard-compliant Earned~~
12 ~~Value Management benchmark established~~
13 ~~under subsection (e)(3)(C).~~
14 ~~"(13) SIGNIFICANTLY DEVIATED.—The term~~
15 ~~'significantly deviated' means Earned Value Manage-~~
16 ~~ment variance that is at least 20 percent from the~~
17 ~~Original Baseline.~~
18 ~~"(b) CORE IT INVESTMENT PROJECTS DESIGNA-~~
19 ~~TION.—Each Chief Information Officer, with approval by~~
20 ~~the Agency Head, shall—~~
21 ~~"(1) identify the major IT investments that are~~
22 ~~the most critical to the agency; and~~
23 ~~"(2) designate any project as a 'core IT invest-~~
24 ~~ment project' or a 'core project', upon determining~~

that the project is a mission critical IT investment project that—

"(A) represents a significant high dollar value relative to the average IT investment project in the agency's portfolio;

"(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

"(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

"(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

"(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

"(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit a written report to the Chief Information Officer that includes, as of the last day of the applicable quarter—

~~"(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;~~

~~"(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;~~

~~"(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager's supervision since the commencement of the project;~~

~~"(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;~~

~~"(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and~~

~~"(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).~~

~~"(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 14 days after such determination, a report on the project that includes, as of the date of the report—~~

~~"(A) a description of the original and current program cost, schedule, and performance benchmarks;~~

~~"(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;~~

~~"(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;~~

~~"(D) the major reasons underlying the significant or gross deviation of the project; and~~

~~"(E) a corrective action plan to correct such deviations.~~

1 ~~"(d) DETERMINATION OF SIGNIFICANT DEVI-~~
2 ~~ATION.—~~
3 ~~"(1) CHIEF INFORMATION OFFICER.—Upon re-~~
4 ~~ceiving a report under subsection (c), the Chief In-~~
5 ~~formation Officer shall—~~
6 ~~"(A) determine if any IT investment~~
7 ~~project has significantly deviated; and~~
8 ~~"(B) report such determination to the~~
9 ~~Agency Head.~~
10 ~~"(2) CONGRESSIONAL NOTIFICATION.—If the~~
11 ~~Chief Information Officer determines under para-~~
12 ~~graph (1) that an IT investment project has signifi-~~
13 ~~cantly deviated and the Agency Head has not issued~~
14 ~~a report to the appropriate congressional committees~~
15 ~~of a significant deviation for that project under this~~
16 ~~section since the project was last required to be~~
17 ~~rebaselined under this section, the Agency Head~~
18 ~~shall submit a report to the appropriate congres-~~
19 ~~sional committees, the Director, and the Government~~
20 ~~Accountability Office that includes—~~
21 ~~"(A) written notification of such deter-~~
22 ~~mination;~~
23 ~~"(B) the date on which such determination~~
24 ~~was made;~~

~~"(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;~~

~~"(D) any requirements that—~~

~~"(i) were added subsequent to the original contract; or~~

~~"(ii) were originally contracted for, but were changed by deferment or deletion from the original schedule, or were otherwise no longer included in the requirements contracted for;~~

~~"(E) an explanation of the differences between—~~

~~"(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and~~

~~"(ii) the original budget at completion;~~

~~"(F) a statement of the reasons underlying the project's significant deviation; and~~

~~"(G) a summary of the plan of action to remedy the significant deviation.~~

~~"(3) DEADLINE.—~~

~~"(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant~~

~~deviation is based on a report submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such report is based.~~

~~"(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on a report submitted under subsection (c)(2), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such report.~~

~~"(c) DETERMINATION OF GROSS DEVIATION.—~~

~~"(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—~~

~~"(A) determine if any IT investment project has grossly deviated; and~~

~~"(B) report any such determination to the Agency Head.~~

~~"(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not issued a re-~~

~~port to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit a report to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—~~

~~"(A) written notification of such determination, which—~~

~~"(i) identifies the date on which such determination was made; and~~

~~"(ii) indicates whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;~~

~~"(B) incorporations by reference of all prior reports to Congress on the project required under this section;~~

~~"(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);~~

~~"(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;~~

~~"(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;~~

~~"(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;~~

~~"(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;~~

~~"(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;~~

~~"(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;~~

~~"(J) a statement regarding previous or anticipated rebaselining or replanning of the~~

~~project and the names of the individuals responsible for approval;~~

~~"(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and~~

~~"(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.~~

~~"(3) REMEDIAL ACTION.—~~

~~"(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—~~

~~"(i) a report that—~~

~~"(I) describes the primary business case and key functional requirements for the project;~~

~~"(II) describes any portions of the project that have technical requirements of sufficient clarity that~~

~~such portions may be feasibly procured under firm, fixed-price type contract;~~

~~"(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;~~

~~"(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and~~

~~"(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;~~

~~"(ii) an analysis that—~~

~~"(I) describes agency business goals that the project was originally designed to address;~~

~~"(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the~~

~~business goals referred to in subclause (I);~~

~~"(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and~~

~~"(IV) includes a cost-benefit analysis, which compares—~~

~~"(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and~~

~~"(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and~~

~~"(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and~~

~~"(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).~~

~~"(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.~~

~~"(C) REPORTING AND ANALYSIS EXEMPTIONS.—~~

~~"(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the difficulties facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.~~

~~"(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include~~

the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

"(4) DEADLINE AND FUNDING CONTINGENCY.—

"(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

"(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

"(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

"(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

"(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet

~~the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.~~

~~"(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—~~

~~"(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—~~

~~"(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and~~

~~"(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).~~

~~"(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the~~

~~project until the requirements of this subsection have been fulfilled.~~

~~"(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—~~

~~"(1) INITIAL REPORT.—If a remedial action plan described in subsection (c)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—~~

~~"(A) a description of the primary business case and key functional requirements for the project;~~

~~"(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price contracts;~~

~~"(C) an independent government cost estimate for the project;~~

~~"(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and~~

~~"(E) any changes to the primary business case or key functional requirements which have occurred since project inception.~~

~~"(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—~~

~~"(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and~~

~~"(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.~~

~~"(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—~~

~~"(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and~~

~~"(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).~~

~~"(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—~~

~~"(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and~~

~~"(B) the Agency Head shall fulfill the requirements under subsections (c)(2) and (c)(3) in accordance with subsection (c)(4).".~~

~~(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—~~

~~(1) in the matter preceding paragraph (1), by striking "include in each budget the following:" and inserting "include in each budget—";~~

~~(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);~~

~~(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;~~

~~(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting "; and"; and~~

~~(5) by adding at the end the following:~~

~~"(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.".~~

~~(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:~~

1 **~~"SEC. 11319. ACQUISITION AND DEVELOPMENT.~~**

2 ~~"(a) PURPOSE.—The objective of this section is to~~
3 ~~significantly reduce—~~

4 ~~"(1) cost overruns and schedule slippage from~~
5 ~~the estimates established at the time the program is~~
6 ~~initially approved;~~

7 ~~"(2) the number of requirements and business~~
8 ~~objectives at the time the program is approved that~~
9 ~~are not met by the delivered products; and~~

10 ~~"(3) the number of critical defects and serious~~
11 ~~defects in delivered information technology.~~

12 ~~"(b) OMB GUIDANCE.—The Director of the Office~~
13 ~~of Management and Budget shall—~~

14 ~~"(1) not later than 180 days after the date of~~
15 ~~the enactment of this section, prescribe uniformly~~
16 ~~applicable guidance for agencies to implement the~~
17 ~~requirements of this section, which shall not include~~
18 ~~any exemptions to such requirements not specifically~~
19 ~~authorized under this section; and~~

20 ~~"(2) take any actions that are necessary to en-~~
21 ~~sure that Federal agencies are in compliance with~~
22 ~~the guidance prescribed pursuant to paragraph (1)~~
23 ~~not later than 1 year after the date of the enactment~~
24 ~~of this section.~~

25 ~~"(c) ESTABLISHMENT OF PROGRAM.—Not later than~~
26 ~~120 days after the date of the enactment of this section,~~

~~each Chief Information Officer, upon the approval of the Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes overseen by the Chief Information Officer.~~

~~"(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—~~

~~"(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;~~

~~"(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—~~

~~"(A) processes and development status of investments;~~

~~"(B) continuous process improvement of the program; and~~

~~"(C) achievement of program and investment outcomes;~~

~~"(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;~~

1 ~~"(4) a process to ensure that the agency imple-~~
2 ~~ments and adheres to established processes and re-~~
3 ~~quirements relating to the planning, acquisition, exe-~~
4 ~~cution, management, and oversight of IT programs~~
5 ~~and developments; and~~
6 ~~"(5) a process for the Chief Information Officer~~
7 ~~to intervene or stop the funding of an IT investment~~
8 ~~if it is at risk of not achieving major project mile-~~
9 ~~stones.~~
10 ~~"(c) ANNUAL REPORT TO OMB.—Not later than the~~
11 ~~last day of February of each year, the Agency Head shall~~
12 ~~submit a report to the Office of Management and Budget~~
13 ~~that includes—~~
14 ~~"(1) a detailed summary of the accomplish-~~
15 ~~ments of the program established by the Agency~~
16 ~~Head pursuant to this section;~~
17 ~~"(2) the status of completeness of implementa-~~
18 ~~tion of each of the program requirements, and the~~
19 ~~date each such requirement was deemed to be com-~~
20 ~~pleted;~~
21 ~~"(3) the percentage of Federal IT projects cov-~~
22 ~~ered under the program compared to all of the IT~~
23 ~~projects of the agency, listed by number of programs~~
24 ~~and by annual dollars expended;~~

1 ~~"(4) a detailed breakdown of the sources and~~
2 ~~uses of the amounts spent by the agency during the~~
3 ~~previous fiscal year to support the activities of the~~
4 ~~program;~~
5 ~~"(5) a copy of any guidance issued under the~~
6 ~~program and a statement regarding whether each~~
7 ~~such guidance is mandatory;~~
8 ~~"(6) the identification of the metrics developed~~
9 ~~in accordance with subsection (b)(2);~~
10 ~~"(7) a description of how paragraphs (3) and~~
11 ~~(4) of subsection (b) have been implemented and any~~
12 ~~related agency guidance; and~~
13 ~~"(8) a description of how agencies will continue~~
14 ~~to review and update the implementation and objec-~~
15 ~~tives of such guidance.~~
16 ~~"(f) ANNUAL REPORT TO CONGRESS.—The Director~~
17 ~~of the Office of Management and Budget shall provide an~~
18 ~~annual report to Congress on the status and implementa-~~
19 ~~tion of the program established pursuant to this section.".~~
20 ~~(d) CLERICAL AMENDMENTS.—The table of sections~~
21 ~~for chapter 113 of title 40, United States Code, is amend-~~
22 ~~ed—~~
23 ~~(1) by striking the item relating to section~~
24 ~~11317 and inserting the following:~~

~~"11317. Significant and gross deviations.";~~

25 ~~and~~

~~(2) by inserting after the item relating to section 11318 the following:~~

~~"11319. Acquisition and development.".~~

~~SEC. 5. IT TIGER TEAM.~~

~~(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the "Director"), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the "E-Gov Administrator"), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).~~

~~(b) IT TIGER TEAM.—~~

~~(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the E-Gov Administrator shall establish a small group of individuals (referred to in this section as the "IT Tiger Team") to carry out the purpose described in subsection (a).~~

~~(2) QUALIFICATIONS.—Individuals selected for the IT Tiger Team—~~

~~(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Cer-~~

~~tification for Program and Project Managers (FAC–P/PM);~~

~~(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or~~

~~(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.~~

~~(3) NUMBER.—The Director, in consultation with the E-Gov Administrator, shall determine the number of individuals who will be selected for the IT Tiger Team.~~

~~(c) OUTSIDE CONSULTANTS.—~~

~~(1) IDENTIFICATION.—The E-Gov Administrator shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:~~

~~(A) Commercial firms.~~

~~(B) Nonprofit entities.~~

~~(C) Federally funded research and development centers.~~

~~(2) USE OF CONSULTANTS.—~~

~~(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT Tiger Team in assessing and improving IT investment projects.~~

~~(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.~~

~~(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.~~

~~(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.~~

~~(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if the E-Gov Administrator determines that the assignment of 1 or more members of the IT Tiger Team could meaningfully reduce the possibility of significant or gross deviation, the E-Gov Administrator shall carry out the following activities:~~

~~(1) Recommend the assignment of 1 or more members of the IT Tiger Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the Tiger Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.~~

~~(2) If the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT Tiger Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT Tiger Team is conducting the assessment described in paragraph (1).~~

~~(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid by the major IT investment project being assessed.~~

~~(4) Monitor the progress made by the IT Tiger Team in assessing the project.~~

~~(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, the E-Gov Administrator shall recommend that the Agency Head (as defined in section 11317(a)(1) of title 40, United States Code) take steps to reduce the deviation, which may include—~~

~~(1) providing training, education, or mentoring to improve the qualifications of the program manager;~~

~~(2) replacing the program manager or other staff;~~

~~(3) supplementing the program management team with Federal Government employees or independent contractors;~~

~~(4) terminating the project; or~~

~~(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.~~

~~(f) REPROGRAMMING OF FUNDS.—~~

~~(1) AUTHORIZATION.—The Director may direct an Agency Head to reprogram amounts which have been appropriated for such agency to pay for an assessment under subsection (d).~~

~~(2) NOTIFICATION.—An Agency Head who reprograms appropriations under paragraph (1) shall notify the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives of any such reprogramming.~~

~~(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT Tiger Team, including—~~

~~(1) the number and qualifications of individuals on the IT Tiger Team;~~

~~(2) a description of the IT investment projects that the IT Tiger Team has worked during the previous fiscal year;~~

~~(3) the major issues that necessitated the involvement of the IT Tiger Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;~~

~~(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;~~

~~(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT Tiger Team; and~~

~~(6) a determination of whether the IT Tiger Team has been effective in—~~

~~(A) preventing projects from deviating from the original baseline; and~~

~~(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.~~

~~SEC. 6. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.~~

~~(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.~~

~~(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—~~

~~(1) obtain objective outcome measures; and~~

~~(2) include procedures for—~~

~~(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and~~

~~(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personal Management shall establish for purposes of the program.~~

~~(c) AWARD OF CASH BONUSES.—As part of the program referred to in subsection (a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to award to any Federal Government employee or teams of such employees recognized pursuant to the program a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The effective deployment of information technology can make the Federal Government more efficient, effective, and transparent.

(2) Historically, the Federal Government has struggled to properly plan, manage, and deliver information technology investments on time, on budget, and performing as planned.

(3) The Office of Management and Budget has made significant progress overseeing information

technology investments made by Federal agencies, but continues to struggle to ensure that such investments meet cost, schedule, and performance expectations.

(4) Congress has limited knowledge of the actual cost, schedule, and performance of agency information technology investments and has difficulty providing the necessary oversight.

(5) In July 2008, an official of the Government Accountability Office testified before the Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security of the Committee on Homeland Security and Governmental Affairs of the Senate, stating that—

(A) agencies self-report inaccurate and unreliable project management data to the Office of Management and Budget and Congress; and

(B) the Office of Management and Budget should establish a mechanism that would provide real-time project management information and force agencies to improve the accuracy and reliability of the information provided.

SEC. 3. REAL-TIME TRANSPARENCY OF IT INVESTMENT PROJECTS.

Section 11302(c)(1) of title 40, United States Code, is amended by striking the period at the end and inserting

the following: ", including establishing a Web site, updating the Web site, at a minimum, on a quarterly basis, and including on the Web site, not later than 90 days after the date of the enactment of the Information Technology (IT) Investment Oversight Enhancement and Waste Prevention Act of 2009—

"(1) the cost, schedule, and performance of all major information technology investments using earned-value management data based on the ANSI–EIA–748–B standard;

"(2) accurate quarterly information since the commencement of the project;

"(3) a graphical depiction of trend information since the commencement of the project;

"(4) a clear delineation of investments that have experienced cost, schedule, or performance variance greater than 10 percent over the life cycle of the investment;

"(5) an explanation of the reasons the investment deviated from the benchmark established at the commencement of the project; and

"(6) the number of times investments were rebaselined and the dates on which such rebaselines occurred.".

SEC. 4. IT INVESTMENT PROJECTS.

(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:

"SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.

"(a) DEFINITIONS.—In this subchapter:

"(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.

"(2) ANSI EIA–748–B STANDARD.—The term 'ANSI EIA–748–B Standard' means the measurement tool jointly developed by the American National Standards Institute and the Electronic Industries Alliance to analyze Earned Value Management systems.

"(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(B) the Committee on Oversight and Government Reform of the House of Representatives;

"(C) the Committee on Appropriations of the Senate;

"(D) the Committee on Appropriations of the House of Representatives; and

"(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

"(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Federal agency that is primarily responsible for the IT investment project under review.

"(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project designated as such by the Chief Information Officer, with approval by the Agency Head under subsection (b).

"(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

"(7) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, performance, and schedule data used to determine project status and developed in accordance with the ANSI EIA–748-B Standard.

"(8) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

"(9) INDEPENDENT GOVERNMENT COST ESTIMATE.—The term 'independent government cost esti-

mate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of an IT investment project, which—

"(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

"(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

"(C) contains sufficient detail to inform the selection of an Earned Value Management baseline benchmark measure under the ANSI EIA–748-B standard; and

"(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.

"(10) IT INVESTMENT PROJECT.—The terms 'IT investment project' and 'project' mean an information technology system or information technology acquisition, excluding systems or acquisitions of the Department of Defense, that—

"(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

"(B) is for financial management and obligates more than $500,000 annually;

"(C) has significant program or policy implications;

"(D) has high executive visibility;

"(E) has high development, operating, or maintenance costs;

"(F) is funded through other than direct appropriations; or

"(G) is defined as major by the agency's capital planning and investment control process.

"(11) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, enhancement, operation, and maintenance.

"(12) ORIGINAL BASELINE.—

"(A) IN GENERAL.—Except as provided under subparagraph (B), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management bench-

mark established at the commencement of an IT investment project.

"(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term 'Original Baseline' means the ANSI EIA–748–B Standard-compliant Earned Value Management benchmark established under subsection (e)(3)(C).

"(13) SIGNIFICANTLY DEVIATED.—The term 'significantly deviated' means Earned Value Management variance that is at least 20 percent from the Original Baseline.

"(b) CORE IT INVESTMENT PROJECTS DESIGNATION.—Each Chief Information Officer, with approval by the Agency Head, shall—

"(1) identify the major IT investments that are the most critical to the agency; and

"(2) designate any project as a 'core IT investment project' or a 'core project', upon determining that the project is a mission critical IT investment project that—

"(A) represents a significant high dollar value relative to the average IT investment project in the agency's portfolio;

"(B) delivers a capability critical to the successful completion of the agency mission, or a portion of such mission;

"(C) incorporates unproven or previously undeveloped technology to meet primary project technical requirements; or

"(D) would have a significant negative impact on the successful completion of the agency mission if the project experienced significant cost, schedule, or performance deviations.

"(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

"(1) QUARTERLY REPORTS.—Not later than 14 days after the end of each fiscal quarter, the project manager designated by the Agency Head for an IT investment project shall submit a written report to the Chief Information Officer that includes, as of the last day of the applicable quarter—

"(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;

"(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;

"(C) the quarterly and cumulative cost, schedule, and performance variance related to each IT investment project under the project manager's supervision since the commencement of the project;

"(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

"(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated; and

"(F) any corrective actions taken to address problems discovered under subparagraphs (C) through (E).

"(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 14 days after such determina-

tion, a report on the project that includes, as of the date of the report—

"(A) a description of the original and current program cost, schedule, and performance benchmarks;

"(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the project;

"(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description;

"(D) the major reasons underlying the significant or gross deviation of the project; and

"(E) a corrective action plan to correct such deviations.

"(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

"(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

"(A) determine if any IT investment project has significantly deviated; and

"(B) report such determination to the Agency Head.

"(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit a report to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

"(A) written notification of such determination;

"(B) the date on which such determination was made;

"(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

"(D) any requirements that—

"(i) were added subsequent to the original baseline; or

"(ii) were originally contracted for, but were changed by deferment or deletion from the original baseline, or were otherwise no

longer included in the requirements contracted for;

"(E) an explanation of the differences between—

"(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

"(ii) the original budget at completion;

"(F) a statement of the reasons underlying the project's significant deviation; and

"(G) a summary of the plan of action to remedy the significant deviation.

"(3) DEADLINE.—

"(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on a report submitted under subsection (c)(1), the Agency Head shall notify Congress and the Director in accordance with paragraph (2) not later than 21 days after the end of the quarter upon which such report is based.

"(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on a report submitted under subsection (c)(2), the Agency Head shall notify Con-

gress and the Director in accordance with paragraph (2) not later than 21 days after the submission of such report.

"(e) DETERMINATION OF GROSS DEVIATION.—

"(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

"(A) determine if any IT investment project has grossly deviated; and

"(B) report any such determination to the Agency Head.

"(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be rebaselined under this section, the Agency Head shall submit a report to the appropriate congressional committees, the Director, and the Government Accountability Office that includes—

"(A) written notification of such determination, which—

"(i) identifies the date on which such determination was made; and

"(ii) indicates whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;

"(B) incorporations by reference of all prior reports to Congress on the project required under this section;

"(C) updated accounts of the items described in subparagraphs (C) through (G) of subsection (d)(2);

"(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

"(E) a graphical depiction that shows monthly planned expenditures against actual expenditures since the commencement of the project;

"(F) the amount, if any, of incentive or award fees any contractor has received since the commencement of the contract and the reasons for receiving such incentive or award fees;

"(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

"(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

"(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

"(J) a statement regarding previous or anticipated rebaselining or replanning of the project and the names of the individuals responsible for approval;

"(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

"(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

"(3) REMEDIAL ACTION.—

"(A) IN GENERAL.—If the Chief Information Officer determines under paragraph (1)(A) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer and the appropriate project manager, shall develop and implement a remedial action plan that includes—

"(i) a report that—

"(I) describes the primary business case and key functional requirements for the project;

"(II) describes any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

"(III) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case;

"(IV) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

"(V) includes an independent government cost estimate for the project conducted by an entity approved by the Director;

"(ii) an analysis that—

"(I) describes agency business goals that the project was originally designed to address;

"(II) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in subclause (I);

"(III) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in subclause (I); and

"(IV) includes a cost-benefit analysis, which compares—

"(aa) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

"(bb) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

"(iii) a new baseline of the project is established that is consistent with the independent government cost estimate required under clause (i)(V); and

"(iv) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

"(B) SUBMISSION TO CONGRESS.—The remedial action plan and all corresponding reports, analyses, and actions under this paragraph shall be submitted to the appropriate congressional committees and the Director.

"(C) REPORTING AND ANALYSIS EXEMPTIONS.—

"(i) IN GENERAL.—The Chief Information Officer, in coordination with the Agency Head and the Director, may forego the completion of any element of a report or analysis under clause (i) or (ii) of subparagraph (A) if the Chief Information Officer determines that such element is not relevant to the understanding of the challenges facing the project or that such element does not further the remedial steps necessary to ensure that the project is completed in a timely and cost-efficient manner.

"(ii) IDENTIFICATION OF REASONS.—The Chief Information Officer shall include the reasons for not including any element referred to in clause (i) in the report submitted to Congress under subparagraph (B).

"(4) DEADLINE AND FUNDING CONTINGENCY.—

"(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

"(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

"(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees and the Director in accordance with paragraph (2); and

"(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

"(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

"(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

"(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Agency Head shall—

"(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

"(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

"(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadline described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

"(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

"(1) INITIAL REPORT.—If a remedial action plan described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title

31, United States Code, after the designation of a project as a core IT investment project, which includes—

"(A) a description of the primary business case and key functional requirements for the project;

"(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under fixed-price contracts;

"(C) an independent government cost estimate for the project;

"(D) certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

"(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

"(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

"(A) monitor the primary business case and core functionality requirements reported to Congress and the Director for designated core IT investment projects; and

"(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress and the Director not later than 14 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

"(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

"(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

"(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

"(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

"(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

"(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).".

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "include in each budget the following:" and inserting "include in each budget—";

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35), as redesignated by paragraph (2), by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following:

"(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.".

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

"SEC. 11319. ACQUISITION AND DEVELOPMENT.

"(a) PURPOSE.—The objective of this section is to significantly reduce—

"(1) cost overruns and schedule slippage from the estimates established at the time the program is initially approved;

"(2) the number of requirements and business objectives at the time the program is approved that are not met by the delivered products; and

"(3) the number of critical defects and serious defects in delivered information technology.

"(b) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

"(1) not later than 180 days after the date of the enactment of this section, prescribe uniformly applicable guidance for agencies to implement the requirements of this section, which shall not include any ex-

emptions to such requirements not specifically authorized under this section; and

"(2) take any actions that are necessary to ensure that Federal agencies are in compliance with the guidance prescribed pursuant to paragraph (1) not later than 1 year after the date of the enactment of this section.

"(c) ESTABLISHMENT OF PROGRAM.—Not later than 120 days after the date of the enactment of this section, each Chief Information Officer, upon the approval of the Agency Head (as defined in section 11317(a) of title 40, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes overseen by the Chief Information Officer.

"(d) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

"(1) a documented process for IT acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

"(2) the development of appropriate metrics that can be implemented and monitored on a real-time dashboard for performance measurement of—

"(A) processes and development status of investments;

"(B) continuous process improvement of the program; and

"(C) achievement of program and investment outcomes;

"(3) a process to ensure that key program personnel have an appropriate level of experience, training, and education, at an institution or institutions approved by the Director, in the planning, acquisition, execution, management, and oversight of IT;

"(4) a process to ensure that the agency implements and adheres to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of IT programs and developments; and

"(5) a process for the Chief Information Officer to intervene or stop the funding of an IT investment if it is at risk of not achieving major project milestones.

"(e) ANNUAL REPORT TO OMB.—Not later than the last day of February of each year, the Agency Head shall submit a report to the Office of Management and Budget that includes—

"(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

"(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

"(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

"(4) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

"(5) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

"(6) the identification of the metrics developed in accordance with subsection (b)(2);

"(7) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

"(8) a description of how agencies will continue to review and update the implementation and objectives of such guidance.

"(f) ANNUAL REPORT TO CONGRESS.—The Director of the Office of Management and Budget shall provide an an-

nual report to Congress on the status and implementation of the program established pursuant to this section.".

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

"11317. Significant and gross deviations."; and

(2) by inserting after the item relating to section 11318 the following:

"11319. Acquisition and development.".

SEC. 5. MAJOR AUTOMATED INFORMATION SYSTEM PROGRAMS.

(a) DEFINITIONS.—Section 2445a of title 10, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 2445a. Definitions";

(2) in subsection (a)—

(A) in paragraph (1), by striking "or" at the end;

(B) in paragraph (2), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(3) the Chief Information Officer, with the approval of the Secretary of Defense, determines that the program—

"(A) delivers a capability critical to the successful completion of the mission of the Department of Defense, or a portion of such mission;

"(B) incorporates unproven or previously undeveloped technology to meet primary program technical requirements; or

"(C) would have a significant negative impact on the successful completion of the mission of the Department of Defense if the program experienced significant cost, schedule, or performance deviations."; and

(3) by adding at the end the following:

"(d) DEFINITIONS.—In this chapter:

"(1) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer of the Department of Defense, designated under section 3506(a)(2) of title 44.

"(2) EARNED VALUE MANAGEMENT.—The term 'Earned Value Management' means the cost, performance, and schedule data used to determine the status of a major automated information system program that has been developed in accordance with the ANSI EIA–748–B Standard.

"(3) INDEPENDENT GOVERNMENT COST ASSESSMENT.—The term 'independent government cost assessment' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with a major automated information system program developed and submitted by the Director of Independent Cost Assessment.".

(b) COST, SCHEDULE, AND PERFORMANCE INFORMATION.—Section 2445b of title 10, United States Code, is amended—

(1) in subsection (a), by striking "Congress" and inserting "the Office of Management and Budget, the Government Accountability Office, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives";

(2) in subsection (b), by adding at the end the following:

"(5) A description of the primary business case and key functional requirements for the program, including an analysis of alternatives;

"(6) An identification and description of any portions of the program that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price contracts;

"(7) An independent government cost assessment for the project provided by the Director of Independent Cost Assessment;

"(8) Certification by the Chief Information Officer that all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

"(9) Any changes to the primary business case or key functional requirements which have occurred since the inception of the program."; and

(3) in subsection (c)—

(A) in paragraph (1), by striking "to Congress"; and

(B) in paragraph (3), by striking "the congressional defense committees" and inserting "the Office of Management and Budget, the Government Accountability Office, the Committee on Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives".

(c) QUARTERLY REPORTS.—Section 2445c of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "identifying" and inserting the following: "that—

"(1) identifies";

(B) by striking "to Congress";

(C) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:

"(2) describes the cost, schedule, and performance of all programs under the program manager's supervision;

"(3) provides the original and current program cost, schedule, and performance benchmarks for each program under the program manager's supervision; and

"(4) for each program under the program manager's supervision, any known, expected, or anticipated changes to program schedule milestones or program performance benchmarks included as part of the original or current baseline description.";

(2) in subsection (c)—

(A) in paragraph (1), by striking "the congressional defense committees" and inserting "the Office of Management and Budget, the Government Accountability Office, the Committee on

Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives"; and

(B) in paragraph (2), by striking "to Congress" each place it appears; and

(3) in subsection (d)—

(A) in paragraph (1)(B), by striking "the congressional defense committees" and inserting "the Office of Management and Budget, the Government Accountability Office, the Committee on Armed Services of the Senate, the Committee on Armed Services of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives"; and

(B) in paragraph (2), by striking "to Congress" each place it appears.

(d) REPORT ON SIGNIFICANT CHANGES IN PROGRAM.—Section 2445c(c) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(D) the Earned Value Management of the program has changed by at least 15 percent, but less than 25 percent."; and

(2) by adding at the end the following:

"(3) NOTIFICATION REQUIREMENTS.—The notification required under paragraph (1) shall include—

"(A) the date on which the determination described in paragraph (2) was made;

"(B) the amount of the cost increases and the extent of the schedule delays with respect to such program;

"(C) any requirements that—

"(i) were added subsequent to the original contract; or

"(ii) were part of the original contract, but were changed by deferment or deletion from the original schedule, or were otherwise no longer included in the contract;

"(D) an explanation of the differences between—

"(i) the estimate at completion between the program manager, any contractor, and any independent analysis; and

"(ii) the original budget at completion;

"(E) a statement of the reasons underlying the program's significant changes; and

"(F) a summary of the plan of action to remedy the significant changes.

"(4) ALTERNATIVE SIGNIFICANT CHANGES DETERMINATION.—If the program manager determines, subsequent to a change in the primary business case or key functional requirements, that without such change the program would undergo significant changes—

"(A) the program manager shall notify the Secretary of Defense of the significant changes; and

"(B) the Secretary of Defense shall notify the congressional defense committees in accordance with the requirements of this subsection.".

(e) REPORT ON CRITICAL CHANGES IN PROGRAM.—Section 2445c(d) of title 10, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking "or" at the end;

(B) in subparagraph (D), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(E) the Earned Value Management of the program has changed by at least 25 percent."; and

(2) by adding at the end the following:

"(3) ALTERNATIVE CRITICAL CHANGES DETERMINATION.—If the program manager determines, subsequent to a change in the primary business case or key functional requirements, that without such change the program would undergo critical changes—

"(A) the program manager shall notify the Secretary of Defense of the critical changes; and

"(B) the Secretary of Defense shall fulfill the requirements described in subparagraphs (A) and (B) of paragraph (1).".

(f) PROGRAM EVALUATION.—Section 2445c(e) of title 10, United States Code, is amended by striking "cost and schedule" in paragraphs (1) and (2) and inserting "schedule and an independent government cost assessment provided by the Director of Independent Cost Assessment".

(g) REPORT ON CRITICAL PROGRAM CHANGES.—Section 2445c(f) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(2) by striking "include a written certification" and inserting the following: "include—

"(1) a written certification";

(3) by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(E) all technical and business requirements have been reviewed and validated to ensure alignment with the reported business case; and

"(2) a description of—

"(A) the primary business case and key functional requirements for the program, including an analysis of alternatives;

"(B) any portions of the program that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price type contract; and

"(C) any changes to the primary business case or key functional requirements which have occurred since the inception of the program.".

(h) CLERICAL AMENDMENT.—The table of sections for chapter 144a of title 10, United States Code, is amended by striking the item relating to section 2445a and inserting the following:

"2445a. Definitions.".

SEC. 6. IT SWAT TEAM.

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the "Director"), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the "E-Gov Administrator"), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

(b) IT SWAT TEAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the E-Gov Administrator shall establish a small group of individuals (referred to in this section as the "IT SWAT Team") to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT SWAT Team—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC–P/PM);

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects; or

(C) shall have expertise in the successful management or oversight of planning, architecture, process, integration, or other technical and management aspects using proven process best practices on high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator, shall determine the number of individuals who will be selected for the IT SWAT Team.

(c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally

associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Federally funded research and development centers.

(2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT SWAT Team in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish com-

petitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, or if the E–Gov Administrator determines that the assignment of 1 or more members of the IT SWAT Team could meaningfully reduce the possibility of significant or gross deviation, the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT SWAT Team to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 14 days after such recommendation. No member of the SWAT Team who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT SWAT Team under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT SWAT Team is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid by the major IT investment project being assessed.

(4) Monitor the progress made by the IT SWAT Team in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, the E-Gov Administrator shall recommend that the Agency Head (as defined in section 11317(a)(1) of title 40, United States Code) take steps to reduce the deviation, which may include—

(1) providing training, education, or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) REPROGRAMMING OF FUNDS.—

(1) AUTHORIZATION.—The Director may direct an Agency Head to reprogram amounts which have been appropriated for such agency to pay for an assessment under subsection (d).

(2) NOTIFICATION.—An Agency Head who reprograms appropriations under paragraph (1) shall notify the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives of any such reprogramming.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT SWAT Team, including—

(1) the number and qualifications of individuals on the IT SWAT Team;

(2) a description of the IT investment projects that the IT SWAT Team has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT SWAT Team to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT SWAT Team; and

(6) a determination of whether the IT SWAT Team has been effective in—

(A) preventing projects from deviating from the original baseline; and

(B) assisting agencies in conducting appropriate analysis and planning before a project is funded.

SEC. 7. AWARDS FOR PERSONNEL FOR EXCELLENCE IN THE ACQUISITION OF INFORMATION SYSTEMS AND INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Not later than 180 days after the enactment of this Act, the Director of the Office of Personnel Management shall develop policy and guidance for agencies to develop a program to recognize excellent performance by Federal Government employees and teams of such employees in the acquisition of information systems and information technology for the agency.

(b) ELEMENTS.—The program referred to in subsection (a) shall, to the extent practicable—

(1) obtain objective outcome measures; and

(2) include procedures for—

(A) the nomination of Federal Government employees and teams of such employees for eligibility for recognition under the program; and

(B) the evaluation of nominations for recognition under the program by 1 or more agency panels of individuals from government, academia, and the private sector who have such expertise, and are appointed in such a manner, as the Director of the Office of Personal Management shall establish for purposes of the program.

(c) AWARD OF CASH BONUSES AND OTHER INCENTIVES.—As part of the program referred to in subsection

(a), the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget, shall establish policies and guidance for agencies to reward any Federal Government employee or teams of such employees recognized pursuant to the program—

(1) by awarding a cash bonus authorized by any other provision of law to the extent that the performance of such individual so recognized warrants the award of such bonus under such provision of law;

(2) through promotions and other nonmonetary awards;

(3) by publicizing acquisition accomplishments by individual employees and, as appropriate, the tangible end benefits that resulted from such accomplishments; and

(4) through other awards, incentives, or bonuses that the head of the agency considers appropriate.

Calendar No. 364

111TH CONGRESS
2D SESSION

S. 920

[Report No. 111–179]

A BILL

To amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes.

MAY 5, 2010

Reported with an amendment