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DOD Cost Overruns and The Nunn-McCurdy Act

Since the U.S. Department of Defense's (DOD) establishment, Congress has expressed interest in ensuring that DOD procures major weapons systems efficiently, including that a program maintain the same projected costs throughout its lifecycle. DOD requested a total of \$168 billion for defense-wide procurement for fiscal year (FY) 2025. Controlling DOD procurement costs has typically challenged DOD, which periodically has "cost overruns," or instances when a program surpasses its initial cost estimate.

Congressional efforts to maintain DOD program costs have included defining programs in statute and creating reporting requirements, including Selected Acquisition Reports (SARs), in statute. SARs require DOD to notify Congress about changes to baseline cost estimates of major defense acquisition programs (MDAPs) and potential risk factors and requirements originally outlined in the 1982 Nunn-McCurdy Act. The Nunn-McCurdy Act (10 U.S.C. §§4371-4377) requires DOD to report to Congress if an MDAP experiences a cost overrun that exceeds certain thresholds. Depending on the size of the program and extent of the cost overrun, DOD is legally required to take certain actions and report its findings to Congress.

DOD Acquisition Categories

The level of management and congressional oversight of an acquisition program generally corresponds with the cost and technical complexity of the program. All DOD acquisition programs are designated by an acquisition category (ACAT). The category is primarily based on the program's total cost.

ACAT I refers to the largest acquisition programs in terms of dollar amounts, and are also known as MDAPs. An MDAP is defined in statute as any program that is (1) not "a highly sensitive classified program", and (2) so designated by the Secretary of Defense, or (3) has an "eventual total expenditure" for procurement of more than \$1.8 billion or, for research and development (R&D), of more than \$300 million (both in FY1990 constant dollars). According to DOD estimates, these dollar amounts are adjusted to \$3.065 billion for procurement and \$525 million for R&D in FY2020 constant dollars. ACAT I programs are also further divided into sub-categories depending on their level of decision authority, or which DOD office is designated to determine whether or not the program should advance throughout DOD's acquisition process "milestones."

ACAT I programs have three major milestones, (Milestones, A, B, and C) requiring milestone decision authority (MDA) approval. For the highest cost or most technically complex ACAT I programs, the Undersecretary of Defense for Acquisition and Sustainment (USD(A&S)) is typically the MDA, the DOD entity responsible for

certifying and approving a program's procession through the different formal stages of acquisition.

Although there are three other acquisition program categories, only ACAT I/MDAP programs are subject to the statutory reporting and oversight requirements of Nunn-McCurdy, including reporting requirements concerning the program's cost, and procedures DOD must follow should an MDAP's eventual cost exceed by a certain percentage its original estimated cost.

Selected Acquisition Reports (SARs)

Selected Acquisition Reports (SARs) consist of information detailing an MDAP's cost, schedule, and performance. Per Title 10, SARs must be provided to Congress either annually (within 30 days after the President's budget is transmitted to Congress) or quarterly (within 45 days after the end of the fiscal year quarter). Quarterly SARs are required if DOD finds that the program had a 15% or more cost increase and/or a six-month or more delay of one of the major program milestones in the last quarter.

Title 10 also requires that DOD establish a program's "baseline description," including a program's "baseline estimate," or a description of the program that must be prepared early in the program's acquisition lifecycle. Should the program experience a cost overrun, the baseline description is to be used as a point of reference concerning DOD's original intentions for the program. Baseline descriptions may be revised or adjusted, including in the event of a cost breach, but DOD is to report such an update in the program's next SAR.

The Nunn-McCurdy Act

The Nunn-McCurdy Act requires that DOD report to Congress if an MDAP experiences a cost overrun that exceeds certain tiers of percentages. Depending on the threshold, DOD must take certain actions and report its findings to Congress.

Two major types of cost growth threshold breaches (also called a "Nunn-McCurdy breach" or a "Nunn-McCurdy," after the sponsors of the original legislation, in the DOD acquisition community) exist:

- 1) **Significant breach.** A significant breach occurs when a program's cost increases either 15% from its current baseline estimate, or 30% from its original baseline estimate; and
- 2) **Critical breach.** A critical breach occurs when a program's cost increases either 25% from its current baseline estimate or 50% from its original baseline estimate.

DOD is statutorily required to report a cost growth breach to Congress in two potential scenarios:

1. **End-of-Quarter Notification.** Every quarter, each military branch's Service Acquisition Executive (SAE) is to submit a unit cost report for its MDAPs. If the Service Acquisition Executive (SAE) determines a program cost breach, DOD must notify Congress within 45 days after the end of the quarter.
2. **Mid-Quarter Notification.** If a cost growth threshold breach is determined or anticipated out of the unit cost report cycle, the respective program office must immediately report this finding to the SAE, who must then determine if there is such a breach and notify Congress within 45 days of that first report.

If Congress is notified of a critical breach, DOD is to submit a new SAR to Congress. For a critical breach, DOD is also required to: (1) submit either a written certification that the program's continuation is essential to national security and a root cause analysis of the program's cost growth, or (2) submit a notification of the program's termination within 60 days. Should the program continue, DOD is to submit a new SAR in the calendar year following the year during which the program was restructured.

DOD Cost Overrun History

The core acquisition framework for major capabilities includes many MDAPs, which DOD calls the Major Capability Acquisition pathway. This pathway represents a milestone-based acquisition approach, which includes three major phases:

1. Technology Maturation & Risk Reduction (Milestone A to Milestone B),
2. Engineering & Manufacturing Development (EMD) (Milestone B to Milestone C), and
3. Production & Deployment (Post-Milestone C).

According to some analysts, historically, most DOD program cost growth occurred during the EMD phase. According to SARs from programs that experienced Nunn-McCurdy breaches from the 2012-2021 timeframe, more than half of identified DOD Nunn-McCurdy breaches occurred in the production phase (post-Milestone C). An identifiable, direct cause of some of these breaches was DOD's decision to decrease the total number of units procured, driving up the per-unit cost.

The FY2009 Weapon Systems Acquisition Reform Act (WSARA) (P.L. 111-23) included updates to portions of Title 10 associated with the Nunn-McCurdy Act. WSARA included a requirement, in the event of a critical breach, that DOD submit to Congress a written certification that the program's continuation is essential to national security and a root cause analysis of the program's cost growth.

DOD Cost Overruns: 2014-2024

According to DOD, it experienced 24 total Nunn-McCurdy breaches over 10 years beginning in 2012: 12 significant breaches and 12 critical breaches, or an average of 2.4 breaches per year. This number represents an average per-year decrease in Nunn-McCurdy breaches, compared to a 13-year period beginning in 1997, during which DOD incurred an annual average of about 5.7 breaches, according to GAO reporting.

Issues for Congress

Determining the Root Cause of Cost Overruns

Over the last 10 years, analysts have posited different potential causes of DOD program cost growth. A 2017 RAND study on Air Force MDAPs with "extreme cost growth" and programs "that experienced the lowest cost growth" found that programs that experienced "extreme cost growth" typically had "premature approval of Milestone B" and "suboptimal acquisition strategies and program structure." A 2022 study in DOD's Acquisition Research Journal (ARJ) proposes further research into "the degree of unrealism in elements of the MS B baseline" and "the interaction of two or more elements of the MS B baseline," while acknowledging that data availability makes it difficult to study in full.

SARs of different programs from 2012 to 2022 indicate that explanations for Nunn-McCurdy breaches lack uniformity and appear to be program-dependent. Some program SARs provide more technical details as an explanation, while other SARs simply state that the program experienced a breach due to cost growth. Congress may consider whether or not to include additional reporting requirements for cost overrun explanations to allow for identification of the root causes of cost overruns.

Oversight of Next-Generation MDAPs

Although the frequency of Nunn-McCurdy breaches has decreased post-WSARA, DOD is set to procure several new MDAPs over the next 10 years, including the next-generation bomber aircraft, the LGM-35A Sentinel intercontinental ballistic missile (ICBM), and the Ohio-class nuclear powered submarine replacement program. Congress may consider how it exercises oversight for these programs, particularly if they experience cost overruns.

Oversight of Non-MDAP Programs

Although there are three other acquisition program categories, ACAT I/MDAP programs are the only category subject to statutory Nunn-McCurdy reporting requirements, potentially due to their high cost. Any program that is not designated as an MDAP may not be subject to the same statutory reporting requirements, including the Nunn-McCurdy process. Congress may consider whether or not to include some kind of cost overrun reporting requirement for smaller programs, such as middle tier of acquisition (MTA) programs.

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