



## Fact Sheet: How Congress Can Improve Oversight of Weapons Programs Acquisition

### The Problem

The Constitution reserves for Congress the responsibility to raise and support our armed forces, including authorizing and appropriating funds and overseeing their expenditure.<sup>1</sup> Unfortunately, Congress has created and allowed serious gaps in its oversight of defense spending.

*We buy weapons that don't work.*

The F-35 is a prime example. As POGO has reported, the Pentagon has continued to take delivery of the jets despite operational test reports indicating numerous failures to meet requirements.<sup>2</sup> As a result, at least 40% of our \$1 trillion fleet of F-35s will require modification at taxpayer expense.<sup>3</sup> In the meantime, we continue to buy more.

*Weapons programs keep exceeding their original cost estimates.*

When costs on a weapons program balloon past a certain point (called a “critical breach”), the Nunn-McCurdy Act requires the secretary of defense to cancel the program or justify why it should continue.<sup>4</sup> It's clear this requirement isn't deterring out of control spending: According to a 2016 Congressional Research Service report, 24 critical breaches were reported between 2007 and 2015, only one of which resulted in cancellation of a program.<sup>5</sup>

*Loopholes in regulations allow contractors to charge unreasonable prices.*

While the Defense Department is required to rely on competition for lower prices, it often resorts to “sole-source” contracts, where contractors themselves provide cost data.<sup>6</sup> Contractors are often unwilling to share that data, preventing procurement officials from striking a fair deal.<sup>7</sup>

*The Pentagon can't account for the value of what it has bought.*

In November 2024, the Pentagon announced it had failed its seventh consecutive financial audit. The year before, when asked to account for their share of nearly \$4 trillion in assets, 18 of 29 Pentagon components were unable to.<sup>8</sup>

---

<sup>1</sup> U. S. Constitution, art. I, § 2; cl. 12,13, U. S. Constitution, art. II, § 2; cl. 1.

<sup>2</sup> Greg Williams, “F-35 Testing Report Reveals Problems with Production Decisions,” Project On Government Oversight, November 21, 2024, <https://www.pogo.org/analysis/f-35-testing-report-reveals-problems-with-production-decisions>; DOT&E, *Assessment of Post-IOT&E F-35 Block 4 Operational Testing*, (February, 2024), <https://www.documentcloud.org/documents/25260009-dote-assessment-of-post-iote-f-35-block-4-operational-testing>.

<sup>3</sup> Government Accountability Office, *F-35 Sustainment: DOD Needs to Cut Billions in Estimated Costs to Achieve Affordability*, GAO-21-439, (2021), 1, <https://www.gao.gov/assets/gao-21-439.pdf#page=6>.

<sup>4</sup> 10 U.S.C. Ch. 325 (2024), <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title10-chapter325&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGl0bGUxMC1jaGFwdGVyMz1%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>.

<sup>5</sup> Congressional Research Service, *The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress*, R41293 (May 12, 2016), 22, <https://crsreports.congress.gov/product/pdf/R/R41293>.

<sup>6</sup> Congressional Research Service, *Department of Defense Contract Pricing*, R47879 (December 19, 2023), 4, <https://crsreports.congress.gov/product/pdf/R/R47879#page=7>.

<sup>7</sup> Congressional Research Service, *Department of Defense Contract Pricing*, 9 [see note 6].

<sup>8</sup> Government Accountability Office, *DOD Financial Management: FY2023 Financial Statement Audit Progress and Challenges*, (2024), <https://www.gao.gov/products/gao-24-107478>.

## The Solutions

*Don't buy weapons before they're tested.*

The law requires that major weapons programs can't proceed to full-rate production until the Pentagon issues a report stating whether they are "effective and suitable for combat."<sup>9</sup> Congress should reject programs that cannot be tested within a reasonable amount of time.<sup>10</sup>

*Increase Congress's power to cancel programs by amending the Nunn-McCurdy Act.*

Congress should take greater responsibility for Pentagon cost overruns by amending the Nunn-McCurdy Act so that it requires congressional approval to continue programs that have experienced multiple critical breaches.

*Restore the Truth in Negotiations Act cost threshold to the pre-2018 value of \$750,000.*

In 2018, Congress significantly weakened the Truth in Negotiations Act, in part by raising the threshold value for contracts to which it applies from \$750,000 to \$2 million.<sup>11</sup> In addition to restoring the earlier threshold, Congress should amend the act in the following ways:

- Require contractors to provide certified cost data for non-competitive procurements by default, with few exceptions.
- Require agencies to create and maintain a public database of cases in which contractors fail to provide cost, pricing, or technical data as required.
- Institute penalties for non-compliance, such as debarment from future contracts, and enforce refunds.<sup>12</sup>

*Require the Pentagon to pass its annual audit.*

Enact legislation requiring a successful Defense Department audit and imposing penalties if the DOD fails the audit. A successful audit increases transparency and year-over-year comparability for our nearly \$1 trillion annual defense budget.<sup>13</sup>

## Contact

Greg Williams, Director, Center for Defense Information, Project On Government Oversight,  
[greg.williams@pogo.org](mailto:greg.williams@pogo.org)

---

<sup>9</sup> 10 U.S.C. §4171 (2024),

[https://uscode.house.gov/view.xhtml?req=\(title:10%20section:4171%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title10-section4171\)&f=treesort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:10%20section:4171%20edition:prelim)%20OR%20(granuleid:USC-prelim-title10-section4171)&f=treesort&edition=prelim&num=0&jumpTo=true).

<sup>10</sup> For example, The F-35 took 17 years to get from its first flight to the conclusion of operational testing, unlike the F-15, which took only four years from first flight to initial operational capability. "Blast From the Past: The F-35 Lightning II's First Flight," [jsf.mil/NewsArticle/276](https://www.af.mil/NewsArticle/276); DOT&E, *Assessment of Post-IOT&E F-35 Block 4 Operational Testing*, (February, 2024), <https://www.documentcloud.org/documents/25260009-dote-assessment-of-post-iote-f-35-block-4-operational-testing>; U.S. Air Force Fact Sheet: F-15, <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104501/f-15-eagle/>.

<sup>11</sup> 10 U.S.C. §3701 (2024), <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title10-chapter271&edition=prelim>.

<sup>12</sup> For more information, see Julia Gledhill and Scott Amey, "Close Accountability Loopholes for Military Contractors," Project On Government Oversight, April 28, 2022, <https://www.pogo.org/fact-sheets/close-accountability-loopholes-for-military-contractors>.

<sup>13</sup> For more information see Greg Williams, "It's Time for Congress to Challenge Years of Failed Pentagon Audits," Project On Government Oversight, September 24, 2024, <https://www.pogo.org/testimonies/its-time-for-congress-to-challenge-years-of-failed-pentagon-audits>.