



## Fact Sheet: Amend Nunn-McCurdy Act to Improve Defense Acquisition Oversight

### The Problem

Major weapons programs consistently and dramatically exceed original timelines and budgets. This is nothing new. In 1982, to help the Pentagon curb these escalating cost growths, Congress passed the Nunn-McCurdy Act.<sup>1</sup> The law requires the service secretary with jurisdiction to notify Congress when a major weapons program goes 15% or more over the current baseline cost estimate. If a program goes 25% or more over the baseline, called a critical breach, the secretary of defense must notify Congress, and the program must be terminated — unless the secretary says it is vital and other programs could be reduced to cover the added costs.<sup>2</sup>

But this mechanism isn't working, and a Nunn-McCurdy breach rarely leads to cancellation. In 2016, the Congressional Research Service identified 37 major defense programs that had experienced significant or critical breaches since 2007.<sup>3</sup> Only four were terminated through Nunn-McCurdy.<sup>4</sup> Programs that continued after critical breaches include the F-35 fighter jet, which nearly doubled in cost and continues to be plagued with cost overruns, extreme delays, and failed performance benchmarks.<sup>5</sup> Also on the list is the Sentinel ICBM program, one of the most recent programs to experience a critical breach, with its cost soaring by 81% over its program lifecycle.<sup>6</sup> The defense secretary recertified it despite the critical breach.<sup>7</sup>

One significant problem with Nunn-McCurdy is that the law is reactive. The DOD is required to report to Congress on escalating cost growth within 30 days after the end of a fiscal quarter, or immediately if a unit cost report shows that an imminent or suspected breach occurred. This lack of advance notice can significantly delay a congressional oversight response. Another significant problem is that the secretary of defense can reinstate critically breached programs, regardless of whether they have incurred massive cost overruns, experienced major delays, or failed to meet

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<sup>1</sup> Congressional Research Service, *The Nunn-McCurdy Act: Background, Analysis, and Issues for Congress*, R41293, (May, 12 2016) 2, <https://crsreports.congress.gov/product/pdf/R/R41293>.

<sup>2</sup> Congressional Research Service, *The Nunn-McCurdy Act*, 2-9 [see note 1]; Mark Thompson, "When Congress Told the Pentagon to Rein In Weapons Costs," Project On Government Oversight, May 28, 2018, <https://www.pogo.org/analysis/when-congress-told-pentagon-to-rein-in-weapons-costs>.

<sup>3</sup> Congressional Research Service, *The Nunn-McCurdy Act*, 22 [see note 1].

<sup>4</sup> Congressional Research Service, *The Nunn-McCurdy Act*, 17 [see note 1].

<sup>5</sup> Greg Williams, Project On Government Oversight, *F-35 Testing Report Reveals Problems with Production Decisions* (November 21, 2024), <https://www.pogo.org/analysis/f-35-testing-report-reveals-problems-with-production-decisions>.

<sup>6</sup> Dylan Hedtler-Gaudette, "POGO's Testimony on Wasteful, Inefficient Pentagon Spending," Project On Government Oversight, July 24, 2024, <https://www.pogo.org/testimonies/pogos-testimony-on-wasteful-inefficient-pentagon-spending>.

<sup>7</sup> U.S. Department of Defense, "Department of Defense Announces Results of Sentinel Nunn-McCurdy Review," DOD, July 8, 2024, <https://www.defense.gov/News/Releases/Release/Article/3829985/departments-of-defense-announces-results-of-sentinel-nunn-mccurdy-review/>.

critical availability or reliability benchmarks.<sup>8</sup> Additionally, not everything that should be subject to Nunn-McCurdy reporting is. For instance, some individual units of major programs, particularly in complex programs such as shipbuilding, can also have significant cost growth, but Nunn-McCurdy doesn't require reporting on that, leaving those cost overruns to go unaddressed. Another area that's not subject to Nunn-McCurdy is operations and support (O&S), yet O&S generally accounts for two-thirds or more of a system's total life-cycle costs.<sup>9</sup>

It's clear that weaknesses in the Nunn-McCurdy Act, such as the delayed timeline, the incomplete nature of what the law requires reporting on, and the secretary of defense's broad authority to recertify a program that has suffered a critical breach, all restrict Congress's ability to curtail spiraling costs, root out waste, and address inefficiencies and boondoggles. The statute has evolved into a simple box-checking exercise, essentially providing the secretary of defense the opportunity to assure Congress that any particular major defense acquisition program is essential for national security and that we should continue funding it despite exploding costs, long delays, and reduced military readiness.

## Solutions

POGO is proposing that the 119th Congress amend the Nunn-McCurdy Act to improve cost reporting and to enhance congressional oversight of failing major defense acquisition programs. POGO recommends the following:

- Shorten the Nunn-McCurdy breach timeline to ensure Congress can intervene before a program goes too far out of budgetary control and can evaluate the options regarding underperforming programs.
- Authorize the secretary of defense to classify individual production units as "major subprograms" subject to Nunn-McCurdy reporting. This would allow Congress and the DOD to maintain a real-time understanding of when individual units exceed defined cost thresholds.
- Amend the baseline estimate to include operations and support (O&S) costs in Nunn-McCurdy reporting requirements.
- Require the secretary of defense to obtain explicit approval from Congress to continue a critically breached program, either on the first critical breach, or after some number of breaches.

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<sup>8</sup> Williams, *F-35 Testing Report Reveals Problems with Production Decisions* [see note 5].

<sup>9</sup> Congressional Research Service, *The Nunn-McCurdy Act*, 16-17 [see note 1].