AMENDMENT NO._______  Calendar No._____

Purpose: To provide for auditable financial statements for the Department of Defense.


S. 3254

To authorize:

activiti

To constr
ment

strength

Referred to

Or:

AMENDMENT intended to be proposed by Mr. COBURN (for himself and Mr. MANCHU)

Viz:

1  At the end of division A, add the following:

2  TITLE XVIII—AUDIT OF DEPARTMENT OF DEFENSE FINANCIAL STATEMENTS

3  SEC. 1801. SHORT TITLE.

4  This title may be cited as the "Audit the Pentagon Act of 2012".

5  SEC. 1802. FINDINGS.

6  Congress makes the following findings:
(1) Section 9 of Article 1 of the Constitution of the United States requires all agencies of the Federal Government, including the Department of Defense, to publish "a regular statement and account of the receipts and expenditures of all public money".

(2) Section 3515 of title 31, United States Code, requires the agencies of the Federal Government, including the Department of Defense, to present auditable financial statements beginning not later than March 1, 1997. The Department has not complied with this law.

(3) The Federal Financial Management Improvement Act of 1996 (31 U.S.C. 3512 note) requires financial systems acquired by the Federal Government, including the Department of Defense, to be able to provide information to leaders to manage and control the cost of government. The Department has not complied with this law.

(4) The financial management of the Department of Defense has been on the “High-Risk” list of Government Accountability Office, which means that the Department is not consistently able to “control costs; ensure basic accountability; anticipate future costs and claims on the budget; measure per-
formance; maintain funds control; [and] prevent and
detect fraud, waste, and abuse”.

Fiscal Year 2002 (Public Law 107–107) requires
the Secretary of Defense to report to Congress an-
nually on the reliability of the financial statements
of the Department of Defense, to minimize resources
spent on producing unreliable financial statements,
and to use resources saved to improve financial man-
agement policies, procedures, and internal controls.

(6) In 2005, the Department of Defense cre-
ated a Financial Improvement and Audit Readiness
(FIAR) Plan, overseen by a directorate within the
office of the Under Secretary of Defense (Compt-
troller), to improve Department business processes
with the goal of producing timely, reliable, and accu-
rate financial information that could generate an
audit-ready annual financial statement. In December
2005, that directorate, known as the FIAR Direc-
torate, issued the first of a series of semianual re-
ports on the status of the Financial Improvement
and Audit Readiness Plan.

Fiscal Year 2010 (Public Law 111–84) requires reg-
ular status reports on the Financial Improvement
and Audit Readiness Plan described in paragraph (6), and codified as a statutory requirement the goal of the Plan in ensuring that Department of Defense financial statements are validated as ready for audit not later than September 30, 2017.

(8) At a September 2010 hearing of the Senate, the Government Accountability Office stated that past expenditures by the Department of Defense of $5,800,000,000 to improve financial information, and billions of dollars more of anticipated expenditures on new information technology systems for that purpose, may not suffice to achieve full audit readiness of the financial statement of the Department. At that hearing, the Government Accountability Office could not predict when the Department would achieve full audit readiness of such statements.

SEC. 1803. AUDIT READINESS OF THE FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE.


(1) in clause (i), by striking “and” at the end;
(2) by redesignating clause (ii) as clause (iv);
and
(3) by inserting after clause (i) the following new clauses:

“(ii) ensuring that a complete and validated statement of budgetary resources of the Department of Defense is ready by not later than September 30, 2014;

“(iii) ensuring that the full set of consolidated financial statements of the Department for the fiscal year ending September 30, 2017, and each fiscal year thereafter, are ready in a timely manner and in preparation for an audit, including submitting the reports not later than November 15, 2017, and each year thereafter, in order to seek an audit opinion on its financial statements; and”.

(b) Definition of Validated as Ready for Audit.—Such section is further amended by adding at the end the following new subsection:

“(d) Validated as Ready for Audit Defined.—In this section, the term ‘validated as ready for audit’ means the following:
“(1) In the case of the financial statements of a military department, that the audit agencies of the military department have reviewed such statements and determined, in writing, that such statements are ready for audit.

“(2) In the case of the financial statements of a Defense Agency, that the audit agencies of the Defense Agency have reviewed such statements and determined, in writing, that such statements are ready for audit.”

SEC. 1804. CESSATION OF APPLICABILITY OF REPORTING REQUIREMENTS REGARDING THE FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE.

(a) Cessation of Applicability.—

(1) Military departments.—The financial statements of a military department shall cease to be covered by the reporting requirements specified in subsection (b) upon the issuance of an unqualified audit opinion on such financial statements.

(2) Department of defense.—The reporting requirements specified in subsection (b) shall cease to be effective when an unqualified audit opinion is issued on the financial statements of the Depart-
ment of Defense, including each of the military de-
partments and the Defense Agencies.

(b) REPORTING REQUIREMENTS.—The reporting re-
quirements specified in this subsection are the following:

(1) The requirement for semi-annual reports in
section 1003(b) of the National Defense Authoriza-
tion Act for Fiscal Year 2010 (Public Law 111–84;

(2) The requirement for annual reports in sec-
tion 1008(a) of the National Defense Authorization
Act for Fiscal Year 2002 (Public Law 107–107; 115

SEC. 1805. REPORT ON DEPARTMENT OF DEFENSE REPORT-
ING REQUIREMENTS MADE OBSOLETE BY OR
AFFECTING AUDITS WITH UNQUALIFIED
OPINIONS.

Not later than 180 days after the date of the enact-
ment of this Act, the Under Secretary of Defense (Com-
troller) shall submit to Congress a report setting forth the
following:

(1) A list of each report of the Department of
Defense required by law to be submitted to Congress
which, in the opinion of the Under Secretary, would
no longer be necessary if the financial statements of
the Department of Defense were audited with an un-
qualified opinion.

(2) A list of each report of the Department re-
quired by law to be submitted to Congress which, in
the opinion of the Under Secretary, interferes with
the capacity of the Department to achieve an audit
of the financial statements of the Department with
an unqualified opinion.

SEC. 1806. ENHANCED REPROGRAMMING AUTHORITY FOL-
LOWING ACHIEVEMENT BY MILITARY DE-
PARTMENTS OF AUDIT WITH UNQUALIFIED
OPINION OF STATEMENT OF BUDGETARY RE-
OURCES FOR FISCAL YEARS AFTER FISCAL
YEAR 2013.

(a) IN GENERAL.—Subject to section 1809(a)(1), if
a military department obtains an audit with an unquali-
fied opinion on its statement of budgetary resources for
any fiscal year after fiscal year 2013, the thresholds for
reprogramming of funds without prior notice to Congress
for the succeeding fiscal year shall be deemed to be the
thresholds as follows:

(1) In the case of an increase or decrease to the
program base amount for a procurement program,
$60,000,000.
(2) In the case of an increase or decrease to the
program base amount for a research program,
$30,000,000.

(3) In the case of an increase or decrease to the
amount for a budget activity for operation and
maintenance, $45,000,000.

(4) In the case of an increase or decrease to the
amount for a budget activity for military personnel,
$30,000,000.

(b) CONSTRUCTION.—Nothing in this section shall be
construed to alter or revise any requirement (other than
a threshold amount) for notice to Congress on
reprogrammings covered by subsection (a) under any
other provision of law.

(c) DEFINITIONS.—In this section, the terms “pro-
gram base amount”, “procurement program”, “research
program”, and “budget activity” have the meanings given
such terms in chapter 6 of volume 3 of the Financial Man-
agement Regulation of the Department of Defense (DoD
7000.14R), dated March 2011, or any successor docu-
ment.
SEC. 1807. AVAILABILITY OF EXPIRING FUNDS FOLLOWING
ACHIEVEMENT BY MILITARY DEPARTMENTS
OF AUDIT WITH UNQUALIFIED OPINION OF
STATEMENT OF BUDGETARY RESOURCES
FOR FISCAL YEARS AFTER FISCAL YEAR 2013.

(a) In general.—Subject to section 1809(a)(1), if
a military department obtains an audit with an unquali-
fied opinion on its statement of budgetary resources for
a fiscal year after fiscal year 2013 (in this section referred
to as a "covered fiscal year"), the amount described in
subsection (b) shall be available for the purposes specified
in subsection (c) at the end of such covered fiscal year
without fiscal year limitation.

(b) Available amount.—The amount described in
this subsection is the amount equal to five percent of the
aggregate amount of unobligated appropriations available
to the military department concerned for a covered fiscal
year that would otherwise expire at the end of such cov-
ered fiscal year by law.

(c) Purposes.—

(1) In general.—Except as provided in para-
graph (2) and subject to paragraph (3), amounts
available under subsection (a) shall, at the election
of the Secretary of the military department con-
cerned, be available for purposes as follows:
(A) Payment in accordance with applicable law of bonuses authorized by law (including awards authorized by subchapter I of chapter 45 of title 5, United States Code) for civilian employees of the military department, including employees determined to have made beneficial contributions to the achievement of the mission of the military department.

(B) Procurement of weapons and weapon systems.

(C) Military education and training programs and activities of the military department.

(2) Exclusion.—Amounts available under subsection (a) shall not be available for purposes as follows:

(A) Research, development, test, and evaluation.

(B) Military construction.

(3) Limitations on bonuses.—

(A) Limitation on bonus amount.—The amount of the bonus payable to a civilian employee of a military department under paragraph (1)(A) in any year may not exceed the amount equal to 25 percent of the base pay of the employee in such year.
(B) LIMITATION ON AGGREGATE AMOUNT OF BONUSES.—The total amount of bonuses payable to civilian employees of a military department under paragraph (1)(A) in any year may not exceed $5,000,000.

(C) CONSTRUCTION.—Nothing in paragraph (1)(A) may be construed to authorize or provide for the payment of a bonus to an officer or employee of a contractor of the Department of Defense.

(d) TRANSFERS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of a military department may transfer amounts described in subsection (b) that are available under subsection (a) among accounts of the military department for purposes of exercising the authority in subsection (a) with respect to such amounts. Amounts so transferred shall be merged with amounts in the account or fund to which transferred and shall be available under the same terms and conditions as the amounts with which merged for the purposes specified in subsection (c).
(2) No new appropriation. — A transfer under paragraph (1) shall not be treated as a new appropriation of the amount so transferred.

(e) Reports.—

(1) Annual reports. — The Secretary of Defense shall submit to Congress each year (at the same time the budget of the President for a fiscal year is submitted to Congress in such year pursuant to section 1105 of title 31, United States Code) a report on the exercise of the authority under this section during the previous fiscal year. Each report under this subsection shall include, for the fiscal year covered by such report, the following:

(A) The amounts transferred under subsection (d), including the total amount transferred and the amounts transferred to each account to which transferred.

(B) The purposes, and amounts, for which amounts transferred were used.

(2) Notice on procurement. — Not later than 30 days before using amounts available under subsection (a) for the procurement of weapons or a weapon system, the Secretary of the military department concerned shall submit to Congress a report, in writing, on the use of such amounts for that pur-
pose. Each report shall include a statement of the
weapons or weapon system to be procured and the
amount to be used for such procurement.

SEC. 1808. FAILURE TO OBTAIN AUDITS WITH UNQUALIFIED OPINION OF FISCAL YEAR 2014 STATEMENT OF BUDGETARY RESOURCES OF THE DEPARTMENT OF DEFENSE.

(a) In General.—If the Department of Defense fails to obtain an audit with an unqualified opinion on its statement of budgetary resources for fiscal year 2014, the following shall take effect, effective as of the date of the issuance of the opinion on such audit:

(1) ADDITIONAL QUALIFICATIONS AND DUTIES OF USD (COMPTROLLER).—

(A) Qualifications.—Any individual nominated for appointment to the position of Under Secretary of Defense (Comptroller) under section 135 of title 10, United States Code, shall be an individual who has served—

(i) as the chief financial officer of a Federal or State agency that has received an audit with an unqualified opinion on such agency’s financial statements during the time of such individual’s service; or
(ii) as the chief financial officer of a public company that has received an audit with an unqualified opinion on such company's financial statements during the time of such individual's service.

(B) DUTIES AND POWERS.—The duties and powers of the individual serving as Under Secretary of Defense (Comptroller) shall include, in addition to the duties and powers specified in section 135(c) of title 10, United States Code, such duties and powers with respect to the financial management of the Department of Defense as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) may prescribe.

(2) ADDITIONAL QUALIFICATIONS AND RESPONSIBILITIES OF ASA FOR FINANCIAL MANAGEMENT.—

(A) QUALIFICATIONS.—Any individual nominated for appointment to the position of Assistant Secretary of the Army for Financial Management under section 3016 of title 10, United States Code, shall be an individual who has served—
(i) as the chief financial officer of a Federal or State agency that has received an audit with an unqualified opinion on such agency’s financial statements during the time of such individual’s service; or

(ii) as the chief financial officer of a public company that has received an audit with an unqualified opinion on such company’s financial statements during the time of such individual’s service.

(B) RESPONSIBILITIES.—The responsibilities of the individual serving as Assistant Secretary of the Army for Financial Management shall include, in addition to the responsibilities specified in section 3016(b)(4) of title 10, United States Code, such responsibilities as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) may prescribe.

(3) ADDITIONAL QUALIFICATIONS AND RESPONSIBILITIES OF ASN FOR FINANCIAL MANAGEMENT.—

(A) QUALIFICATIONS.—Any individual nominated for appointment to the position of
Assistant Secretary of the Navy for Financial Management under section 5016 of title 10, United States Code, shall be an individual who has served—

(i) as the chief financial officer of a Federal or State agency that has received an audit with an unqualified opinion on such agency's financial statements during the time of such individual's service; or

(ii) as the chief financial officer of a public company that has received an audit with an unqualified opinion on such company's financial statements during the time of such individual's service.

(B) RESPONSIBILITIES.—The responsibilities of the individual serving as Assistant Secretary of the Navy for Financial Management shall include, in addition to the responsibilities specified in section 5016(b)(4) of title 10, United States Code, such responsibilities as the Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) may prescribe.
(4) **Additional Qualifications and Responsibilities of ASAf for Financial Management.**—

(A) **Qualifications.**—Any individual nominated for appointment to the position of Assistant Secretary of the Air Force for Financial Management under section 8016 of title 10, United States Code, shall be an individual who has served—

(i) as the chief financial officer of a Federal or State agency that has received an audit with an unqualified opinion on such agency's financial statements during the time of such individual's service; or

(ii) as the chief financial officer of a public company that has received an audit with an unqualified opinion on such company's financial statements during the time of such individual's service.

(B) **Responsibilities.**—The responsibilities of the individual serving as Assistant Secretary of the Air Force for Financial Management shall include, in addition to the responsibilities specified in section 8016(b)(4) of title 10, United States Code, such responsibilities as
the Deputy Secretary of Defense (acting in the
capacity of Chief Management Officer of the
Department of Defense) or a successor official
in the Department of Defense (acting in such
capacity) may prescribe.

(b) PUBLIC COMPANY DEFINED.—In this section, the
term “public company” has the meaning given the term
“issuer” in section 2(a)(7) of the Sarbanes-Oxley Act of
2002 (15 U.S.C. 7201(a)(7)).

SEC. 1809. FAILURE TO OBTAIN AUDITS WITH UNQUALIFIED OPINION OF FISCAL YEAR 2017 FINANCIAL STATEMENTS OF THE DEPARTMENT OF DEFENSE.

(a) MILITARY DEPARTMENTS.—

(1) CESSATION OF AUTHORITIES ON RE-
PROGRAMMING AND AVAILABILITY OF FUNDS.—If a
military department fails to obtain an audit with an
unqualified opinion on its financial statements for
fiscal year 2017, effective as of the date of the
issuance of the opinion on such audit, the authorities
in sections 1806 and 1807 shall cease to be available
to the military department for fiscal year 2017 or
any fiscal year thereafter.

(2) PROHIBITION ON EXPENDITURE OF FUNDS
FOR CERTAIN MDAPS PAST MILESTONE B.—
(A) Prohibition.—If a military department fails to obtain an unqualified opinion on its financial statements for fiscal year 2017, effective as of the date of the issuance of the opinion on such audit, amounts may not be expended by the military department for a weapon or weapon system or platform being acquired as a major defense acquisition program for any activity beyond Milestone B approval unless such program has already achieved Milestone B approval of the date of the issuance of the opinion on such audit.

(B) Definitions.—In this paragraph:

(i) The term “major defense acquisition program” has the meaning given that term in section 2430 of title 10, United States Code.

(ii) The term “Milestone B approval” has the meaning given that term in section 2366(e)(7) of title 10, United States Code.

(b) Department of Defense.—If the Department of Defense fails to obtain an audit with an unqualified opinion on its financial statements for fiscal year 2017, the following shall take effect, effective as of the date of the issuance of the opinion on such audit:
(1) Reorganization of responsibilities of chief management officer.—

(A) Position of chief management officer.—Section 132a of title 10, United States Code, is amended to read as follows:

“§ 132a. Chief Management Officer

“(a) In general.—(1) There is a Chief Management Officer of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

“(2) Any individual nominated for appointment as Chief Management Officer shall be an individual who has—

“(A) extensive executive level leadership and management experience in the public or private sector;

“(B) strong leadership skills;

“(C) a demonstrated ability to manage large and complex organizations; and

“(D) a proven record in achieving positive operational results.

“(b) Powers and duties.—The Chief Management Officer shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.
"(c) Service as Chief Management Officer.—

(1) The Chief Management Officer is the Chief Management Officer of the Department of Defense.

(2) In serving as the Chief Management Officer of the Department of Defense, the Chief Management Officer shall be responsible for the management and administration of the Department of Defense with respect to the following:

(A) The expenditure of funds, accounting, and finance.

(B) Procurement, including procurement of any enterprise resource planning (ERP) system and any information technology (IT) system that is a financial feeder system, human resources system, or logistics system.

(C) Facilities, property, nonmilitary equipment, and other resources.

(D) Strategic planning, and annual performance planning, and identification and tracking of performance measures.

(E) Internal audits and management analyses of the programs and activities of the Department, including the Defense Contract Audit Agency.

(F) Such other areas or matters as the Secretary of Defense may designate.
“(3) The head of the Defense Contract Audit Agency shall be under the supervision of, and shall report directly to, the Chief Management Officer.

“(d) PRECEDENCE.—The Chief Management Officer takes precedence in the Department of Defense after the Secretary of Defense and the Deputy Secretary of Defense.”

(B) CONFORMING AMENDMENTS.—

(i) Section 131(b) of title 10, United States Code, is amended—

(I) by striking paragraph (3);

(II) by redesignating paragraph (2) as paragraph (3); and

(III) by inserting after paragraph (1) the following new paragraph (2):

“(2) The Chief Management Officer of the Department of Defense.”

(ii) Section 132 of such title is amended—

(I) by striking subsection (e); and

(II) by redesignating subsections (d) and (e) as subsections (e) and (d), respectively.
(iii) Section 133(e)(1) of such title is amended by striking "and the Deputy Secretary of Defense" and inserting "the Deputy Secretary of Defense, and the Chief Management Officer of the Department of Defense".

(iv) Such title is further amended by inserting "the Chief Management Officer of the Department of Defense," after "the Deputy Secretary of Defense," each place it appears in the provisions as follows:

(I) Section 133(e)(2).

(II) Section 134(e).

(v) Section 137a(d) of such title is amended by striking "the Secretaries of the military departments," and all that follows and inserting "the Chief Management Officer of the Department of Defense, the Secretaries of the military departments, and the Under Secretaries of Defense.".

(vi) Section 138(d) of such title is amended by striking "the Secretaries of the military departments," and all that follows through the period and inserting "the Chief Management Officer of the Depart-
25

ment of Defense, the Secretaries of the
military departments, the Under Secre-
taries of Defense, and the Director of De-
fense Research and Engineering”.

(C) CLERICAL AMENDMENT.—The table of
sections at the beginning of chapter 4 of such
title is amended by striking the item relating to
section 132a and inserting the following new
item:

“132a. Chief Management Officer.”.

(D) EXECUTIVE SCHEDULE.—Section
5313 of title 5, United States Code, is amended
by adding at the end the following:

“Chief Management Officer of the Department
of Defense.”.

(E) REFERENCE IN LAW.—Any reference
in any provision of law to the Chief Manage-
ment Officer of the Department of Defense
shall be deemed to refer to the Chief Manage-
ment Officer of the Department of Defense
under section 132a of title 10, United States
Code (as amended by this paragraph).

(2) JURISDICTION OF DFAS.—

(A) TRANSFER TO DEPARTMENT OF
TREASURY.—Jurisdiction of the Defense Fi-
nance and Accounting Service (DFAS) is trans-
ferred from the Department of Defense to the
Department of the Treasury.

(B) ADMINISTRATION.—The Secretary of
the Treasury shall administer the Defense Fi-
nance and Accounting Service following transfer
under this paragraph through the Financial
Management Service of the Department of
Treasury.

(C) MEMORANDUM OF UNDERSTANDING.—
The Secretary of Defense and the Secretary of
the Treasury shall jointly enter into a memo-
randum of understanding regarding the trans-
fer of jurisdiction of the Defense Finance and
Accounting Service under this paragraph. The
memorandum of understanding shall provide for
the transfer of the personnel and other re-
sources of the Service to the Department of the
Treasury and for the assumption of responsi-
bility for such personnel and resources by the
Department of the Treasury.

(D) CONSTRUCTION.—Nothing in this
paragraph shall be construed as terminating, al-
tering, or revising any responsibilities or au-
thorities of the Defense Finance and Account-
ing Service (other than responsibilities and au-
authorities in connection with the exercise of jurisdiction of the Service following transfer under this paragraph).

SEC. 1810. ENTERPRISE RESOURCE PLANNING.

The Secretary of Defense shall amend the acquisition guidance of the Department of Defense to provide for the following:

(1) The Defense Business System Management Committee may not approve procurement of any Enterprise Resource Planning (ERP) business system that is independently estimated to take longer than three years to procure from initial obligation of funds to full deployment and sustainment.

(2) Any contract for the acquisition of an Enterprise Resource Planning business system shall include a provision authorizing termination of the contract at no cost to the Government if procurement of the system takes longer than three years from initial obligation of funds to full deployment and sustainment.

(3) The Deputy Secretary of Defense (acting in the capacity of Chief Management Officer of the Department of Defense) or a successor official in the Department of Defense (acting in such capacity) shall have the authority to replace any program
manager (whether in a military department or a Defense Agency) for the procurement of an Enterprise Resource Planning business system if procurement of the system takes longer than three years from initial obligation of funds to full deployment and sustainment.

(4) Any integrator contract for the implementation of an Enterprise Resource Planning business system shall only be awarded to companies that have a history of successful implementation of other Enterprise Resource Planning business systems for the Federal Government (whether with the Department of Defense or another department or agency of the Federal Government), including meeting cost and schedule goals.