

Calendar No. 1104110TH CONGRESS
2D SESSION**S. 3384**

To amend section 11317 of title 40, United States Code, to require greater accountability for cost overruns on Federal IT investment projects.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

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

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

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 require greater accountability for cost overruns on Federal IT investment projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Information Tech-
3 nology Investment Oversight Enhancement and Waste
4 Prevention Act of 2008”.

5 **SEC. 2. IT INVESTMENT PROJECTS.**

6 (a) SIGNIFICANT AND GROSS DEVIATIONS.—Section
7 11317 of title 40, United States Code, is amended to read
8 as follows:

9 **“SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.**

10 **“(a) DEFINITIONS.—**In this subchapter:

11 **“(1) AGENCY HEAD.—**The term ‘Agency Head’
12 means the head of the Federal agency that is pri-
13 marily responsible for the IT investment project
14 under review.

15 **“(2) ANSI EIA-748 STANDARD.—**The term
16 ‘ANSI EIA-748 Standard’ means the measurement
17 tool jointly developed by the American National
18 Standards Institute and the Electronic Industries
19 Alliance to analyze earned value management sys-
20 tems.

21 **“(3) APPROPRIATE CONGRESSIONAL COMMIT-**
22 **TEES.—**The term ‘appropriate congressional com-
23 mittees’ means—

24 **“(A)** the Committee on Homeland Security
25 and Governmental Affairs of the Senate;

1 “(B) the Committee on Oversight and Gov-
2 ernment Reform of the House of Representa-
3 tives;

4 “(C) the Committee on Appropriations of
5 the Senate;

6 “(D) the Committee on Appropriations of
7 the House of Representatives; and

8 “(E) any other relevant congressional com-
9 mittee with jurisdiction over an agency required
10 to take action under this section.

11 “(4) CHIEF INFORMATION OFFICER.—The term
12 ‘Chief Information Officer’ means the Chief Infor-
13 mation Officer designated under section 3506(a)(2)
14 of title 44 of the Federal agency that is primarily re-
15 sponsible for the IT investment project under review.

16 “(5) CORE IT INVESTMENT PROJECT.—The
17 terms ‘core IT investment project’ and ‘core project’
18 mean a mission critical IT investment project jointly
19 designated as such by the Agency Head and the Di-
20 rector under subsection (b).

21 “(6) DIRECTOR.—The term ‘Director’ means
22 the Director of the Office of Management and Budget.
23 et.

24 “(7) GROSSLY DEVIATED.—The term ‘grossly
25 deviated’ means cost, schedule, or performance vari-

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

3 “(8) INDEPENDENT COST ESTIMATE.—The
4 term ‘independent cost estimate’ means a pragmatic
5 and neutral analysis, assessment, and quantification
6 of all costs and risks associated with the acquisition
7 of an IT investment project, which—

8 “(A) is based on programmatic and tech-
9 nical specifications provided by the office within
10 the agency with primary responsibility for the
11 development, procurement, and delivery of the
12 project;

13 “(B) is formulated and provided by an en-
14 tity other than the office within the agency with
15 primary responsibility for the development, pro-
16 curement, and delivery of the project;

17 “(C) contains sufficient detail to inform
18 the selection of a baseline benchmark measure
19 under the ANSI EIA-748 standard; and

20 “(D) accounts for the full life cycle cost
21 plus associated operations and maintenance ex-
22 penses over the usable life of the project’s
23 deliverables.

1 “(9) IT INVESTMENT PROJECT.—The terms ‘IT
2 investment project’ and ‘project’ mean an informa-
3 tion technology system or acquisition that—

4 “(A) requires special management atten-
5 tion because of its importance to the mission or
6 function of the agency; a component of the
7 agency; or another organization;

8 “(B) is for financial management and obli-
9 gates more than \$500,000 annually;

10 “(C) has significant program or policy im-
11 plications;

12 “(D) has high executive visibility;

13 “(E) has high development, modernization,
14 or enhancement costs;

15 “(F) is funded through other than direct
16 appropriations; or

17 “(G) is defined as major by the agency’s
18 capital planning and investment control process.

19 “(10) LIFE CYCLE COST.—The term ‘life cycle
20 cost’ means the total cost of an IT investment
21 project for planning, research and development,
22 modernization, and enhancement.

23 “(11) ORIGINAL BASELINE.—

24 “(A) IN GENERAL.—Except as provided
25 under subparagraph (B), the term ‘Original

1 Baseline’ means the ANSI EIA-748 Standard-
 2 compliant cost, schedule, and performance
 3 benchmark established at the commencement of
 4 an IT investment project contract.

5 “(B) GROSSLY DEVIATED PROJECT.—If an
 6 IT investment project grossly deviates from its
 7 Original Baseline (as defined in subparagraph
 8 (A)), the term ‘Original Baseline’ means the
 9 ANSI EIA-748 Standard-compliant cost,
 10 schedule, and performance benchmark estab-
 11 lished under subsection (e)(3)(C).

12 “(12) SIGNIFICANTLY DEVIATED.—The term
 13 ‘significantly deviated’ means cost, schedule, or per-
 14 formance variance that is at least 20 percent from
 15 the Original Baseline.

16 “(b) CORE IT INVESTMENT PROJECTS.—

17 “(1) DESIGNATION.—Except as provided under
 18 paragraph (2), each Agency Head and the Director
 19 shall jointly designate not fewer than 5 of the agen-
 20 cy’s most mission critical IT investment projects as
 21 ‘core IT investment projects’ or ‘core projects’, after
 22 considering, among other factors—

23 “(A) whether the project represents a
 24 high-dollar value relative to the average IT in-
 25 vestment project in the agency’s portfolio;

1 “(B) whether the project delivers a capa-
2 bility critical to the successful completion of the
3 agency mission; or a portion of such mission;
4 and

5 “(C) whether the project incorporates
6 unproven or previously undeveloped technology
7 to meet primary project technical requirements.

8 “(2) EXCEPTION.—If the Agency Head and the
9 Director jointly determine that fewer than 5 IT in-
10 vestment projects meet the criteria described in
11 paragraph (1), the Director—

12 “(A) may provide the agency with written
13 authorization to designate fewer than 5
14 projects; and

15 “(B) shall submit a report to the appro-
16 priate congressional committees that contains
17 notice of, and justification for, any such author-
18 ization.

19 “(c) COST, SCHEDULE, AND PERFORMANCE RE-
20 PORTS.—

21 “(1) QUARTERLY REPORTS.—Not later than 7
22 days after the end of each fiscal quarter, the project
23 manager for an IT investment project shall submit
24 a written report to the Chief Information Officer

1 that includes, as of the last day of the applicable
2 quarter—

3 “(A) a description of the cost, schedule,
4 and performance of all projects under the
5 project manager’s supervision;

6 “(B) the original and current project cost,
7 schedule, and performance benchmarks for each
8 project under the project manager’s supervision;

9 “(C) the cost, schedule, or performance
10 variance related to each IT investment project
11 under the project manager’s supervision since
12 the commencement of the contract;

13 “(D) for each project under the project
14 manager’s supervision, any known, expected, or
15 anticipated changes to project schedule mile-
16 stones or project performance benchmarks in-
17 cluded as part of the original or current base-
18 line description; and

19 “(E) the current cost, schedule, and per-
20 formance status of all projects under super-
21 vision that were previously identified as signifi-
22 cantly deviated or grossly deviated.

23 “(2) INTERIM REPORTS.—If the project man-
24 ager for an IT investment project determines that
25 there is reasonable cause to believe that an IT in-

1 investment project has significantly deviated or grossly
 2 deviated since the issuance of the latest quarterly re-
 3 port, the project manager shall submit to the Chief
 4 Information Officer, not later than 7 days after such
 5 determination, a report on the project that includes,
 6 as of the date of the report—

7 “(A) a description of the original and cur-
 8 rent program cost, schedule, and performance
 9 benchmarks;

10 “(B) the cost, schedule, or performance
 11 variance related to the IT investment project
 12 since the commencement of the contract;

13 “(C) any known, expected, or anticipated
 14 changes to the project schedule milestones or
 15 project performance benchmarks included as
 16 part of the original or current baseline descrip-
 17 tion; and

18 “(D) the major reasons underlying the sig-
 19 nificant or gross deviation of the project.

20 “(d) DETERMINATION OF SIGNIFICANT DEVI-
 21 ATION.—

22 “(1) CHIEF INFORMATION OFFICER.—Upon re-
 23 ceiving a report under subsection (c), the Chief In-
 24 formation Officer shall—

1 “(A) determine if any IT investment
2 project has significantly deviated; and

3 “(B) report such determination to the
4 Agency Head.

5 “(2) CONGRESSIONAL NOTIFICATION.—If the
6 Chief Information Officer determines under para-
7 graph (1) that an IT investment project has signifi-
8 cantly deviated and the Agency Head has not issued
9 a report to the appropriate congressional committees
10 of a significant deviation for that project under this
11 section since the project was last required to be re-
12 baselined under this section, the Agency Head shall
13 submit a report to the appropriate congressional
14 committees and to the Government Accountability
15 Office that includes—

16 “(A) written notification of such deter-
17 mination;

18 “(B) the date on which such determination
19 was made;

20 “(C) the amount of the cost increases and
21 the extent of the schedule delays with respect to
22 such project;

23 “(D) any requirements that—

24 “(i) were added subsequent to the
25 original contract; or

1 “(ii) were originally contracted for,
2 but were changed by deferment or deletion
3 from the original schedule, or were other-
4 wise no longer included in the require-
5 ments contracted for;

6 “(E) an explanation of the differences be-
7 tween—

8 “(i) the estimate at completion be-
9 tween the project manager, any contractor,
10 and any independent analysis; and

11 “(ii) the original budget at comple-
12 tion;

13 “(F) the rough order of magnitude of the
14 costs of any reasonable alternative system, or
15 reasonable alternative approach to establishing
16 an equivalent outcome or capability;

17 “(G) a statement of the reasons underlying
18 the project’s significant deviation;

19 “(H) the identities of the project managers
20 responsible for program management and cost
21 control of the program; and

22 “(I) a summary of the plan of action to
23 remedy the significant deviation.

24 “(3) DEADLINE.—

1 “(A) NOTIFICATION BASED ON QUARTERLY
2 REPORT.—If the determination of significant
3 deviation is based on a report submitted under
4 subsection (b)(1), the Agency Head shall notify
5 Congress in accordance with paragraph (2) not
6 later than 14 days after the end of the quarter
7 upon which such report is based.

8 “(B) NOTIFICATION BASED ON INTERIM
9 REPORT.—If the determination of significant
10 deviation is based on a report submitted under
11 subsection (b)(2), the Secretary shall notify
12 Congress in accordance with paragraph (2) not
13 later than 14 days after the submission of such
14 report.

15 “(c) DETERMINATION OF GROSS DEVIATION.—

16 “(1) CHIEF INFORMATION OFFICER.—Upon re-
17 ceiving a report under subsection (c), the Chief In-
18 formation Officer shall—

19 “(A) determine if any IT investment
20 project has grossly deviated; and

21 “(B) report any such determination to the
22 Agency Head.

23 “(2) CONGRESSIONAL NOTIFICATION.—If the
24 Chief Information Officer determines under para-
25 graph (1) that an IT investment project has grossly

1 deviated and the Agency Head has not issued a re-
2 port to the appropriate congressional committees of
3 a gross deviation for that project under this section
4 since the project was last required to be re-baselined
5 under this section, the Agency Head shall submit a
6 report to the appropriate congressional committees
7 and to the Government Accountability Office that in-
8 cludes—

9 “(A) written notification of such deter-
10 mination, which states—

11 “(i) the date on which such deter-
12 mination was made; and

13 “(ii) an indication of whether or not
14 the project has been previously reported as
15 a significant or gross deviation by the
16 Chief Information Officer, and the date of
17 any such report;

18 “(B) incorporations by reference of all
19 prior reports to Congress on the project re-
20 quired under this section;

21 “(C) updated accounts of the items de-
22 scribed in subparagraphs (C) through (H) of
23 subsection (d)(2);

1 “(D) the original estimate at completion
2 for the project manager, any contractor, and
3 any independent analysis;

4 “(E) a graphical depiction of actual cost
5 variance since the commencement of the con-
6 tract;

7 “(F) the amount, if any, of incentive
8 award fees any contractor has received since the
9 commencement of the contract and the reasons
10 for receiving such award fees;

11 “(G) the project manager’s estimated cost
12 at completion and estimated completion date for
13 the project if current requirements are not
14 modified;

15 “(H) the project manager’s estimated cost
16 at completion and estimated completion date for
17 the project based on reasonable modification of
18 such requirements;

19 “(I) an explanation of the most significant
20 occurrence contributing to the variance identi-
21 fied, including cost, schedule, and performance
22 variances; and the effect such occurrence will
23 have on future project costs and program
24 schedule;

1 “(J) a statement regarding previous or an-
2 ticipated re-baselining or re-planning of the
3 project and the names of the individuals respon-
4 sible for approval;

5 “(K) the original life cycle cost of the in-
6 vestment and the expected life cycle cost of the
7 investment expressed in constant base year dol-
8 lars and in current dollars; and

9 “(L) a comprehensive plan of action to
10 remedy the gross deviation; and milestones es-
11 tablished to control future cost, schedule, and
12 performance deviations in the future.

13 “(3) REMEDIAL ACTION.—If the Chief Informa-
14 tion Officer determines under paragraph (1) that an
15 IT investment project has grossly deviated, the
16 Agency Head, in consultation with the Chief Infor-
17 mation Officer, shall ensure that—

18 “(A) a report is submitted to the appro-
19 priate congressional committees that—

20 “(i) describes the primary business
21 ease and key functional requirements for
22 the project;

23 “(ii) describes any portions of the
24 project that have technical requirements of
25 sufficient clarity that such portions may be

1 feasibly procured under firm, fixed-price
2 contract;

3 “(iii) includes a certification by the
4 Agency Head, after consultation with the
5 Chief Information Officer, that all tech-
6 nical requirements have been reviewed and
7 validated to ensure alignment with the re-
8 ported business case;

9 “(iv) describes any changes to the pri-
10 mary business case or key functional re-
11 quirements which have occurred since
12 project inception; and

13 “(v) includes an independent cost esti-
14 mate for the project conducted by an enti-
15 ty approved by the Director;

16 “(B) an analysis is submitted to the appro-
17 priate congressional committees that—

18 “(i) describes agency business goals
19 that the project was originally designed to
20 address;

21 “(ii) includes a gap analysis of what
22 project deliverables remain in order for the
23 agency to accomplish the business goals re-
24 ferred to in clause (i);

1 “(iii) identifies the 3 most cost-effective
2 alternative approaches to the project
3 which would achieve the business goals referred to in clause (i); and

4 “(iv) includes a cost-benefit analysis,
5 which compares—

6 “(I) the completion of the project
7 with the completion of each alternative
8 approach, after factoring in future costs associated with the
9 termination of the project; and
10 “(II) the termination of the
11 project without pursuit of alternatives,
12 after factoring in foregone benefits;
13 and
14 “(C) a new baseline of the project is established that is consistent with the independent
15 cost estimate required under subparagraph
16 (A)(v); and
17 “(D) the project is designated as a core IT
18 investment project and subjected to the requirements under subsection (f).

19 “(4) DEADLINE AND FUNDING CONTIN-
20 GENCY.—
21
22
23
24

1 “(A) NOTIFICATION AND REMEDIAL AC-
2 TION BASED ON QUARTERLY REPORT.—

3 “(i) IN GENERAL.—If the determina-
4 tion of gross deviation is based on a report
5 submitted under subsection (c)(1), the
6 Agency Head shall—

7 “(I) not later than 45 days after
8 the end of the quarter upon which
9 such report is based, notify the appro-
10 priate congressional committees in ac-
11 cordance with paragraph (2); and

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

17 “(ii) FAILURE TO MEET DEAD-
18 LINES.—If the Agency Head fails to meet
19 the deadlines described in clause (i)(II),
20 additional funds may not be obligated to
21 support expenditures associated with the
22 project until the requirements of this sub-
23 section have been fulfilled.

24 “(B) NOTIFICATION AND REMEDIAL AC-
25 TION BASED ON INTERIM REPORT.—

1 “(i) IN GENERAL.—If the determina-
 2 tion of gross deviation is based on a report
 3 submitted under subsection (e)(2), the Sec-
 4 retary shall—

5 “(I) not later than 45 days after
 6 the submission of such report, notify
 7 the appropriate congressional commit-
 8 tees in accordance with paragraph (2);
 9 and

10 “(II) not later than 180 days
 11 after the submission of such report,
 12 ensure the completion of remedial ac-
 13 tion in accordance with paragraph (3).

14 “(ii) FAILURE TO MEET DEAD-
 15 LINES.—If the Agency Head fails to meet
 16 the deadlines described in clause (i)(II),
 17 additional funds may not be obligated to
 18 support expenditures associated with the
 19 project until the requirements of this sub-
 20 section have been fulfilled.

21 “(f) ADDITIONAL REQUIREMENTS FOR CORE IT IN-
 22 VESTMENT PROJECT REPORTS.—

23 “(1) INITIAL REPORT.—If a report described in
 24 subsection (e)(3)(A) has not been submitted for a
 25 core IT investment project, the Agency Head, in co-

1 ordination with the Chief Information Officer and
2 responsible program managers, shall prepare an ini-
3 tial report for inclusion in the first budget submitted
4 to Congress under section 1105(a) of title 31,
5 United States Code, after the designation of a
6 project as a core IT investment project, which in-
7 cludes—

8 “(A) a description of the primary business
9 ease and key functional requirements for the
10 project;

11 “(B) an identification and description of
12 any portions of the project that have technical
13 requirements of sufficient clarity that such por-
14 tions may be feasibly procured under firm,
15 fixed-price contracts;

16 “(C) an independent cost estimate for the
17 project;

18 “(D) certification by the Chief Information
19 Officer that all technical requirements have
20 been reviewed and validated to ensure align-
21 ment with the reported business ease; and

22 “(E) any changes to the primary business
23 ease or key functional requirements which have
24 occurred since project inception.

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

5 “(A) monitor the primary business case
6 and core functionality requirements reported to
7 Congress for designated core IT investment
8 projects; and

9 “(B) if changes to the primary business
10 case or key functional requirements for a core
11 IT investment project occur in any fiscal quar-
12 ter, submit a report to Congress not later than
13 7 days after the end of such quarter that de-
14 tails the changes and describes the impact the
15 changes will have on the cost and ultimate ef-
16 fectiveness of the project.

17 “(3) ALTERNATIVE SIGNIFICANT DEVIATION
18 DETERMINATION.—If the Chief Information Officer
19 determines, subsequent to a change in the primary
20 business case or key functional requirements, that
21 without such change the project would have signifi-
22 cantly deviated—

23 “(A) the Chief Information Officer shall
24 notify the Agency Head of the significant devi-
25 ation; and

1 “(B) the Agency Head shall fulfill the re-
2 quirements under subsection (d)(2) in accord-
3 ance with the deadlines under subsection (d)(3).

4 “~~(4) ALTERNATIVE GROSS DEVIATION DETER-~~
5 ~~MINATION.—~~If the Chief Information Officer deter-
6 mines, subsequent to a change in the primary busi-
7 ness case or key functional requirements, that with-
8 out such change the project would have grossly devi-
9 ated—

10 “(A) the Chief Information Officer shall
11 notify the Agency Head of the gross deviation;
12 and

13 “(B) the Agency Head shall fulfill the re-
14 quirements under subsections (e)(2) and (e)(3)
15 in accordance with subsection (e)(4).”.

16 (b) ~~INCLUSION IN THE BUDGET SUBMITTED TO CON-~~
17 ~~GRESS.—~~Section 1105(a) of title 31, United States Code,
18 is amended—

19 (1) in the matter preceding paragraph (1), by
20 striking “include in each budget the following:” and
21 inserting “include in each budget—”;

22 (2) by redesignating the second paragraph ~~(3)~~
23 (as added by section 889(a) of Public Law 107–296)
24 as paragraph ~~(3)~~5);

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

4 (4) in paragraph (35) (as redesignated by para-
5 graph (2)), by striking the period at the end and in-
6 serting “; and”; and

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

8 “(36) the reports prepared under section
9 11317(f) of title 40, United States Code, relating to
10 the core IT investment projects of the agency.”.

11 (e) IMPROVEMENT OF INFORMATION TECHNOLOGY
12 ACQUISITION AND DEVELOPMENT.—Subchapter H of
13 chapter 113 of title 40, United States Code, is amended
14 by adding at the end the following:

15 **“SEC. 11319. ACQUISITION AND DEVELOPMENT.**

16 “(a) ESTABLISHMENT OF PROGRAMS.—Not later
17 than 120 days after the date of the enactment of this sec-
18 tion, each Agency Head (as defined in section 11317(a)
19 of title 49, United States Code) shall establish a program
20 to improve the information technology (referred to in this
21 section as ‘IT’) processes of the agency overseen by the
22 Agency Head.

23 “(b) PROGRAM REQUIREMENTS.—Each program es-
24 tablished pursuant to this section shall include—

1 “(1) a documented process for information
2 technology acquisition planning, requirements devel-
3 opment and management, project management and
4 oversight, earned-value management, and risk man-
5 agement;

6 “(2) the development of appropriate metrics for
7 performance measurement of—

8 “(A) processes and development status;
9 and

10 “(B) continuous process improvement;

11 “(3) a process to ensure that key program per-
12 sonnel have an appropriate level of experience or
13 training in the planning, acquisition, execution, man-
14 agement, and oversight of information technology;
15 and

16 “(4) a process to ensure that the applicable de-
17 partment and subcomponents implement and adhere
18 to established processes and requirements relating to
19 the planning, acquisition, execution, management,
20 and oversight of information technology programs
21 and developments.

22 “(e) OMB GUIDANCE.—The Director of the Office
23 of Management and Budget shall—

1 “(1) prescribe uniformly applicable guidance to
2 the administration of all the programs established
3 under subsection (a); and

4 “(2) take any actions that are necessary to en-
5 sure that Federal agencies comply with the guid-
6 ance.

7 “(d) ANNUAL REPORT TO CONGRESS.—Not later
8 than the last day of February of each year, the Agency
9 Head shall submit a report to Congress that includes—

10 “(1) a detailed summary of the accomplish-
11 ments of the program established by the Agency
12 Head pursuant to this section;

13 “(2) the status of completeness of implementa-
14 tion of each of the program requirements, and the
15 date each such requirement was deemed to be com-
16 pleted;

17 “(3) the percentage of Federal IT projects cov-
18 ered under the program compared to all of the IT
19 projects of the agency, listed by number of programs
20 and by annual dollars expended;

21 “(4) the identification, listed by name and posi-
22 tion, of—

23 “(A) the person assigned responsibility for
24 implementation and management of the pro-

1 gram and the percent of such person's time
2 used to carry out such responsibility; and

3 “(B) the person to whom the person de-
4 scribed in subparagraph (A) reports;

5 “(5) a detailed breakdown of the sources and
6 uses of the amounts spent by the agency during the
7 previous fiscal year to support the activities of the
8 program;

9 “(6) a copy of any guidance issued under the
10 program and a statement regarding whether each
11 such guidance is mandatory;

12 “(7) the identification of the metrics developed
13 in accordance with subsection (b)(2);

14 “(8) a description of how paragraphs (3) and
15 (4) of subsection (b) have been implemented and any
16 related agency guidance; and

17 “(9) a description of how continuous process
18 improvement has been implemented and the objec-
19 tives of such guidance.”.

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.”; and

1 (2) by inserting after the item relating to sec-
2 tion 11318 the following:

“11319. Acquisition and development.”.

3 **SEC. 3. IT STRIKE FORCE.**

4 (a) **PURPOSE.**—The Director of the Office of Man-
5 agement of Budget (referred to in this section as the “Di-
6 rector”), in consultation with the Administrator of the Of-
7 fice of Electronic Government and Information and Tech-
8 nology at the Office of Management and Budget (referred
9 to in this section as the “E-Gov Administrator”), shall as-
10 sist agencies in avoiding significant and gross deviations
11 in the cost, schedule, and performance of IT investment
12 projects (as such terms are defined in section 11317(a)
13 of title 40, United States Code).

14 (b) **IT STRIKE FORCE.**—

15 (1) **ESTABLISHMENT.**—Not later than 180 days
16 after the date of the enactment of this Act, the E-
17 Gov Administrator shall establish a small group of
18 individuals (referred to in this section as the “IT
19 Strike Force”) to carry out the purpose described in
20 subsection (a).

21 (2) **QUALIFICATIONS.**—Individuals selected for
22 the IT Strike Force—

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

1 tification for Program and Project Managers
2 (~~FAC-P/PM~~); or

3 (B) shall have comparable education, cer-
4 tification, training, and experience to success-
5 fully manage high-risk IT investment projects.

6 (3) NUMBER.—The Director, in consultation
7 with the E-Gov Administrator, shall determine the
8 number of individuals who will be selected for the IT
9 Strike Force.

10 (c) OUTSIDE CONSULTANTS.—

11 (1) IDENTIFICATION.—The E-Gov Adminis-
12 trator shall identify consultants in the private sector
13 who have expert knowledge in IT program manage-
14 ment and program management review teams. Not
15 more than 20 percent of such consultants may be
16 formally associated with any 1 of the following types
17 of entities:

18 (A) Commercial firms.

19 (B) Nonprofit entities.

20 (C) Research and development corpora-
21 tions receiving Federal financial assistance.

22 (2) USE OF CONSULTANTS.—

23 (A) IN GENERAL.—Consultants identified
24 under paragraph (1) may be used to assist the

1 IT Strike Force in assessing and improving IT
2 investment projects.

3 (B) LIMITATION.—Consultants with a for-
4 mally established relationship with an organiza-
5 tion may not participate in any assessment in-
6 volving an IT investment project for which such
7 organization is under contract to provide tech-
8 nical support.

9 (C) EXCEPTION.—The limitation described
10 in subparagraph (B) may not be construed as
11 precluding access to anyone having relevant in-
12 formation helpful to the conduct of the assess-
13 ment.

14 (3) CONTRACTS.—The E-Gov Administrator, in
15 conjunction with the Administrator of the General
16 Services Administration (GSA), may establish com-
17 petitively bid contracts with 1 or more qualified con-
18 sultants, independent of any GSA schedule.

19 (d) INITIAL RESPONSE TO ANTICIPATED SIGNIFI-
20 cant OR GROSS DEVIATION.—If the E-Gov Administrator
21 determines there is reasonable cause to believe that a
22 major IT investment project is likely to significantly or
23 grossly deviate (as defined in section 11317(a) of title 40,
24 United States Code), including the receipt of inconsistent

1 or missing data, the E-Gov Administrator shall carry out
2 the following activities:

3 (1) Recommend the assignment of 1 or more
4 members of the IT Strike Force to assess the project
5 in accordance with the scope and time period de-
6 scribed in section 11317(e)(1) of title 40, United
7 States Code, beginning not later than 7 days after
8 such recommendation. No member of the Strike
9 Force who is associated with the department or
10 agency whose IT investment project is the subject of
11 the assessment may be assigned to participate in
12 this assessment. Such limitation may not be con-
13 strued as precluding access to anyone having rel-
14 evant information helpful to the conduct of the as-
15 sessment.

16 (2) If the E-Gov Administrator determines that
17 1 or more qualified consultants are needed to sup-
18 port the efforts of the IT Strike Force under para-
19 graph (1), negotiate a contract with the consultant
20 to provide such support during the period in which
21 the IT Strike Force is conducting the assessment
22 described in paragraph (1).

23 (3) Ensure that the costs of an assessment
24 under paragraph (1) and the support services of 1

1 or more consultants under paragraph (2) are paid
2 by the major IT investment project being assessed.

3 (4) Monitor the progress made by the IT Strike
4 Force in assessing the project.

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

13 (1) providing training or mentoring to improve
14 the qualifications of the program manager;

15 (2) replacing the program manager or other
16 staff;

17 (3) supplementing the program management
18 team with Federal Government employees or inde-
19 pendent contractors;

20 (4) terminating the project; or

21 (5) hiring an independent contractor to report
22 directly to senior management and the E-Gov Ad-
23 ministrator.

24 (f) REPROGRAMMING OF FUNDS.—

1 (1) AUTHORIZATION.—The Director may direct
2 an Agency Head to reprogram amounts which have
3 been appropriated for such agency to pay for an as-
4 sessment under subsection (d).

5 (2) NOTIFICATION.—An Agency Head who re-
6 programs appropriations under paragraph (1) shall
7 notify the Committee on Appropriations of the Sen-
8 ate and the Committee on Appropriations of the
9 House of Representatives of any such reprogram-
10 ming.

11 (g) REPORT TO CONGRESS.—The Director shall in-
12 clude in the annual Report to Congress on the Benefits
13 of E-Government Initiatives a detailed summary of the
14 composition and activities of the IT Strike Force, includ-
15 ing—

16 (1) the number and qualifications of individuals
17 on the IT Strike Force;

18 (2) a description of the IT investment projects
19 that the IT Strike Force has worked during the pre-
20 vious fiscal year;

21 (3) the major issues that necessitated the in-
22 volvement of the IT Strike Force to assist agencies
23 with assessing and managing IT investment projects
24 and whether such issues were satisfactorily resolved;

1 (4) if the issues referred to in paragraph (3)
 2 were not satisfactorily resolved, the issues still need-
 3 ed to be resolved and the Agency Head's plan for re-
 4 solving such issues;

5 (5) a detailed breakdown of the sources and
 6 uses of the amounts spent by the Office of Manage-
 7 ment and Budget and other Federal agencies during
 8 the previous fiscal year to support the activities of
 9 the IT Strike Force; and

10 (6) a determination of whether the IT Strike
 11 Force has been effective in reducing the amount of
 12 IT investment projects that deviate or significantly
 13 deviate.

14 **SECTION 1. SHORT TITLE.**

15 *This Act may be cited as the "Information Technology*
 16 *Investment Oversight Enhancement and Waste Prevention*
 17 *Act of 2008".*

18 **SEC. 2. IT INVESTMENT PROJECTS.**

19 (a) *SIGNIFICANT AND GROSS DEVIATIONS.—Section*
 20 *11317 of title 40, United States Code, is amended to read*
 21 *as follows:*

22 **"SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.**

23 “(a) *DEFINITIONS.—In this subchapter:*

24 “(1) *AGENCY HEAD.—The term ‘Agency Head’*
 25 *means the head of the Federal agency that is pri-*

1 *marily responsible for the IT investment project*
2 *under review.*

3 “(2) *ANSI EIA-748-B STANDARD.*—*The term*
4 *‘ANSI EIA-748-B Standard’ means the measurement*
5 *tool jointly developed by the American National*
6 *Standards Institute and the Electronic Industries Al-*
7 *liance to analyze Earned Value Management systems.*

8 “(3) *APPROPRIATE CONGRESSIONAL COMMIT-*
9 *TEES.*—*The term ‘appropriate congressional commit-*
10 *tees’ means—*

11 “(A) *the Committee on Homeland Security*
12 *and Governmental Affairs of the Senate;*

13 “(B) *the Committee on Oversight and Gov-*
14 *ernment Reform of the House of Representatives;*

15 “(C) *the Committee on Appropriations of*
16 *the Senate;*

17 “(D) *the Committee on Appropriations of*
18 *the House of Representatives; and*

19 “(E) *any other relevant congressional com-*
20 *mittee with jurisdiction over an agency required*
21 *to take action under this section.*

22 “(4) *CHIEF INFORMATION OFFICER.*—*The term*
23 *‘Chief Information Officer’ means the Chief Informa-*
24 *tion Officer designated under section 3506(a)(2) of*

1 *title 44 of the Federal agency that is primarily re-*
2 *sponsible for the IT investment project under review.*

3 “(5) *CORE IT INVESTMENT PROJECT.*—*The terms*
4 *‘core IT investment project’ and ‘core project’ mean a*
5 *mission critical IT investment project designated as*
6 *such by the Chief Information Officer, with approval*
7 *by the Agency Head under subsection (b).*

8 “(6) *DIRECTOR.*—*The term ‘Director’ means the*
9 *Director of the Office of Management and Budget.*

10 “(7) *EARNED VALUE MANAGEMENT.*—*The term*
11 *‘Earned Value Management’ means the cost, perform-*
12 *ance, and schedule data used to determine project sta-*
13 *tus and developed in accordance with the ANSI EIA-*
14 *748-B standard.*

15 “(8) *GROSSLY DEVIATED.*—*The term ‘grossly de-*
16 *viated’ means cost, schedule, or performance variance*
17 *that is at least 40 percent from the Original Baseline.*

18 “(9) *INDEPENDENT GOVERNMENT COST ESTI-*
19 *MATE.*—*The term ‘independent government cost esti-*
20 *mate’ means a pragmatic and neutral analysis, as-*
21 *essment, and quantification of all costs and risks as-*
22 *sociated with the acquisition of an IT investment*
23 *project, which—*

24 “(A) *is based on programmatic and tech-*
25 *nical specifications provided by the office within*

1 *the agency with primary responsibility for the*
2 *development, procurement, and delivery of the*
3 *project;*

4 *“(B) is formulated and provided by an enti-*
5 *ty other than the office within the agency with*
6 *primary responsibility for the development, pro-*
7 *curement, and delivery of the project;*

8 *“(C) contains sufficient detail to inform the*
9 *selection of an Earned Value Management base-*
10 *line benchmark measure under the ANSI EIA-*
11 *748-B standard; and*

12 *“(D) accounts for the full life cycle cost plus*
13 *associated operations and maintenance expenses*
14 *over the usable life of the project’s deliverables.*

15 *“(10) IT INVESTMENT PROJECT.—The terms ‘IT*
16 *investment project’ and ‘project’ mean an information*
17 *technology system or acquisition that—*

18 *“(A) requires special management attention*
19 *because of its importance to the mission or func-*
20 *tion of the agency, a component of the agency, or*
21 *another organization;*

22 *“(B) is for financial management and obli-*
23 *gates more than \$500,000 annually;*

24 *“(C) has significant program or policy im-*
25 *plications;*

1 “(D) has high executive visibility;

2 “(E) has high development, operating, or
3 maintenance costs;

4 “(F) is funded through other than direct ap-
5 propriations; or

6 “(G) is defined as major by the agency’s
7 capital planning and investment control process.

8 “(11) LIFE CYCLE COST.—The term ‘life cycle
9 cost’ means the total cost of an IT investment project
10 for planning, research and development, moderniza-
11 tion, enhancement, operation, and maintenance.

12 “(12) ORIGINAL BASELINE.—

13 “(A) IN GENERAL.—Except as provided
14 under subparagraph (B), the term ‘Original
15 Baseline’ means the ANSI EIA-748-B Stand-
16 ard-compliant Earned Value Management bench-
17 mark established at the commencement of an IT
18 investment project.

19 “(B) GROSSLY DEVIATED PROJECT.—If an
20 IT investment project grossly deviates from its
21 Original Baseline (as defined in subparagraph
22 (A)), the term ‘Original Baseline’ means the
23 ANSI EIA-748-B Standard-compliant Earned
24 Value Management benchmark established under
25 subsection (e)(3)(C).

1 “(13) *SIGNIFICANTLY DEVIATED.*—*The term ‘sig-*
2 *nificantly deviated’ means Earned Value Manage-*
3 *ment variance that is at least 20 percent from the*
4 *Original Baseline.*

5 “(b) *CORE IT INVESTMENT PROJECTS DESIGNA-*
6 *TION.*—*Except as provided under paragraph (2), each Chief*
7 *Information Officer, with approval by the Agency Head,*
8 *shall—*

9 “(1) *identify the major IT investments that are*
10 *the most critical to the agency; and*

11 “(2) *designate those most mission critical IT in-*
12 *vestment projects as ‘core IT investment projects’ or*
13 *‘core projects’, after considering, among other fac-*
14 *tors—*

15 “(A) *whether the project represents a sig-*
16 *nificant high-dollar value relative to the average*
17 *IT investment project in the agency’s portfolio;*

18 “(B) *whether the project delivers a capa-*
19 *bility critical to the successful completion of the*
20 *agency mission, or a portion of such mission;*

21 “(C) *whether the project incorporates*
22 *unproven or previously undeveloped technology*
23 *to meet primary project technical requirements;*
24 *or*

1 “(D) whether the project would have a sig-
2 nificant negative impact on the successful com-
3 pletion of the agency mission if the project expe-
4 rienced significant cost, schedule, or performance
5 deviations.

6 “(c) COST, SCHEDULE, AND PERFORMANCE RE-
7 PORTS.—

8 “(1) QUARTERLY REPORTS.—Not later than 14
9 days after the end of each fiscal quarter, the project
10 manager for an IT investment project shall submit a
11 written report to the Chief Information Officer that
12 includes, as of the last day of the applicable quar-
13 ter—

14 “(A) a description of the cost, schedule, and
15 performance of all projects under the project
16 manager’s supervision;

17 “(B) the original and current project cost,
18 schedule, and performance benchmarks for each
19 project under the project manager’s supervision;

20 “(C) the quarterly and cumulative cost,
21 schedule, and performance variance related to
22 each IT investment project under the project
23 manager’s supervision since the commencement
24 of the project;

1 “(D) for each project under the project man-
2 ager’s supervision, any known, expected, or an-
3 ticipated changes to project schedule milestones
4 or project performance benchmarks included as
5 part of the original or current baseline descrip-
6 tion;

7 “(E) the current cost, schedule, and per-
8 formance status of all projects under supervision
9 that were previously identified as significantly
10 deviated or grossly deviated; and

11 “(F) any corrective actions taken to address
12 problems discovered under subparagraphs (C)
13 through (E).

14 “(2) *INTERIM REPORTS.*—If the project manager
15 for an IT investment project determines that there is
16 reasonable cause to believe that an IT investment
17 project has significantly deviated or grossly deviated
18 since the issuance of the latest quarterly report, the
19 project manager shall submit to the Chief Information
20 Officer, not later than 14 days after such determina-
21 tion, a report on the project that includes, as of the
22 date of the report—

23 “(A) a description of the original and cur-
24 rent program cost, schedule, and performance
25 benchmarks;

1 “(B) the cost, schedule, or performance vari-
2 ance related to the IT investment project since
3 the commencement of the project;

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

8 “(D) the major reasons underlying the sig-
9 nificant or gross deviation of the project; and

10 “(E) a corrective action plan to correct such
11 deviations.

12 “(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

13 “(1) CHIEF INFORMATION OFFICER.—Upon re-
14 ceiving a report under subsection (c), the Chief Infor-
15 mation Officer shall—

16 “(A) determine if any IT investment project
17 has significantly deviated; and

18 “(B) report such determination to the Agen-
19 cy Head.

20 “(2) CONGRESSIONAL NOTIFICATION.—If the
21 Chief Information Officer determines under para-
22 graph (1) that an IT investment project has signifi-
23 cantly deviated and the Agency Head has not issued
24 a report to the appropriate congressional committees
25 of a significant deviation for that project under this

1 *section since the project was last required to be re-*
2 *baselined under this section, the Agency Head shall*
3 *submit a report to the appropriate congressional com-*
4 *mittees, the Director, and the Government Account-*
5 *ability Office that includes—*

6 *“(A) written notification of such determina-*
7 *tion;*

8 *“(B) the date on which such determination*
9 *was made;*

10 *“(C) the amount of the cost increases and*
11 *the extent of the schedule delays with respect to*
12 *such project;*

13 *“(D) any requirements that—*

14 *“(i) were added subsequent to the origi-*
15 *nal contract; or*

16 *“(ii) were originally contracted for, but*
17 *were changed by deferment or deletion from*
18 *the original schedule, or were otherwise no*
19 *longer included in the requirements con-*
20 *tracted for;*

21 *“(E) an explanation of the differences be-*
22 *tween—*

23 *“(i) the estimate at completion between*
24 *the project manager, any contractor, and*
25 *any independent analysis; and*

1 “(ii) *the original budget at completion;*

2 “(F) *a statement of the reasons underlying*
3 *the project’s significant deviation; and*

4 “(G) *a summary of the plan of action to*
5 *remedy the significant deviation.*

6 “(3) *DEADLINE.—*

7 “(A) *NOTIFICATION BASED ON QUARTERLY*
8 *REPORT.—If the determination of significant de-*
9 *viation is based on a report submitted under*
10 *subsection (b)(1), the Agency Head shall notify*
11 *Congress and the Director in accordance with*
12 *paragraph (2) not later than 21 days after the*
13 *end of the quarter upon which such report is*
14 *based.*

15 “(B) *NOTIFICATION BASED ON INTERIM RE-*
16 *PORT.—If the determination of significant devi-*
17 *ation is based on a report submitted under sub-*
18 *section (b)(2), the Agency Head shall notify Con-*
19 *gress and the Director in accordance with para-*
20 *graph (2) not later than 21 days after the sub-*
21 *mission of such report.*

22 “(e) *DETERMINATION OF GROSS DEVIATION.—*

23 “(1) *CHIEF INFORMATION OFFICER.—Upon re-*
24 *ceiving a report under subsection (c), the Chief Infor-*
25 *mation Officer shall—*

1 “(A) determine if any IT investment project
2 has grossly deviated; and

3 “(B) report any such determination to the
4 Agency Head.

5 “(2) CONGRESSIONAL NOTIFICATION.—If the
6 Chief Information Officer determines under para-
7 graph (1) that an IT investment project has grossly
8 deviated and the Agency Head has not issued a report
9 to the appropriate congressional committees of a gross
10 deviation for that project under this section since the
11 project was last required to be re-baselined under this
12 section, the Agency Head shall submit a report to the
13 appropriate congressional committees, the Director,
14 and the Government Accountability Office that in-
15 cludes—

16 “(A) written notification of such determina-
17 tion, which states—

18 “(i) the date on which such determina-
19 tion was made; and

20 “(ii) an indication of whether or not
21 the project has been previously reported as
22 a significant or gross deviation by the Chief
23 Information Officer, and the date of any
24 such report;

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

4 “(C) updated accounts of the items de-
5 scribed in subparagraphs (C) through (H) of
6 subsection (d)(2);

7 “(D) the original estimate at completion for
8 the project manager, any contractor, and any
9 independent analysis;

10 “(E) a graphical depiction that shows
11 monthly planned expenditures against actual ex-
12 penditures since the commencement of the
13 project;

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

18 “(G) the project manager’s estimated cost at
19 completion and estimated completion date for the
20 project if current requirements are not modified;

21 “(H) the project manager’s estimated cost at
22 completion and estimated completion date for the
23 project based on reasonable modification of such
24 requirements;

1 “(I) an explanation of the most significant
2 occurrence contributing to the variance identi-
3 fied, including cost, schedule, and performance
4 variances, and the effect such occurrence will
5 have on future project costs and program sched-
6 ule;

7 “(J) a statement regarding previous or an-
8 ticipated re-baselining or re-planning of the
9 project and the names of the individuals respon-
10 sible for approval;

11 “(K) the original life cycle cost of the in-
12 vestment and the expected life cycle cost of the
13 investment expressed in constant base year dol-
14 lars and in current dollars; and

15 “(L) a comprehensive plan of action to rem-
16 edy the gross deviation, and milestones estab-
17 lished to control future cost, schedule, and per-
18 formance deviations in the future.

19 “(3) REMEDIAL ACTION.—

20 “(A) IN GENERAL.—If the Chief Informa-
21 tion Officer determines under paragraph (1) that
22 an IT investment project has grossly deviated,
23 the Agency Head, in consultation with the Chief
24 Information Officer, shall develop and imple-
25 ment a remedial action plan that includes—

1 “(i) a report that—

2 “(I) describes the primary busi-
3 ness case and key functional require-
4 ments for the project;

5 “(II) describes any portions of the
6 project that have technical require-
7 ments of sufficient clarity that such
8 portions may be feasibly procured
9 under firm, fixed-price contract;

10 “(III) includes a certification by
11 the Agency Head, after consultation
12 with the Chief Information Officer,
13 that all technical requirements have
14 been reviewed and validated to ensure
15 alignment with the reported business
16 case;

17 “(IV) describes any changes to the
18 primary business case or key func-
19 tional requirements which have oc-
20 curred since project inception; and

21 “(V) includes an independent gov-
22 ernment cost estimate for the project
23 conducted by an entity approved by
24 the Director;

25 “(ii) an analysis that—

1 “(I) describes agency business
2 goals that the project was originally
3 designed to address;

4 “(II) includes a gap analysis of
5 what project deliverables remain in
6 order for the agency to accomplish the
7 business goals referred to in subclause
8 (I);

9 “(III) identifies the 3 most cost-ef-
10 fective alternative approaches to the
11 project which would achieve the busi-
12 ness goals referred to in subclause (I);
13 and

14 “(IV) includes a cost-benefit anal-
15 ysis, which compares—

16 “(aa) the completion of the
17 project with the completion of
18 each alternative approach, after
19 factoring in future costs associ-
20 ated with the termination of the
21 project; and

22 “(bb) the termination of the
23 project without pursuit of alter-
24 natives, after factoring in foregone
25 benefits; and

1 “(iii) a new baseline of the project is
2 established that is consistent with the inde-
3 pendent government cost estimate required
4 under clause (i)(V); and

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

8 “(B) *SUBMISSION TO CONGRESS.*—The re-
9 medial action plan and all corresponding re-
10 ports, analyses, and actions under this para-
11 graph shall be submitted to the appropriate con-
12 gressional committees and the Director.

13 “(C) *REPORTING AND ANALYSIS EXEMP-*
14 *TIONS.*—

15 “(i) *IN GENERAL.*—The Chief Informa-
16 tion Officer, in coordination with the Agen-
17 cy Head and the Director, may forego the
18 completion of any element of a report or
19 analysis under clause (i) or (ii) of subpara-
20 graph (A) if the Chief Information Officer
21 determines that such element is not relevant
22 to the understanding of the difficulties fac-
23 ing the project or further continuation of
24 the project in a timely and cost-efficient
25 manner.

1 “(i) *IDENTIFICATION OF REASONS.*—
2 *The Chief Information Officer shall include*
3 *the reasons for not including any element*
4 *referred to in clause (i) in the report sub-*
5 *mitted to Congress under subparagraph (B).*

6 “(4) *DEADLINE AND FUNDING CONTINGENCY.*—

7 “(A) *NOTIFICATION AND REMEDIAL ACTION*
8 *BASED ON QUARTERLY REPORT.*—

9 “(i) *IN GENERAL.*—*If the determina-*
10 *tion of gross deviation is based on a report*
11 *submitted under subsection (c)(1), the Agen-*
12 *cy Head shall—*

13 “(I) *not later than 45 days after*
14 *the end of the quarter upon which such*
15 *report is based, notify the appropriate*
16 *congressional committees and the Di-*
17 *rector in accordance with paragraph*
18 *(2); and*

19 “(II) *not later than 180 days*
20 *after the end of the quarter upon which*
21 *such report is based, ensure the comple-*
22 *tion of remedial action under para-*
23 *graph (3).*

24 “(ii) *FAILURE TO MEET DEADLINES.*—
25 *If the Agency Head fails to meet the dead-*

1 *lines described in clause (i)(II), additional*
2 *funds may not be obligated to support ex-*
3 *penditures associated with the project until*
4 *the requirements of this subsection have*
5 *been fulfilled.*

6 “(B) NOTIFICATION AND REMEDIAL ACTION
7 BASED ON INTERIM REPORT.—

8 “(i) IN GENERAL.—*If the determina-*
9 *tion of gross deviation is based on a report*
10 *submitted under subsection (c)(2), the Agen-*
11 *cy Head shall—*

12 “(I) *not later than 45 days after*
13 *the submission of such report, notify*
14 *the appropriate congressional commit-*
15 *tees in accordance with paragraph (2);*
16 *and*

17 “(II) *not later than 180 days*
18 *after the submission of such report, en-*
19 *sure the completion of remedial action*
20 *in accordance with paragraph (3).*

21 “(ii) FAILURE TO MEET DEADLINES.—
22 *If the Agency Head fails to meet the dead-*
23 *lines described in clause (i)(II), additional*
24 *funds may not be obligated to support ex-*
25 *penditures associated with the project until*

1 the requirements of this subsection have
2 been fulfilled.

3 “(f) *ADDITIONAL REQUIREMENTS FOR CORE IT IN-*
4 *VESTMENT PROJECT REPORTS.—*

5 “(1) *INITIAL REPORT.—If a report described in*
6 *subsection (e)(3)(A) has not been submitted for a core*
7 *IT investment project, the Agency Head, in coordina-*
8 *tion with the Chief Information Officer and respon-*
9 *sible program managers, shall prepare an initial re-*
10 *port for inclusion in the first budget submitted to*
11 *Congress under section 1105(a) of title 31, United*
12 *States Code, after the designation of a project as a*
13 *core IT investment project, which includes—*

14 “(A) *a description of the primary business*
15 *case and key functional requirements for the*
16 *project;*

17 “(B) *an identification and description of*
18 *any portions of the project that have technical*
19 *requirements of sufficient clarity that such por-*
20 *tions may be feasibly procured under firm, fixed-*
21 *price contracts;*

22 “(C) *an independent cost estimate for the*
23 *project;*

24 “(D) *certification by the Chief Information*
25 *Officer that all technical requirements have been*

1 *reviewed and validated to ensure alignment with*
2 *the reported business case; and*

3 “(E) *any changes to the primary business*
4 *case or key functional requirements which have*
5 *occurred since project inception.*

6 “(2) *QUARTERLY REVIEW OF BUSINESS CASE.—*
7 *The Agency Head, in coordination with the Chief In-*
8 *formation Officer and responsible program managers,*
9 *shall—*

10 “(A) *monitor the primary business case and*
11 *core functionality requirements reported to Con-*
12 *gress and the Director for designated core IT in-*
13 *vestment projects; and*

14 “(B) *if changes to the primary business case*
15 *or key functional requirements for a core IT in-*
16 *vestment project occur in any fiscal quarter, sub-*
17 *mit a report to Congress and the Director not*
18 *later than 14 days after the end of such quarter*
19 *that details the changes and describes the impact*
20 *the changes will have on the cost and ultimate*
21 *effectiveness of the project.*

22 “(3) *ALTERNATIVE SIGNIFICANT DEVIATION DE-*
23 *TERMINATION.—If the Chief Information Officer de-*
24 *termines, subsequent to a change in the primary busi-*
25 *ness case or key functional requirements, that without*

1 *such change the project would have significantly devi-*
 2 *ated—*

3 *“(A) the Chief Information Officer shall no-*
 4 *tify the Agency Head of the significant devi-*
 5 *ation; and*

6 *“(B) the Agency Head shall fulfill the re-*
 7 *quirements under subsection (d)(2) in accordance*
 8 *with the deadlines under subsection (d)(3).*

9 *“(4) ALTERNATIVE GROSS DEVIATION DETER-*
 10 *MINATION.—If the Chief Information Officer deter-*
 11 *mines, subsequent to a change in the primary busi-*
 12 *ness case or key functional requirements, that without*
 13 *such change the project would have grossly deviated—*

14 *“(A) the Chief Information Officer shall no-*
 15 *tify the Agency Head of the gross deviation; and*

16 *“(B) the Agency Head shall fulfill the re-*
 17 *quirements under subsections (e)(2) and (e)(3) in*
 18 *accordance with subsection (e)(4).”.*

19 **(b) INCLUSION IN THE BUDGET SUBMITTED TO CON-**
 20 **GRESS.—Section 1105(a) of title 31, United States Code,**
 21 *is amended—*

22 *(1) in the matter preceding paragraph (1), by*
 23 *striking “include in each budget the following:” and*
 24 *inserting “include in each budget—”;*

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

4 (3) in each of paragraphs (1) through (34), by
5 striking the period at the end and inserting a semi-
6 colon;

7 (4) in paragraph (35) (as redesignated by para-
8 graph (2)), by striking the period at the end and in-
9 serting “; and”; and

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

11 “(36) the reports prepared under section
12 11317(f) of title 40, United States Code, relating to
13 the core IT investment projects of the agency.”.

14 (c) *IMPROVEMENT OF INFORMATION TECHNOLOGY AC-*
15 *QUISITION AND DEVELOPMENT.*—Subchapter II of chapter
16 113 of title 40, United States Code, is amended by adding
17 at the end the following:

18 “**SEC. 11319. ACQUISITION AND DEVELOPMENT.**

19 “(a) *ESTABLISHMENT OF PROGRAMS.*—Not later than
20 120 days after the date of the enactment of this section, each
21 Chief Information Officer, upon the approval of the Agency
22 Head (as defined in section 11317(a) of title 40, United
23 States Code) shall establish a program to improve the infor-
24 mation technology (referred to in this section as ‘IT’) proc-
25 esses overseen by the Chief Information Officer.

1 “(b) *PROGRAM REQUIREMENTS.*—*Each program es-*
2 *tablished pursuant to this section shall include—*

3 “(1) *a documented process for information tech-*
4 *nology acquisition planning, requirements develop-*
5 *ment and management, project management and*
6 *oversight, earned-value management, and risk man-*
7 *agement;*

8 “(2) *the development of appropriate metrics for*
9 *performance measurement of—*

10 “(A) *processes and development status;*

11 “(B) *continuous process improvement; and*

12 “(C) *achievement of project outcomes;*

13 “(3) *a process to ensure that key program per-*
14 *sonnel have an appropriate level of experience and*
15 *training and education, at an institution or institu-*
16 *tions approved by the Director, in the planning, ac-*
17 *quisition, execution, management, and oversight of*
18 *information technology;*

19 “(4) *a process to ensure that the applicable de-*
20 *partment and subcomponents implement and adhere*
21 *to established processes and requirements relating to*
22 *the planning, acquisition, execution, management,*
23 *and oversight of information technology programs*
24 *and developments; and*

1 “(5) a process for the Chief Information Officer
2 to intervene or stop the funding of an IT investment
3 if it is at risk of not achieving major project mile-
4 stones.

5 “(c) OMB GUIDANCE.—The Director of the Office of
6 Management and Budget shall—

7 “(1) prescribe uniformly applicable guidance to
8 the administration of all the programs established
9 under subsection (a); and

10 “(2) take any actions that are necessary to en-
11 sure that Federal agencies comply with the guidance.

12 “(d) ANNUAL REPORT TO CONGRESS.—Not later than
13 the last day of February of each year, the Agency Head
14 shall submit a report to Congress that includes—

15 “(1) a detailed summary of the accomplishments
16 of the program established by the Agency Head pursu-
17 ant to this section;

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

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

1 “(4) a detailed breakdown of the sources and uses
2 of the amounts spent by the agency during the pre-
3 vious fiscal year to support the activities of the pro-
4 gram;

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 in
9 accordance with subsection (b)(2);

10 “(7) a description of how paragraphs (3) and (4)
11 of subsection (b) have been implemented and any re-
12 lated agency guidance; and

13 “(8) a description of how continuous process im-
14 provement has been implemented and the objectives of
15 such guidance.”.

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

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

“11317. Significant and gross deviations.”;

20 and

21 (2) by inserting after the item relating to section
22 11318 the following:

“11319. Acquisition and development.”.

1 **SEC. 3. IT STRIKE FORCE.**

2 (a) *PURPOSE.*—*The Director of the Office of Manage-*
3 *ment of Budget (referred to in this section as the “Direc-*
4 *tor”), in consultation with the Administrator of the Office*
5 *of Electronic Government and Information and Technology*
6 *at the Office of Management and Budget (referred to in this*
7 *section as the “E–Gov Administrator”), shall assist agen-*
8 *cies in avoiding significant and gross deviations in the cost,*
9 *schedule, and performance of IT investment projects (as*
10 *such terms are defined in section 11317(a) of title 40,*
11 *United States Code).*

12 (b) *IT STRIKE FORCE.*—

13 (1) *ESTABLISHMENT.*—*Not later than 180 days*
14 *after the date of the enactment of this Act, the E–Gov*
15 *Administrator shall establish a small group of indi-*
16 *viduals (referred to in this section as the “IT Strike*
17 *Force”) to carry out the purpose described in sub-*
18 *section (a).*

19 (2) *QUALIFICATIONS.*—*Individuals selected for*
20 *the IT Strike Force—*

21 (A) *shall be certified at the Senior/Expert*
22 *level according to the Federal Acquisition Cer-*
23 *tification for Program and Project Managers*
24 *(FAC–P/PM); or*

1 (B) shall have comparable education, cer-
2 tification, training, and experience to success-
3 fully manage high-risk IT investment projects.

4 (3) NUMBER.—The Director, in consultation
5 with the E-Gov Administrator, shall determine the
6 number of individuals who will be selected for the IT
7 Strike Force.

8 (c) OUTSIDE CONSULTANTS.—

9 (1) IDENTIFICATION.—The E-Gov Administrator
10 shall identify consultants in the private sector who
11 have expert knowledge in IT program management
12 and program management review teams. Not more
13 than 20 percent of such consultants may be formally
14 associated with any one of the following types of enti-
15 ties:

16 (A) Commercial firms.

17 (B) Nonprofit entities.

18 (C) Federally funded research and develop-
19 ment centers.

20 (2) USE OF CONSULTANTS.—

21 (A) IN GENERAL.—Consultants identified
22 under paragraph (1) may be used to assist the
23 IT Strike Force in assessing and improving IT
24 investment projects.

1 (B) *LIMITATION.*—*Consultants with a formally*
2 *established relationship with an organiza-*
3 *tion may not participate in any assessment in-*
4 *volving an IT investment project for which such*
5 *organization is under contract to provide tech-*
6 *nical support.*

7 (C) *EXCEPTION.*—*The limitation described*
8 *in subparagraph (B) may not be construed as*
9 *precluding access to anyone having relevant in-*
10 *formation helpful to the conduct of the assess-*
11 *ment.*

12 (3) *CONTRACTS.*—*The E-Gov Administrator, in*
13 *conjunction with the Administrator of the General*
14 *Services Administration (GSA), may establish com-*
15 *petitively bid contracts with one or more qualified*
16 *consultants, independent of any GSA schedule.*

17 (d) *INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT*
18 *OR GROSS DEVIATION.*—*If the E-Gov Administrator deter-*
19 *mines there is reasonable cause to believe that a major IT*
20 *investment project is likely to significantly or grossly devi-*
21 *ate (as defined in section 11317(a) of title 40, United States*
22 *Code), including the receipt of inconsistent or missing data,*
23 *the E-Gov Administrator shall carry out the following ac-*
24 *tivities:*

1 (1) *Recommend the assignment of one or more*
2 *members of the IT Strike Force to assess the project*
3 *in accordance with the scope and time period de-*
4 *scribed in section 11317(c)(1) of title 40, United*
5 *States Code, beginning not later than 14 days after*
6 *such recommendation. No member of the Strike Force*
7 *who is associated with the department or agency*
8 *whose IT investment project is the subject of the as-*
9 *essment may be assigned to participate in this as-*
10 *essment. Such limitation may not be construed as*
11 *precluding access to anyone having relevant informa-*
12 *tion helpful to the conduct of the assessment.*

13 (2) *If the E-Gov Administrator determines that*
14 *one or more qualified consultants are needed to sup-*
15 *port the efforts of the IT Strike Force under para-*
16 *graph (1), negotiate a contract with the consultant to*
17 *provide such support during the period in which the*
18 *IT Strike Force is conducting the assessment de-*
19 *scribed in paragraph (1).*

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

24 (4) *Monitor the progress made by the IT Strike*
25 *Force in assessing the project.*

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

9 (1) *providing training, education, or mentoring*
10 *to improve the qualifications of the program man-*
11 *ager;*

12 (2) *replacing the program manager or other*
13 *staff;*

14 (3) *supplementing the program management*
15 *team with Federal Government employees or inde-*
16 *pendent contractors;*

17 (4) *terminating the project; or*

18 (5) *hiring an independent contractor to report*
19 *directly to senior management and the E-Gov Ad-*
20 *ministrator.*

21 (f) *REPROGRAMMING OF FUNDS.*—

22 (1) *AUTHORIZATION.*—*The Director may direct*
23 *an Agency Head to reprogram amounts which have*
24 *been appropriated for such agency to pay for an as-*
25 *essment under subsection (d).*

1 (2) *NOTIFICATION.*—*An Agency Head who repro-*
2 *grams appropriations under paragraph (1) shall no-*
3 *tify the Committee on Appropriations of the Senate*
4 *and the Committee on Appropriations of the House of*
5 *Representatives of any such reprogramming.*

6 (9) *REPORT TO CONGRESS.*—*The Director shall in-*
7 *clude in the annual Report to Congress on the Benefits of*
8 *E–Government Initiatives a detailed summary of the com-*
9 *position and activities of the IT Strike Force, including—*

10 (1) *the number and qualifications of individuals*
11 *on the IT Strike Force;*

12 (2) *a description of the IT investment projects*
13 *that the IT Strike Force has worked during the pre-*
14 *vious fiscal year;*

15 (3) *the major issues that necessitated the involve-*
16 *ment of the IT Strike Force to assist agencies with as-*
17 *sessing and managing IT investment projects and*
18 *whether such issues were satisfactorily resolved;*

19 (4) *if the issues referred to in paragraph (3)*
20 *were not satisfactorily resolved, the issues still needed*
21 *to be resolved and the Agency Head’s plan for resolv-*
22 *ing such issues;*

23 (5) *a detailed breakdown of the sources and uses*
24 *of the amounts spent by the Office of Management*
25 *and Budget and other Federal agencies during the*

1 *previous fiscal year to support the activities of the IT*
2 *Strike Force; and*

3 *(6) a determination of whether the IT Strike*
4 *Force has been effective in—*

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

7 *(B) assisting agencies in conducting appro-*
8 *priate analysis and planning before a project is*
9 *funded.*

Calendar No. 1104

110TH CONGRESS
2^D SESSION

S. 3384

A BILL

To amend section 11317 of title 40, United States Code, to require greater accountability for cost overruns on Federal IT investment projects.

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008
Reported with an amendment