

1 “(6) by procurement for experimental purposes
2 pursuant to section 2373 of this title.”.

3 ***Subtitle I—Development and Acqui-***
4 ***sition of Software Intensive and***
5 ***Digital Products and Services***

6 **SEC. 881. RIGHTS IN TECHNICAL DATA.**

7 (a) *MODIFICATION OF DEFINITION OF TECHNICAL*
8 *DATA.—Paragraph (4) of section 2302 of title 10, United*
9 *States Code, is amended to read as follows:*

10 “(4) The term ‘technical data’—

11 “(A) means recorded information (regard-
12 less of the form or method of the recording) of a
13 scientific or technical nature relating to supplies
14 procured by an agency;

15 “(B) with respect to software, includes ev-
16 erything required to reproduce, build/recompile,
17 test, and deploy working system binaries on sys-
18 tem hardware, including all source code, revision
19 histories, build scripts, build/compilation/modi-
20 fication instructions/procedures, documentation,
21 test cases, expected test results, compilers, inter-
22 preters, test harnesses, specialized build and test
23 hardware, connectors, cables, and library de-
24 pendencies; and

1 “(C) does not include computer software in-
2 cidental to contract administration or financial,
3 administrative, cost or pricing, or management
4 data or other information incidental to contract
5 administration.”.

6 (b) *RIGHTS IN TECHNICAL DATA.*—Section 2320(a)(2)
7 of title 10, United States Code, is amended by adding at
8 the end the following new subparagraph:

9 “(J) The Secretary of Defense shall require the
10 following with respect to software delivery:

11 “(i) Software shall be delivered in native
12 electronic format.

13 “(ii) Builds must not be dependent upon
14 pre-defined build directories.

15 “(iii) In the case of licensing restrictions
16 that do not allow library dependency inclusion,
17 verified accessible repositories and revision his-
18 tory shall be documented and included.

19 “(iv) Commercial Off-The Shelf/Non-Devel-
20 opment Item (COTS/NDI) shall be delivered on
21 original Licensed Media. If firmware is part of
22 the delivery, then a Firmware Support Manual
23 should be included as an Appendix.”.

1 **SEC. 882. DEFENSE INNOVATION BOARD ANALYSIS OF**
2 **SOFTWARE ACQUISITION REGULATIONS.**

3 (a) *STUDY.*—

4 (1) *IN GENERAL.*—*Not later than 30 days after*
5 *the date of the enactment of this Act, the Secretary of*
6 *Defense shall task the Defense Innovation Board to*
7 *undertake a study on streamlining software develop-*
8 *ment and acquisition regulations.*

9 (2) *MEMBER PARTICIPATION.*—*The Chairman of*
10 *the Defense Innovation Board shall select appropriate*
11 *members from the membership of the Board to par-*
12 *ticipate in this study, and may recommend addi-*
13 *tional temporary members or contracted support per-*
14 *sonnel to the Secretary of Defense for the purposes of*
15 *this study. In considering additional appointments to*
16 *the study, the Secretary of Defense shall ensure that*
17 *members have significant technical, legislative, or reg-*
18 *ulatory expertise and reflect diverse experiences in the*
19 *public and private sector.*

20 (3) *SCOPE.*—*The study conducted pursuant to*
21 *paragraph (1) shall—*

22 (A) *review the acquisition regulations ap-*
23 *plicable to the Department of Defense with a*
24 *view toward streamlining and improving the ef-*
25 *iciency and effectiveness of software acquisition*

1 *in order to maintain defense technology advan-*
2 *tage;*

3 *(B) produce specific and detailed rec-*
4 *ommendations for any legislation, including the*
5 *amendment or repeal of regulations, that the*
6 *members of the Board conducting the study de-*
7 *termine necessary to—*

8 *(i) streamline development and pro-*
9 *curement of software;*

10 *(ii) adopt best practices from the pri-*
11 *vate sector applicable to government use;*

12 *(iii) promote rapid adoption of new*
13 *technology;*

14 *(iv) ensure continuing financial and*
15 *ethical integrity in procurement; and*

16 *(v) protect the best interests of the De-*
17 *partment of Defense; and*

18 *(C) produce such additional recommenda-*
19 *tions for legislation as such members consider*
20 *appropriate.*

21 *(4) CONSULTATION ON MAJOR PROGRAM RE-*
22 *ALIGNMENT.—The Secretary of Defense shall consult*
23 *with the Defense Innovation Board in conducting ac-*
24 *tivities under the major program realignment pilot*
25 *program established pursuant to section 873. The Sec-*

1 *retary shall provide the Board with timely access to*
2 *all information necessary for the Board to provide*
3 *such consultation and report on the major program*
4 *realignment.*

5 (5) *ACCESS TO INFORMATION.*—*The Secretary of*
6 *Defense shall provide the Defense Innovation Board*
7 *with timely access to appropriate information, data,*
8 *resources, and analysis so that the Board may con-*
9 *duct a thorough and independent analysis as required*
10 *under this subsection.*

11 (b) *REPORTS.*—

12 (1) *INTERIM REPORTS.*—*Not later than 150 days*
13 *after the date of the enactment of this Act, the Sec-*
14 *retary of Defense shall submit a report to or brief the*
15 *congressional defense committees on the interim find-*
16 *ings of the study conducted pursuant to subsection*
17 *(a). The Defense Innovation Board shall provide reg-*
18 *ular updates to the Secretary of Defense and the con-*
19 *gressional defense committees for purposes of pro-*
20 *viding the interim report.*

21 (2) *FINAL REPORT.*—*Not later than one year*
22 *after the Secretary of Defense tasks the Defense Advi-*
23 *sory Board to conduct the study, the Board shall*
24 *transmit a final report of the study to the Secretary.*
25 *Not later than 30 days after receiving the final re-*

1 *port, the Secretary of Defense shall transmit the final*
2 *report, together with such comments as the Secretary*
3 *determines appropriate, to the congressional defense*
4 *committees.*

5 **SEC. 883. PILOT TO TAILOR SOFTWARE-INTENSIVE MAJOR**
6 **PROGRAMS TO USE AGILE METHODS.**

7 *(a) IN GENERAL.—Not later than 30 days after the*
8 *date of the enactment of this Act, the Secretary of Defense,*
9 *in consultation with the Secretaries and Chiefs of the mili-*
10 *tary services, shall identify one major program per service*
11 *and one defense-wide program for tailoring into smaller in-*
12 *crements. The programs shall be selected from among those*
13 *designated as major defense acquisition programs and those*
14 *formerly designated as major automated information sys-*
15 *tems (excluding defense business systems).*

16 *(b) PROGRAM SELECTION CRITERIA.—In identifying*
17 *candidate programs, the Secretary shall prioritize pro-*
18 *grams that—*

19 *(1) are software intensive;*

20 *(2) have identified software development as a*
21 *risk;*

22 *(3) have experienced cost growth and schedule*
23 *delay; and*

24 *(4) did not deliver any operational capability*
25 *within the prior calendar year.*

1 (c) *REALIGNMENT PLAN.*—*The Secretary of Defense*
2 *shall finalize a realignment plan within 60 days of pro-*
3 *grams being identified under subsection (a) that provides*
4 *for the realigned program increments having a cost below*
5 *the cost threshold for designation as a major acquisition.*

6 (d) *REALIGNMENT EXECUTION.*—*Each realigned pro-*
7 *gram increment shall—*

8 (1) *be designed to deliver a meaningfully useful*
9 *capability within the first 180 days following realign-*
10 *ment;*

11 (2) *be designed to deliver subsequent meaning-*
12 *fully useful capabilities on timeframes of less than*
13 *180 days;*

14 (3) *incorporate cross-functional teams focused on*
15 *software production that prioritize user needs and*
16 *control of total cost of ownership;*

17 (4) *be staffed with highly qualified technically*
18 *trained staff and personnel with management and*
19 *business process expertise in leadership positions to*
20 *support requirements modification, acquisition strat-*
21 *egy, and program decisionmaking;*

22 (5) *ensure that realigned acquisition strategies*
23 *are broad enough to allow offerors to propose a serv-*
24 *ice, system, modified business practice, configuration*
25 *of personnel, or combination thereof as a solution;*

1 (6) include periodic engagement with the user
2 community, as well as representation by the user
3 community in program management and software
4 production activity;

5 (7) ensure realigned acquisition strategies favor
6 outcomes-based requirements definition and capa-
7 bility as a service, including the establishment of tech-
8 nical evaluation criteria as outcomes to be used to
9 drive service-level agreements with vendors; and

10 (8) consider options for termination of the rela-
11 tionship with any vendor unable or unwilling to offer
12 terms that meet the requirements of this section.

13 (e) *CONSULTATION.*—In conducting the program selec-
14 tion and tailoring under this section, the Secretary shall—

15 (1) use the tools, resources, and expertise of dig-
16 ital and innovation organizations resident in the De-
17 partment, such as the Defense Innovation Board, the
18 Defense Innovation Unit Experimental, the Defense
19 Science Board, the Defense Digital Services, federally
20 funded research and development centers, research
21 laboratories, and other technical, management, and
22 acquisition experts;

23 (2) use the digital development and acquisition
24 expertise of the General Services Administration's
25 Technology Transition Service, Office of 18F; and

1 (3) leverage the science, technology, and innova-
2 tion activities established pursuant to section 217 of
3 the National Defense Authorization Act for Fiscal
4 Year 2016 (Public Law 114–92; 10 U.S.C. 2445a
5 note).

6 (f) *AGILE ACQUISITION DEFINED.*—In this section, the
7 term “agile acquisition”—

8 (1) means acquisition pursuant to a methodology
9 for delivering multiple, rapid, incremental capabili-
10 ties to the user for operational use, evaluation, and
11 feedback; and

12 (2) involves—

13 (A) the incremental development and field-
14 ing of capabilities, commonly called “spirals”,
15 “spins”, or “sprints”, which can be measured in
16 a few weeks or months; and

17 (B) continuous participation and collabora-
18 tion by users, testers, and requirements authori-
19 ties.

20 **SEC. 884. REVIEW AND REALIGNMENT OF DEFENSE BUSI-**
21 **NESS SYSTEMS TO EMPHASIZE AGILE METH-**
22 **ODS.**

23 (a) *IN GENERAL.*—Not later than 30 days after the
24 date of the enactment of this Act, the Secretary of Defense,
25 in consultation with the Chief Information Officers and

1 *Chief Management Officers of the military services, shall*
2 *conduct a comprehensive assessment of investments in de-*
3 *fense business systems and prioritize no fewer than four and*
4 *up to eight such systems for realignment and restructuring*
5 *into smaller increments and the incorporation of agile ac-*
6 *quisition methods.*

7 **(b) PROGRAM ASSESSMENT ELEMENTS.**—*The assess-*
8 *ment under subsection (a) shall include the following:*

9 **(1)** *A comparison of investments in business sys-*
10 *tems across the Department of Defense within each*
11 *business system portfolio category, such as personnel*
12 *and pay systems, accounting and financial systems,*
13 *and contracting and procurement systems.*

14 **(2)** *Identification of opportunities to rationalize*
15 *requirements across investments within a business*
16 *system portfolio.*

17 **(3)** *Identification of programs within business*
18 *system portfolio categories that are most closely fol-*
19 *lowing the best acquisition practices for software in-*
20 *tensive systems.*

21 **(c) PROGRAM REALIGNMENT SELECTION CRITERIA.**—
22 *In identifying programs for potential realignment, the Sec-*
23 *retary of Defense shall prioritize programs that—*

24 **(1)** *did not deliver any operational capability*
25 *within the prior calendar year;*

1 (2) *have experienced cost growth and schedule*
2 *delay; and*

3 (3) *have similar user requirements to a better*
4 *performing program within the same business system*
5 *portfolio category.*

6 (d) *REALIGNMENT PLAN.—The Secretary of Defense*
7 *shall finalize a realignment plan within 60 days of pro-*
8 *grams being identified under subsection (c).*

9 (e) *REALIGNMENT EXECUTION.—Each realigned pro-*
10 *gram increment shall—*

11 (1) *be designed to deliver a meaningfully useful*
12 *capability within the first 180 days following realign-*
13 *ment;*

14 (2) *be designed to deliver subsequent meaning-*
15 *fully useful capabilities on timeframes of less than*
16 *180 days;*

17 (3) *incorporate cross-functional teams focused on*
18 *software production that prioritize user needs and*
19 *control of total cost of ownership;*

20 (4) *be staffed with highly qualified technically*
21 *trained staff and personnel with management and*
22 *business process expertise in leadership positions to*
23 *support requirements modification, acquisition strat-*
24 *egy, and program decision making;*

1 (5) ensure that realigned acquisition strategies
2 are broad enough to allow offerors to propose a serv-
3 ice, system, modified business practice, configuration
4 of personnel, or combination thereof as a solution;

5 (6) include periodic engagement with the user
6 community as well as representation by the user com-
7 munity in program management and software pro-
8 duction activity;

9 (7) ensure realigned acquisition strategies favor
10 outcomes-based requirements definition and capa-
11 bility as a service, including the establishment of tech-
12 nical evaluation criteria as outcomes to be used to
13 drive service-level-agreements with vendors; and

14 (8) consider options for termination of the rela-
15 tionship with any vendor unable or unwilling to offer
16 terms that meet the requirements of this section.

17 (f) CONSULTATION.—In conducting the program selec-
18 tion and realignments under this section, the Secretary
19 shall—

20 (1) use the tools, resources, and expertise of dig-
21 ital and innovation organizations resident in the De-
22 partment, such as the Defense Innovation Board, the
23 Defense Innovation Unit Experimental, the Defense
24 Science Board, the Defense Business Board, the De-
25 fense Digital Services, federally funded research and

1 *development centers, research laboratories, and other*
2 *technical, management, and acquisition experts;*

3 (2) *use the digital development and acquisition*
4 *expertise of the General Services Administration’s*
5 *Technology Transition Service, Office of 18F; and*

6 (3) *leverage the science, technology, and innova-*
7 *tion activities established pursuant to section 217 of*
8 *the National Defense Authorization Act for Fiscal*
9 *Year 2016 (Public Law 114–92; 10 U.S.C. 2445a*
10 *note).*

11 (g) *AGILE ACQUISITION DEFINED.*—*In this section, the*
12 *term “agile acquisition”—*

13 (1) *means acquisition pursuant to a methodology*
14 *for delivering multiple, rapid, incremental capabili-*
15 *ties to the user for operational use, evaluation, and*
16 *feedback; and*

17 (2) *involves—*

18 (A) *the incremental development and field-*
19 *ing of capabilities, commonly called “spirals”,*
20 *“spins”, or “sprints”, which can be measured in*
21 *a few weeks or months; and*

22 (B) *continuous participation and collabora-*
23 *tion by users, testers, and requirements authori-*
24 *ties.*

1 **SEC. 885. SOFTWARE DEVELOPMENT PILOT USING AGILE**
2 **BEST PRACTICES.**

3 (a) *IN GENERAL.*—Not later than 30 days after the
4 date of the enactment of this Act, the Secretary of Defense
5 shall identify no fewer than four and up to eight software
6 development activities within the Department of Defense or
7 military departments to be developed using modern agile
8 acquisition methods.

9 (b) *STREAMLINED PROCESSES.*—Software develop-
10 ment activities identified under subsection (a) shall be de-
11 veloped without incorporation of the following contract or
12 transaction requirements:

13 (1) *Earned Value Management (EVM) or EVM-*
14 *like reporting.*

15 (2) *Development of Integrated Master Schedule.*

16 (3) *Development of Integrated Master Plan.*

17 (4) *Development of Technical Requirement Docu-*
18 *ment.*

19 (5) *Development of Systems Requirement Docu-*
20 *ments.*

21 (6) *Use of Information Technology Infrastructure*
22 *Library agreements.*

23 (7) *Use of Software Development Life Cycle*
24 *(methodology).*

25 (c) *ROLES AND RESPONSIBILITIES.*—

1 (1) *IN GENERAL.*—Selected activities shall in-
2 clude the following roles and responsibilities:

3 (A) A program manager that is empowered
4 to make all programmatic decisions within the
5 overarching activity objectives, including re-
6 sources, funding, personnel, and contract or
7 transaction termination recommendations.

8 (B) A product owner that reports directly to
9 the program manager and is responsible for the
10 overall design of the product, prioritization of
11 roadmap elements and interpretation of their ac-
12 ceptance criteria, and prioritization of the list of
13 all features desired in the product.

14 (C) An engineering lead that reports di-
15 rectly to the program manager and is responsible
16 for the implementation and operation of the soft-
17 ware.

18 (D) A design lead that reports directly to
19 the program manager and is responsible for
20 identifying, communicating, and visualizing
21 user needs through a human centered design
22 process.

23 (2) *QUALIFICATIONS.*—The Secretary shall estab-
24 lish qualifications for personnel filling these positions
25 prior to their selection. The qualifications may not

1 *include a positive education requirement and must be*
2 *based on technical expertise or experience in delivery*
3 *of software products, to include agile concepts.*

4 (3) *COORDINATION PLAN FOR TESTING AND CER-*
5 *TIFICATION ORGANIZATIONS.—The program manager*
6 *shall ensure resources for test and certification orga-*
7 *nizations support of iterative development processes.*

8 (d) *PLAN.—The Secretary of Defense or designee shall*
9 *develop a plan for each selected activity under the pilot to*
10 *include the following elements:*

11 (1) *Definition of a product vision, identifying a*
12 *succinct, clearly defined need the software will ad-*
13 *dress.*

14 (2) *Definition of a product road map, outlining*
15 *a noncontractual plan that identifies short-term and*
16 *long-term product goals and specific technology solu-*
17 *tions to help meet those goals and adjusts to mission*
18 *and user needs at the product owner’s discretion.*

19 (3) *The use of a Broad Agency Announcement,*
20 *Other Transaction Authority, or other rapid merit-*
21 *based solicitation procedure.*

22 (4) *Identification of, and continuous engagement*
23 *with, end users.*

1 (5) *Frequent and iterative end user validation of*
2 *features and usability consistent with the principles*
3 *outlined in the Digital Services Playbook.*

4 (6) *Use of commercial best practices for ad-*
5 *vanced computing systems, including, where applica-*
6 *ble—*

7 (A) *Automated Testing, Integration, and*
8 *Deployment;*

9 (B) *compliance with applicable commercial*
10 *accessibility standards;*

11 (C) *capability to support modern versions*
12 *of multiple, common web browsers;*

13 (D) *capability to be viewable across com-*
14 *monly used end user devices, including mobile*
15 *devices; and*

16 (E) *built-in application monitoring.*

17 (e) *PROGRAM SCHEDULE.—The Secretary shall ensure*
18 *that each selected activity includes—*

19 (1) *award processes that take no longer than 3*
20 *months after a requirement is identified;*

21 (2) *planned frequent and iterative end user vali-*
22 *dation of implemented features and their usability;*

23 (3) *delivery of a functional prototype or mini-*
24 *maximally viable product in 3 months or less from award;*
25 *and*

1 (4) *follow-on delivery of iterative development*
2 *cycles no longer than 4 weeks apart, including secu-*
3 *rity testing and configuration management as appli-*
4 *cable.*

5 (f) *OVERSIGHT METRICS.—The Secretary shall ensure*
6 *that the selected activities—*

7 (1) *use a modern tracking tool to execute require-*
8 *ments backlog tracking; and*

9 (2) *use agile development metrics that, at a min-*
10 *imum, track—*

11 (A) *pace of work accomplishment;*

12 (B) *completeness of scope of testing activi-*
13 *ties (such as code coverage, fault tolerance, and*
14 *boundary testing);*

15 (C) *product quality attributes (such as*
16 *major and minor defects and measures of key*
17 *performance attributes and quality attributes);*

18 (D) *delivery progress relative to the current*
19 *product roadmap; and*

20 (E) *goals for each iteration.*

21 (g) *DATA RIGHTS.—*

22 (1) *UNCLASSIFIED SOFTWARE.—*

23 (A) *DEPARTMENT OF DEFENSE RIGHTS.—*

24 *The Department of Defense shall obtain suffi-*
25 *cient data rights for unclassified software so that*

1 *all custom computer software developed under*
2 *the pilot activities are managed as open source*
3 *software.*

4 *(B) PUBLIC AVAILABILITY.—The contractor*
5 *shall publicly develop and release the source code*
6 *for unclassified custom software in a public re-*
7 *pository with a license through which the copy-*
8 *right holder provides the rights to use, study,*
9 *reuse, modify, enhance, and distribute the soft-*
10 *ware to anyone and for any purpose.*

11 *(2) OTHER SOFTWARE.—For all other custom*
12 *software delivered under the pilot activities, the De-*
13 *partment of Defense shall obtain sufficient data rights*
14 *to enable a third party, other than the pilot con-*
15 *tractor, to continue development and maintenance ac-*
16 *tivities throughout the program lifecycle.*

17 *(h) RESTRICTIONS.—*

18 *(1) USE OF FUNDS.—No funds made available*
19 *for the selected activities may be expended on esti-*
20 *mation or evaluation using source lines of code meth-*
21 *odologies.*

22 *(2) CONTRACT TYPES.—The Secretary of Defense*
23 *may not use lowest price technically acceptable con-*
24 *tracting methods or cost plus contracts to carry out*
25 *selected activities under this section, and shall encour-*

1 *age the use of existing streamlined and flexible con-*
2 *tracting arrangements.*

3 (i) *CONSULTATION.*—*In executing the software devel-*
4 *opment activities under subsection (a), the Secretary*
5 *shall—*

6 (1) *use the tools, resources, and expertise of dig-*
7 *ital and innovation organizations resident in the De-*
8 *partment, such as the Defense Innovation Board, the*
9 *Defense Innovation Unit Experimental, the Defense*
10 *Science Board, the Defense Business Board, the De-*
11 *fense Digital Services, federally funded research and*
12 *development centers, research laboratories, and other*
13 *technical, management, and acquisition experts; and*

14 (2) *use, as appropriate, the digital development*
15 *and acquisition expertise of the General Services Ad-*
16 *ministration.*

17 (j) *REPORTS.*—

18 (1) *SOFTWARE DEVELOPMENT ACTIVITY COM-*
19 *MENCEMENT.*—

20 (A) *IN GENERAL.*—*Not later than 30 days*
21 *before the commencement of a software develop-*
22 *ment activity under subsection (a), the Secretary*
23 *shall submit to the congressional defense commit-*
24 *tees a report on the pilot activity.*

1 (B) *ELEMENTS.*—*The report on a pilot ac-*
2 *tivity under this paragraph shall set forth a de-*
3 *scription of the pilot activity, including the fol-*
4 *lowing information:*

5 (i) *The purpose of the pilot activity.*

6 (ii) *The duration of the pilot activity.*

7 (iii) *The efficiencies and benefits an-*
8 *ticipated to accrue to the Government under*
9 *the pilot program.*

10 (2) *SOFTWARE DEVELOPMENT ACTIVITY COMPLE-*
11 *TION.*—

12 (A) *IN GENERAL.*—*Not later than 60 days*
13 *after the completion of a pilot activity, the Sec-*
14 *retary shall submit to the congressional defense*
15 *committees a report on the pilot activity.*

16 (B) *ELEMENTS.*—*The report on a pilot ac-*
17 *tivity under this paragraph shall include the fol-*
18 *lowing elements:*

19 (i) *A description of results of the pilot*
20 *activity.*

21 (ii) *Such recommendations for legisla-*
22 *tive or administrative action as the Sec-*
23 *retary considers appropriate in light of the*
24 *pilot activity.*

1 (k) *AGILE ACQUISITION DEFINED.*—*In this section, the*
2 *term “agile acquisition”*—

3 (1) *means acquisition pursuant to a methodology*
4 *for delivering multiple, rapid, incremental capabili-*
5 *ties to the user for operational use, evaluation, and*
6 *feedback; and*

7 (2) *involves*—

8 (A) *the incremental development and field-*
9 *ing of capabilities, commonly called “spirals”,*
10 *“spins”, or “sprints”, which can be measured in*
11 *a few weeks or months; and*

12 (B) *continuous participation and collabora-*
13 *tion by users, testers, and requirements authori-*
14 *ties.*

15 **SEC. 886. USE OF OPEN SOURCE SOFTWARE.**

16 (a) *OPEN SOURCE SOFTWARE.*—

17 (1) *IN GENERAL.*—*Chapter 137 of title 10,*
18 *United States Code, is amended by inserting after sec-*
19 *tion 2320 the following new section:*

20 **“§ 2320a. Use of open source software**

21 “(a) *SOFTWARE DEVELOPMENT.*—*All unclassified cus-*
22 *tom-developed computer software and related technical data*
23 *that is not a defense article regulated pursuant to section*
24 *38 of the Arms Export Control Act (22 U.S.C. 2778) and*
25 *that is developed under a contract or other transaction*

1 *awarded by the Department of Defense on or after the date*
2 *that is 180 days after the date of the enactment of this sec-*
3 *tion shall be managed as open source software unless spe-*
4 *cifically waived by the service acquisition executive.*

5 “(b) *RELEASE OF SOFTWARE IN PUBLIC REPOSI-*
6 *TORY.—The Secretary of Defense shall require the con-*
7 *tractor to release source code and related technical data de-*
8 *scribed under subsection (a) in a public repository approved*
9 *by the Department of Defense, subject to a license through*
10 *which the copyright holder provides the rights to use, study,*
11 *reuse, modify, enhance, and distribute the software to any-*
12 *one and for any purpose.*

13 “(c) *APPLICABILITY TO EXISTING SOFTWARE.—The*
14 *Secretary of Defense shall, where appropriate—*

15 “(1) *seek to negotiate open source licenses to ex-*
16 *isting custom-developed computer software with con-*
17 *tractors that developed it; and*

18 “(2) *release related source code and technical*
19 *data in a public repository location approved by the*
20 *Department of Defense.*

21 “(d) *DEFINITIONS.—In this section:*

22 “(1) *CUSTOM-DEVELOPED COMPUTER SOFT-*
23 *WARE.—The term ‘custom-developed computer soft-*
24 *ware’—*

1 “(A) means human-readable source code, in-
2 cluding segregable portions thereof, that is—

3 “(i) first produced in the performance
4 of a Department of Defense contract, grant,
5 cooperative agreement, or other transaction;
6 or

7 “(ii) developed by a contractor or sub-
8 contractor exclusively with Federal funds
9 (other than an item or process developed
10 under a contract or subcontract to which
11 regulations under section 9(j)(2) of the
12 Small Business Act (15 U.S.C. 638(j)(2))
13 apply); and

14 “(B) does not include Commercial Off-The-
15 Shelf software, or packaged software developed
16 exclusively at private expense, whether delivered
17 as a Cloud Service, in binary form, or by any
18 other means of software delivery.

19 “(2) *TECHNICAL DATA*.—The term ‘technical
20 data’ has the meaning given the term in section 2302
21 of this title.”.

22 (2) *CLERICAL AMENDMENT*.—The table of sec-
23 tions at the beginning of such chapter is amended by
24 adding after the item relating to section 2320 the fol-
25 lowing new item:

“2320a. *Use of open source software*.”.

1 **(b) PRIZE COMPETITION.**—*The Secretary of Defense*
2 *shall create a prize for a research and develop program or*
3 *other activity for identifying, capturing, and storing exist-*
4 *ing Department of Defense custom-developed computer soft-*
5 *ware and related technical data. The Secretary of Defense*
6 *shall create an additional prize for improving, repurposing,*
7 *or reusing software to better support the Department of De-*
8 *fense mission. The prize programs shall be conducted in ac-*
9 *cordance with section 2374a of title 10, United States Code.*

10 **(c) REVERSE ENGINEERING.**—*The Secretary of De-*
11 *fense shall task the Defense Advanced Research Program*
12 *Agency with a project to identify methods to locate and re-*
13 *verse engineer Department of Defense custom-developed*
14 *computer software and related technical data for which*
15 *source code is unavailable.*

16 **(d) DEFINITIONS.**—*In this section:*

17 **(1) CUSTOM-DEVELOPED COMPUTER SOFT-**
18 **WARE.**—*The term “custom-developed computer soft-*
19 *ware”*—

20 **(A)** *means human-readable source code, in-*
21 *cluding segregable portions thereof, that is—*

22 **(i)** *first produced in the performance of*
23 *a Department of Defense contract, grant, co-*
24 *operative agreement, or other transaction;*
25 *or*

1 (ii) developed by a contractor or sub-
2 contractor exclusively with Federal funds
3 (other than an item or process developed
4 under a contract or subcontract to which
5 regulations under section 9(j)(2) of the
6 Small Business Act (15 U.S.C. 638(j)(2))
7 apply); and

8 (B) does not include Commercial Off-The-
9 Shelf software, or packaged software developed
10 exclusively at private expense, whether delivered
11 as a Cloud Service, in binary form, or by any
12 other means of software delivery.

13 (2) *TECHNICAL DATA*.—The term “technical
14 data” has the meaning given the term in section 2302
15 of title 10, United States Code.

16 (e) *REGULATIONS*.—Not later than 180 days after the
17 date of the enactment of this Act, the Secretary of Defense
18 shall amend the Defense Federal Acquisition Regulation
19 Supplement to carry out this section and the amendments
20 made by this section.



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