

Recommended NDAA Markups in Letters to Chairman Smith or in which he was copied			
Date	To	Topic	NDAA Markup
8/19	Speier	Award Fees	<p>Please consider amending Boondoggle Act to restore the omission, as follows.</p> <p style="text-align: center;">TITLE V—PREVENTING UNJUSTIFIED AWARD FEES SEC. 501. ENCOURAGING EXCELLENT CONTRACT PERFORMANCE. (a) LIMITATION.—For any cost-based contract entered into by the Federal Government that includes an award or incentive fee— (2) at a minimum, the following factors shall be considered in making a determination regarding whether, and in what amount, the fee shall be paid to the contractor: (A) Whether the contractor met cost goals. (B) Whether the contractor met schedule goals. (C) Whether the contractor met performance goals and delivered the goods or services required to be provided under the contract.</p> <p>Alternately, please coordinate with Chairman Smith to mark up the NDAA to restore the omission.</p>
7/2	Speier	Program and Project Management (P/PM)	<p>Your Unfinished Business</p> <p>I really appreciate your attempt, last year, to force DoD to adhere to a higher standard. It reminded me of Hebrew National salami. Unfortunately, your markup to the NDAA for FY 2011, HR 6395, Sec. 1745, Requirements Relating to Program and Project Management, was receded, per the Conference Report. Please read my letter to Chairman Smith, Subj: <i>NDAA Excludes Your Most Game-Changing Provision for Program and Project Management</i>, dated Dec. 12, 2020. I had requested that he again include the provision in the NDAA for FY 2022. I did not realize, then, that the provision was yours. I hope that the provision will not be rejected this year as the Senate no longer has a Republican majority.</p>
7/7	Ernst	(P/PM)	<p>Request GAO to review DoD policy, guidance, and instructions to determine if PMIAA is applicable to DoD. (I expect that GAO will verify and corroborate my allegations).</p> <p>3. Determine if a markup to NDAA is needed to transform PMIAA into a law that requires all federal agencies to “adopt widely accepted (or ANSI-approved) management standards that are often used in the private sector, ...ensure that taxpayer dollars are safeguarded by increasing accountability throughout the federal government.”</p>

Smith	8/13		<p>augment my previous recommendations to amend the NDAA mark up. Request Software Engineering Institutel to:</p> <ol style="list-style-type: none"> 1. Obtain a definition of “enhancements” as used by the F-35 JPO. 2. Break down the technical debt into three or four components, as applicable: SDD residual defects, TR-3 defects, new capability defects, enhancements. 3. Provide estimated, time-phased burndown plans for the above components. <p>Request GAO to assess F-35 Block 4 final costs and schedule.</p>
Smith	7/14	<p>Agile Methods</p> <p>Technical Debt</p> <p>F-35 Award fees</p>	<p>Also, please add a review of the F-35 program office’s failure to perform. It <i>recategorized</i> 178 of the 861 category 2 deficiencies as “enhancements.” If category 2 deficiencies could formerly impede mission success, how can they now be considered enhancements? What is an enhancement? Is this another scheme to conceal deferred or reduced functionality?</p> <p>It is recommended that you request GAO to expand the scope of requested Report on Agile P/PM, to include “other information” that includes:</p> <ol style="list-style-type: none"> 1. An assessment of the effectiveness and use of incentive and award fees when Agile P/PM is used to acquire software that is embedded in weapon systems and other military-unique hardware systems. 2. Per my letter to you dated Oct. 6, 2020: <ol style="list-style-type: none"> a. I am concerned that the current policies, guidance, and regulations do not provide sufficient incentives to deliver the Minimum Viable Product (MVP) within cost and schedule objectives and to reduce the technical debt. More importantly, the lack of disincentives or financial penalties provide no deterrence to contractors from continuing to receive undeserved award fees. Without more contractual definition and oversight, contractors are enabled to earn the Maximum Viable Profit despite delivering a subjectively defined and downwardly revised Minimum Viable Product. b. Please include appropriate provisions in the NDAA markup. <p>Conduct a study of the incentive or award fees most recently paid on the F-35 Lightning II JSF...contract.</p> <p>(2) ELEMENTS.—The study (1) shall include an assessment of the following</p> <ol style="list-style-type: none"> (A) the extent to which the Department has established award or incentive fee criteria that are based on the verification, on a timely basis, of the quality and technical maturity of the features and functions of the product being developed and tested and that the Department has defined and documented technical performance objectives such as

			<p>technical performance measures, progress against requirements, and exit criteria of life-cycle phases.</p> <p>(B) the extent to which the prime contractors have reported schedule performance in their contract performance reports for the most current incentive or award fee period that is based on verified, objective measures of technical performance.</p> <p>(C) the extent to which the prime contractors have been paid award or incentive fees, in the most recent period, that is based on verified technical and schedule performance</p>
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