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2D SESSION

H. R. 6004

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2016

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To modernize Government information technology, and for
other purposes.

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 “Modernizing Govern-
3 ment Technology Act of 2016” or the “MGT Act”.

4 **SEC. 2. FINDINGS; PURPOSES.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) The Federal Government spends nearly 75
7 percent of its annual information technology funding
8 on operating and maintaining existing, legacy infor-
9 mation technology systems. These systems can pose
10 operational risks, including rising costs and inability
11 to meet mission requirements. These systems also
12 pose security risks, including the inability to use cur-
13 rent security best practices, such as data encryption
14 and multi-factor authentication, making these sys-
15 tems particularly vulnerable to malicious cyber activ-
16 ity.

17 (2) In 2015, the Government Accountability Of-
18 fice (GAO) designated Improving the Management
19 of IT Acquisitions and Operations to its biannual
20 High Risk List and identified as a particular con-
21 cern the increasing level of information technology
22 spending on Operations and Maintenance making
23 less funding available for development or moderniza-
24 tion. The GAO also found the Government has spent
25 billions on failed and poorly performing IT invest-
26 ments due to a lack of effective oversight.

1 (3) The Federal Government must modernize
2 Federal IT systems to mitigate existing operational
3 and security risks.

4 (4) The efficiencies, cost savings, and greater
5 computing power, offered by modernized solutions,
6 such as cloud computing, have the potential to—

7 (A) eliminate inappropriate duplication and
8 reduce costs;

9 (B) address the critical need for cyber se-
10 curity by design; and

11 (C) move the Federal Government into a
12 broad, digital-services delivery model that will
13 transform the Federal Government’s ability to
14 meet mission requirements and deliver services
15 to the American people.

16 (b) PURPOSES.—The purposes of this Act are the fol-
17 lowing:

18 (1) Assist the Federal Government in modern-
19 ized Federal information technology to mitigate cur-
20 rent operational and security risks.

21 (2) Incentivize cost savings in Federal informa-
22 tion technology through modernization.

23 (3) Accelerate the acquisition and deployment
24 of modernized information technology solutions, such
25 as cloud computing, by addressing impediments in

1 the areas of funding, development, and acquisition
2 practices.

3 **SEC. 3. ESTABLISHMENT OF AGENCY INFORMATION TECH-**
4 **NOLOGY SYSTEMS MODERNIZATION AND**
5 **WORKING CAPITAL FUNDS.**

6 (a) INFORMATION TECHNOLOGY SYSTEM MOD-
7 ERNIZATION AND WORKING CAPITAL FUNDS.—

8 (1) ESTABLISHMENT.—There is established in
9 each covered agency an information technology sys-
10 tem modernization and working capital fund (in this
11 section referred to as the “IT working capital fund”)
12 for necessary expenses for the agency described in
13 paragraph (3).

14 (2) SOURCE OF FUNDS.—Amounts may be de-
15 posited into an IT working capital fund as follows:

16 (A) Reprogramming of funds, including re-
17 programming of any funds available on the date
18 of the enactment of this Act for the operation
19 and maintenance of legacy information tech-
20 nology systems, in compliance with any applica-
21 ble reprogramming law or guidelines of the
22 Committees on Appropriations of the House of
23 Representatives and the Senate.

24 (B) Transfer of funds, including transfer
25 of any funds available on the date of the enact-

1 ment of this Act for the operation and mainte-
2 nance of legacy information technology systems,
3 but only if transfer authority is specifically pro-
4 vided for by law.

5 (C) Amounts made available through dis-
6 cretionary appropriations.

7 (3) USE OF FUNDS.—An IT working capital
8 fund established under paragraph (1) may be used,
9 subject to the availability of appropriations, only for
10 the following:

11 (A) To improve, retire, or replace existing
12 information technology systems to improve effi-
13 ciency and effectiveness.

14 (B) To transition to cloud computing and
15 innovative platforms and technologies.

16 (C) To assist and support covered agency
17 efforts to provide adequate, risk-based, and
18 cost-effective information technology capabilities
19 that address evolving threats to information se-
20 curity.

21 (D) Reimbursement of funds transferred
22 from the Information Technology Modernization
23 Fund established under section 4, with the ap-
24 proval of the agency Chief Information Officer.

1 (4) EXISTING FUNDS.—An IT working capital
2 fund may not be used to supplant funds provided for
3 the operation and maintenance of any system al-
4 ready within an appropriation for the covered agency
5 at the time of establishment of the IT working cap-
6 ital fund.

7 (5) REPROGRAMMING AND TRANSFER OF
8 FUNDS.—The head of each covered agency shall
9 prioritize funds within the IT working capital fund
10 to be used initially for cost savings activities ap-
11 proved by the covered agency Chief Information Of-
12 ficer, in consultation with the Administrator of the
13 Office of Electronic Government. The head of each
14 covered agency may—

15 (A) reprogram any amounts saved as a di-
16 rect result of such activities for deposit into the
17 applicable IT working capital fund, consistent
18 with paragraph (2)(A); and

19 (B) transfer any amounts saved as a direct
20 result of such activities for deposit into the ap-
21 plicable IT working capital fund, consistent
22 with paragraph (2)(B).

23 (6) RETURN OF FUNDS.—Any funds deposited
24 into an IT working capital fund shall be available

1 for obligation for 3 years after the date of such de-
2 posit.

3 (7) AGENCY CIO RESPONSIBILITIES.—In evalu-
4 ating projects to be funded from the IT working
5 capital fund, the covered agency Chief Information
6 Officer shall consider, to the extent applicable, guid-
7 ance established pursuant to section 4(a)(1) to
8 evaluate applications for funding from the Informa-
9 tion Technology Modernization Fund that include
10 factors such as a strong business case, technical de-
11 sign, procurement strategy (including adequate use
12 of incremental software development practices), and
13 program management.

14 (b) REPORTING REQUIREMENT.—

15 (1) IN GENERAL.—Not later than 1 year after
16 the date of the enactment of this Act, and every 6
17 months thereafter, the head of each covered agency
18 shall submit to the Director the following, with re-
19 spect to the IT working capital fund for that covered
20 agency:

21 (A) A list of each information technology
22 investment funded with estimated cost and
23 completion date for each such investment.

24 (B) A summary by fiscal year of the obli-
25 gations, expenditures, and unused balances.

1 (2) PUBLIC AVAILABILITY.—The Director shall
2 make the information required pursuant to para-
3 graph (1) publicly available on a website.

4 (c) COVERED AGENCY DEFINED.—In this section,
5 the term “covered agency” means each agency listed in
6 section 901(b) of title 31, United States Code.

7 **SEC. 4. ESTABLISHMENT OF INFORMATION TECHNOLOGY**
8 **MODERNIZATION FUND AND BOARD.**

9 (a) INFORMATION TECHNOLOGY MODERNIZATION
10 FUND.—

11 (1) ESTABLISHMENT.—There is established in
12 the Treasury an Information Technology Moderniza-
13 tion Fund (in this section referred to as the
14 “Fund”) for technology related activities, to improve
15 information technology, to enhance cybersecurity
16 across the Federal Government, and to be adminis-
17 tered in accordance with guidance established by the
18 Director of the Office of Management of Budget.

19 (2) ADMINISTRATION OF FUND.—The Adminis-
20 trator of General Services, in consultation with the
21 Chief Information Officers Council and with the con-
22 currence of the Director, shall administer the Fund
23 in accordance with this subsection.

24 (3) USE OF FUNDS.—The Administrator of
25 General Services shall, in accordance with the rec-

ommendations of the Information Technology Modernization Board established under subsection (b), use amounts in the Fund for the following purposes:

(A) To transfer such amounts, to remain available until expended, to the head of an agency to improve, retire, or replace existing information technology systems to enhance cybersecurity and improve efficiency and effectiveness.

(B) For the development, operation, and procurement of information technology products, services, and acquisition vehicles for use by agencies to improve Governmentwide efficiency and cybersecurity in accordance with the requirements of the agencies.

(C) To provide services or work performed in support of the activities described under subparagraph (A) or (B).

(4) CREDITS; AVAILABILITY OF FUNDS.—

(A) CREDITS.—In addition to any funds otherwise appropriated, the Fund shall be credited with all reimbursements, advances, or refunds or recoveries relating to information technology or services provided through the Fund.

1 (B) AVAILABILITY OF FUNDS.—Amounts
2 deposited, credited, or otherwise made available
3 to the Fund shall be available, as provided in
4 appropriations Acts, until expended for the pur-
5 poses described in paragraph (3).

6 (5) REIMBURSEMENT.—

7 (A) PAYMENT BY AGENCY.—For a product
8 or service developed under paragraph (3), the
9 head of an agency that uses such product or
10 service shall pay an amount fixed by the Ad-
11 ministrator of General Services in accordance
12 with this subsection.

13 (B) REIMBURSEMENT BY AGENCY.—The
14 head of an agency shall reimburse the Fund for
15 any transfer made under paragraph (3)(A) in
16 accordance with the terms established in the
17 written agreement described in paragraph (6).
18 Notwithstanding any other provision of law, an
19 agency may make a reimbursement required by
20 this subparagraph from any appropriation avail-
21 able for information technology activities. An
22 obligation to make a payment under an agree-
23 ment described in paragraph (6) in a future fis-
24 cal year shall be recorded pursuant to section

1 1501 of title 31, United States Code, in the fis-
2 cal year in which the payment is due.

3 (C) PRICES FIXED BY ADMINISTRATOR OF
4 GENERAL SERVICES.—The Administrator of
5 General Services, in consultation with the Di-
6 rector, shall establish amounts to be paid by an
7 agency and terms of repayment for use of a
8 product or service developed under paragraph
9 (3) at levels sufficient to ensure the solvency of
10 the Fund, including operating expenses. Before
11 making any changes to the established amounts
12 and terms of repayment, the Administrator of
13 General Services shall conduct a review and ob-
14 tain approval from the Director.

15 (D) FAILURE TO MAKE TIMELY REIM-
16 BURSEMENT.—The Administrator of General
17 Services may obtain reimbursement by the
18 issuance of transfer and counterwarrants, or
19 other lawful transfer documents, supported by
20 itemized bills, if payment is not made by an
21 agency—

22 (i) within 90 days after the expiration
23 of a repayment period described in the
24 written agreement described in paragraph
25 (6)(A); or

1 (ii) within 45 days after the expiration
2 of the time period to make a payment
3 under a payment schedule for a product or
4 service developed under paragraph (3).

5 (6) WRITTEN AGREEMENT.—

6 (A) IN GENERAL.—Before the transfer of
7 funds to an agency under paragraph (3)(A), the
8 Administrator of General Services (in consulta-
9 tion with the Director) and the head of the req-
10 uisitioning agency shall enter into a written
11 agreement documenting the purpose for which
12 the funds will be used and the terms of repay-
13 ment. An agreement made pursuant to this sub-
14 paragraph shall be recorded as an obligation as
15 provided in paragraph (5)(B).

16 (B) REQUIREMENT FOR USE OF INCRE-
17 MENTAL DEVELOPMENT PRACTICES.—For any
18 funds transferred to an agency under para-
19 graph (3)(A), in the absence of compelling cir-
20 cumstances documented by the Administrator
21 of General Services at the time of transfer, such
22 funds shall be transferred only on an incre-
23 mental basis, tied to metric-based development
24 milestones achieved by the agency, to be de-

1 scribed in the written agreement required pur-
2 suant to subparagraph (A).

3 (7) REPORTING REQUIREMENT.—Not later than
4 6 months after the date of the enactment of this
5 Act, the Director shall publish and maintain a list
6 of each project funded by the Fund on a public
7 website to be updated not less than quarterly, that
8 includes a description of the project, project status
9 (including any schedule delay and cost overruns),
10 and financial expenditure data related to the project.

11 (b) INFORMATION TECHNOLOGY MODERNIZATION
12 BOARD.—

13 (1) ESTABLISHMENT.—There is established an
14 Information Technology Modernization Board (in
15 this section referred to as the “Board”) which shall
16 evaluate proposals submitted by agencies for funding
17 authorized under the Fund.

18 (2) RESPONSIBILITIES.—The responsibilities of
19 the Board are the following:

20 (A) Provide input to the Director for the
21 development of processes for agencies to submit
22 modernization proposals to the Board and to
23 establish the criteria by which such proposals
24 are evaluated, which shall include addressing
25 the greatest security and operational risks, hav-

1 ing the greatest Governmentwide impact, and
2 having a high probability of success based on
3 factors such as a strong business case, technical
4 design, procurement strategy (including ade-
5 quate use of incremental software development
6 practices), and program management.

7 (B) Make recommendations to the Admin-
8 istrator of General Services to assist agencies in
9 the further development and refinement of se-
10 lect submitted modernization proposals, based
11 on an initial evaluation performed with the as-
12 sistance of the Administrator of General Serv-
13 ices.

14 (C) review and prioritize, with the assist-
15 ance of the Administrator of General Services
16 and the Director, modernization proposals
17 based on criteria established pursuant to sub-
18 paragraph (A).

19 (D) Identify, with the assistance of the Ad-
20 ministrator of General Services, opportunities
21 to improve or replace multiple information tech-
22 nology systems with a smaller number of infor-
23 mation technology systems common to multiple
24 agencies.

1 (E) Recommend the funding of moderniza-
2 tion projects, in accordance with the uses de-
3 scribed in subsection (a)(3), to the Adminis-
4 trator of General Services.

5 (F) Monitor, in consultation with the Ad-
6 ministrator of General Services, progress and
7 performance in executing approved projects
8 and, if necessary, recommend the suspension or
9 termination of funding for projects based on
10 factors such as failure to meet the terms of the
11 written agreement described in subsection
12 (a)(6).

13 (G) Monitor operating costs of the Fund.

14 (3) MEMBERSHIP.—The Board shall consist of
15 8 voting members.

16 (4) CHAIR.—The Chair of the Board shall be
17 the Administrator of the Office of Electronic Gov-
18 ernment.

19 (5) PERMANENT MEMBERS.—The permanent
20 members of the Board shall be the following:

21 (A) The Administrator of the Office of
22 Electronic Government.

23 (B) A senior official from the General
24 Services Administration, who shall be appointed
25 by the Administrator of General Services.

1 (6) ADDITIONAL MEMBERS OF THE BOARD.—

2 (A) APPOINTMENT.—The other members
3 of the Board shall be appointed as follows:

4 (i) One employee of the National In-
5 stitute of Standards and Technology of the
6 Department of Commerce, appointed by
7 the Secretary of Commerce.

8 (ii) One employee of the National Pro-
9 tection and Programs Directorate of the
10 Department of Homeland Security, ap-
11 pointed by the Secretary of Homeland Se-
12 curity.

13 (iii) One employee of the Department
14 of Defense, appointed by the Secretary of
15 Defense.

16 (iv) Three Federal employees pri-
17 marily having technical expertise in infor-
18 mation technology development, financial
19 management, cybersecurity and privacy,
20 and acquisition, appointed by the Director.

21 (B) TERM.—Each member of the Board
22 described in paragraph (A) shall serve a term
23 of 1 year, which shall be renewable up to 3
24 times, at the discretion of the appointing Sec-
25 retary or Director, as applicable.

1 (7) PROHIBITION ON COMPENSATION.—Mem-
2 bers of the Board may not receive additional pay, al-
3 lowances, or benefits by reason of their service on
4 the Board.

5 (8) STAFF.—Upon request of the Chair of the
6 Board, the Director and the Administrator of Gen-
7 eral Services may detail, on a nonreimbursable basis,
8 any of the personnel of the Office of Management
9 and Budget or the General Services Administration
10 (as the case may be) to the Board to assist it in car-
11 rying out its functions under this Act.

12 (c) RESPONSIBILITIES OF THE ADMINISTRATOR OF
13 GENERAL SERVICES.—

14 (1) IN GENERAL.—In addition to the respon-
15 sibilities described in subsection (a), the Adminis-
16 trator of General Services shall support the activities
17 of the Board and provide technical support to, and,
18 with the concurrence of the Director, oversight of,
19 agencies that receive transfers from the Fund.

20 (2) RESPONSIBILITIES.—The responsibilities of
21 the Administrator of General Services are to—

22 (A) provide direct technical support in the
23 form of personnel services or otherwise to agen-
24 cies transferred amounts under subsection
25 (a)(3)(A) and for products, services, and acqui-

1 sition vehicles funded under subsection
2 (a)(3)(B);

3 (B) assist the Board with the evaluation,
4 prioritization, and development of agency mod-
5 ernization proposals;

6 (C) perform regular project oversight and
7 monitoring of approved agency modernization
8 projects, in consultation with the Board and the
9 Director, to increase the likelihood of successful
10 implementation and reduce waste; and

11 (D) provide the Director with information
12 necessary to meet the requirements of sub-
13 section (a)(7).

14 (d) AGENCY DEFINED.—In this section, the term
15 “agency” has the meaning given that term in section 551
16 of title 5, United States Code.

17 **SEC. 5. DEFINITIONS.**

18 In this Act:

19 (1) CLOUD COMPUTING.—The term “cloud
20 computing” has the meaning given that term by the
21 National Institute of Standards and Technology in
22 NIST Special Publication 800–145 and any amend-
23 atory or superseding document thereto.

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Office of Management and Budg-
3 et.

4 (3) INFORMATION TECHNOLOGY.—The term
5 “information technology” has the meaning given
6 that term in section 3502 of title 44, United States
7 Code.

8 (4) LEGACY INFORMATION TECHNOLOGY SYS-
9 TEM.—The term “legacy information technology sys-
10 tem” means an outdated or obsolete system of infor-
11 mation technology.

Passed the House of Representatives September 22,
2016.

Attest:

KAREN L. HAAS,
Clerk.