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H. R. 2227

IN THE SENATE OF THE UNITED STATES

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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 2017” 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 information

1 technology investments due to a lack of effective
2 oversight.

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

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

9 (A) eliminate inappropriate duplication and
10 reduce costs;

11 (B) address the critical need for cybersecu-
12 rity by design; and

13 (C) move the Federal Government into a
14 broad, digital-services delivery model that will
15 transform the ability of the Federal Govern-
16 ment to meet mission requirements and deliver
17 services to the American people.

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

20 (1) Assist the Federal Government in modern-
21 izing Federal information technology to mitigate
22 current operational and security risks.

23 (2) Incentivize cost savings in Federal informa-
24 tion technology through modernization.

1 (3) Accelerate the acquisition and deployment
2 of modernized information technology solutions, such
3 as cloud computing, by addressing impediments in
4 the areas of funding, development, and acquisition
5 practices.

6 **SEC. 3. ESTABLISHMENT OF AGENCY INFORMATION TECH-**
7 **NOLOGY SYSTEMS MODERNIZATION AND**
8 **WORKING CAPITAL FUNDS.**

9 (a) INFORMATION TECHNOLOGY SYSTEM MOD-
10 ERNIZATION AND WORKING CAPITAL FUNDS.—

11 (1) ESTABLISHMENT.—The head of a covered
12 agency may establish within such agency an infor-
13 mation technology system modernization and work-
14 ing capital fund (in this section referred to as the
15 “IT working capital fund”) for necessary expenses
16 described in paragraph (3).

17 (2) SOURCE OF FUNDS.—The following
18 amounts may be deposited into an IT working cap-
19 ital fund:

20 (A) Reprogramming and transfer of funds
21 made available in appropriations Acts subse-
22 quent to the date of the enactment of this Act,
23 including transfer of any funds for the oper-
24 ation and maintenance of legacy information
25 technology systems, in compliance with any ap-

1 plicable reprogramming law or guidelines of the
2 Committees on Appropriations of the House of
3 Representatives and the Senate.

4 (B) Amounts made available to the IT
5 working capital fund through discretionary ap-
6 propriations made available subsequent to the
7 date of the enactment of this Act.

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

12 (A) To improve, retire, or replace existing
13 information technology systems in the covered
14 agency to enhance cybersecurity and to improve
15 efficiency and effectiveness.

16 (B) To transition legacy information tech-
17 nology systems at the covered agency to cloud
18 computing and other innovative platforms and
19 technologies, including those serving more than
20 one covered agency with common requirements.

21 (C) To assist and support covered agency
22 efforts to provide adequate, risk-based, and
23 cost-effective information technology capabilities
24 that address evolving threats to information se-
25 curity.

1 (D) To reimburse funds transferred to the
2 covered agency from the Technology Moderniza-
3 tion Fund established under section 4, with the
4 approval of the Chief Information Officer of the
5 covered agency.

6 (4) EXISTING FUNDS.—An IT working capital
7 fund may not be used to supplant funds provided for
8 the operation and maintenance of any system within
9 an appropriation for the covered agency at the time
10 of establishment of the IT working capital fund.

11 (5) PRIORITIZATION OF FUNDS.—The head of
12 each covered agency shall prioritize funds within the
13 IT working capital fund to be used initially for cost
14 savings activities approved by the Chief Information
15 Officer of the covered agency, in consultation with
16 the Administrator of the Office of Electronic Gov-
17 ernment. The head of each covered agency may re-
18 program and transfer any amounts saved as a direct
19 result of such activities for deposit into the applica-
20 ble IT working capital fund, consistent with para-
21 graph (2)(A).

22 (6) RETURN OF FUNDS.—Any funds deposited
23 into an IT working capital fund shall be available
24 for obligation for 3 years after the last day of the
25 fiscal year in which such funds were deposited.

1 (7) AGENCY CIO RESPONSIBILITIES.—In evalu-
2 ating projects to be funded from the IT working
3 capital fund, the Chief Information Officer of the
4 covered agency shall consider, to the extent applica-
5 ble, guidance issued pursuant to section 4(a)(1) to
6 evaluate applications for funding from the Tech-
7 nology Modernization Fund established under that
8 section that include factors such as a strong busi-
9 ness case, technical design, procurement strategy
10 (including adequate use of incremental software de-
11 velopment practices), and program management.

12 (b) REPORTING REQUIREMENT.—

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

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

22 (B) A summary by fiscal year of obliga-
23 tions, expenditures, and unused balances.

1 (2) PUBLIC AVAILABILITY.—The Director shall
2 make the information submitted under paragraph
3 (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 TECHNOLOGY MODERNIZA-**
8 **TION FUND AND BOARD.**

9 (a) TECHNOLOGY MODERNIZATION FUND.—

10 (1) ESTABLISHMENT.—There is established in
11 the Treasury a Technology Modernization Fund (in
12 this section referred to as the “Fund”) for tech-
13 nology-related activities, to improve information
14 technology, to enhance cybersecurity across the Fed-
15 eral Government, and to be administered in accord-
16 ance with guidance issued by the Director.

17 (2) ADMINISTRATION OF FUND.—The Commis-
18 sioner of the Technology Transformation Service of
19 the General Services Administration, in consultation
20 with the Chief Information Officers Council and
21 with the approval of the Director, shall administer
22 the Fund in accordance with this subsection.

23 (3) USE OF FUNDS.—The Commissioner shall,
24 in accordance with the recommendations of the
25 Technology Modernization Board established under

1 subsection (b), use amounts in the Fund for the fol-
2 lowing purposes:

3 (A) To transfer such amounts, to remain
4 available until expended, to the head of an
5 agency to improve, retire, or replace existing
6 Federal information technology systems to en-
7 hance cybersecurity and improve efficiency and
8 effectiveness.

9 (B) For the development, operation, and
10 procurement of information technology prod-
11 ucts, services, and acquisition vehicles for use
12 by agencies to improve Governmentwide effi-
13 ciency and cybersecurity in accordance with the
14 requirements of such agencies.

15 (C) To provide services or work performed
16 in support of the activities described under sub-
17 paragraph (A) or (B).

18 (4) AUTHORIZATION OF APPROPRIATIONS;
19 CREDITS; AVAILABILITY OF FUNDS.—

20 (A) AUTHORIZATION OF APPROPRIA-
21 TIONS.—There is authorized to be appropriated
22 to the Fund \$250,000,000 for each of fiscal
23 years 2018 and 2019.

24 (B) CREDITS.—In addition to any funds
25 otherwise appropriated, the Fund shall be cred-

1 ited with all reimbursements, advances, or re-
2 funds or recoveries relating to information tech-
3 nology or services provided through the Fund.

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

9 (5) REIMBURSEMENT.—

10 (A) PAYMENT BY AGENCY.—For a product
11 or service developed under paragraph (3)(B),
12 including any services or work performed in
13 support of such development under paragraph
14 (3)(C), the head of an agency that uses such
15 product or service shall pay an amount fixed by
16 the Commissioner in accordance with this para-
17 graph.

18 (B) REIMBURSEMENT BY AGENCY.—The
19 head of an agency shall reimburse the Fund for
20 any transfer made under paragraph (3)(A), in-
21 cluding any services or work performed in sup-
22 port of such transfer under paragraph (3)(C),
23 in accordance with the terms established in a
24 written agreement described in paragraph (6).
25 Notwithstanding any other provision of law, an

1 agency may make a reimbursement required by
2 this subparagraph from any appropriation made
3 available subsequent to the date of the enact-
4 ment of this Act for information technology ac-
5 tivities, consistent with any applicable re-
6 programming law or guidelines of the Commit-
7 tees on Appropriations of the House of Rep-
8 resentatives and the Senate. An obligation to
9 make a payment under a written agreement de-
10 scribed in paragraph (6) in a fiscal year after
11 the date of the enactment of this Act shall be
12 recorded pursuant to section 1501 of title 31,
13 United States Code, in the fiscal year in which
14 the payment is due.

15 (C) PRICES FIXED BY COMMISSIONER.—

16 The Commissioner, in consultation with the Di-
17 rector, shall establish amounts to be paid by an
18 agency and terms of repayment for use of a
19 product or service developed under paragraph
20 (3)(B), including any services or work per-
21 formed in support of such development under
22 paragraph (3)(C), at levels sufficient to ensure
23 the solvency of the Fund, including operating
24 expenses. Before making any changes to the es-
25 tablished amounts and terms of repayment, the

1 Commissioner shall conduct a review and obtain
2 approval from the Director.

3 (D) FAILURE TO MAKE TIMELY REIM-
4 BURSEMENT.—The Commissioner may obtain
5 reimbursement by the issuance of transfer and
6 counterwarrants, or other lawful transfer docu-
7 ments, supported by itemized bills, if payment
8 is not made by an agency—

9 (i) within 90 days after the expiration
10 of a repayment period described in a writ-
11 ten agreement described in paragraph (6);
12 or

13 (ii) within 45 days after the expiration
14 of the time period to make a payment
15 under a payment schedule for a product or
16 service developed under paragraph (3)(B).

17 (6) WRITTEN AGREEMENT.—

18 (A) IN GENERAL.—Before the transfer of
19 funds to an agency under paragraph (3)(A), the
20 Commissioner (in consultation with the Direc-
21 tor) and the head of the requisitioning agency
22 shall enter into a written agreement docu-
23 menting the purpose for which the funds will be
24 used and the terms of repayment, which may
25 not exceed 5 years unless approved by the Di-

1 rector. An agreement made pursuant to this
2 subparagraph shall be recorded as an obligation
3 as provided in paragraph (5)(B).

4 (B) REQUIREMENT FOR USE OF INCRE-
5 MENTAL DEVELOPMENT PRACTICES.—For any
6 funds transferred to an agency under para-
7 graph (3)(A), in the absence of compelling cir-
8 cumstances documented by the Commissioner
9 at the time of transfer, such funds shall be
10 transferred only on an incremental basis, tied to
11 metric-based development milestones achieved
12 by the agency, to be described in a written
13 agreement required under subparagraph (A).

14 (7) REPORTING REQUIREMENT.—Not later than
15 6 months after the date of the enactment of this
16 Act, the Director shall publish and maintain a list
17 of each project funded by the Fund on a public
18 website, to be updated not less than quarterly, that
19 includes a description of the project, project status
20 (including any schedule delay and cost overruns),
21 and financial expenditure data related to the project.

22 (b) TECHNOLOGY MODERNIZATION BOARD.—

23 (1) ESTABLISHMENT.—There is established a
24 Technology Modernization Board (in this section re-
25 ferred to as the “Board”) to evaluate proposals sub-

1 mitted by agencies for funding authorized under the
2 Fund.

3 (2) RESPONSIBILITIES.—The responsibilities of
4 the Board are the following:

5 (A) Provide input to the Director for the
6 development of processes for agencies to submit
7 modernization proposals to the Board and to
8 establish the criteria by which such proposals
9 are evaluated, which shall include addressing
10 the greatest security and operational risks, hav-
11 ing the greatest Governmentwide impact, and
12 having a high probability of success based on
13 factors such as a strong business case, technical
14 design, procurement strategy (including ade-
15 quate use of incremental software development
16 practices), and program management.

17 (B) Make recommendations to the Com-
18 missioner to assist agencies in the further devel-
19 opment and refinement of select submitted
20 modernization proposals, based on an initial
21 evaluation performed with the assistance of the
22 Commissioner.

23 (C) Review and prioritize, with the assist-
24 ance of the Commissioner and the Director,

1 modernization proposals based on criteria estab-
2 lished pursuant to subparagraph (A).

3 (D) Identify, with the assistance of the
4 Commissioner, opportunities to improve or re-
5 place multiple information technology systems
6 with a smaller number of information tech-
7 nology systems common to multiple agencies.

8 (E) Recommend the funding of moderniza-
9 tion projects, in accordance with the uses de-
10 scribed in subsection (a)(3), to the Commis-
11 sioner.

12 (F) Monitor, in consultation with the Com-
13 missioner, progress and performance in exe-
14 cuting approved projects and, if necessary, rec-
15 ommend the suspension or termination of fund-
16 ing for projects based on factors such as failure
17 to meet the terms of a written agreement de-
18 scribed in subsection (a)(6).

19 (G) Monitor operating costs of the Fund.

20 (3) MEMBERSHIP.—The Board shall consist of
21 eight voting members.

22 (4) CHAIR.—The Chair of the Board shall be
23 the Administrator of the Office of Electronic Gov-
24 ernment.

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

3 (A) The Administrator of the Office of
4 Electronic Government.

5 (B) A senior official from the General
6 Services Administration having technical exper-
7 tise in information technology development, ap-
8 pointed by the Administrator of General Serv-
9 ices, with the approval of the Director.

10 (6) ADDITIONAL MEMBERS OF THE BOARD.—

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

13 (i) One employee of the National Pro-
14 tection and Programs Directorate of the
15 Department of Homeland Security, ap-
16 pointed by the Secretary of Homeland Se-
17 curity.

18 (ii) One employee of the Department
19 of Defense, appointed by the Secretary of
20 Defense.

21 (iii) Four Federal employees primarily
22 having technical expertise in information
23 technology development, financial manage-
24 ment, cybersecurity and privacy, and ac-
25 quisition, appointed by the Director.

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

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

10 (8) STAFF.—Upon request of the Chair of the
11 Board, the Director and the Administrator of Gen-
12 eral Services may detail, on a nonreimbursable basis,
13 any of the personnel of the Office of Management
14 and Budget or the General Services Administration
15 (as the case may be) to the Board to assist the
16 Board in carrying out its functions under this Act.

17 (c) RESPONSIBILITIES OF COMMISSIONER.—

18 (1) IN GENERAL.—In addition to the respon-
19 sibilities described in subsection (a), the Commis-
20 sioner shall support the activities of the Board and
21 provide technical support to, and, with the concur-
22 rence of the Director, oversight of, agencies that re-
23 ceive transfers from the Fund.

24 (2) RESPONSIBILITIES.—The responsibilities of
25 the Commissioner are the following:

1 (A) Provide direct technical support in the
2 form of personnel services or otherwise to agen-
3 cies transferred amounts under subsection
4 (a)(3)(A) and for products, services, and acqui-
5 sition vehicles funded under subsection
6 (a)(3)(B).

7 (B) Assist the Board with the evaluation,
8 prioritization, and development of agency mod-
9 ernization proposals.

10 (C) Perform regular project oversight and
11 monitoring of approved agency modernization
12 projects, in consultation with the Board and the
13 Director, to increase the likelihood of successful
14 implementation and reduce waste.

15 (D) Provide the Director with information
16 necessary to meet the requirements of sub-
17 section (a)(7).

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

21 **SEC. 5. DEFINITIONS.**

22 In this Act:

23 (1) CLOUD COMPUTING.—The term “cloud
24 computing” has the meaning given that term by the
25 National Institute of Standards and Technology in

1 NIST Special Publication 800–145 and any amend-
2 atory or superseding document thereto.

3 (2) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner of the Technology
5 Transformation Service of the General Services Ad-
6 ministration.

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

10 (4) INFORMATION TECHNOLOGY.—The term
11 “information technology” has the meaning given
12 that term in section 3502 of title 44, United States
13 Code.

14 (5) LEGACY INFORMATION TECHNOLOGY SYS-
15 TEM.—The term “legacy information technology sys-
16 tem” means an outdated or obsolete system of infor-
17 mation technology.

Passed the House of Representatives May 17, 2017.

Attest:

KAREN L. HAAS,

Clerk.