

115TH CONGRESS  
1ST SESSION

# S. 990

To modernize Government information technology, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 28, 2017

Mr. MORAN (for himself, Mr. UDALL, Mr. DAINES, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Modernizing Govern-  
5       ment Technology Act of 2017” or the “MGT Act”.

6       **SEC. 2. FINDINGS; PURPOSES.**

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

8               (1) The Federal Government spends nearly 75  
9       percent of its annual information technology funding  
10       on operating and maintaining existing legacy infor-

1 information technology systems. These systems can pose  
2 operational risks, including rising costs and inability  
3 to meet mission requirements. These systems also  
4 pose security risks, including the inability to use cur-  
5 rent security best practices, such as data encryption  
6 and multi-factor authentication, making these sys-  
7 tems particularly vulnerable to malicious cyber activ-  
8 ity.

9 (2) In 2015, the Government Accountability Of-  
10 fice designated improving the management of infor-  
11 mation technology acquisitions and operations to its  
12 biannual High Risk List and identified as a par-  
13 ticular concern the increasing level of information  
14 technology spending on operations and maintenance,  
15 making less funding available for development or  
16 modernization. The Government Accountability Of-  
17 fice also found that the Federal Government has  
18 spent billions on failed and poorly performing infor-  
19 mation technology investments due to a lack of ef-  
20 fective oversight.

21 (3) The Federal Government must modernize  
22 Federal information technology systems to mitigate  
23 existing operational and security risks.

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

4           (A) eliminate inappropriate duplication and  
5 reduce costs;

6           (B) address the critical need for cybersecu-  
7 rity by design; and

8           (C) move the Federal Government into a  
9 broad, digital-services delivery model that will  
10 transform the ability of the Federal Govern-  
11 ment to meet mission requirements and deliver  
12 services to the people of the United States.

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

15           (1) Assist the Federal Government in modern-  
16 izing Federal information technology to mitigate  
17 current operational and security risks.

18           (2) Incentivize cost savings in Federal informa-  
19 tion technology through modernization.

20           (3) Accelerate the acquisition and deployment  
21 of modernized information technology solutions, such  
22 as cloud computing, by addressing impediments in  
23 the areas of funding, development, and acquisition  
24 practices.

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

4 (a) INFORMATION TECHNOLOGY SYSTEM MOD-  
5 ERNIZATION AND WORKING CAPITAL FUNDS.—

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

12 (2) SOURCE OF FUNDS.—The following  
13 amounts may be deposited into an IT working cap-  
14 ital fund:

15 (A) Reprogramming and transfer of funds  
16 made available in appropriations Acts subse-  
17 quent to the date of the enactment of this Act,  
18 including transfer of any funds for the oper-  
19 ation and maintenance of legacy information  
20 technology systems, in compliance with any ap-  
21 plicable reprogramming law or guidelines of the  
22 Committees on Appropriations of the House of  
23 Representatives and the Senate.

24 (B) Amounts made available to the IT  
25 working capital fund through discretionary ap-

1           appropriations made available subsequent to the  
2           date of the enactment of this Act.

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

7                   (A) To improve, retire, or replace existing  
8                   information technology systems in the covered  
9                   agency to enhance cybersecurity and to improve  
10                  efficiency and effectiveness.

11                  (B) To transition legacy information tech-  
12                  nology at the covered agency to cloud com-  
13                  puting and other innovative platforms and tech-  
14                  nologies, including those serving more than one  
15                  covered agency with common requirements.

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) To reimburse funds transferred to the  
22                  covered agency from the Technology Moderniza-  
23                  tion Fund established under section 4, with the  
24                  approval of the Chief Information Officer of the  
25                  covered agency.

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 within  
4 an appropriation for the covered agency at the time  
5 of establishment of the IT working capital fund.

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

17           (6) RETURN OF FUNDS.—Any funds deposited  
18 into an IT working capital fund shall be available  
19 for obligation for three years after the last day of  
20 the fiscal year in which such funds were deposited.

21           (7) AGENCY CIO RESPONSIBILITIES.—In evalu-  
22 ating projects to be funded from the IT working  
23 capital fund, the Chief Information Officer of the  
24 covered agency shall consider, to the extent applica-  
25 ble, guidance issued pursuant to section 4(a)(1) to

1 evaluate applications for funding from the Tech-  
2 nology Modernization Fund established under that  
3 section that include factors such as a strong busi-  
4 ness case, technical design, procurement strategy  
5 (including adequate use of incremental software de-  
6 velopment practices), and program management.

7 (b) REPORTING REQUIREMENT.—

8 (1) IN GENERAL.—Not later than one year  
9 after the date of the enactment of this Act, and  
10 every six months thereafter, the head of each cov-  
11 ered agency shall submit to the Director the fol-  
12 lowing, with respect to the IT working capital fund  
13 for the covered agency:

14 (A) A list of each information technology  
15 investment funded with estimated cost and  
16 completion date for each such investment.

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

19 (2) PUBLIC AVAILABILITY.—The Director shall  
20 make the information submitted under paragraph  
21 (1) publicly available on a website.

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

1 **SEC. 4. ESTABLISHMENT OF TECHNOLOGY MODERNIZA-**  
2 **TION FUND AND BOARD.**

3 (a) TECHNOLOGY MODERNIZATION FUND.—

4 (1) ESTABLISHMENT.—There is established in  
5 the Treasury of the United States a Technology  
6 Modernization Fund (in this section referred to as  
7 the “Fund”) for technology-related activities, to im-  
8 prove information technology, to enhance cybersecu-  
9 rity across the Federal Government, and to be ad-  
10 ministered in accordance with guidance issued by the  
11 Director.

12 (2) ADMINISTRATION OF FUND.—The Commis-  
13 sioner of the Technology Transformation Service of  
14 the General Services Administration, in consultation  
15 with the Chief Information Officers Council and  
16 with the approval of the Director, shall administer  
17 the Fund in accordance with this subsection.

18 (3) USE OF FUNDS.—The Commissioner shall,  
19 in accordance with the recommendations of the  
20 Technology Modernization Board established under  
21 subsection (b), use amounts in the Fund for the fol-  
22 lowing purposes:

23 (A) To transfer such amounts, to remain  
24 available until expended, to the head of an  
25 agency to improve, retire, or replace existing  
26 Federal information technology systems to en-



1           hance cybersecurity and improve efficiency and  
2           effectiveness.

3           (B) For the development, operation, and  
4           procurement of information technology prod-  
5           ucts, services, and acquisition vehicles for use  
6           by agencies to improve Governmentwide effi-  
7           ciency and cybersecurity in accordance with the  
8           requirements of such agencies.

9           (C) To provide services or work performed  
10          in support of the activities described under sub-  
11          paragraph (A) or (B).

12          (4) AUTHORIZATION OF APPROPRIATIONS;  
13          CREDITS; AVAILABILITY OF FUNDS.—

14           (A) AUTHORIZATION OF APPROPRIA-  
15           TIONS.—There is authorized to be appropriated  
16           to the Fund \$250,000,000 for each of fiscal  
17           years 2018 and 2019.

18           (B) CREDITS.—In addition to any funds  
19           otherwise appropriated, the Fund shall be cred-  
20           ited with all reimbursements, advances, or re-  
21           funds or recoveries relating to information tech-  
22           nology or services provided through the Fund.

23           (C) AVAILABILITY OF FUNDS.—Amounts  
24           deposited, credited, or otherwise made available  
25           to the Fund shall be available, as provided in

1 appropriations Acts, until expended for the pur-  
2 poses described in paragraph (3).

3 (5) REIMBURSEMENT.—

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

12 (B) REIMBURSEMENT BY AGENCY.—The  
13 head of an agency shall reimburse the Fund for  
14 any transfer made under paragraph (3)(A), in-  
15 cluding any services or work performed in sup-  
16 port of such transfer under paragraph (3)(C),  
17 in accordance with the terms established in a  
18 written agreement described in paragraph (6).  
19 Notwithstanding any other provision of law, an  
20 agency may make a reimbursement required by  
21 this subparagraph from any appropriation made  
22 available subsequent to the date of the enact-  
23 ment of this Act for information technology ac-  
24 tivities, consistent with any applicable re-  
25 programming law or guidelines of the Commit-

1           tees on Appropriations of the House of Rep-  
2           resentatives and the Senate. An obligation to  
3           make a payment under a written agreement de-  
4           scribed in paragraph (6) in a fiscal year after  
5           the date of the enactment of this Act shall be  
6           recorded pursuant to section 1501 of title 31,  
7           United States Code, in the fiscal year in which  
8           the payment is due.

9           (C) PRICES FIXED BY COMMISSIONER.—

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

22          (D) FAILURE TO MAKE TIMELY REIM-  
23          BURSEMENT.—The Commissioner may obtain  
24          reimbursement by the issuance of transfer and  
25          counterwarrants, or other lawful transfer docu-

1 ments, supported by itemized bills, if payment  
2 is not made by an agency—

3 (i) within 90 days after the expiration  
4 of a repayment period described in a writ-  
5 ten agreement described in paragraph (6);  
6 or

7 (ii) within 45 days after the expiration  
8 of the time period to make a payment  
9 under a payment schedule for a product or  
10 service developed under paragraph (3)(B).

11 (6) WRITTEN AGREEMENT.—

12 (A) IN GENERAL.—Before the transfer of  
13 funds to an agency under paragraph (3)(A), the  
14 Commissioner (in consultation with the Direc-  
15 tor) and the head of the requisitioning agency  
16 shall enter into a written agreement docu-  
17 menting the purpose for which the funds will be  
18 used and the terms of repayment, which may  
19 not exceed five years unless approved by the Di-  
20 rector. An agreement made pursuant to this  
21 subparagraph shall be recorded as an obligation  
22 as provided in paragraph (5)(B).

23 (B) REQUIREMENT FOR USE OF INCRE-  
24 MENTAL DEVELOPMENT PRACTICES.—For any  
25 funds transferred to an agency under para-

1 graph (3)(A), in the absence of compelling cir-  
2 cumstances documented by the Commissioner  
3 at the time of transfer, such funds shall be  
4 transferred only on an incremental basis, tied to  
5 metric-based development milestones achieved  
6 by the agency, to be described in a written  
7 agreement required under subparagraph (A).

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

16 (b) TECHNOLOGY MODERNIZATION BOARD.—

17 (1) ESTABLISHMENT.—There is established a  
18 Technology Modernization Board (in this section re-  
19 ferred to as the “Board”) to evaluate proposals sub-  
20 mitted by agencies for funding authorized under the  
21 Fund.

22 (2) RESPONSIBILITIES.—The responsibilities of  
23 the Board are the following:

24 (A) Provide input to the Director for the  
25 development of processes for agencies to submit

1 modernization proposals to the Board and to  
2 establish the criteria by which such proposals  
3 are evaluated, which shall include addressing  
4 the greatest security and operational risks, hav-  
5 ing the greatest Governmentwide impact, and  
6 having a high probability of success based on  
7 factors such as a strong business case, technical  
8 design, procurement strategy (including ade-  
9 quate use of incremental software development  
10 practices), and program management.

11 (B) Make recommendations to the Com-  
12 missioner to assist agencies in the further devel-  
13 opment and refinement of select submitted  
14 modernization proposals, based on an initial  
15 evaluation performed with the assistance of the  
16 Commissioner.

17 (C) Review and prioritize, with the assist-  
18 ance of the Commissioner and the Director,  
19 modernization proposals based on criteria estab-  
20 lished pursuant to subparagraph (A).

21 (D) Identify, with the assistance of the  
22 Commissioner, opportunities to improve or re-  
23 place multiple information technology systems  
24 with a smaller number of information tech-  
25 nology systems common to multiple 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 Commis-  
4           sioner.

5           (F) Monitor, in consultation with the Com-  
6           missioner, progress and performance in exe-  
7           cuting approved projects and, if necessary, rec-  
8           ommend the suspension or termination of fund-  
9           ing for projects based on factors such as failure  
10          to meet the terms of a written agreement de-  
11          scribed in subsection (a)(6).

12          (G) Monitor operating costs of the Fund.

13          (3) MEMBERSHIP.—The Board shall consist of  
14          eight voting members.

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

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

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

22                  (B) A senior official from the General  
23                  Services Administration having technical exper-  
24                  tise in information technology development, ap-

1 pointed by the Administrator of General Serv-  
2 ices, with the approval of the Director.

3 (6) ADDITIONAL MEMBERS OF THE BOARD.—

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

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

11 (ii) One employee of the Department  
12 of Defense, appointed by the Secretary of  
13 Defense.

14 (iii) Four Federal employees primarily  
15 having technical expertise in information  
16 technology development, financial manage-  
17 ment, cybersecurity and privacy, and ac-  
18 quisition, appointed by the Director.

19 (B) TERM.—Each member of the Board  
20 described in subparagraph (A) shall serve a  
21 term of one year, which shall be renewable up  
22 to three times, at the discretion of the appoint-  
23 ing Secretary or Director, as applicable.

24 (7) PROHIBITION ON COMPENSATION.—Mem-  
25 bers of the Board may not receive additional pay, al-



1 lowances, or benefits by reason of their service on  
2 the Board.

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

10 (c) RESPONSIBILITIES OF COMMISSIONER.—

11 (1) IN GENERAL.—In addition to the respon-  
12 sibilities described in subsection (b), the Commis-  
13 sioner shall support the activities of the Board and  
14 provide technical support to, and, with the concur-  
15 rence of the Director, oversight of, agencies that re-  
16 ceive transfers from the Fund.

17 (2) RESPONSIBILITIES.—The responsibilities of  
18 the Commissioner are the following:

19 (A) Provide direct technical support in the  
20 form of personnel services or otherwise to agen-  
21 cies transferred amounts under subsection  
22 (a)(3)(A) and for products, services, and acqui-  
23 sition vehicles funded under subsection  
24 (a)(3)(B).

1           (B) Assist the Board with the evaluation,  
2           prioritization, and development of agency mod-  
3           ernization proposals.

4           (C) Perform regular project oversight and  
5           monitoring of approved agency modernization  
6           projects, in consultation with the Board and the  
7           Director, to increase the likelihood of successful  
8           implementation and reduce waste.

9           (D) Provide the Director with information  
10          necessary to meet the requirements of sub-  
11          section (a)(7).

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

15          **SEC. 5. DEFINITIONS.**

16          In this Act:

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

22               (2) COMMISSIONER.—The term “Commis-  
23               sioner” means the Commissioner of the Technology  
24               Transformation Service of the General Services Ad-  
25               ministration.

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

4           (4) 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           (5) 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.

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