

114TH CONGRESS
2D SESSION

H. R. 6004

[Report No. 114-]

To modernize Government information technology, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2016

Mr. HURD of Texas (for himself, Mr. CONNOLLY, Mr. CHAFFETZ, Mr. CUMMINGS, Ms. KELLY of Illinois, and Mr. TED LIEU of California) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER --, 2016

Reported from the Committee on Oversight and Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on September 13, 2016]

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 2016” 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-*
11 *mation technology systems. These systems can pose*
12 *operational risks, including rising costs and inability*
13 *to meet mission requirements. These systems also pose*
14 *security risks, including the inability to use current*
15 *security best practices, such as data encryption and*
16 *multi-factor authentication, making these systems*
17 *particularly vulnerable to malicious cyber activity.*

18 *(2) In 2015, the Government Accountability Of-*
19 *fice (GAO) designated Improving the Management of*
20 *IT Acquisitions and Operations to its biannual High*
21 *Risk List and identified as a particular concern the*
22 *increasing level of information technology spending*
23 *on Operations and Maintenance making less funding*
24 *available for development or modernization. The GAO*
25 *also found the Government has spent billions on failed*

1 *and poorly performing IT investments due to a lack*
2 *of effective 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*
10 *and reduce costs;*

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

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

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

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

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

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

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

9 (a) *INFORMATION TECHNOLOGY SYSTEM MODERNIZA-*
10 *TION AND WORKING CAPITAL FUNDS.—*

11 (1) *ESTABLISHMENT.—There is established in*
12 *each covered agency an information technology system*
13 *modernization and working capital fund (in this sec-*
14 *tion referred to as the “IT working capital fund”) for*
15 *necessary expenses for the agency described in para-*
16 *graph (3).*

17 (2) *SOURCE OF FUNDS.—Amounts may be depos-*
18 *ited into an IT working capital fund as follows:*

19 (A) *Reprogramming of funds, including re-*
20 *programming of any funds available on the date*
21 *of the enactment of this Act for the operation*
22 *and maintenance of legacy information tech-*
23 *nology systems, in compliance with any applica-*
24 *ble reprogramming law or guidelines of the Com-*

1 *mittees on Appropriations of the House of Rep-*
2 *resentatives and the Senate.*

3 *(B) Transfer of funds, including transfer of*
4 *any funds available on the date of the enactment*
5 *of this Act for the operation and maintenance of*
6 *legacy information technology systems, but only*
7 *if transfer authority is specifically provided for*
8 *by law.*

9 *(C) Amounts made available through discre-*
10 *tionary appropriations.*

11 *(3) USE OF FUNDS.—An IT working capital*
12 *fund established under paragraph (1) may be used*
13 *only for the following:*

14 *(A) To improve, retire, or replace existing*
15 *information technology systems to improve effi-*
16 *ciency and effectiveness.*

17 *(B) To transition to cloud computing and*
18 *innovative platforms and technologies.*

19 *(C) To assist and support covered agency ef-*
20 *forts to provide adequate, risk-based, and cost-ef-*
21 *fective information technology capabilities that*
22 *address evolving threats to information security.*

23 *(D) Reimbursement of funds transferred*
24 *from the Information Technology Modernization*

1 *Fund established under section 4, with the ap-*
2 *proval of the agency Chief Information Officer.*

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

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

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

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

24 (6) *RETURN OF FUNDS.—Any funds deposited*
25 *into an IT working capital fund must be obligated*

1 *not later than 3 years after the date of such deposit.*
2 *Any funds that are unobligated 3 years after such*
3 *date shall be rescinded and reported to the Commit-*
4 *tees on Appropriations of the House of Representa-*
5 *tives and the Senate.*

6 (7) *AGENCY CIO RESPONSIBILITIES.*—*In evalu-*
7 *ating projects to be funded from the IT working cap-*
8 *ital fund, the covered agency Chief Information Offi-*
9 *cer shall consider, to the extent applicable, guidance*
10 *established pursuant to section 4(a)(1) to evaluate ap-*
11 *plications for funding from the Information Tech-*
12 *nology Modernization Fund that include factors such*
13 *as a strong business case, technical design, procure-*
14 *ment strategy (including adequate use of incremental*
15 *software development practices), and program man-*
16 *agement.*

17 (b) *REPORTING REQUIREMENT.*—

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

1 *Chief Information Officers Council and with the con-*
2 *currence of the Director, shall administer the Fund in*
3 *accordance with this subsection.*

4 (3) *USE OF FUNDS.—The Administrator of Gen-*
5 *eral Services shall, in accordance with the rec-*
6 *ommendations of the Information Technology Mod-*
7 *ernization Board established under subsection (b), use*
8 *amounts in the Fund for the following purposes:*

9 (A) *To transfer such amounts, to remain*
10 *available until expended, to the head of an agen-*
11 *cy to improve, retire, or replace existing infor-*
12 *mation technology systems to enhance cybersecu-*
13 *rity and improve efficiency and effectiveness.*

14 (B) *For the development, operation, and*
15 *procurement of information technology products,*
16 *services, and acquisition vehicles for use by agen-*
17 *cies to improve Governmentwide efficiency and*
18 *cybersecurity in accordance with the require-*
19 *ments of the agencies.*

20 (C) *To provide services or work performed*
21 *in support of the activities described under sub-*
22 *paragraph (A) or (B).*

23 (4) *CREDITS; AVAILABILITY OF FUNDS.—*

24 (A) *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 *(B) AVAILABILITY OF FUNDS.—Amounts de-*
5 *posited, credited, or otherwise made available to*
6 *the Fund shall be available until expended and*
7 *without further appropriation for the purposes*
8 *described in paragraph (3).*

9 *(5) REIMBURSEMENT.—*

10 *(A) PAYMENT BY AGENCY.—For a product*
11 *or service developed under paragraph (3), the*
12 *head of an agency that uses such product or serv-*
13 *ice shall pay an amount fixed by the Adminis-*
14 *trator of General Services in accordance with*
15 *this subsection.*

16 *(B) REIMBURSEMENT BY AGENCY.—The*
17 *head of an agency shall reimburse the Fund for*
18 *any transfer made under paragraph (3)(A) in*
19 *accordance with the terms established in the*
20 *written agreement described in paragraph (6).*
21 *Notwithstanding any other provision of law, an*
22 *agency may make a reimbursement required by*
23 *this subparagraph from any appropriation*
24 *available for information technology activities.*
25 *An obligation to make a payment under an*

1 *agreement described in paragraph (6) in a fu-*
2 *ture fiscal year shall be recorded pursuant to sec-*
3 *tion 1501 of title 31, United States Code, in the*
4 *fiscal year in which the payment is due.*

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

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

23 (i) *within 90 days after the expiration*
24 *of a repayment period described in the writ-*

1 *ten agreement described in paragraph*
2 *(6)(A); or*

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

7 (6) *WRITTEN AGREEMENT.—*

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

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

1 *milestones achieved by the agency, to be described*
2 *in the written agreement required pursuant to*
3 *subparagraph (A).*

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

12 (b) *INFORMATION TECHNOLOGY MODERNIZATION*
13 *BOARD.*—

14 (1) *ESTABLISHMENT.*—*There is established an*
15 *Information Technology Modernization Board (in this*
16 *section referred to as the “Board”) which shall evalu-*
17 *ate proposals submitted by agencies for funding au-*
18 *thorized under the Fund.*

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

21 (A) *Provide input to the Director for the de-*
22 *velopment of processes for agencies to submit*
23 *modernization proposals to the Board and to es-*
24 *tablish the criteria by which such proposals are*
25 *evaluated, which shall include addressing the*

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

8 *(B) Make recommendations to the Adminis-*
9 *trator of General Services to assist agencies in*
10 *the further development and refinement of select*
11 *submitted modernization proposals, based on an*
12 *initial evaluation performed with the assistance*
13 *of the Administrator of General Services.*

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

19 *(D) Identify, with the assistance of the Ad-*
20 *ministrator of General Services, opportunities to*
21 *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 Administrator*
4 *of General Services.*

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

12 (G) *Monitor operating costs of the Fund.*

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

15 (4) *CHAIR.—The Chair of the Board shall be the*
16 *Administrator of the Office of Electronic Government.*

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

19 (A) *The Administrator of the Office of Elec-*
20 *tronic Government.*

21 (B) *A senior official from the General Serv-*
22 *ices Administration, who shall be appointed by*
23 *the Administrator of General Services.*

24 (6) *ADDITIONAL MEMBERS OF THE BOARD.—*

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

3 (i) *One employee of the National Insti-*
4 *tute of Standards and Technology of the De-*
5 *partment of Commerce, appointed by the*
6 *Secretary of Commerce.*

7 (ii) *One employee of the National Pro-*
8 *tection and Programs Directorate of the De-*
9 *partment of Homeland Security, appointed*
10 *by the Secretary of Homeland Security.*

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

14 (iv) *Three Federal employees primarily*
15 *having technical expertise in information*
16 *technology development, financial manage-*
17 *ment, cybersecurity and privacy, and acqui-*
18 *sition, appointed by the Director.*

19 (B) *TERM.*—*Each member of the Board de-*
20 *scribed in paragraph (A) shall serve a term of*
21 *one year, which shall be renewable up to three*
22 *times, at the discretion of the appointing Sec-*
23 *retary or Director, as applicable.*

24 (7) *PROHIBITION ON COMPENSATION.*—*Members*
25 *of the Board may not receive additional pay, allow-*

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

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

10 (c) *RESPONSIBILITIES OF THE ADMINISTRATOR OF*
11 *GENERAL SERVICES.*—

12 (1) *IN GENERAL.*—*In addition to the responsibil-*
13 *ities described in subsection (a), the Administrator of*
14 *General Services shall support the activities of the*
15 *Board and provide technical support to, and, with the*
16 *concurrence of the Director, oversight of, agencies that*
17 *receive transfers from the Fund.*

18 (2) *RESPONSIBILITIES.*—*The responsibilities of*
19 *the Administrator of General Services are to—*

20 (A) *provide direct technical support in the*
21 *form of personnel services or otherwise to agen-*
22 *cies transferred amounts under subsection*
23 *(a)(3)(A) and for products, services, and acquisi-*
24 *tion vehicles funded under subsection (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; and

9 (D) provide the Director with information
10 necessary to meet the requirements of subsection
11 (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 com-*
18 *puting” has the meaning given that term by the Na-*
19 *tional Institute of Standards and Technology in*
20 *NIST Special Publication 800–145 and any amend-*
21 *atory or superseding document thereto.*

22 (2) *DIRECTOR.*—*The term “Director” means the*
23 *Director of the Office of Management and Budget.*

1 (3) *INFORMATION TECHNOLOGY.*—*The term “in-*
2 *formation technology” has the meaning given that*
3 *term in section 3502 of title 44, United States Code.*

4 (4) *LEGACY INFORMATION TECHNOLOGY SYS-*
5 *TEM.*—*The term “legacy information technology sys-*
6 *tem” means an outdated or obsolete system of infor-*
7 *mation technology.*