FEDERAL INFORMATION TECHNOLOGY ACQUISITION REFORM ACT

FEBRUARY 25, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 1232]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 1232) to amend titles 40, 41, and 44, United States Code, to eliminate duplication and waste in information technology acquisition and management, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

Information technology (IT) plays a pivotal role in the efficient operation of government. Without modern IT systems, government is incapable of providing basic services, curtailing waste, fraud and abuse, or managing internal operations.

Starting in the 112th Congress, the House Oversight and Government Reform Committee ("Committee") began a detailed examination of the basic framework by which the government acquires and deploys IT assets. Our oversight hearings[1] confirmed that despite spending more than $600 billion over the past decade, federal IT investments, too often, run over budget, behind schedule, or never deliver on the promised solution or functionality.[2] Indeed, industry experts have estimated that as much as 25 percent of the annual $80 billion spent on IT is attributable to mismanaged or duplicative IT investments.[3]

These failures directly impact progress towards improving citizen services and conducting effective oversight. As such, they impact the entire $3.5 trillion of annual federal outlays.[4] For example, without state-of-the-art IT and the oversight capability it brings, the government cannot tackle the $108 billion lost to improper payments in fiscal year 2012 alone.[5] Furthermore, in terms of potential cost savings, some in the industry have estimated that more than one trillion dollars could be saved over the next ten years if the government adopted the "proven" IT best practices currently in use by the private sector.[6]

The existing legal framework for IT acquisition and deployment is now 17 years old,[7] a virtual eternity in terms of the evolution of technology. While government stands by, industry is experiencing tectonic shifts in IT, such as the transition to cloud com-

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[1] *See Transparency and Federal Management IT Systems: Hearing Before the Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Government Reform,* 112 Cong. (2011); *On Frontlines in Acquisition Workforce's Battle Against Taxpayer Waste: Hearing Before the Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Government Reform,* 112 Cong. (2011); *How Much is Too Much? Examining Duplicative IT Investments at DOE and DOD: Hearing Before the Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Government Reform,* 112 Cong. (2012); *Government 2.0: GAO Unveils New Duplicative Program Report: Hearing Before H. Comm. on Oversight and Government Reform,* 112 Cong. (2012); *Wasting Information Technology Dollars: How Can the Federal Government Reform its IT Investment Strategy?: Hearing Before the H. Comm. on Oversight and Government Reform,* 113 Cong. (2013); *Time to Reform Information Technology Acquisition: The Federal IT Acquisition Reform Act: Hearing Before the H. Comm. on Oversight and Government Reform,* 113 Cong. (2013).
See below *"Oversight by the House Oversight and Government Reform Committee"* under the "Background and Need for Legislation" section for further details.
[2] *See* Vivek Kundra, Department of Homeland Security, *25 Point Implementation Plan to Reform Federal Information Technology Management*, at 1 (2010), available at http://www.dhs.gov/sites/default/files/publications/digital-strategy/25-point-implementation-plan-to-reform-federal-it.pdf.
[3] The Technology CEO Council, One Trillion Reasons, at 4 (2010) (estimating that at least 20–30% of IT spending could be eliminated by reducing IT overhead, consolidating data centers, eliminating redundant networks, and standardizing applications), available at http://www.techceocouncil.org/clientuploads/reports/TCC_One_Trillion_Reasons_FINAL.pdf.
[4] *Time to Reform Information Technology Acquisition: The Federal IT Acquisition Reform Act, Hearing Before H. Comm. on Oversight and Government Reform*, 113 Cong. (2013) (Statement of Rep. Darrell Issa, Chairman, H. Comm. on Oversight and Government Reform).
[5] Payment Accuracy, About Improper Payments, http://www.paymentaccuracy.gov/about-improper-payments (last visited May 22, 2013) (explaining that in fiscal year 2012, federal agencies reported government-wide improper payment rate of 4.35%).
[6] The Technology Council, *supra* note 3, at 3.
[7] *See* Clinger-Cohen Act of 1996, Pub. L. No. 104–106, 110 Stat. 679 (1996).

puting; the shared services model of IT delivery; and the need for data center optimization. Although modest revisions have been made to the procedures used to acquire and deploy modern IT, increasingly, the management structure and acquisition procedures currently in place are causing the government to fall further behind.

The Federal Information Technology Acquisition Reform Act (FITARA) addresses this rapidly changing landscape by addressing key underlying issues.

First, it creates a clear line of responsibility, authority, and accountability over IT investment and management decisions within each agency. Perpetuation of collective failure and obscure accountability must stop and be replaced by a culture of transformative leadership and a recognition of success or failure.

Second, it creates an operational framework to drastically enhance government's ability to procure commonly-used IT faster, cheaper, and smarter. The majority of IT needs, such as infrastructure or back office systems and applications, are common throughout the government and could be met by commercially-available solutions. Any meaningful IT transformation must first target such common and expensive problems.

Third, it strengthens the IT acquisition workforce. No matter how many laws we pass, the effectiveness of our federal acquisition system ultimately depends on a vital human component—the acquisition workforce. Each failed IT procurement that a better-trained acquisition professional prevents will save the taxpayers tens of millions of dollars. If IT contract overspending is reduced just one percent, the taxpayers will save more than $800 million each year.

Title I of FITARA increases the responsibility, authority, and accountability of the Chief Information Officers (CIOs) for each of the major civilian federal agencies by providing them with budget and personnel-related authority over IT investments within the entire agency. Currently, CIOs in most agencies lack the necessary authority or even visibility over how the agency's IT budget is allocated and executed. Many large federated agencies, such as Department of Homeland Security (DHS) and Department of Commerce, have numerous CIOs at their component organizations with little or no accountability to the central agency CIO.[8]

As a result, the primary role of agency CIOs has been typically limited to policymaking and infrastructure maintenance. The Committee believes an agency CIO should play a central role in all aspects of IT within the entire agency. CIOs must be able to design and deliver transformational enterprise-wide IT solutions that support the mission and business function while overcoming bureaucratic impediments and parochialism. The Committee also expects, along with increased stature and authority, for each CIO to be accountable for the success or failure of the agency's overall IT management. As an extension of this intra-agency leadership, FITARA

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[8] E-mail from Patty Figliola, Specialist, Internet and Telecom Policy, Cong. Research Serv, to Eric Cho, H. Comm. on Oversight and Government Reform (Oct. 17, 2012, 11:39 EST) (on file with recipient). According to the research conducted by the Congressional Research Service (CRS), there are currently more than 240 CIOs in 24 major departments and agencies that are subject to the Chief Financial Officers Act. The Department of Transportation alone has 35 CIOs.

expands the role of the CIO Council to encompass a more active role in cross-agency shared services and collaboration.

Title II of FITARA is designed to optimize the usage and efficiency of federal data centers. As of the most recent data reported in May 2013, the 24 CFO Act agencies have a combined total of 3,133 data centers.[9] Operating such a large number of centers is a significant cost to the Federal Government; including costs related to hardware, software, real estate, and cooling. According to the Environmental Protection Agency (EPA), the electricity cost alone is about $450 million annually.[10] The Committee recognizes that there is an on-going Administration initiative to consolidate data centers.[11] FITARA requires greater emphasis on performance and savings, rather than merely focusing on the number of data centers closed or consolidated.

FITARA's use of the term "optimization," rather than "consolidation" is to make this important distinction. As required in the bill, there should be appropriate consideration of utilizing commercially owned data centers where appropriate. The government IT managers must evolve from the mindset of IT hardware ownership to outcome-based citizen service delivery.

Title III of FITARA aims to eliminate wasteful duplication in IT assets, processes, and contracts. Unnecessary duplications and unaccounted or underutilized IT assets cost the government money and administrative effort. This not only redirects resources away from other needed investments; it hampers the adoption of new and innovative solutions. The bill requires an inventory of IT assets with particular focus on software licenses. It directs the Office of Management and Budget (OMB) to reshape government web strategy to facilitate the creative use of government data by the public. The Committee recognizes that commercial cloud computing services may offer a critical part of such consideration. The flexibility offered by cloud technology necessitates appropriate re-consideration of how government should consume and pay for needed software and services while keeping pace with technology upgrades.

Title IV of FITARA focuses on acquisition operations. Recognizing that there currently is and will continue to be a shortage of skilled IT acquisition personnel in the foreseeable future,[12] the government must better leverage its current IT acquisition capabilities while strengthening the IT acquisition workforce. Experts from both government and industry have pointed out that particular weakness exists in IT program management.[13]

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[9] U.S. Gov't Accountability Office, GAO–13–627T, Data Center Consolidation: Strengthened Oversight Needed to Achieve Billions of Dollars in Savings (2013), *available at* http://www.gao.gov/assets/660/654604.txt.

[10] *Id.* at 2.

[11] *See* Memorandum from Vivek Kundra, Federal Chief Information Officer on Federal Data Center Consolidation Initiative, Office of Management and Budget (Feb. 26, 2010), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/egov_docs/federal_data_center_consolidation_initiative_02-26-2010.pdf.

[12] *See Time to Reform Information Technology Acquisition: The Federal IT Acquisition Reform Act: Hearing Before the H. Comm. on Oversight and Government Reform*, 113 Cong. (2013) (Testimony of Daniel I. Gordon, Associate Dean for Government Procurement Law Studies, George Washington University Law School); *id.* (Testimony of Stan Soloway, President and CEO, Professional Services Council).

[13] *See id.* (Testimony of Richard A. Spires, CIO, Department of Homeland Security).

Almost all major IT acquisition failures stem from poorly drafted requirements [14] and federal agencies often pursue individualized approaches for common problems, without building upon collective knowledge and experiences. Mandatory centralized acquisition, however, may hamper a specific agency's need to support its mission and may inappropriately dilute its ownership of its own acquisition decisions. Therefore, the bill takes a balanced approach by creating central acquisition resources and capabilities for common IT requirements that give individual agencies the choice to utilize.

The most notable IT waste and duplication exists in the area of infrastructure and common IT systems and business applications.[15] For example, in the fiscal year 2011 budget submissions, agencies reported 622 separate investments or $2.4 billion in human resource management systems, and 580 investments or $2.7 billion in financial management systems.[16] Considering most of these back office systems perform similar functions, there are opportunities to consolidate them into smaller, more manageable numbers within each major agency, and even share services across multiple agencies.[17]

FITARA aims to eliminate unnecessary duplication and streamline IT acquisitions by first targeting numerous, commonly-used IT commodity-like investments such as these. FITARA requires establishment of a Federal Infrastructure and Common Application Collaboration Center (Collaboration Center) to serve as a focal point for the program and to provide technical expertise necessary for coordinated IT acquisition best practices. In developing such common requirements, it is imperative that the Collaboration Center keep its focus on "common"—the so-called 80 percent solution required by all agencies—and not non-standard or non-commercial features desired by each individual agency. This Collaboration Center will be funded by existing interagency acquisition fees, without the need for any additional appropriation or agency expense.

With respect to the formation of specific contracts for commonly-needed IT, the Committee recognizes that individual agency contracting personnel often lack the relevant experience and knowledge of market conditions to get the best value for taxpayer dollars. FITARA, therefore, provides for OMB to designate fee-for-service Assisted Acquisition Centers of Excellence (AACEs) to promote expedient, best value procurement practices. By engaging in repeated acquisitions of the same IT requirement, the contracting personnel in the AACEs will develop a keen acquisition expertise and market awareness that can benefit multiple agencies while promoting demand aggregation where possible and appropriate.

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[14] U.S. Gov't Accountability Office, GAO–12–7, Information Technology: Critical Factors Underlying Successful Major Acquisitions (2011).

[15] *See* Memorandum from Jeffrey D. Zients and Steven VanRockel on Fiscal Year 2013 PortfolioStat Guidance: Strengthening Federal IT Portfolio Management, Office of Management and Budget (Mar. 27, 2013) (on file at http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-09.pdf). The memo defined commodity IT as services such as: "IT infrastructure ([meaning] data centers, networks, desktop computer and mobile devices), enterprise IT systems ([meaning] email, collaboration tools, identity and access management, security and web infrastructure), and business systems ([meaning] finance, human resources, and other administrative functions.)." *Id.* at 1 n. 2.

[16] *Wasting Information Technology Dollars: How Can the Federal Government Reform its IT Investment Strategy: Hearing Before the H. Comm. on Oversight and Government Reform*, 113 Cong. (2013) (Testimony of David A. Powner, Director of Information Technology Management Issues, Gov't Accountability Office).

[17] *Id.*

The Committee expects that AACEs will ultimately be able to expedite the acquisition cycle for common IT requirements to a matter of months rather than years. When used properly, an individual agency should be able to obtain a well-constructed IT requirement "template" from the Collaboration Center, customize it to meet its specific needs, and then avail itself of expert contracting support from an AACE. This would enable the agency to fulfill its procurement needs by leveraging acquisition expertise and resources it does not alone possess.

Between fiscal years 2002 and 2012, acquisition spending by the Federal Government expanded by 95 percent, from $264 billion to nearly $514 billion.[18] While contract spending has risen dramatically, the number of acquisition professionals did not keep pace. Moreover, a significant portion of the current acquisition workforce will be eligible to retire over the next decade. Statistics from the Office of Personnel Management show that there are seven times as many IT workers in government over 50 as under 30—the diametric opposite of the commercial world.[19] While many have pointed out dire statistics and expressed serious concerns over the past decade concerning the acquisition workforce, a question remains as to whether any meaningful government-wide strategy or leadership currently exists.

The complexities and challenges in rebuilding the acquisition workforce under the current budget-constrained environment make an acquisition workforce plan essential. FITARA directs OMB to prepare and implement a five-year strategic plan, to be accompanied by annual implementation reports to Congress and GAO verification and to ensure utmost and consistent attention to this critical subject.

Title V of FITARA makes additional reforms to improve acquisition practices and transparency. The Committee reaffirms that government IT managers must maintain technology neutrality and should fairly consider open source solutions, alongside proprietary ones, when making procurement decisions. There are many instances where the use of open source software and its attendant business model would greatly benefit the government while promoting transparency and engagement with and by the public.

The Department of Defense (DoD) is an enormous user of the government-wide acquisition resources that are at the heart of the FITARA legislation. The Committee believes the bill would therefore significantly enhance DoD's acquisition capabilities.

BACKGROUND AND NEED FOR LEGISLATION

Government's wasteful practices with IT

Federal Government IT procurements have been a perennial source of problems for the Federal Government for many years.[20]

[18] *See* USA Spending, USASpending.gov (Last visited May 23, 2013); *Time to Reform IT Acquisition: the Federal IT Acquisition Reform Act: Hearing Before the H. Comm. on Oversight and Government Reform*, 113 Cong. (2013) (Testimony of Rep. John L. Mica, Member, H. Comm. on Oversight and Government Reform).

[19] *Id.* (Testimony of Stan Soloway, President and CEO, Professional Services Council).

[20] U.S. Gov't Accountability Office, GAO–12–7, IT: Critical Factors Underlying Successful Major Acquisitions 1 (2011), *available at* http://www.gao.gov/new.items/d127.pdf. "As we have previously reported, federal IT projects too frequently incur cost overruns and schedule slippages while contributing little to mission-related outcomes." *Id.* at 1; *see also* Senator William Cohen, Subcomm. on Oversight of Gov't Mgmt., Computer Chaos: Billions Wasted Buying Federal Computer Systems (1994), *available at* https://acc.dau.mil/adl/en-US/22163/file/2121/Cohen

As noted by OMB, "IT has transformed how the private sector operates and has revolutionized the way in which it serves its customer. The Federal Government has largely missed out on these transformations, due in part to its poor management of large [IT] investments."[21] The FY 2014 budget request indicates that the Federal Government plans to invest over $82 billion in IT during fiscal year 2014.[22] The practices by which IT is acquired have been heavily criticized by GAO for their lack of efficiency and size of redundancies and overlap.[23] GAO has repeatedly identified broad waste and unnecessary duplication in the government's IT investments, both within and across the agencies.[24]

A noticeable example of IT waste and duplication is the staggering number of common back office support systems or business applications in the Federal Government. In the fiscal year 2011 budget submissions, agencies reported 777 separate investments or $3.3 billion in supply chain management IT; 622 investments or $2.4 billion in human resource management IT; 580 investments or $2.7 billion in financial management IT; 444 investments or $5 billion in health IT; 372 investments or $1.6 billion in general science and innovation IT; 358 investments or $9.3 billion in defense and national security IT; 301 investments or $800 million in administrative management IT; and the list continues.[25] Considering most of these back office systems perform similar functions, there are opportunities to consolidate them into smaller, more manageable numbers within each major agency and perhaps even share services across multiple agencies.

In addition to the waste and duplication of IT systems throughout the government, the government's priorities in terms of IT spending often perpetuate the use of obsolete and outdated IT systems. Of the approximately $80 billion federal agencies spend in IT each year, about 69 percent or $54 billion is spent on the operations and maintenance of existing systems (so-called "legacy IT systems," commonly referred to as "steady state investment").[26] GAO has determined that several major agencies, namely Department of Treasury, Agriculture, Energy, and State, spend well over 80 percent of their IT budget on operations and maintenance of potentially obsolete legacy systems.[27] Maintaining outdated IT sys-

%20Computer%20Chaos%201994.pdf. (The seminal report describing the broken federal IT acquisition system based on hearings and research of the House Oversight Comm. and Senate Governmental Affairs Comm., Subcomm. on Oversight of Gov't Mgmt.).

[21] Memorandum from Vivek Kundra, *supra* note 2, at 11.

[22] Office of Mgmt. and Budget, Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2014, at 349 (2013), *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/spec.pdf.

[23] U.S. Gov't Accountability Office, GAO–12–241, IT: Department of Defense and Energy Need to Address Potentially Duplicative Investments, at 1 (2012).

[24] *See* U.S. Gov't Accountability Office, GAO–13–297T, Information Technology: OMB and Agencies Need to Fully Implement Major Initiatives to Save Billions of Dollars, at 11 (2013); U.S. Gov't Accountability Office, GAO–13–627T, Data Center Consolidation: Strengthened Oversight Needed to Achieve Billons of Dollars in Savings (2013).

[25] *Wasting Information Technology Dollars: How Can the Federal Government Reform its IT Investment Strategy: Hearing Before the H. Comm. on Oversight and Government Reform*, 113 Cong. (2013) (Testimony of David A. Powner, Director, Information Technology Management Issues, Gov't Accountability Office).

[26] U.S. Gov't Accountability Office, GAO–13–87, Agencies Need to Strengthen Oversight of Billions of Dollars in Operations and Maintenance Investments, at 1 (2012).

[27] *Id.* Given the size and significance of these steady state investments, it is essential that agencies, in accordance with the OMB guidance, perform annual operational analysis to verify performance indicators such as cost, schedule, and performance are being met. If such reviews

tems may be necessary and the risks of a technology transition can be very high. However, agencies are supposed to be undertaking operational analysis to stay ahead of the technology curve, and many are not. This indicates that potentially up to two thirds of the annual $80 billion IT investment is being spent without sufficient transparency and at a sub-optimal efficiency.[28]

Data center optimization

Over the past few decades, the Federal Government's increasing demand for IT has led to a dramatic increase in the number of federal data centers[29] and a corresponding increase in operational costs. According to OMB, the Federal Government had 432 data centers in 1998, more than 1,100 in 2009, and 3,133 by the latest count.[30] According to the Department of Energy, data center spaces can consume 100 to 200 times more electricity than a standard office space.[31] The EPA estimates that the cost of electricity alone to operate federal data centers is $450 million annually.[32] Information collected by OMB also shows relatively low utilization rates of current infrastructure and limited reuse of data centers within or across agencies.[33]

In February 2010, OMB announced the Federal Data Center Consolidation Initiative (FDCCI) with a goal to reduce costs, increase overall IT security posture, and shift IT investments to more efficient computing platforms and technologies. 24 agencies established plans to close 40 percent of their data centers (1,253) by 2015, resulting in an estimated $3 billion in cost savings.[34] As of December 2012, participating agencies reported having closed 420 data centers and are planning to close an additional 548 centers by the end of 2015.[35]

However, after more than three years into the FDCCI, agencies' consolidation and savings goals continue to be built on incomplete inventories and plans. According to GAO, only three of the twenty-four agencies have submitted complete inventories and only one submitted a complete plan.[36] More significantly, OMB has neither measured agencies' progress against its cost savings goal nor pro-

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reveal deficiencies, investments should be reevaluated or terminated to allow for better use of the funds.

[28] *Id.* GAO has found that several major agencies, such as DoD, Treasury, and VA neither had developed a policy nor had performed required operational analyses, resulting in billions of dollars of questionable spending each year. To address this problem, GAO recommended that the OMB require agencies to report on the IT Dashboard the results from the operational analyses of their steady state investment.

[29] Memorandum from Steven VanRoekel on Implementation Guidance for the Federal Data Center Consolidation Initiative, Office of Management and Budget, at 2 (2012) (stating that under the FDCCI a data center is defined "as a closet, room, floor or building for the storage, management, and dissemination of data and information. Such a repository houses computer systems and associated components, such as database, application, and storage systems and data stores. A data center generally includes redundant or backup power supplies, redundant data communications connections, environmental controls (air conditioning, fire suppression, etc.) and special security devices housed in leased (including by cloud providers), owned, collocated, or stand-alone facilities. Under this revised definition, neither square footage nor Uptime Institute tier classifications are required to define a facility as a data center.").

[30] U.S. Gov't. Accountability Office, GAO–13–378, Data Center Consolidation: Strengthening Oversight Needed to Achieve Cost Savings Goal, at 2, 5 (2013). Under the latest OMB definition, the 24 CFO Act agencies have identified 3,133 data centers. *Id.* at 5.

[31] *Id.* at 3.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 5.

[35] *Id.* at 11.

[36] *Id.* at 8. For example, 13 agencies do not provide a full master program schedule and 21 agencies do not fully report their expected cost savings.

vided agencies with a consistent and repeatable method for track-ing cost savings.[37] In light of the challenges and slow progress, GAO has stressed that it is important for OMB to establish a mechanism to ensure that the established responsibilities of designated data center consolidation oversight organizations are fully executed and extend the time frame for achieving cost savings related to data center consolidation beyond the current 2015 horizon. This will allow time to meet the initiative's planned cost savings goal.[38]

Recent attempts to provide greater oversight of IT investments by OMB

In June 2009, OMB deployed an IT Dashboard, a transparency tool designed to provide near real-time information on the cost, schedule and performance of all major federal IT investments.[39] In January 2010, OMB began using this Dashboard as one of several tools to identify troubled investments. Problems with the IT Dashboard quickly appeared.

The Committee was surprised, for example, that not one single major IT investment in the DoD dashboard was identified as being "high" or "moderately high" risk when GAO reviewed them in October 2012.[40] Thus, according to DoD, none of their IT development projects were significantly behind schedule, over cost, or late in delivery. Yet at the same time, multiple occurrences of fundamental program failures were being reported in the press, such as the Air Force's cancellation of the Expeditionary Combat Support System, with a waste of over $1 billion in lost taxpayer funding.[41]

These troubled investments have become the focus of joint OMB-agency TechStat Accountability Sessions (TechStats)—evidence-based reviews intended to improve investment performance through concrete action plans. In December 2010, OMB claimed that these sessions resulted in $3 billion in reduced life-cycle costs and subsequently incorporated the TechStat model into its 25-point plan for reforming federal IT management.[42] According to GAO, some agencies have already experienced collateral benefits and management results from their risk evaluations in the IT Dashboard.[43]

Yet the TechStat process appears to have lost momentum and focus. OMB held approximately fifty-nine TechStat meetings in

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[37] *Id.* (highlights).

[38] *Id.* at 15.

[39] Federal IT Dashboard, http://www.itdashboard.gov/ (last accessed May 23, 2013). The Dashboard website displays data for over 700 major federal IT investments at 27 federal agencies that represent about $40 billion or half of the $80 billion budgeted for IT. The Dashboard visually presents color-coded (Green/Yellow/Red) performance ratings for agencies overall and for individual investments using metrics. It also identifies the name of the responsible agency CIO and his/her picture for added accountability. Unfortunately, the dashboard is often out-of-date and missing key data elements.

[40] U.S. Gov't Accountability Office, GAO–13–98, Information Technology Dashboard: Opportunities Exist to Improve Transparency and Oversight of Investment Risk at Select Agencies, at 15 (2012).

[41] Sean Riley, Air Force's $1 billion IT system has 'negligible' capability, comptroller says, Federal Times, Apr. 19, 2012, *available at* http://www.federaltimes.com/article/2012 0419/DEPARTMENTS01/204190302/Air-Force-s-1-billion-system-has-8216-negligible-capability-comptroller-says.

[42] U.S. Gov't Accountability Office, GAO–13–98, Information Technology Dashboard: Opportunities Exist to Improve Transparency and Oversight of Investment Risk at Select Agencies, at 1–2 (2012).

[43] *Id.* at 28.

2010, five in 2011, and six as of September 2012,[44] indicating considerable slow-down of the pace and increasing reliance on TechStat sessions at the department level. It is the Committee's understanding that TechStat was created, in part, because agencies did not appropriately manage their IT investments, and yet, less than two years later OMB seems to be returning back to relying upon individual agencies. The Committee believes continuing focus from OMB and agencies on how to accurately portray and derive value from the ratings and the associated TechStat processes could maximize the benefits.

Oversight by the House Oversight and Government Reform Committee

FITARA is the outgrowth of oversight by the Committee concerning the means and methods by which the Federal Government acquires critical resources—IT systems essential to its operation. Starting in the 112th Congress, the Committee and its subcommittees, began a detailed inquiry into the organizational structures and processes that continue to impede the implementation of this critical infrastructure.

On July 14, 2011, the Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform examined the issue of the duplicative and wasteful procedures currently in effect for the acquisition of IT by the Federal Government. In a hearing entitled *"Transparency and Federal Management IT Systems,"* the Subcommittee examined how federal agencies used their financial management IT systems, highlighted best practices, and explored ways to improve efficiency.

On November 16, 2011, the Subcommittee held a hearing entitled *"On the Frontlines in the Acquisition Workforce's Battle against Taxpayer Waste."* This hearing examined the critical role of federal government acquisition professionals, who are charged with ensuring that government procurements are competitive and effectively overseen so as to avoid waste, fraud, abuse, and mismanagement. This hearing highlighted the obligations and challenges of the acquisition workforce in the face of the evolving complexities of the current acquisition system.

On February 17, 2012, the Subcommittee focused on duplication and waste in Department of Energy (DOE); DoD, and Department of Homeland Security (DHS). The hearing entitled *"How Much Is Too Much? Examining Duplicative IT Investments at DOE and DOD"* showcased a contemporaneous report from the GAO.[45] The GAO report examined 810 IT investments made by DoD, DOE, and DHS. Based on the description of the IT investment, GAO determined that 31 IT investments of DoD were potentially duplicative while six IT investments at DOE were duplicative.[46] For example, GAO found five similar contract management IT systems at the Air Force, four similar acquisition management systems at the Navy, and four personnel assignment IT systems at the Navy.[47] At DOE,

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[44] *See* David Perera, Fierce Government, IT FOIAs OMB TechStat meeting info for 2011 and 2012, FierceGovernmentIT (Dec. 2, 2012), *available at* http://www.fiercegovernmentit.com/story/ fiercegovernmentit-foias-omb-techstat-meeting-info-2011-and-2012/2012-12-02.

[45] U.S. Gov't Accountability Office, GAO–12–241, IT: Department of Defense and Energy Need to Address Potentially Duplicative Investments (2012).

[46] *Id.* at 2.

[47] *Id.* at 18.

GAO found three overlapping back-end infrastructure investments, as well as three similar electronic records and document management systems.[48] GAO did not identify any potentially duplicative investments at DHS and noted that DHS has consolidated or otherwise eliminated several duplicative investments in recent years.[49]

While these IT duplication numbers may seem relatively small, these assessments were made by outside analysts not intimately familiar with the programs' mission or the specific IT systems. Moreover, these three agencies made more than 3,000 investments; thus, more than two thirds of IT spending of these agencies was not reviewed. The report suggests that the CIOs are not effectively managing these portfolios.[50]

In addition, GAO found a lack of precision in the IT investment classification taxonomy—the vocabulary that is designed to describe business function and sub-function areas, as well as related services that are performed within and between federal agencies. GAO identified 22 investments as incorrectly categorized. GAO stated that until agencies correctly categorize their investments, they cannot be confident that their investments are not duplicative.[51]

Following this subcommittee hearing, a full committee hearing on waste and duplication occurred on February 28, 2012. This hearing was entitled, *"Government 2.0: GAO Unveils New Duplicative Program Report."* The full committee hearing examined duplication and overlapping programs in government, and evaluated ways to save money and increase efficiency in federal programs.

The full Committee continued its oversight of IT acquisition and investment practices in the 113th Congress by holding two additional hearings entitled *"Wasting Information Technology Dollars: How Can the Federal Government Reform its IT Investment Strategy?"* on January 22, 2013, and *"Time to Reform Information Technology Acquisition: The Federal IT Acquisition Reform Act"* on February 27, 2013.

These hearings established the need for significant IT acquisition reform. They reinforced that at a time of fiscal austerity, it has never been more important for the Federal Government to drive efficiencies and cost-savings through its acquisition and deployment of IT. In order to achieve cost savings, government IT must be acquired in such a way as to maximize return on investment, reduce operational risk, and provide responsive services to citizens.

LEGISLATIVE AND POLICY HISTORY

Increased authority of Chief Information Officers over IT—Agency-level CIOs

The Clinger-Cohen Act of 1996 (Pub. L. 104–106) requires the 24 major agencies specified in 31 U.S.C. § 901 to have a Chief Information Officer (CIO).[52] Pursuant to the Act, CIOs are to provide information management and policy advice to their agency heads;

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[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.* at 19.
[52] The Clinger-Cohen Act of 1996 was originally enacted as the Information Technology Management Reform Act of 1996 (Divisions D and E of P.L. 104–106). The law was renamed the Clinger-Cohen Act by Pub. L. 104–208,110 Stat. 3009–393 (1996).

develop, maintain, and facilitate information systems; and evaluate, assess, and report to their respective agency heads on the progress made developing agency information technology systems.

Additionally, Clinger-Cohen requires that the CIO and Chief Financial Officer (CFO; or a comparable official) of each agency develop an accounting, financial, and asset management system which is reliable, consistent and timely. The Clinger-Cohen Act also designated CIO pay at Executive Level IV, or the same rate of pay provided to many agencies' assistant directors, CFOs, or general counsels.[53] Pursuant to the legislation, agency CIOs are required to report directly to agency heads.[54]

Since the statutory establishment of CIO positions within federal agencies in 1996, Congress and the executive branch have debated the proper extent of CIOs' authority and jurisdiction. In private sector organizations with CIOs, this person may often serve as a senior decision maker, providing leadership and direction for information resource development, procurement, and management, with a focus on improving efficiency and the quality of services delivered. In federal agencies, however, the missions, responsibilities, and powers bestowed on CIOs both by law and in practice may be less clear. For example, although the CIO responsibilities delineated in 44 U.S.C. § 3506 suggest that federal CIOs are the primary officials in charge of planning and maintaining IT resources in their respective agencies, the act does not explicitly identify federal CIOs as having any budgetary control or authority over IT resources.

On August 8, 2011, Jacob J. Lew, then-Office of Management and Budget (OMB) Director, released a memorandum stating the Administration's position on the authorities of agency-level CIOs. The memorandum construed the authorities so as to change the role of CIOs from "just policymaking and infrastructure maintenance, to encompass true portfolio management for all IT."[55] The memorandum laid out responsibilities in four primary areas:

- Governance—CIOs are to "have responsibility over the entire IT portfolio for an Agency" and work to "ensure IT portfolio analysis is an integral part of the yearly budget process of an agency." This component of CIO responsibilities was to be measured by a "goal of terminating or turning around one-third of all underperforming IT Investments by June 2012."[56]
- Commodity IT—CIOs are to "focus on eliminating duplication and rationalize . . . IT investments." Among the services to examine are: data centers, networks, desktop computers, mobile devices, e-mail, collaboration tools, web infrastructure, human resources systems, and finance systems. CIOs are directed to "pool their agency's purchasing power across the entire organization to drive down costs and improve service." The CIOs will be required to "show a preference for using shared services . . . instead of standing up separate independent services."[57]

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[53] 5 U.S.C. § 5315 (2012).

[54] Clinger Cohen Act § 5125(c)(3)(D).

[55] Memorandum from Jacob J. Lew, U.S. Office of Management and Budget, Chief Information Officer Authorities, at 1 (Aug. 8, 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-29.pdf.

[56] *Id.*

[57] *Id.* at 2. The Obama Administration's interest in shared services in this context appears to be in contrast with another Obama Administration initiative that explicitly removed a Bush Administration requirement that agencies use shared services for core financial operations. *See*

- Program Management—CIOs are charged with "identifying, re-cruiting, and hiring top IT program management talent."[58] The CIOs are also required to "train and provide annual per-formance reviews" for employees in charge of major programs as well as lower-level CIOs. According to the memorandum, CIOs "will be held accountable for the performance of IT pro-gram managers based on their governance process and the IT Dashboard."[59] The memorandum does not indicate how those accountability standards are to be applied.[60]
- Information Security—CIOs, or other designated agency offi-cials who report to the CIO, are required "to implement an agency-wide information security program and to provide infor-mation security for both the information collected and main-tained by the agency, or on behalf of the agency, and for the information systems that support the operations, assets, and mission of the agency." The Department of Homeland Security is directed to examine security implementation. Continuous monitoring and oversight of security is intended to "allow for the development of immediate remediation plans to address any vulnerabilities."[61]

Pursuant to the memorandum, the requirements outlined in the four areas above would allow OMB to hold agency CIOs "account-able for lowering operational costs, terminating and turning around troubled projects, and delivering meaningful functionality at a fast-er rate while enhancing the security of information systems." In addition, CIOs are expected to "reduce the number of wasteful du-plicative systems, simplify services for the American people, and deliver more effective IT to support their agency's mission." CIOs "are required to play a cross-agency portfolio management role through the Federal CIO Council."[62]

Appointment of agency-level CIOs

Under the current law,[63] nearly all federal agencies CIOs are re-quired to be appointed by the head of that individual agency.[64] Currently the only statutorily mandated exception[65] is the CIO of DHS. The DHS CIO must be appointed by the President with ad-vice and consent of the Senate (PAS).[66] In addition, several agency CIOs are concurrently serving in positions designated as PAS ap-

Memorandum from Peter R. Orszag, Director, U.S. Office of Management and Budget, Imme-diate Review of Financial Systems IT Projects (June 28, 2010), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m-10-26.pdf.

[58] Memorandum from Jacob J. Lew, *supra* note 55, at 2. For additional information regarding pay for the IT workforce, see "Report on Strengthening Program and Project Management Per-formance (Section 312)."

[59] Memorandum from Jacob J. Lew, *supra* note 55, at 2. The IT Dashboard is "a website ena-bling federal agencies, industry, the general public and other stakeholders to view details of fed-eral information technology investments." *See* "IT Dashboard FY2014 Edition," http://www.itdashboard.gov/ (last accessed Jan. 14, 2014).

[60] *See* Memorandum from Jacob J. Lew, *supra* note 55, at 2.

[61] *Id.*

[62] *Id.*

[63] *See* Paperwork Reduction Act of 1995, Pub. L. No. 104–13, 109 Stat. 163 (codified as amend-ed at 44 U.S.C. § 3506 (2012)).

[64] Memorandum from Wendy Ginsberg, Analyst, and Michael Greene, Information Research Specialist, on Designation Authorities for Fed. Dept. and Agency Chief Information Officers, Cong. Research Service, to Eric Cho, H. Comm. on Oversight and Gov't Reform (May 31, 2013) (on file with recipient) (noting of the 24 CIOs covered in 31 U.S.C. § 901(b) only 1 is statutorily not appointed by the agency head).

[65] *See* Homeland Security Act of 2002, Pub. L. No. 107–296, § 103, 116 Stat. 2035 (2002).

[66] Memorandum from Wendy Ginsberg, *supra* note 64, at 2.

pointed.[67] These individuals include the Department of Labor Assistant Secretary for Administration, the Veterans Affairs Assistant Secretary for Information and Technology, the Environmental Protection Agency Assistant Administrator, and the Nuclear Regulatory Commission Deputy Executive Director for Corporate Management.[68]

The Federal CIO

Among its provisions, the E-Government Act of 2002 (P.L. 107–347; 116 Stat. 2902) established the Office of Electronic Government within OMB, headed by an administrator, who is appointed by the President without Senate confirmation. The law, besides a brief reference in the preamble, does not provide the title of Federal Chief Information Officer to the Administrator of the Office of E-Government.[69] The position, however, is assigned a range of information technology management and advisory responsibilities that many would associate with such a title. In announcing Vivek Kundra as his selection to serve in this position, President Barack Obama referred to Mr. Kundra as the Federal Chief Information Officer. According to the press release, the position:

establishes and oversees enterprise architecture to ensure system interoperability and information sharing and ensure information security and privacy across the Federal Government. The CIO will also work closely with the Chief Technology Officer to advance the President's technology agenda.[70]

On August 4, 2011, President Obama announced his intent to appoint Steven L. VanRoekel as Mr. Kundra's replacement as Federal CIO.[71]

Lead coordination role of Chief Information Officers Council

On July 19, 1996, President Bill Clinton issued Executive Order 13011 which, among other actions, established a Federal Chief Information Officer Council (CIO Council) chaired by OMB's Deputy Director for Management.[72] On December 17, 2002, President

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[67] *Id.*

[68] *Id.* (in addition, the memorandum notes that the Office of Personnel Management, in job listing for the CIO position, classified it as a position within the Senior Executive Service, which would make it an agency head appointment).

[69] U.S. Office of Management and Budget, Mark Forman Named Associate Director for Information Technology and E-Government (June 14, 2001), *available at* http://georgewbush-whitehouse.archives.gov/omb/pubpress/2001-13.html. To help lead and carry out President George W. Bush's information technology efforts, OMB announced, on June 14, 2001, the appointment of Mark Forman to a newly created position: the Associate Director for Information Technology and E-Government. As "the leading federal e-government executive," the new Associate Director was to be responsible for the eGovernment fund, to direct the activities of the CIO Council, and to advise on the appointments of agency CIOs. The Associate Director also would "lead the development and implementation of federal information technology policy." *Where's the CIO? The Role, Responsibility and Challenge for Federal Chief Information Officers in IT Investment Oversight and Information Management: Subcomm. on Technology, Information Policy, Intergovernmental Relations and the Census H. Comm. on Gov't Reform,* 108th Cong. (2004) (testimony of Karen Evans, Administrator, Electronic Government and Information Technology). Ms. Evans described the role of a CIO as "a strategic thinker and coordinator, not a technical implementer," and added that a CIO is "a service provider working across the agency to use IT to resolve business problems." *Id.* at 15.

[70] Press Release, White House, President Obama Names Vivek Kundra Chief Information Officer (Mar. 5, 2009), *available at* http://www.whitehouse.gov/the-press-office/president-obama-names-vivek-kundra-chief-information-officer.

[71] Press Release, Office of the Press Sec'y, White House, President Obama Announces More Key Administration Posts (Aug. 4, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/08/04/president-obama-announces-more-key-administration-posts.

[72] Federal Information Technology, 61 Fed. Reg. 37, 657 (July 19, 1996).

George W. Bush signed into law the E-Government Act of 2002.[73] The legislation enacted into law the CIO Council originally established by Executive Order 13011. The CIO Council is composed largely of agency CIOs and carries out both coordination and advisory roles for the agency-level CIOs. According to the law, the council serves as:

the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.[74]

Inventory of information technology assets

On October 24, 2012, Jeffrey Zients, Deputy Director for Management, OMB, wrote on the White House blog about PortfolioStat—a coordinated effort by agencies to "scour their IT budgets to find unnecessary IT spending and develop a plan to root out waste."[75] Mr. Zients wrote that the initiative will save $2.5 billion over three years "through consolidating duplicative systems, buying in bulk, and ending or streamlining off-track proposals."[76] According to the blog post, since May 2012, agencies have "collected and analyzed baseline data on 13 specific types of commodity IT investments" to find the "most significant opportunities for reducing waste."[77] Agencies found "98 opportunities to consolidate or eliminate commodity IT areas."[78]

Finding ways to eliminate waste and duplication using an inventory of existing technology assets is not a new idea. In 2004, Congress included provisions in the Ronald W. Reagan National Defense Authorization Act (NDAA) for Fiscal Year 2005[79] that required DoD to, among other things, identify business systems information in its annual budget submission. A GAO study of DoD's compliance with the NDAA's information systems survey found that "[b]udget submissions included some, but omitted other, key information about business system investments, in part because of the lack of a reliable, comprehensive inventory of all defense busi-

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[73] E-Government Act of 2002, Pub. L. No. 107–347, 116 Stat. 2899 (2002).

[74] *Id.* §3603 [what does this refer to—the E-gov act??]; U.S. Chief Information Officer, About, https://cio.gov/about/ (last accessed Jan. 14, 2014). According to the CIO Council's website, the council "keeps the public informed about how our Government is working to close the technology gap between the private and public sectors" by "showcasing examples of innovation, identifying best practices, and providing a forum for Federal IT leaders." *Id.* According to a September 2012 GAO report, the responsibilities of the CIO Council are: developing recommendations for information and IT management policies, procedures, and standards; sharing management best practices; and working with the Office of Personnel Management to assess and address the needs of the federal government's IT workforce. *See* U.S. Gov't Accountability Office, GAO–12–782, Electronic Government Act: Agencies Have Implemented Most Provisions, But Key Areas of Attention Remain, at 9 (2012), *available at* http://gao.gov/assets/650/648180.pdf. In addition, the act requires the CIOs of each of the 24 agencies to participate in the functions of the council and monitor the implementation of information technology standards for the federal government developed by the National Institute of Standards and Technology and promulgated by the Secretary of Commerce, including common standards for interconnectivity and interoperability, categorization of federal government electronic information, and computer system efficiency and security. *Id.*

[75] Jeffrey Zients, PortfolioStat: Saving Billions on IT Spending, U.S. Office of Management and Budget, (Oct. 24, 2012), *available at* http://www.whitehouse.gov/blog/2012/10/24/portfoliostat-saving-billions-it-spending.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108–375, 332, 118 Stat. 1811 (2004).

ness systems." [80] Moreover, according to the GAO report, DoD "has not included all business system investments in its fiscal year 2013 budget submission, due in part to an unreliable inventory of all defense business systems." [81] GAO determined that the inventory was incomplete by comparing two different DoD databases: one used to generate DoD's budget and the other to develop an IT portfolio repository. DoD told GAO that it sought to integrate the two databases and make each databases' information more robust and reliable, but a shortage of resources and time has inhibited such actions. [82]

United Kingdom model for software licensing and use by the Government

The UK government is substantially revamping its software use policy. It is moving away from issuing individual software licenses provided to each department by commercial off-the-shelf software (COTS) publishers to establishing one software license that is assigned to the Crown and reusable across the public sector. This approach adopts a "pay as you go" model; that is, paying only for consumption or use of services. [83] While difficulties negotiating agreements with software companies have arisen, this "[s]oftware licensing optimization has delivered over £7m (approximately US$11 million) of savings to date through license transfer and renegotiation of terms." [84]

The UK government is in the process of developing the "Government Cloud" (G-Cloud), a collection of virtual data centers linked to the public sector by secure connections provided through a single point. [85] These data centers eventually aim to include all software used across the public sector to eliminate the purchase of multiple versions of the same commercial software that require separate support plans across the public sector. The UK government is anticipating that consolidating software in these datacenters and bringing the G-Cloud into full operation will result in a savings of £3.2 billion per year ($5.4 billion at $1.51 to £1 conversion rate). [86]

Website consolidation and transparency

On June 13, 2011, Mr. Zients, the Deputy Director for Management of OMB, released a memorandum to agency heads that, among other requirements, froze the creation of new federal executive branch domains, required an update of .gov domain guidelines, and required the elimination of outdated or duplicative domain sites. [87] In his memorandum, Mr. Zients wrote that the Federal

[80] U.S. Gov't Accountability Office, GAO–12–685, DoD Business Systems Modernization: Governance Mechanisms for Implementing Management Controls Need to Be Improved, at 15 (2012), *available at* http://www.gao.gov/assets/600/591330.pdf.

[81] *Id.* at 17.

[82] *Id.* at 24–25.

[83] HM Gov't, Gov't ICT Strategy: Smarter, Cheaper, Greener 10 (2009) (U.K.), *available at* http://ctpr.org/wp-content/uploads/2011/03/ict__strategy4.pdf.

[84] Gov't Procurement Service, ICT, http://gps.cabinetoffice.gov.uk/i-am-buyer/categories/ict (last visited April 3, 2013) (U.K.).

[85] HM Gov't, Gov't Cloud Strategy, at 3–4 (2011), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266214/government-cloud-strategy_0.pdf (U.K.).

[86] HM Gov't, *supra* note 83, at 13.

[87] Memorandum from Jeffrey Zients, Office of Management and Budget, on Implementing Executive Order 13571 on Streamlining Service Delivery and Improving Customer Service (June 13, 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-24.pdf (released in response to Executive Order 13571, *Streamlining Service Delivery and Improving Customer Service*).

Government had nearly "2,000 top-level Federal *.gov* domains. . . ."

> [W]ithin these top-level domains, there are thousands of websites, subsites, and microsites, resulting in an esti-mated 24,000 websites of varying purpose, design, naviga-tion, usability, and accessibility. This duplication not only can cause confusion, but also wastes taxpayer dollars.[88]

Federal CIO Steven VanRoekel said he is observing a similar website consolidation initiative in the United Kingdom (UK), which took six years to complete and culminated in the creation of a sin-gle UK government-wide web portal.[89]

In July 2011, Mr. Kundra, then-Federal CIO, announced the cre-ation of a task force to assist in reducing the number of federal .gov domains in the executive branch and to update policies on creating new websites and domains.[90] The task force has not publicly re-leased a report or guidance.

On December 16, 2011, the .gov Reform Task Force released its State of the Federal Web Report.[91] After surveying 34 agencies, the task force found that, in many agencies, decisions to create or eliminate domains and websites were decentralized across agency units. Some agencies had "clearly set web policies, while many agencies [were] still working to develop more formal web guidance and governance policies."[92] The task force also reported that agen-cies acknowledged that consolidating web domains could be bene-ficial, but "that integration may come at a cost."[93] In short, some agencies noted that the costs of migrating information to fewer websites would exceed short-term or even medium-term savings.

The process of reducing domains was further clarified in the Obama Administration's "Digital Government Strategy," released May 23, 2012.[94] According to the directive:

> Under the principle of "no new domains," criteria for ap-proving new second-level domains will be strengthened and new domains will only be granted on an exception basis. For example, an agency may be granted a new sin-gle domain to host consolidated content previously spread across multiple domains, thus streamlining the customer experience and reducing redundant infrastructure. Do-mains will be approved or renewed only if they to [sic]

[88] *Id.* at 3.

[89] Press Release, U.K. Cabinet Office, Clamp Down on Government Websites to Save Millions (June 24, 2012) (U.K.), *available at* http://www.cabinetoffice.gov.uk/news/clampdown-on-govern-ment-websites; Joseph Marks, British Government's Massive Website Reduction Took Years, NextGov, (June 30, 2011), *available at* http://www.nextgov.com/health/2011/06/british-governmentsmassive-website-reduction-took-years/49331/.

Molly Bernhart Walker, United Kingdom Commits to 1 Government Website, *FierceGovernmentIT,* (Oct. 25, 2012), *available at* http://www.fiercegovernmentit.com/story/united-kingdom-commits-1-governmentwebsite/2012-10-25.

[90] Joseph Marks, Kundra Names Task Force to Consolidate Federal Websites, NextGov (July 12, 2011), *available at* http://www.nextgov.com/technology-news/2011/07/kundra-names-task-force-to-consolidate-federal-websites/49388/; .gov Reform Task Force, State of the Federal Web Report (2011), *available at* http://www.usa.gov/webreform/state-of-the-web.pdf.

[91] .gov Reform Task Force, *supra* note 91.

[92] *Id.* at 22.

[93] *Id.*

[94] Exec. Office of the President, *Digital Government: Building a 21st Century Platform to Bet-ter Serve the American People,* (2012) ([hereinafter Digital Government]), *available at* http://www.whitehouse.gov/sites/default/files/omb/egov/digital-government/digital-government.html.

comply with web-related federal standards, guidance, and regulations[.] [95]

In addition to restricting the creation of new federal domains, the "Digital Government Strategy" also listed as one of three primary objectives a goal to "[e]nable the American people and an increasingly mobile workforce to access high-quality digital government information and services anywhere, anytime, on any device." [96]

> Putting the customer first means quality information is accessible, current and accurate at any time whether the customer is in the battlefield, the lab, or the classroom. It means coordinating across agencies to ensure when citizens and employees interact with government information and services, they can find what they need and complete transactions with a level of efficiency that rivals their experiences when engaging with the private-sector.[97]

As of January 11, 2013, the Federal Government reported it had 1,354 executive branch domains.[98]

Transition to the cloud

Cloud computing is a new name for an old concept: the delivery of computing services from a remote location, similar to the way electricity and other utilities are provided to most customers. In some ways, cloud computing is reminiscent of mainframe computing; allowing users to share the resources of a central computer, the way most users acquired computing services before the advent of the personal computer. What is new, however, is that cloud computing is far more powerful and useful than previous generations of remote computing due to the advance in ubiquitous network connectivity.[99]

The Federal Government, through the Federal CIO, is responsible for achieving the potential significant cost, agility, and innovation benefits of cloud computing as quickly as possible. In February 2011, then- Federal CIO Vivek Kundra released the Federal Cloud Computing Strategy (FCCS).[100] This document stated that "the Federal Government's current Information Technology (IT) environment is characterized by low asset utilization, a fragmented demand for resources, duplicative systems, environments which are difficult to manage, and long procurement lead times." [101] To help address these challenges, the strategy is designed to:

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[95] *Id.*

[96] *Id.* § Strategy Objectives.

[97] *Id.* § Strategy Principles: Customer Centric.

[98] *See* Data.gov, https://explore.data.gov/Federal-Government-Finances-and-Employment/Federal-Executive-Agency-Internet-Domains-as-of-11/ku4m-7ynp? (last accessed May 23, 2013). The database generates domain counts and states it contains federal executive agency domains. The database, however, also includes domain counts for Amtrak (a corporation not expressly defined as an executive agency), the Smithsonian Institution (created by congressional charter, and not expressly defined by statute as an executive agency), and the U.S. Capitol Police (a legislative branch entity). Without those three domains included in the count, the executive branch reported 1,351 executive branch domains as of January 11, 2013. Federal .gov domain counts can be generated at data.gov.

[99] Eric A. Fischer and Patricia Moloney Figliola, Cong. Research Serv., R42887, Overview and Issues for Implementation of the Federal Cloud Computing Initiative: Implications for Federal Information Technology Reform Management, at 1 (2013).

[100] Vivek Kundra, Office of the U.S. Chief Information Officer, *U.S. Federal Cloud Computing Strategy* (2011), *available at* https://cio.gov/wpcontent/uploads/downloads/2012/09/Federal-Cloud-Computing-Strategy.pdf.

[101] *Id.* at 1.

- "Articulate the benefits, considerations, and trade-offs of cloud computing;
- Provide a decision framework and case examples to support agencies in migrating towards cloud computing;
- Highlight cloud computing implementation resources; and
- Identify Federal Government activities and roles and responsibilities for catalyzing cloud adoption." [102]

According to the FCCS, "[c]loud computing has the potential to play a major part in addressing . . . inefficiencies and improving government service delivery. The cloud computing model can significantly help agencies grappling with the need to provide highly reliable, innovative services quickly despite resource constraints." [103] For the Federal Government, "cloud computing holds tremendous potential to deliver public value by increasing operational efficiency and responding faster to constituent needs." [104]

About half of all federal agencies have adopted cloud computing in some way—21 percent are already moving forward with cloud adoption and 29 percent are in the early stages.[105] Adoption, however, is not occurring more rapidly for a number of reasons. The Government Accountability Office and InformationWeek Government conducted assessments in July and October 2012, respectively, of the status of Federal Government cloud computing adoption.[106] Both identified a number of considerations, mostly challenges, to moving services to the cloud.

Both assessments found that security is the top concern of those responsible for implementing cloud computing at the agency level. The Federal Risk and Authorization Management Program (FedRAMP), which began in June 2012, is intended to increase confidence in the cloud by standardizing the security assessment of vendor facilities and services. According to the results of an InformationWeek Government survey of federal government IT professionals, only about 1 in 10 have begun using FedRAMP, so it is difficult to say what, if any, impact the program has had thus far.[107]

Other challenges faced by those responsible for cloud adoption at the agency level include:

- ensuring compatibility (e.g., data portability and interoperability) with legacy systems and processes;
- increasing the level of expertise and experience;
- stabilizing the standards process; and
- obtaining additional guidance/governance to avoid cloud services "sprawl."

In the face of these challenges, however, there are two strong drivers of cloud adoption: "lowering the cost of ongoing IT operations [and] reducing capital investment in servers and data center

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[102] *Id.* at 2.

[103] *Id.* at 1.

[104] *Id.*

[105] Stephen Delahunty, 2013 Federal Government Cloud Computing Survey, InformationWeek Reports, at 8 (2012), *available at* http://reports.informationweek.com/abstract/104/9047/Government/research-federal-cloudcomputingsurvey.html?cid=pub__analyt_iwk__20121008.

[106] U.S. Gov't Accountability Office, GAO–12–756, Information Technology Reform: Progress Made but Future Cloud Computing Efforts Should be Better Planned (2012), *available at* http://www.gao.gov/assets/600/592249.pdf; InformationWeek, *supra* note 105.

[107] InformationWeek, *supra* note 105.

equipment." [108] It appears that in spite of existing challenges budget pressures may play a significant role in driving cloud adoption.

Strengthening program and project management performance

As part of his 25-Point Plan, Mr. Kundra, then-federal CIO, directed the Department of the Treasury and the Department of Agriculture to pilot the creation of new "federal career paths" in IT program management.[109] These career paths, presumably if effective, would then be expanded across the Federal Government. According to media reports, OMB and the Office of Personnel Management (OPM), which creates and manages career paths, or "job series", held a January 2011 meeting with about 30 IT industry executives and former CIOs, to determine the expertise and skills that would be needed to create a "new GS-series," or career path.[110] Those who attended the meeting reportedly said the consensus was that IT program managers would need "technical skills and experience." [111] Creating a new job series allows OPM to work with agencies to craft job postings that target potential employees with specific, IT-project management skills—as opposed to general project management skills.

Personnel awards for acquisition of information systems and information technology

Federal law establishes many authorities that govern employee awards. In this context, the term award refers to an agency payment that is used to reward an individual employee or a group of employees for the quality of past performance.[112] In general, Congress established these statutory authorities to give agencies tools to help them manage their workforces, thereby, better accomplishing agency missions and policy goals that cut across agency boundaries.[113] Award authorities that reside in Title 5 of the *U.S. Code,* in particular, have wide coverage across federal agencies and workforces. Congress granted extensive flexibility and discretion to agencies under these provisions to customize award practices to fit agency missions, environments, and resource levels.

Requiring business case analysis to address duplicative contracts

A legislative provision involving business case analysis was enacted during the 110th Congress.[114] Section 865 of P.L. 110–417

[108] *Id.* at 15.

[109] Kundra, *supra* note 2, at 13.

[110] Jason Miller, OMB, OPM Turn to Former CIOs for Help, Federal News Radio (Jan. 28, 2011), *available at* http://www.federalnewsradio.com/697/2252313/OMB-OPM-turn-to-former-CIOs-for-help.

[111] *Id.*

[112] 5 U.S.C. §§ 4501–4523 (2012). *See also* Clinton T. Brass, Cong. Research Serv., R40031, Federal Employee Awards and Incentives: Title 5 Authorities and Potential Issues For Congress (2008); Maeve P. Carey, Cong. Research Serv., R41801, The Senior Executive Service: Background and Options for Reform (2012). Award authorities differ in their coverage and requirements among three general types of employees: federal employees generally; career Senior Executive Service employees; and political appointees. Payment of awards may be subject to statutory limitations on aggregate compensation for an individual employee. By contrast, the term *incentive* refers to a payment that is designed to provide a monetary inducement for an individual (or group) to accept a new position or to remain employed in a current position.

[113] 5 U.S.C. §§ 4501–4523; Brass, *supra* note 112; Carey, *supra* note 112. Some of these statutory award authorities are contained within Title 5 of the *U.S. Code* and cover most agencies in the executive branch along with some agencies in the legislative branch. Other authorities in Title 5 and elsewhere in the *U.S. Code* may be unique in their coverage to a single agency, occupation type, or workforce.

[114] Ralph C. Nash, Jr. et al., The Government Contracts Reference Book 75 (Wash., DC: CCH, 2007) (defining *business case* as an "analysis of the factors affecting and affected by a capital

addressed interagency contracts, agency-specific contracts, and agency-specific blanket purchase agreements (BPAs).[115] Section 865 required, among other things, that the Federal Acquisition Regulation (FAR) be revised "to require any multi-agency contract entered into by any executive agency after the effective date of such regulations to be supported by a business case analysis, including an analysis of all direct and indirect costs" related to awarding and administering the contract. Section 865 also required OMB to provide guidelines to federal agencies regarding the management of interagency contracts. The resulting revision to the FAR may be found at FAR 17.502–1(c),[116] and OMB issued its guidance, through the Office of Federal Procurement Policy (OFPP), on September 29, 2011.[117]

Assisted Acquisition Centers of Excellence

In response to a statutory requirement, OFPP, in partnership with the Federal Acquisition Institute, the Defense Acquisition University, federal agencies, and private sector stakeholders, established the Acquisition Center of Excellence (ACE) for Services.[118] The center is to "assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors."[119] The Acquisition Center of Excellence for Services website, https://acc.dau.mil/ace, includes links to regulations, policy and guidance, successful practices, a training center, e-tools, news sources, the Automated Requirements Roadmap Training (ARRT) Tool, and information regarding the acquisition of specific types of services (e.g., research and development services, construction services, and medical services).

IT acquisition workforce

In 2010, the Administration proposed the design and development of specialized IT acquisition cadres as part of its 25-point plan for reforming IT management.[120] The following year, and as noted in the 25-point plan, OFPP issued guidance that addressed how agencies could establish cadres of acquisition professionals and strengthen their capabilities, but it did not require agencies to es-

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investment or other acquisition decision. Such factors could include cost/benefit, cash flow, and cost and schedule risk.").

[115] Memorandum from Daniel I. Gordon, Administrator, Office of Federal Procurement Policy, Development, Review and Approval of Business Cases for Certain Interagency and Agency-Specific Acquisitions, at 1 (Sept. 29, 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf. For the purpose of the OFPP memorandum, an agency-specific contract "is an indefinite-delivery, indefinite quantity contract intended for the sole use of the establishing agency." *Id.* at 1, n. 1. Agency-specific contracts may be agency-wide (sometimes referred to as 'enterprise-wide') or limited to one or more specific component organizations within the agency." *See also* Nash, Jr. et al., *supra* note 114. The same description probably applies to agency-specific BPAs. A blanket purchase agreement is a "simplified method of filling the government's anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources of supply," including GSA's schedules.

[116] Acquisition Central, FAR, https://www.acquisition.gov/far/current/pdf/FAR.pdf (site contains the complete FAR).

[117] Memorandum from Daniel I. Gordon, *supra* note 115.

[118] Services Acquisition Reform Act (SARA), Pub. L. No. 108–136 § 1431(b), 117 Stat. 1392 (2003).

[119] 41 U.S.C. § 1129 (2012).

[120] Kundra, *supra* note 2 (the plan can be found at http://cio.gov/wp-content/uploads/downloads/2012/09/25-Point-Implementation-Plan-to-Reform-Federal-IT.pdf)

tablish cadres.[121] Specifically, OFPP's guidance advised agencies on how they could

design and organize a cadre of contracting professionals, Program Managers (PMs), and Contracting Officer's Representatives (CORs) to ensure these functions work closely throughout the process to achieve program goals, and strengthen the skills and capabilities of this specialized acquisition cadre to improve outcomes.[122]

OFPP did, however, require agencies to update their acquisition human capital plans, which was to include an analysis of their "current IT acquisition staffing challenges," an assessment regarding whether "developing or expanding the use of cadres would improve IT program results," and an outline for a "plan to pilot or expand cadres for an especially high-risk IT area if the agency determine[d] this effort would improve performance."[123] This supplemental information was due to OMB by August 31, 2011.

Federal IT Acquisition Management Improvement Fund

Several years ago, an acquisition fund was established to support the training of the DoD acquisition workforce.[124] Section 852 of National Defense Authorization Act for FY2008 required the Secretary of Defense to establish the Defense Acquisition Workforce Development Fund. Credits to the fund are provided, at least in part, by "an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance."[125] No parallel provision was made for the civilian acquisition workforce.

Section 1412 of the Services Acquisition Reform Act (SARA; Title XIV of P.L. 108–136), requires the Administrator of General Services to establish the Acquisition Workforce Training Fund (AWTF). The Administrator manages the fund through the Federal Acquisition Institute (FAI) and consults with the head of OFPP in managing the fund.[126] Credits to the fund are provided in the following manner:

> Five percent of the fees collected by executive agencies (other than the Department of Defense) under the following contracts shall be credited to the fund: (A) Government-wide task and delivery order contracts entered into under sections 4103 and 4105 of this title [41 USCS §§ 4103 and 4105]. (B) Government-wide contracts for the acquisition of information technology as defined in section 11101 of title 40 and multi-agency acquisition contracts for

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[121] Memorandum from Daniel I. Gordon, Administrator, Office of Fed Procurement Policy, Guidance for Specialized Information Technology Acquisition Cadres 1 (July 13, 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/guidance-for-specialized-acquisition-cadres.pdf.

[122] *Id.*

[123] *Id.* at 2.

[124] *See* National Defense Authorization Act for FY2008, Pub. L. No. 110–181 § 852, 122 Stat. 3 (2008) (required the Secretary of Defense to establish the Defense Acquisition Workforce Development Fund (DAWDF)); 10 U.S.C. § 1705(d)(2)(A) (2012). Credits to the fund are provided, at least in part, by "an amount equal to the applicable percentage for a fiscal year of all amounts expended by the Department of Defense in such fiscal year for contract services from amounts available for contract services for operation and maintenance." 10 U.S.C. § 1705(d)(2)(A).

[125] National Defense Authorization Act for FY2008 § 852; 10 U.S.C. § 1705(d)(2)(A).

[126] National Defense Authorization Act for FY2004, Pub. L. No. 108–136 § 1412(b), 117 Stat. 1392 (2003).

that technology authorized by section 11314 of title 40. (C) [M]ultiple-award schedule contracts entered into by the Administrator of General Services.[127]

Strategic sourcing

Strategic sourcing, as defined by OMB, is "the collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring commodities and services more effectively and efficiently."[128] According to the GAO,

> [a] strategic sourcing effort begins with an opportunity assessment—an analysis of spending and the identification of products and services for which strategic sourcing should be implemented. Spend analysis provides knowledge about how much is being spent for which products and services, who the buyers are, who the suppliers are, and where the opportunities are for leveraged buying and other tactics to save money and improve performance. Data on spending are analyzed on a continual basis to support decisions on strategic sourcing and procurement management in areas such as cost cutting, streamlining operations, and reducing the number of suppliers. Based on this analysis, organizations evaluate and prioritize commodities to create a list of top products or services to target for strategic sourcing. This list typically includes the products or services on which most of the organization's spending is focused. In addition to spending, criteria such as potential savings and relative ease of implementation are considered.[129]

OMB issued a memorandum dated May 20, 2005, that made agency Chief Acquisition Officers (CAOs), Chief Financial Officers (CFOs), and Chief Information Officers (CIOs) responsible for developing and implementing their agencies' strategic sourcing efforts and directed CAOs to head their respective agencies' teams.[130] Later that same year, the General Services Administration (GSA), in partnership with the Office of Federal Procurement Policy, launched the Federal Strategic Sourcing Initiative (FSSI).[131] FSSI has established or plans to offer strategic sourcing programs for office supplies, print management, domestic delivery services, wireless telecommunications expense management services, and software (which is known as SmartBUY).[132]

In December 2012, OMB issued strategic sourcing guidance. The memorandum directs each of the 24 Chief Financial Officer (CFO)

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[127] 41 U.S.C. § 1703(i)(3).

[128] Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, Implementing Strategic Sourcing 1 (May 20, 2005), *available at* http://www.whitehouse.gov/sites/default/files/omb/procurement/comp_src/implementing_strategic_sourcing.pdf.

[129] U.S. Gov't Accountability Office, GAO–12–919, Strategic Sourcing: Improved and Expanded Use Could Save Billions in Annual Procurement Costs, at 5 (2012), *available at* http://www.gao.gov/assets/650/648644.pdf.

[130] Memorandum from Clay Johnson III, *supra* note 128.

[131] U.S. General Services Administration, Fact Sheet, Federal Strategic Sourcing Initiative, Office Supplies, Blanket Purchase Agreements, *available at* http://www.gsa.gov/graphics/fas/FSSIOfficeSupplyBPAsFactSheetOct2011.pdf.

[132] Federal Strategic Sourcing Initiative, U.S. General Services Administration, www.gsa.gov/portal/content/112561.

Act agencies to designate a Strategic Sourcing Accountable Official; establishes the Strategic Sourcing Leadership Council (SSLC), which will be chaired by the OFPP Administrator and include representatives from several selected agencies;[133] requires the SSLC to provide "recommendations for management strategies for specific goods and services" to OMB by March 2013 and the SSLC members to promote strategic sourcing within their respective agencies; requires GSA, among other things, to implement a minimum of five strategic sourcing solutions in each fiscal year (FY2013 and FY2014); and states that, "[t]o the maximum extent practicable, all strategic sourcing opportunities shall seek to increase participation by small businesses."[134] Notably, the SSLC's recommendations to OMB for management strategies is to include "several IT commodities identified through the PortfolioStat process."[135]

Open source software

Open source software refers to a computer program whose source code[136] is made available to the general public to be improved or modified as the user wishes. Changes to such a computer program may be available freely through websites and user groups dedicated to that particular program. Some examples of open source software include the Linux operating system[137] and Apache web server software.[138] In contrast, *closed source,* or proprietary, programs have source code that is not made publicly available and can be altered only by the software manufacturer. In the case of closed source software, updates to a program are usually distributed in the form of a patch[139] or as a new version of the program that the user can install but not alter. Some examples of closed source software include Microsoft Word and Adobe Flash Player. The majority of software products most commonly used, such as operating systems, word processing programs, and databases, are closed source programs.

Open source software often is developed and supported by a loosely organized community of volunteer developers and users of the product. Sometimes, however, companies, universities, or other organizations with an interest in the product will have their paid staff contribute toward the development and support of open source products. Collaborating via the Internet, interested individuals share new contributions, develop fixes, and hold discussions re-

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[133] *See* Memorandum from Jeffrey D. Zients, Deputy Director for Management, U.S. Office of Management and Budget, Improving Acquisition Through Strategic Sourcing, at 2 (Dec. 5, 2012), *available at* http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-02-0.pdf.

[134] *Id.* at 2–5.

[135] *Id.* at 3. "PortfolioStat [is] a new toll that agencies use to assess the current maturity of their IT portfolio management process, make decisions on eliminating duplications, augment current CIO-led capital planning and investment control processes, and move to shared solutions in order to maximize the return on IT investments across the portfolio."

[136] Source code is the set of programming instructions written by the software developer that allows a program to execute its functions. Source code is written at the keyboard and appears as a set of commands in the form of words, symbols, and numbers. After a programmer has finished writing the source code, it is compiled into a machine language that is recognized only by computers and is represented entirely as numbers. Proprietary software includes only the machine language code, which allows the computer to function but cannot be altered by the user. Open source software includes the source code (and sometimes the machine language code) so that the user can make changes to how the software program functions.

[137] Linux, http://www.linux.org (additional information on Linux).

[138] *Id.*

[139] A software patch is a small piece of software that integrates itself into the larger program and is created to fix a specific problem, such as a particular security weakness or some other error or defect in the product.

garding the development of the software. The software itself is developed as a collection of modules, or subcomponents, that are connected together to form the whole program or application. This modular approach allows for multiple development efforts to occur in parallel, and for changes and additions to be tested and implemented incrementally.

Although the origins of open source software date back to the development of ARPANET[140] in the late 1960s, the debate over federal government use of open source software has at times intersected with several other issues, including, but not limited to, information security, protecting intellectual property rights, costs, and product quality. A lack of familiarity with open source software, and the rapidly evolving nature of application development overall, has prompted concerns about whether information on these platforms is secure or whether Federal Government purchase of open source software is permissible by law or regulation.[141]

On July 1, 2004, however, Karen S. Evans, then-OMB's Administrator for IT and E-Gov, released a memorandum to senior procurement executives and chief information officers in the executive branch, saying that open source software should receive the same consideration as proprietary software in the acquisition process. The memorandum further clarified that "Open Source Software's source code is widely available so it may be used, copied, modified, and redistributed."[142] It further stated:

> It is licensed with certain common restrictions, which generally differ from proprietary software. Frequently, the licenses require users who distribute Open Source Software, whether in its original form or as modified, to make the source code widely available. Subsequent licenses usually include the terms of the original license, thereby requiring wide availability. These differences in licensing may affect the use, the security, and the total cost of ownership of the software and must be considered when an agency is planning a software acquisition.[143]

The House Armed Services Committee, in its Report[144] accompanying the Defense Authorization Act for Fiscal Year 2009 stated the following:

Open source software systems

> The committee is concerned by the rising costs and decreasing security associated with software development for information technology (IT) systems. These rising costs are linked to the increasing complexity of software, which has also resulted in increasing numbers of system vulnerabilities that might be exploited by malicious hackers and po-

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[140] The Advanced Research Projects Agency Network (ARPANET). The network was initially funded by the Advanced Research Projects Agency (ARPA, later DARPA) within the U.S. Department of Defense for use by its projects at universities and research laboratories in the U.S.

[141] *See, e.g.*, Brian Robinson, Kundra Advocates Open Source, FCW (June 15, 2009), *available at* http://fcw.com/articles/2009/06/08/feature-open-source.aspx; Alex Howard, *Government IT's Quiet Open Source Evolution*, O'Reilly Radar (Sept. 1, 2011), *available at* http://radar.oreilly.com/2011/09/open-source-government-it-goscon.html.

[142] Memorandum from Karen S. Evans, Administrator, Office of E-Government and Information Technology, U.S. Office of Mmgt. and Budget, Software Acquisition (July 1, 2004), *available at* http://www.whitehouse.gov/omb/memoranda__fy04__m04-16.

[143] *Id.*

[144] H.R. Rep. No. 110–652, at 275 (2008).

tential adversaries. While the Administration has put forth a plan to increase cybersecurity within the larger enterprise of federal IT systems, a focus and assessment of fundamental software engineering practices is not apparent.

Open source software (OSS) is a set of practices on how to write software, based on the open availability and right to use software code. This process provides greater rigor in the software development process by making it available to a diverse community of programmers for review, testing, and improvement. The Linux operation system and Internet Protocol internet addressing system are examples of high quality products developed within the business sector using the OSS standard.

The committee encourages the Department to rely more broadly on OSS and establish it as a standard for intra-Department software development. The committee acknowledges the availability of proprietary software and encourages its development and acquisition as necessary and appropriate. The committee believes, however, the widespread implementation of an OSS standard will not only lead to more secure software, but will also foster broader competition by minimizing traditional constraints imposed by an over-reliance on proprietary software systems.

In January 2011, then-Federal CIO Vivek Kundra released a memorandum to CIOs and senior procurement executives reminding them to remain technology neutral while they select and acquire "information technology that best fits the needs of the Federal Government." [145] The January 2011 memorandum continued:

This long-standing policy helps ensure that federal investments in IT are merit-based, improve the performance of our government and create value for the American people . . . Accordingly, as program, IT, acquisition, and other officials work together to develop requirements and plan acquisitions, they should follow technology neutral principles and practices. This means selecting suitable IT on a case-by- case basis to meet the particular operational needs of the agency by considering factors such as performance, cost, security, interoperability, ability to share or re-use, and availability of quality support. [146]

The Obama Administration's "Digital Government Strategy," released May 23, 2012, indicated that the Federal Government had received considerable feedback encouraging it to "use open source technology to enable more sharing of data and make content more accessible." [147]

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[145] Memorandum from Vivek Kundra, Federal Chief Information Officer, Office of Management and Budget, Technology Neutrality (Jan. 7, 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/egov__docs/memotociostechnologyneutrality.pdf.

[146] *Id.*

[147] Digital Government, *supra* note 94. *See also* National Dialogue for Improving Federal Websites, http://web-reform-dialogue.ideascale.com/ (providing more information on the feedback dialogue).

SECTION-BY-SECTION

Section 1. Short title

The short title of the bill is the "Federal Information Technology Acquisition Reform Act."

Section 2. Table of contents

Provides the table of contents.

Section 3. Definitions

Provides the definitions for the purpose of this bill.

TITLE I—MANAGEMENT OF INFORMATION TECHNOLOGY WITHIN FEDERAL GOVERNMENT

Section 101. Increased authority of agency Chief Information Officers over information technology

Increases the accountability and authority of the agency Chief Information Officers (CIO) over each agency's information technology (IT) investment practices. Subsection (a) makes CIOs of the 16 major civilian agencies (i) presidential appointees or designees; (ii) maintain a direct reporting link with the head of the agency. Listed below are the 16 agencies:

> *The Department of Agriculture, the Department of Commerce, the Department of Education, the Department of Energy, the Department of Health and Human Services, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of the Interior, the Department of Justice, the Department of Labor, the Department of State, the Department of Transportation, the Department of the Treasury, the Department of Veterans Affairs, the Environmental Protection Agency, the National Aeronautics and Space Administration.*

FITARA intends such appointee or designee to be a fully-dedicated CIO without any concurrent non-IT duties. The Committee also expects there be a deputy CIO who is a full-time career executive with the same requisite qualifications to provide needed continuity.

Subsection (b) provides additional budget and personnel-related authority to 23 major civilian agencies. Listed below are the additional seven agencies that are covered by this subsection:

> *The Agency for International Development, the General Services Administration, the National Science Foundation, the Nuclear Regulatory Commission, the Office of Personnel Management, the Small Business Administration, the Social Security Administration.*

Subsection (c) eliminates redundant CIO positions within each agency covered by the Clinger-Cohen Act by requiring there be only one CIO for the entire agency. For the purpose of this subsection, DoD and its three military departments are each treated as a single "agency" (see definitions in 44 U.S.C. § 3502(1)).

The Department of Defense was generally excluded from subsections (a) and (b) due to the differing procedures currently in place in Title 10 for DoD and its three military departments regarding the appointment, budget, and investment review process

utilized by CIOs. However, as the biggest user of interagency acquisitions, both in direct and assisted acquisition settings, the Committee expects DoD to be a major participant and beneficiary of FITARA.

Section 102. Lead coordination role of Chief Information Officers Council

Expands the role of the CIO Council to encompass a more active role in portfolio-based oversight and establishment of cross-agency IT standards and practices. The word "acquisition" in the current statutory language is removed to clarify the potential conflict of authority between CIOs and CAOs. Requires additional reporting obligations to allow further transparency into the activities and roles of the CIO Council.

Section 103. Reports by Government Accountability Office

Requires GAO review of CIO Council effectiveness.

TITLE II—DATA CENTER OPTIMIZATION

Section 201. Purpose

The purpose of this title is to optimize Federal data center usage and efficiency.

Section 202. Definitions

Provides the definitions for the purpose of this title.

Section 203. Federal Data Center Optimization Initiative

Requires the Federal CIO to develop and implement the Federal Data Center Optimization Initiative to optimize the usage and efficiency of federal data centers.

Section 204. Performance requirements related to data center consolidation

Requires greater emphasis and clarity on performance with respect to the server utilization and energy efficiency related to federal data centers.

Section 205. Cost savings related to data center optimization

Requires tracking and reporting of cost savings realized from Data Center Optimization. Authorizes the savings to be used to offset implementation costs of the initiative, or be invested in IT enhancement that improve capabilities and services. Requires GAO to examine and verify the accuracy of the methods to calculate savings.

Section 206. Reporting requirements to Congress and the Federal Chief Information Officer

Requires each agency to annually report to the Federal CIO on the implementation of the Federal Data Center Optimization Initiative. The Federal CIO, in turn, is required to assess agency progress and report to Congress.

TITLE III—ELIMINATION OF DUPLICATION AND WASTE IN INFORMATION TECHNOLOGY ACQUISITION

Section 301. Inventory of information technology assets

Requires the Director of Office of Management and Budget (OMB) to develop and then implement a plan for conducting a Governmentwide inventory of IT assets with particular focus on software licenses.

Elimination of wasteful IT management practices must begin from an adequate awareness of the current IT assets. The Committee recognizes past attempts for comprehensive inventory of IT assets have had limited success. The Committee is also aware that there are various innovative tools and evolving technology to aid software and hardware asset management. For example, DHS-led continuous diagnostics and mitigation (also known as continuous monitoring) program or cloud-based solutions may offer alternate ways to discover and manage IT assets or even transform the way software rights are purchased and deployed. As such, this section is not intended to require any particular IT inventory methodology or perpetuate existing software asset management practices.

Section 302. Website consolidation and transparency

Requires the Director of OMB to eliminate or consolidate duplicative or overlapping public Federal Government websites. Requires the Director to issue guidance to ensure that the data on such websites are open and accessible to the public.

Section 303. Transition to the cloud

Expresses the intent of Congress that transitioning to cloud computing offers significant potential benefits for federal IT projects. Requires the CIO Council to provide guidelines for the establishment of government-wide standards for security assessments pertaining to cloud offerings. Grants broader budget flexibility to the CIOs in the 24 Chief Financial Officer Act (CFO Act) agencies to establish cloud service Working Capital Funds.

The Committee continued to believe that a standardized approach to cloud security certification offered by the FedRAMP can save the government and the industry money, time, and staff by eliminating redundant individual agency security assessments. The Committee urges OMB and GSA to make timely progress while maintaining the integrity of this important program.

Section 304. Elimination of unnecessary duplication of contracts by requiring business case analysis

Eliminates unnecessary duplication of IT contracts across the federal enterprise by requiring that the agencies obtain the Office of Federal Procurement Policy (OFPP) approval of business case analysis when creating a new government-wide contract vehicle.

This provision, as drafted, does not address single agency contracts such as DHS Enterprise Acquisition Gateway for Leading Edge Solutions (EAGLE) or Navy's SeaPort-e (also referred to as "enterprise-wide" contracts). The term "government-wide contract vehicle" is defined to treat DoD or DHS as a single "executive agency" (as defined in 5 U.S.C. § 105). The Administrator of the Office

of Federal Procurement Policy (OFPP) is allowed to exercise administrative discretion to add other contracts as necessary.

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TITLE IV—STRENGTHENING AND STREAMLINING INFORMATION TECHNOLOGY ACQUISITION MANAGEMENT PRACTICES
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Subtitle A—Strengthening and streamlining IT program management practices

Section 401. Establishment of Federal Infrastructure and Common Application Collaboration Center

Establishes the Federal Infrastructure and Common Application Collaboration Center (Collaboration Center) to promote coordinated program management practices for the acquisition of IT infrastructure and business applications commonly used by various federal agencies. It is funded without appropriations utilizing the existing fees already collected for certain interagency contracts.

Section 402. Designation of assisted acquisition centers of excellence

Requires designation of specialized Assisted Acquisition Centers of Excellence (AACE) to promote government-wide leverage of IT procurement special expertise that exists within government. AACEs are provided with enhanced budget flexibilities to enable long term IT acquisition planning.

FITARA's intent is to develop and share pockets of IT procurement special expertise that currently exists within government. AACEs are provided with enhanced budget flexibilities unavailable to other contracting options. This flexibility is akin to the existing case law found in GAO Principles of Federal Appropriations Law (Red Book), B–302760 (May 17, 2004). The Committee is aware that some agencies, such as DoD, have existing policies strictly prohibiting any use of the appropriated funds beyond their original duration even in a legitimate assisted acquisition context. FITARA is intended to overcome such restrictions. FITARA establishes a statutory exception to the constraints of the so-called bona fide needs rule to provide funding flexibility to an agency utilizing AACEs.

Subtitle B—Strengthening IT acquisition workforce

Section 411. Expansion of training and use of information technology acquisition cadres

Requires OMB to prepare and implement a 5-year strategic plan to enhance IT acquisition workforce capabilities. Requires annual progress report and GAO verification to ensure effective implementation.

Section 412. Plan on strengthening program and project management performance

Requires the Director of OMB, in consultation with the Director of the Office of Personnel Management (OPM), to provide a plan for improving management of IT programs and projects by creating a specialized career path for IT program managers.

Section 413. Personnel awards for excellence in the acquisition of information systems and information technology

Requires the Director of the OPM to develop policies to recognize excellent performance in the acquisition of IT, including monetary incentives.

TITLE V—ADDITIONAL REFORMS

Section 501. Maximizing the benefit of the Federal Strategic Sourcing Initiative

Requires the Federal Acquisition Regulation (FAR) to be amended to ensure proper consideration of the Federal Strategic Sourcing Initiative (FSSI) by contracting personnel.

Section 502. Promoting transparency of blanket purchase agreements

Requires the Administrator of General Services Administration to publish a list of all blanket purchase agreements (BPAs) entered into by federal agencies under its Federal Supply Schedules contract and the associated prices with those BPAs.

The Committee considers that the final negotiated price offered by an awardee is public information and should be available to other government buyers. This provision does not promote the creation of duplicative BPAs. In contrary, by availing the list of existing BPAs, agency buyers will be able to utilize them rather than creating a new one.

Section 503. Additional source selection technique in solicitations

Provides an additional, non-mandatory source selection technique called "fixed price technical competition" to enhance best value acquisition practices.

The Committee recognizes and shares the concern that the use of Lowest Price Technically Acceptable (LPTA) evaluation techniques in IT acquisition is often contrary to the best interest of the government and that the use of LPTA is on the rise in recent years.

Currently under the Federal Acquisition Regulation (FAR), there are two main types of source selection evaluation techniques for competitive, negotiated procurements: "trade-offs" and LPTA. While both are designed to obtain best value, the relative importance of cost/price varies depending on the technique.

Under "trade-offs," the difference in cost/price is weighed against the additional benefits in non-price factors such as quality, experience, or technical specifications. This allows the government to accept options other than the lowest-priced proposal. Effectively judging the relative merits of the competing proposals involves a complicated analysis on the part of the government acquisition workforce to appropriately and fairly evaluate and quantify the differences in price and technical factors.

Under the "lowest price technically acceptable" technique, an award will be selected on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-price factors. This is a simpler evaluation process reserved generally for requirements that are based on well-established tech-

nology where varied qualification levels above industry standards will not result in significant performance risks.

There is another source selection technique often used by the government and private sector characterized as "fixed price technical competition" or "bid to price." Under this technique, the solicitation, based on independent cost estimates or a request for information (RFI), would set a pre-determined award price and invite offerors to compete on non-price factors only (e.g., quality, past performance, and technical factors). Because the price is pre-set, the evaluation of proposals is much simpler and strictly based on technical evaluations. This technique is appropriate when the buyer has a good understanding of the requirements and the technologies involved and can therefore rely on the validity of its independent cost estimate, as further refined by the RFI.

While this type of evaluation technique is not prohibited by the FAR and has been used successfully by some agencies, the FAR lacks clear guidance on when a "fixed price technical competition" approach would be appropriate. This source-selection technique, if used properly, could help both the government and industry acquisition workforce by lowering bid and proposal costs and simplifying the evaluation process, thereby alleviating acquisition workforce challenges.

Additionally, this new "fixed price technical competition" technique would:

- Force government buyers to fully develop requirement documents necessary to determine realistic and complete total cost estimates.
- Promote transparency and competition by maximizing government-industry exchange of ideas prior to formal solicitation.
- Encourage clear and fair criteria for technical evaluation by eliminating the danger of inconsistent valuation of minor quality or technical variations vis-á-vis price. Often, in a trade-off evaluation, inexperienced contracting officers have a hard time eliminating "low-ball" offers by under-qualified offerors. Emphasis must be given to ensure selection of the best-qualified offeror that can get the job done at a fair and reasonable price.
- Significantly reduce the gamesmanship involved in the bid and proposal process. Often, companies will offer multiple proposals at various price ranges in response to one solicitation because they do not know whether the government is looking for an "economical" solution or a "luxury" solution.
- Help reduce program cost overruns by maximizing firm-fixed price arrangements.
- Be one of several optional source-selection techniques that may be used when appropriate.

Section 504. Enhanced transparency in information technology investments

Increases the transparency of IT investments by requiring 80 percent of the governmentwide IT spending, and 60 percent of each of the 24 CFO Act agency IT spending be covered by the IT Dashboard. Requires OMB to ensure that the information posted is current, accurate, and reflects the risks associated with each covered IT investment.

The Committee appreciates the transparency IT Dashboard brings and urges OMB to fully utilize its potential. The Committee also notes that OMB in recent years has considerably slowed down the pace of its TechStat reviews of agency IT programs. The Committee urges the OMB to continue to hold a sufficient number of OMB-led TechStat sessions to maintain sufficient independent oversight in assessing and improving the performance of agency IT investments.

Section 505. Enhanced communication between Government and industry

Requires strengthening of the government-industry exchange of information to enhance acquisition planning.

Section 506. Clarification of current law with respect to open source software

Clarifies that open source software should be viewed on a level playing field with other forms of software acquisitions.

EXPLANATION OF AMENDMENTS

No amendments were offered.

COMMITTEE CONSIDERATION

On March 20, 2013, the Committee met in open session and ordered reported favorably the bill, H.R. 1232, by voice vote, a quorum being present.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill increases the accountability and authority of the agency CIOs over each agency's IT investment practices. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1232 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section

21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

H.R. 1232 requires the Director of the Office of Management and Budget to develop policies, guidelines, and plans on various information technology acquisition management-related matters. The bill also requires the Administrator for Federal Procurement Policy to make necessary amendments to the Federal Acquisition Regulation to implement the bill. Further, H.R. 1232 requires the heads of certain agencies to establish internal guidelines to provide the Chief Information Officers additional authorities related to budget and personnel.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1232 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1232. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1232 from the Director of Congressional Budget Office:

NOVEMBER 12, 2013.

Hon. DARRELL ISSA,
Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1232, the Federal Information Technology Acquisition Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1232—Federal Information Technology Acquisition Reform Act

Summary: H.R. 1232 would amend the laws governing the procurement and management of information technology (IT) throughout the federal government. Specifically, the legislation would increase the authority of Chief Information Officers (CIOs) and the CIO Council, establish a collaboration center to coordinate the acquisition of IT products, and require a number of additional reports and analysis by government agencies.

CBO estimates that implementing H.R. 1232 would cost $145 million over the 2014–2018 period, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

H.R. 1232 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 1232 is shown in the following table. The costs of this legislation fall within all budget functions that include funding to purchase information technology.

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Federal IT Acquisition Management Improvement Fund:						
Estimated Authorization Level	8	18	18	18	18	80
Estimated Outlays	8	18	18	18	18	80
Administrative Provisions:						
Estimated Authorization Level	12	10	10	10	10	52
Estimated Outlays	10	10	10	10	10	50
Regulations and Reports:						
Estimated Authorization Level	5	3	3	3	3	17
Estimated Outlays	3	3	3	3	3	15
Total Proposed Changes:						
Estimated Authorization Level	25	31	31	31	31	149
Estimated Outlays	21	31	31	31	31	145

Basis of estimate: For this estimate, CBO assumes that H.R. 1232 will be enacted early in fiscal year 2014.

Federal IT Acquisition Management Improvement Fund

The bill would establish and authorize funding for the Federal Infrastructure and Common Application Collaboration Center. The Center would advise agencies on IT procurement. Under the bill, 5 percent of the amounts currently set aside from funds appropriated to procure goods and services through governmentwide and multiple award contracts would be deposited in the proposed Federal IT Acquisition Management Improvement Fund. Amounts in the fund would be spent by the collaboration center to improve IT purchasing as well as recruitment and training of IT personnel.

The federal government spends about $50 billion annually under current law to procure goods and services through interagency contracts. Such contracts lower prices by leveraging the government's buying power. The General Services Administration (GSA) recovers the costs of administering that contracting program (about $360 million annually), by charging federal agencies that participate in such contracts a fee of less than 1 percent. Under H.R. 1232, 5 percent of that annual fee (about $18 million annually) would be deposited in the Federal IT Acquisition Management Improvement Fund and spent on improvements to federal IT infrastructure. Based on information from GSA regarding the current contracts and the experience of similar programs, such as the Acquisition Workforce Training Fund, CBO expects that GSA would continue to spend the same amount on general administrative expenses under H.R. 1232 as under current law. Therefore, H.R. 1232 would result in an increase in overall spending of about $18 million annually.

Administrative provisions

H.R. 1232 would authorize agency CIOs to hire additional staff, expand the role and responsibilities of the Chief Information Officers Council, and expand the analysis needed to justify governmentwide IT procurements. Based on information from GSA and the Government Accountability Office (GAO), CBO estimates that implementing those provisions would cost $50 million over the 2014–2018 period.

Regulations and reports

The legislation would require agencies to prepare additional regulations for purchasing IT equipment. Under the bill, GAO, the Office of Federal Procurement Policy, and GSA would be required to prepare reports to the Congress concerning the inventory of the federal government's information technology, the use of open-source technology by the government, and the need for federal data centers. Based on the cost of similar activities, CBO estimates that implementing those provisions would cost $15 million over the 2014–2018 period.

Other provisions

The federal government spends about $80 billion annually on information technology investments. Many provisions of H.R. 1232 would codify and expand upon the government's current practices concerning IT procurement. OMB memoranda, Presidential directives, initiatives, and plans have directed federal agencies to consolidate data centers, make improvements to websites, increase the

use of cloud computing, and generally improve IT procurement practices. Consequently, CBO expects that enacting those provisions of H.R. 1232 would not significantly increase administrative costs to federal agencies.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 40, UNITED STATES CODE

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SUBTITLE III—INFORMATION TECHNOLOGY MANAGEMENT

* * * * * * *

CHAPTER 113—RESPONSIBILITY FOR ACQUISITIONS OF INFORMATION TECHNOLOGY

* * * * * * *

SUBCHAPTER I—DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

* * * * * * *

§ 11302. Capital planning and investment control

(a) * * *

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(c) USE OF BUDGET PROCESS.—
(1) * * *
(2) PUBLIC AVAILABILITY.—
(A) IN GENERAL.—The Director shall make available to the public the cost, schedule, and performance data for at least 80 percent (by dollar value) of all information technology investments Governmentwide, and 60 percent (by dollar value) of all information technology investments in each Federal agency listed in section 901(b) of title 31. The Director shall ensure that the information is current, accurate, and reflects the risks associated with each covered information technology investment.
(B) WAIVER OR LIMITATION AUTHORITY.—The applicability of subparagraph (A) may be waived or the extent of the information may be limited—

(i) by the Director, with respect to IT investments Governmentwide; and

(ii) by the Chief Information Officer of a Federal agency, with respect to IT investments in that agency; if the Director or the Chief Information Officer, as the case may be, determines that such a waiver or limitation is in the national security interests of the United States.

〔(2)〕 *(3)* REPORT TO CONGRESS.—At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies for information systems and how the benefits relate to the accomplishment of the goals of the executive agencies. *The report shall include an analysis of agency trends reflected in the performance risk information required in paragraph (2).*

(d) INFORMATION TECHNOLOGY STANDARDS.—The Director shall oversee the development and implementation of standards and guidelines pertaining to federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 11331 of this title and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3). *The standards and guidelines shall include those necessary to enable effective adoption of open source software.*

* * * * * * *

SUBCHAPTER II—EXECUTIVE AGENCIES

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§ 11315. Agency Chief Information Officer

(a) PRESIDENTIAL APPOINTMENT OR DESIGNATION OF CERTAIN CHIEF INFORMATION OFFICERS.—

(1) IN GENERAL.—There shall be within each agency listed in section 901(b)(1) of title 31, other than the Department of Defense, an agency Chief Information Officer. Each agency Chief Information Officer shall—

(A)(i) be appointed by the President; or

(ii) be designated by the President, in consultation with the head of the agency; and

(B) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in, information technology management practices in large governmental or business entities.

(2) RESPONSIBILITIES.—An agency Chief Information Officer appointed or designated under this section shall report directly to the head of the agency and carry out responsibilities as set forth in this section and in section 3506(a) of title 44 for Chief Information Officers designated under paragraph (2) of such section.

* * * * * * *

(d) ADDITIONAL AUTHORITIES FOR CERTAIN CIOs.—

(1) BUDGET-RELATED AUTHORITY.—

(A) PLANNING.—The head of each agency listed in section 901(b)(1) or 901(b)(2) of title 31, other than the Department of Defense, shall ensure that the Chief Information Officer of the agency has the authority to participate and provide input in the budget planning process related to information technology or programs that include significant information technology components.

(B) ALLOCATION.—Amounts appropriated for any agency listed in section 901(b)(1) or 901(b)(2) of title 31, other than the Department of Defense, for any fiscal year that are available for information technology shall be allocated within the agency, consistent with the provisions of appropriations Acts and budget guidelines and recommendations from the Director of the Office of Management and Budget, in such manner as may be specified by, or approved by, the Chief Information Officer of the agency.

(2) PERSONNEL-RELATED AUTHORITY.—The head of each agency listed in section 901(b)(1) or 901(b)(2) of title 31, other than the Department of Defense, shall ensure that the Chief Information Officer of the agency has the authority necessary to approve the hiring of personnel who will have information technology responsibilities within the agency and to require that such personnel have the obligation to report to the Chief Information Officer in a manner considered sufficient by the Chief Information Officer.

[(a)] *(e)* DEFINITION.—In this section, the term "information technology architecture", with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

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[CHAPTER 115—INFORMATION TECHNOLOGY ACQUISITION PILOT PROGRAM

[SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

[SUBCHAPTER II—SPECIFIC PILOT PROGRAM]

[SUBCHAPTER I—CONDUCT OF PILOT PROGRAM

[§ 11501. Authority to conduct pilot program

[(a) IN GENERAL.—

[(1) PURPOSE.—In consultation with the Administrator for the Office of Information and Regulatory Affairs, the Administrator for Federal Procurement Policy may conduct a pilot program pursuant to the requirements of section 11521 of this title to test alternative approaches for the acquisition of information technology by executive agencies.

⟦(2) MULTIAGENCY, MULTI-ACTIVITY CONDUCT OF EACH PRO-
GRAM.—Except as otherwise provided in this chapter, the pilot
program conducted under this chapter shall be carried out in
not more than two procuring activities in each of the executive
agencies that are designated by the Administrator for Federal
Procurement Policy in accordance with this chapter to carry
out the pilot program. With the approval of the Administrator
for Federal Procurement Policy, the head of each designated
executive agency shall select the procuring activities of the ex-
ecutive agency that are to participate in the test and shall des-
ignate a procurement testing official who shall be responsible
for the conduct and evaluation of the pilot program within the
executive agency.
⟦(b) LIMITATION ON AMOUNT.—The total amount obligated for
contracts entered into under the pilot program conducted under
this chapter may not exceed $750,000,000. The Administrator for
Federal Procurement Policy shall monitor those contracts and en-
sure that contracts are not entered into in violation of this sub-
section.
⟦(c) PERIOD OF PROGRAMS.—
⟦(1) IN GENERAL.—Subject to paragraph (2), the pilot pro-
gram may be carried out under this chapter for the period, not
in excess of five years, the Administrator for Federal Procure-
ment Policy determines is sufficient to establish reliable re-
sults.
⟦(2) CONTINUING VALIDITY OF CONTRACTS.—A contract en-
tered into under the pilot program before the expiration of that
program remains in effect according to the terms of the con-
tract after the expiration of the program.

⟦§ 11502. Evaluation criteria and plans

⟦(a) MEASURABLE TEST CRITERIA.—To the maximum extent prac-
ticable, the head of each executive agency conducting the pilot pro-
gram under section 11501 of this title shall establish measurable
criteria for evaluating the effects of the procedures or techniques
to be tested under the program.
⟦(b) TEST PLAN.—Before the pilot program may be conducted
under section 11501 of this title, the Administrator for Federal Pro-
curement Policy shall submit to Congress a detailed test plan for
the program, including a detailed description of the procedures to
be used and a list of regulations that are to be waived.

⟦§ 11503. Report

⟦(a) REQUIREMENT.—Not later than 180 days after the comple-
tion of the pilot program under this chapter, the Administrator for
Federal Procurement Policy shall—
⟦(1) submit to the Director of the Office of Management and
Budget a report on the results and findings under the program;
and
⟦(2) provide a copy of the report to Congress.
⟦(b) CONTENT.—The report shall include—
⟦(1) a detailed description of the results of the program, as
measured by the criteria established for the program; and
⟦(2) a discussion of legislation that the Administrator rec-
ommends, or changes in regulations that the Administrator

considers necessary, to improve overall information resources management in the Federal Government.

[§ 11504. Recommended legislation

[If the Director of the Office of Management and Budget determines that the results and findings under the pilot program under this chapter indicate that legislation is necessary or desirable to improve the process for acquisition of information technology, the Director shall transmit the Director's recommendations for that legislation to Congress.

[§ 11505. Rule of construction

[This chapter does not authorize the appropriation or obligation of amounts for the pilot program authorized under this chapter.

[SUBCHAPTER II—SPECIFIC PILOT PROGRAM]

CHAPTER 115—INFORMATION TECHNOLOGY ACQUISITION MANAGEMENT PRACTICES

§ 11501. Federal Infrastructure and Common Application Collaboration Center

(a) ESTABLISHMENT AND PURPOSES.—The Director of the Office of Management and Budget shall establish a Federal Infrastructure and Common Application Collaboration Center (hereafter in this section referred to as the "Collaboration Center") within the Office of Management and Budget in accordance with this section. The purposes of the Collaboration Center are to serve as a focal point for coordinated program management practices and to develop and maintain requirements for the acquisition of IT infrastructure and common applications commonly used by various Federal agencies.
(b) ORGANIZATION OF CENTER.—
(1) MEMBERSHIP.—The Center shall consist of the following members:
(A) An appropriate number, as determined by the CIO Council, but not less than 12, full-time program managers or cost specialists, all of whom have appropriate experience in the private or Government sector in managing or overseeing acquisitions of IT infrastructure and common applications.
(B) At least 1 full-time detailee from each of the Federal agencies listed in section 901(b) of title 31, nominated by the respective agency chief information officer for a detail period of not less than 2 years.
(2) WORKING GROUPS.—The Collaboration Center shall have working groups that specialize in IT infrastructure and common applications identified by the CIO Council. Each working group shall be headed by a separate dedicated program manager appointed by the CIO Council.
(c) CAPABILITIES AND FUNCTIONS OF THE COLLABORATION CENTER.—For each of the IT infrastructure and common application areas identified by the CIO Council, the Collaboration Center shall

perform the following roles, and any other functions as directed by the CIO Council:

(1) Develop, maintain, and disseminate requirements suitable to establish contracts that will meet the common and general needs of various Federal agencies as determined by the Center. In doing so, the Center shall give maximum consideration to the adoption of commercial standards and industry acquisition best practices, including opportunities for shared services, consideration of total cost of ownership, preference for industry-neutral functional specifications leveraging open industry standards and competition, use of open source software, and use of long-term contracts, as appropriate.

(2) Develop, maintain, and disseminate reliable cost estimates that are accurate, comprehensive, well-documented, and credible.

(3) Lead the review of significant or troubled IT investments or acquisitions as identified by the CIO Council.

(4) Provide expert aid to troubled IT investments or acquisitions.

(d) GUIDANCE.—The Director, in consultation with the Chief Information Officers Council, shall issue guidance addressing the scope and operation of the Collaboration Center. The guidance shall require that the Collaboration Center report to the Federal Chief Information Officer or his delegate.

(e) REPORT TO CONGRESS.—The Director shall annually submit to the relevant congressional committees a report detailing the organization, staff, and activities of the Collaboration Center, including a list of IT infrastructure and common applications the Center assisted and an assessment of the Center's achievement in promoting efficiency, shared services, and elimination of unnecessary Government requirements that are contrary to commercial best practices.

(f) IMPROVEMENT OF THE DOD ENTERPRISE SOFTWARE INITIATIVE AND GSA SMARTBUY PROGRAM.—

(1) IN GENERAL.—The Collaboration Center, in collaboration with the Office of Federal Procurement Policy, the Department of Defense, and the General Services Administration, shall identify and develop a strategic sourcing initiative to enhance Governmentwide acquisition, shared use, and dissemination of software, as well as compliance with end user license agreements.

(2) EXAMINATION OF METHODS.—In developing the strategic sourcing initiative, the Collaboration Center shall examine the use of realistic and effective demand aggregation models supported by actual agency commitment to use the models, and supplier relationship management practices, to more effectively govern the Government's acquisition of information technology.

(3) GOVERNMENTWIDE USER LICENSE AGREEMENT.—The Collaboration Center, in coordination with the Department of Defense and the General Services Administration, shall issue guidelines for establishing a Governmentwide contract vehicle that allows for the purchase of a license agreement that is available for use by all executive agencies as one user. To the maximum extent practicable, in establishing the Governmentwide contract vehicle, the Collaboration Center shall pursue di-

rect negotiation and contracting with major software publishers as prime contractors.

(g) GUIDELINES FOR ACQUISITION OF IT INFRASTRUCTURE AND COMMON APPLICATIONS.—

(1) GUIDELINES.—The Collaboration Center shall establish guidelines that, to the maximum extent possible, eliminate inconsistent practices among executive agencies and ensure uniformity and consistency in acquisition processes for IT infrastructure and common applications across the Federal Government.

(2) CENTRAL WEBSITE.—In preparing the guidelines, the Collaboration Center, in consultation with the Chief Acquisition Officers Council, shall offer executive agencies the option of accessing a central website for best practices, templates, and other relevant information.

(h) PRICING TRANSPARENCY.—The Collaboration Center, in collaboration with the Office of Federal Procurement Policy, the Chief Acquisition Officers Council, the General Services Administration, and the Assisted Acquisition Centers of Excellence, shall compile a price list and catalogue containing current pricing information by vendor for each of its IT infrastructure and common applications categories. The price catalogue shall contain any price provided by a vendor for the same or similar good or service to any executive agency. The catalogue shall be developed in a fashion ensuring that it may be used for pricing comparisons and pricing analysis using standard data formats. The price catalogue shall not be made public, but shall be accessible to executive agencies.

(i) FEDERAL IT ACQUISITION MANAGEMENT IMPROVEMENT FUND.—

(1) ESTABLISHMENT AND MANAGEMENT OF FUND.—There is a Federal IT Acquisition Management Improvement Fund (in this subsection referred to as the "Fund"). The Administrator of General Services shall manage the Fund through the Collaboration Center to support the activities of the Collaboration Center carried out pursuant to this section. The Administrator of General Services shall consult with the Director in managing the Fund.

(2) CREDITS TO FUND.—Five percent of the fees collected by executive agencies under the following contracts shall be credited to the Fund:

(A) Governmentwide task and delivery order contracts entered into under sections 4103 and 4105 of title 41.

(B) Governmentwide contracts for the acquisition of information technology and multiagency acquisition contracts for that technology authorized by section 11314 of this title.

(C) Multiple-award schedule contracts entered into by the Administrator of General Services.

(3) REMITTANCE BY HEAD OF EXECUTIVE AGENCY.—The head of an executive agency that administers a contract described in paragraph (2) shall remit to the General Services Administration the amount required to be credited to the Fund with respect to the contract at the end of each quarter of the fiscal year.

(4) AMOUNTS NOT TO BE USED FOR OTHER PURPOSES.—The Administrator of General Services, through the Office of Management and Budget, shall ensure that amounts collected under

this subsection are not used for a purpose other than the activities of the Collaboration Center carried out pursuant to this section.

(5) AVAILABILITY OF AMOUNTS.—Amounts credited to the Fund remain available to be expended only in the fiscal year for which they are credited and the 4 succeeding fiscal years.

(j) DEFINITIONS.—In this section:

(1) EXECUTIVE AGENCY.—The term "executive agency" has the meaning provided that term by section 105 of title 5.

(2) GOVERNMENTWIDE CONTRACT VEHICLE.—The term "Governmentwide contract vehicle" means any contract, blanket purchase agreement, or other contractual instrument that allows for an indefinite number of orders to be placed within the contract, agreement, or instrument, and that is established by one executive agency for use by multiple executive agencies to obtain supplies and services.

(3) RELEVANT CONGRESSIONAL COMMITTEES.—The term "relevant congressional committees" means each of the following:

(A) The Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives.

(B) The Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate.

(k) REVISION OF FAR.—The Federal Acquisition Regulation shall be amended to implement this section.

§ 11502. Assisted Acquisition Centers of Excellence

(a) PURPOSE.—The purpose of this section is to develop specialized assisted acquisition centers of excellence within the Federal Government to promote—

(1) the effective use of best acquisition practices;

(2) the development of specialized expertise in the acquisition of information technology; and

(3) Governmentwide sharing of acquisition capability to augment any shortage in the information technology acquisition workforce.

(b) DESIGNATION OF AACEs.—Not later than 1 year after the date of the enactment of this section, and every 3 years thereafter, the Director of the Office of Management and Budget, in consultation with the Chief Acquisition Officers Council and the Chief Information Officers Council, shall designate, redesignate, or withdraw the designation of acquisition centers of excellence within various executive agencies to carry out the functions set forth in subsection (c) in an area of specialized acquisition expertise as determined by the Director. Each such center of excellence shall be known as an "Assisted Acquisition Center of Excellence" or an "AACE".

(c) FUNCTIONS.—The functions of each AACE are as follows:

(1) BEST PRACTICES.—To promote, develop, and implement the use of best acquisition practices in the area of specialized acquisition expertise that the AACE is designated to carry out by the Director under subsection (b).

(2) ASSISTED ACQUISITIONS.—To assist all Government agencies in the expedient and low-cost acquisition of the information technology goods or services covered by such area of specialized

acquisition expertise by engaging in repeated and frequent acquisition of similar information technology requirements.

(3) DEVELOPMENT AND TRAINING OF IT ACQUISITION WORKFORCE.—To assist in recruiting and training IT acquisition cadres (referred to in section 1704(j) of title 41).

(d) CRITERIA.—In designating, redesignating, or withdrawing the designation of an AACE, the Director shall consider, at a minimum, the following matters:

(1) The subject matter expertise of the host agency in a specific area of information technology acquisition.

(2) For acquisitions of IT infrastructure and common applications covered by the Federal Infrastructure and Common Application Collaboration Center established under section 11501 of this title, the ability and willingness to collaborate with the Collaboration Center and adhere to the requirements standards established by the Collaboration Center.

(3) The ability of an AACE to develop customized requirements documents that meet the needs of executive agencies as well as the current industry standards and commercial best practices.

(4) The ability of an AACE to consistently award and manage various contracts, task or delivery orders, and other acquisition arrangements in a timely, cost-effective, and compliant manner.

(5) The ability of an AACE to aggregate demands from multiple executive agencies for similar information technology goods or services and fulfill those demands in one acquisition.

(6) The ability of an AACE to acquire innovative or emerging commercial and noncommercial technologies using various contracting methods, including ways to lower the entry barriers for small businesses with limited Government contracting experiences.

(7) The ability of an AACE to maximize commercial item acquisition, effectively manage high-risk contract types, increase competition, promote small business participation, and maximize use of available Governmentwide contract vehicles.

(8) The existence of an in-house cost estimating group with expertise to consistently develop reliable cost estimates that are accurate, comprehensive, well-documented, and credible.

(9) The ability of an AACE to employ best practices and educate requesting agencies, to the maximum extent practicable, regarding critical factors underlying successful major IT acquisitions, including the following factors:

(A) Active engagement by program officials with stakeholders.

(B) Possession by program staff of the necessary knowledge and skills.

(C) Support of the programs by senior department and agency executives.

(D) Involvement by end users and stakeholders in the development of requirements.

(E) Participation by end users in testing of system functionality prior to formal end user acceptance testing.

(F) Stability and consistency of Government and contractor staff.

(G) Prioritization of requirements by program staff.

(H) Maintenance of regular communication with the prime contractor by program officials.

(I) Receipt of sufficient funding by programs.

(10) The ability of an AACE to run an effective acquisition intern program in collaboration with the Federal Acquisition Institute or the Defense Acquisition University.

(11) The ability of an AACE to effectively and properly manage fees received for assisted acquisitions pursuant to this section.

(e) FUNDS RECEIVED BY AACEs.—

(1) AVAILABILITY.—Notwithstanding any other provision of law or regulation, funds obligated and transferred from an executive agency in a fiscal year to an AACE for the acquisition of goods or services covered by an area of specialized acquisition expertise of an AACE, regardless of whether the requirements are severable or non-severable, shall remain available for awards of contracts by the AACE for the same general requirements for the next 5 fiscal years following the fiscal year in which the funds were transferred.

(2) ADDITIONAL TRANSFER AUTHORITY.—If the AACE to which the funds are transferred under paragraph (1) becomes unable to fulfill the requirements of the executive agency from which the funds were transferred, the funds may be transferred to a different AACE to fulfill such requirements. The funds so transferred shall be used for the same purpose and remain available for the same period of time as applied when transferred to the original AACE.

(3) RELATIONSHIP TO EXISTING AUTHORITIES.—This subsection does not limit any existing authorities an AACE may have under its revolving or working capital funds authorities.

(f) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW OF AACE.—

(1) REVIEW.—The Comptroller General of the United States shall review and assess the use and management of fees received by the AACEs pursuant to this section to ensure that an appropriate fee structure is established and enforced to cover activities addressed in this section and that no excess fees are charged or retained.

(2) REPORTS.—Not later than 1 year after the designation or redesignation of AACES under subsection (b), the Comptroller General shall submit to the relevant congressional committees a report containing the findings and assessment under paragraph (1).

(g) DEFINITIONS.—In this section:

(1) ASSISTED ACQUISITION.—The term "assisted acquisition" means a type of interagency acquisition in which the parties enter into an interagency agreement pursuant to which—

(A) the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding, administering, or closing out a contract, task order, delivery order, or blanket purchase agreement; and

(B) funding is provided through a franchise fund, the Acquisition Services Fund in section 321 of this title, sections 1535 and 1536 of title 31, or other available methods.

(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning provided that term by section 133 of title 41.

(3) RELEVANT CONGRESSIONAL COMMITTEES.—The term "relevant congressional committees" has the meaning provided that term by section 11501 of this title.

(h) REVISION OF FAR.—The Federal Acquisition Regulation shall be amended to implement this section.

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TITLE 44, UNITED STATES CODE

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

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SUBCHAPTER I—FEDERAL INFORMATION POLICY

*   *   *   *   *   *   *

§ 3506. Federal agency responsibilities

(a)(1) * * *

(2)(A) Except as provided under subparagraph (B), the head of each agency*, other than an agency with a Presidentially appointed or designated Chief Information Officer as provided in section 11315(a)(1) of title 40,* shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter.

*   *   *   *   *   *   *

(3)*(A)* The Chief Information Officer designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this subchapter, including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter.

(B) Each agency shall have only one individual with the title and designation of "Chief Information Officer". Any bureau, office, or subordinate organization within the agency may designate one individual with the title "Deputy Chief Information Officer", "Associate Chief Information Officer", or "Assistant Chief Information Officer". The head of the agency shall seek the advice of the Chief Information Officer of the agency in designating or appointing any deputy, associate, or assistant chief information officer within the agency.

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CHAPTER 36—MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES

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§ 3603. Chief Information Officers Council

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⟦(d) The Council is designated the principal interagency forum for improving agency practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Federal Government information resources.⟧

(d) LEAD INTERAGENCY FORUM.—

    (1) IN GENERAL.—The Council is designated the lead interagency forum for improving agency coordination of practices related to the design, development, modernization, use, operation, sharing, performance, and review of Federal Government information resources investment. As the lead interagency forum, the Council shall develop cross-agency portfolio management practices to allow and encourage the development of cross-agency shared services and shared platforms. The Council shall also issue standards and practices for infrastructure and common information technology applications, including expansion of the Federal Enterprise Architecture process if appropriate. The standards and practices may address broader transparency, common inputs, common outputs, and outcomes achieved. The standards and practices shall be used as a basis for comparing performance across diverse missions and operations in various agencies.

    (2) REPORT.—Not later than December 1 in each of the 6 years following the date of the enactment of this paragraph, the Council shall submit to the relevant congressional committees a report (to be known as the "CIO Council Report") summarizing the Council's activities in the preceding fiscal year and containing such recommendations for further congressional action to fulfill its mission as the Council considers appropriate.

    (3) RELEVANT CONGRESSIONAL COMMITTEES.—For purposes of the report required by paragraph (2), the relevant congressional committees are each of the following:

        (A) The Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives.

        (B) The Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate.

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(f) The Council shall perform functions that include the following:

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    (8) Direct the Federal Infrastructure and Common Application Collaboration Center established under section 11501 of title 40.

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TITLE 41, UNITED STATES CODE

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SUBTITLE I—FEDERAL PROCUREMENT POLICY

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DIVISION B—OFFICE OF FEDERAL PROCUREMENT POLICY

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CHAPTER 17—AGENCY RESPONSIBILITIES AND PROCEDURES

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§ 1704. Planning and policy-making for acquisition workforce

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(j) STRATEGIC PLAN ON INFORMATION TECHNOLOGY ACQUISITION CADRES.—

(1) FIVE-YEAR STRATEGIC PLAN TO CONGRESS.—Not later than June 1 following the date of the enactment of this subsection, the Director shall submit to the relevant congressional committees a 5-year strategic plan (to be known as the "IT Acquisition Cadres Strategic Plan") to develop, strengthen, and solidify information technology acquisition cadres. The plan shall include a timeline for implementation of the plan and identification of individuals responsible for specific elements of the plan during the 5-year period covered by the plan.

(2) MATTERS COVERED.—The plan shall address, at a minimum, the following matters:

(A) Current information technology acquisition staffing challenges in Federal agencies, by previous year's information technology acquisition value, and by the Federal Government as a whole.

(B) The variety and complexity of information technology acquisitions conducted by each Federal agency covered by the plan, and the specialized information technology acquisition workforce needed to effectively carry out such acquisitions.

(C) The development of a sustainable funding model to support efforts to hire, retain, and train an information technology acquisition cadre of appropriate size and skill to effectively carry out the acquisition programs of the Federal agencies covered by the plan, including an examination of interagency funding methods and a discussion of how the model of the Defense Acquisition Workforce Development Fund could be applied to civilian agencies.

(D) Any strategic human capital planning necessary to hire, retain, and train an information acquisition cadre of appropriate size and skill at each Federal agency covered by the plan.

(E) Governmentwide training standards and certification requirements necessary to enhance the mobility and career

opportunities of the Federal information technology acquisition cadre within the Federal agencies covered by the plan.

(F) New and innovative approaches to workforce development and training, including cross-functional training, rotational development, and assignments both within and outside the Government.

(G) Appropriate consideration and alignment with the needs and priorities of the Infrastructure and Common Application Collaboration Center, Assisted Acquisition Centers of Excellence, and acquisition intern programs.

(H) Assessment of the current workforce competency and usage trends in evaluation technique to obtain best value, including proper handling of tradeoffs between price and nonprice factors.

(I) Assessment of the current workforce competency in designing and aligning performance goals, life cycle costs, and contract incentives.

(J) Assessment of the current workforce competency in avoiding brand-name preference and using industry-neutral functional specifications to leverage open industry standards and competition.

(K) Use of integrated program teams, including fully dedicated program managers, for each complex information technology investment.

(L) Proper assignment of recognition or accountability to the members of an integrated program team for both individual functional goals and overall program success or failure.

(M) The development of a technology fellows program that includes provisions for recruiting, for rotation of assignments, and for partnering directly with universities with well-recognized information technology programs.

(N) The capability to properly manage other transaction authority (where such authority is granted), including ensuring that the use of the authority is warranted due to unique technical challenges, rapid adoption of innovative or emerging commercial or noncommercial technologies, or other circumstances that cannot readily be satisfied using a contract, grant, or cooperative agreement in accordance with applicable law and the Federal Acquisition Regulation.

(O) Any other matters the Director considers appropriate.

(3) ANNUAL REPORT.—Not later than June 1 in each of the 5 years following the year of submission of the plan required by paragraph (1), the Director shall submit to the relevant congressional committees an annual report outlining the progress made pursuant to the plan.

(4) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW OF THE PLAN AND ANNUAL REPORT.—

(A) Not later than 1 year after the submission of the plan required by paragraph (1), the Comptroller General of the United States shall review the plan and submit to the relevant congressional committees a report on the review.

(B) Not later than 6 months after the submission of the first, third, and fifth annual report required under para-

graph (3), the Comptroller General shall independently assess the findings of the annual report and brief the relevant congressional committees on the Comptroller General's findings and recommendations to ensure the objectives of the plan are accomplished.

(5) DEFINITIONS.—In this subsection:

(A) The term "Federal agency" means each agency listed in section 901(b) of title 31.

(B) The term "relevant congressional committees" means each of the following:

(i) The Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives.

(ii) The Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate.

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CHAPTER 33—PLANNING AND SOLICITATION

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§ 3306. Planning and solicitation requirements

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(d) ADDITIONAL INFORMATION IN SOLICITATION.—This section does not prohibit an executive agency from—

(1) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; [or]

(2) stating in a solicitation that award will be made to the offeror that meets the solicitation's mandatory requirements at the lowest cost or price[.]*; or*

(3) stating in the solicitation that the award will be made using a fixed price technical competition, under which all offerors compete solely on nonprice factors and the fixed award price is pre-announced in the solicitation.

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