

ENHANCING OVERSEAS TRAVELER VETTING ACT

APRIL 11, 2016.—Ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
 submitted the following

R E P O R T

[To accompany H.R. 4403]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4403) to authorize the development of open-source software based on certain systems of the Department of Homeland Security and the Department of State to facilitate the vetting of travelers against terrorist watchlists and law enforcement databases, enhance border management, and improve targeting and analysis, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	3
Committee Consideration	4
Committee Votes	5
Committee Oversight Findings	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Congressional Budget Office Estimate	5
Statement of General Performance Goals and Objectives	6
Duplicative Federal Programs	6
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	6
Federal Mandates Statement	6
Preemption Clarification	7
Disclosure of Directed Rule Makings	7
Advisory Committee Statement	7
Applicability to Legislative Branch	7
Section-by-Section Analysis of the Legislation	7
Changes in Existing Law Made by the Bill, as Reported	8

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Enhancing Overseas Traveler Vetting Act”.

SEC. 2. OPEN-SOURCE SCREENING SOFTWARE.

(a) **IN GENERAL.**—Subject to subsection (c), the Secretary of Homeland Security and the Secretary of State—

(1) are authorized to develop open-source software, in accordance with cybersecurity best practices, based on U.S. Customs and Border Protection’s global travel targeting and analysis systems and the Department of State’s watchlisting, identification, and screening systems in order to facilitate the vetting of travelers against terrorist watchlists and law enforcement databases, enhance border management, and improve targeting and analysis; and

(2) may make such software and any related technical assistance or training available to foreign governments or multilateral organizations for such purposes.

(b) **REPORT TO CONGRESS.**—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security and Secretary of State shall submit to the appropriate congressional committees a plan to implement subsection (a).

(c) **PROVISION OF SOFTWARE AND CONGRESSIONAL NOTIFICATION.**—Not later than 15 days before the open-source software described in subsection (a) is made available to foreign governments or multilateral organizations pursuant to such subsection, the Secretary of Homeland Security and Secretary of State, with the concurrence of the Director of National Intelligence, shall—

(1) certify to the appropriate congressional committees that such availability is in the national security interests of the United States; and

(2) provide to such committees information on how such software or any related technical assistance or training will be made available.

(d) **RULE OF CONSTRUCTION.**—The authority provided under this section shall be exercised in accordance with applicable provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.), the Export Administration Regulations, or any other similar provision of law.

(e) **PROHIBITION ON ADDITIONAL FUNDING.**—No additional funds are authorized to be appropriated to carry out this section. This section shall be carried out using amounts otherwise appropriated or made available to the Department of Homeland Security.

(f) **DEFINITIONS.**—In this section:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) in the House of Representatives—

- (i) the Committee on Homeland Security; and
- (ii) the Committee on Foreign Affairs; and

(B) in the Senate—

- (i) the Committee on Homeland Security and Governmental Affairs; and
- (ii) the Committee on Foreign Relations.

(2) **EXPORT ADMINISTRATION REGULATIONS.**—The term “Export Administration Regulations” means—

(A) the Export Administration Regulations as maintained and amended under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and codified in subchapter C of chapter VII of title 15, Code of Federal Regulations; or

(B) any successor regulations.

PURPOSE AND SUMMARY

The purpose of H.R. 4403 is to authorize the development of open-source software based on certain systems of the Department of Homeland Security and the Department of State to facilitate the vetting of travelers against terrorist watchlists and law enforcement databases, enhance border management, and improve targeting and analysis, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In September 2015, the final report of the Committee on Homeland Security’s Task Force on Combating Terrorist and Foreign

Fighter Travel was released. It included 32 findings and more than 50 recommendations for enhancing U.S. security. Among other conclusions, the Task Force found that many U.S. allies are not conducting sufficient counterterrorism checks at their borders and airports. Indeed, a number of countries have failed to implement comprehensive watchlisting and screening procedures or systems to identify individuals with suspicious travel patterns and other warning signs. These tools are critical tripwires needed to prevent the cross-border movement of terrorists. If countries do not have such systems in place, it increases the risks that terrorists or foreign fighters will be able to transit their territory undetected—potentially allowing them to get closer to the U.S. homeland.

In some cases, the United States shares its sophisticated watchlisting and screening systems with trusted foreign governments to help them fight terrorist travel. Two of the primary systems include U.S. Customs and Border Protection’s (CBP) Automated Targeting System (ATS) and the State Department’s Personal Identification Secure Comparison and Evaluation Tool (PISCES). Tailored versions of these systems are provided to U.S. partners on a case-by-case basis to improve their ability to detect terrorist movements and target suspicious travelers.

However, the United States is unable to provide these sensitive watchlisting and screening technologies to certain governments that are in need of assistance. Many of these countries are also unable to develop the technology on their own, creating a serious hole in global counterterrorism screening efforts. Accordingly, the Task Force recommended that DHS and the State Department develop “open-source” versions of their screening tools—ATS and PISCES—that are less sensitive and have only a basic feature set. Countries that receive such tools would then have baseline terrorist screening systems that, over time, could be built upon and enhanced.

HEARINGS

The Committee did not hold any hearings on H.R. 4403, however, the Committee held the following oversight hearings:

On February 11, 2015, the Committee held a hearing entitled “Countering Violent Islamist Extremism: The Urgent Threat of Foreign Fighters and Homegrown Terror.” The Committee received testimony from Hon. Francis X. Taylor, Under Secretary, Intelligence and Analysis, U.S. Department of Homeland Security; Hon. Nicholas J. Rasmussen, Director, National Counterterrorism Center, Office of the Director of National Intelligence; and Mr. Michael B. Steinbach, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, U.S. Department of Justice.

On March 24, 2015, the Committee held a hearing entitled “A Global Battleground: The Fight Against Islamist Extremism at Home and Abroad.” The Committee received testimony from Hon. Newt Gingrich, Former Speaker of the U.S. House of Representatives; General Michael Hayden (USAF-Ret.), Former Director, Central Intelligence Agency and Former Director, National Security Agency; Mr. Philip Mudd, Senior Fellow, New America Foundation; and Mr. Brian Michael Jenkins, Senior Adviser to the RAND President, The RAND Corporation.

On June 3, 2015, the Committee held a hearing entitled “Terrorism Gone Viral: The Attack in Garland, Texas and Beyond.” The

Committee received testimony from Mr. John J. Mulligan, Deputy Director, National Counterterrorism Center; Hon. Francis X. Taylor, Under Secretary, Intelligence and Analysis, U.S. Department of Homeland Security; and Mr. Michael B. Steinbach, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation, U.S. Department of Justice.

On July 15, 2015, the Committee held a hearing entitled “The Rise of Radicalization: Is the U.S. Government Failing to Counter International and Domestic Terrorism?” The Committee received testimony from Ms. Farah Pandith, Adjunct Senior Fellow, Council on Foreign Relations; Mr. Seamus Hughes, Deputy Director, Program on Extremism, Center for Cyber and Homeland Security, George Washington University; and Mr. J. Richard Cohen, President, Southern Poverty Law Center.

On September 8, 2015, the Committee held a field hearing in New York City, New York entitled “Beyond Bin Laden’s Caves and Couriers to a New Generation of Terrorists: Confronting the Challenges in a Post 9/11 World.” The Committee received testimony from Hon. Rudolph “Rudy” W. Giuliani, Former Mayor, City of New York, New York; Mr. William J. Bratton, Commissioner, Police Department, City of New York, New York; Mr. Daniel A. Nigro, Commissioner, Fire Department, City of New York, New York; Mr. Lee A. Ielpi, President, September 11th Families Association; and Mr. Gregory A. Thomas, National President, National Organization of Black Law Enforcement Executives.

On October 21, 2015, the Committee held a hearing entitled “Worldwide Threats and Homeland Security Challenges.” The Committee received testimony from Hon. Jeh C. Johnson, Secretary, Department of Homeland Security; Hon. Nicholas J. Rasmussen, Director, The National Counterterrorism Center, Office of the Director of National Intelligence; and Hon. James B. Comey, Director, Federal Bureau of Investigation, U.S. Department of Justice.

On November 18, 2015, the Committee on Homeland Security and the Committee on Foreign Affairs held a joint hearing entitled “The Rise of Radicalism: Growing Terrorist Sanctuaries and the Threat to the U.S. Homeland.” The Committees received testimony from Hon. Matthew G. Olsen, Co-Founder and President, Business Development and Strategy, IronNet Cybersecurity; Gen. John M. Keane (Ret. U.S. Army), Chairman of the Board, Institute for the Study of War; and Mr. Peter Bergen, Vice President, Director International Security and Fellows Programs, New America.

COMMITTEE CONSIDERATION

The Committee met on February 2, 2016, to consider H.R. 4403, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by voice vote.

The following amendments were offered:

An amendment by MS. JACKSON LEE (#1); was AGREED TO by voice vote.

In paragraph (1) of section 2(a), insert “, in accordance with cybersecurity best practices,” before “based”.

COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 4403.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4403, the Enhancing Overseas Traveler Vetting Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 8, 2016.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4403, the Enhancing Overseas Traveler Vetting Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 4403—Enhancing Overseas Traveler Vetting Act

H.R. 4403 would authorize the Department of Homeland Security (DHS) and the Department of State to develop open-source software that would be designed to screen travelers by checking law enforcement databases and terrorist watch lists. The software would be shared with foreign governments and multilateral organizations. The bill would require DHS and the Department of State, within 60 days of enactment, to submit to the Congress a plan to develop and share such software.

Based on information from DHS, CBO estimates that it would cost about \$2 million over the 2016–2017 period (mostly for DHS) to develop and share software as required by H.R. 4403; such spending would be subject to the availability of appropriated funds.

Because enacting the legislation would not affect direct spending or revenues, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 4403 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 4403 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On April 8, 2016, CBO transmitted a cost estimate for H.R. 4403, the Enhancing Overseas Traveler Vetting Act, as ordered reported by the House Committee on Foreign Affairs on February 24, 2016. The legislative language is identical and CBO's estimated costs are the same for both versions of the bill.

The CBO staff contacts for this estimate are Mark Grabowicz (for DHS costs) and Sunita D'Monte (for costs to the Department of State). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 4403 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of H.R. 4403 is to enable DHS and the State Department to develop open-source versions of U.S. government watchlisting and traveler screening systems for provision to certain foreign governments—with the ultimate aim of helping foreign partners disrupt terrorist travel. Presently, many foreign governments lack the capability to do effective counterterrorism screening of travelers, and as a result, violent extremists are able to more easily evade detection. While the United States provides its sensitive vetting tools to select foreign partners, it cannot do so for all of them. H.R. 4403 permits DHS and the State Department to develop basic screening systems that can be given to certain foreign partners to strengthen global counterterrorism efforts.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of Rule XIII, the Committee finds that H.R. 4403 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with Rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the Rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 4403 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4403 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title.

This section provides that this bill may be cited as the “Enhancing Overseas Traveler Vetting Act”.

*Sec. 2. Open-Source Screening Software.**Subsection (a)—In General.*

This subsection authorizes the Secretary of Homeland Security and the Secretary of State to develop open-source software based on existing U.S. government systems or order to facilitate the vetting of travelers against terrorist watchlists and law enforcement databases, enhance border management, and improve targeting and analysis. The subsection also allows the Secretaries to make such software and any related technical assistance available to foreign governments or multilateral organizations.

Subsection (b)—Report to Congress.

This subsection requires the Secretary of Homeland Security and Secretary of State to provide a report on implementing the authorities in subsection (a) within 60 days of enactment.

Subsection (c)—Provision of Software and Congressional Notification.

This subsection requires the Secretary of Homeland Security and Secretary of State, in consultation with the Director of National Intelligence, to provide certification to Congress—before offering these screening systems to foreign entities—that it is in the national security interests of the United States to do so. The Secre-

taries are also required to notify Congress regarding how the software and technical assistance will be made available.

Subsection (d)—Rule of Construction.

This subsection requires the authority in this section to be exercised in accordance with the Arms Export Control Act, Export Administration Regulations, or other similar provision of law.

Subsection (e)—Prohibition on Additional Funding

This subsection requires that the activities of this section be carried out using existing funds and clarifies that additional funds are not authorized for the purposes of this act.

Subsection (f)—Definitions.

This section defines “appropriate congressional committees” and “export administration regulations.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported, H.R. 4403 makes no changes to existing law.

