

SBA CYBER AWARENESS ACT

JUNE 13, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 2331]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2331) to require an annual report on the cybersecurity of the Small Business Administration, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 2331 is to amend the Small Business Act to require the Small Business Administrator (SBA) to issue annual

reports assessing its IT and cybersecurity infrastructure and notify Congress and affected parties of cyber incidents when they occur.

II. BACKGROUND AND NEED FOR LEGISLATION

In June 2015, the U.S. Office of Personnel Management announced that it had been the target of a massive data breach affecting over 20 million people. The announcement raised awareness of the vulnerability of the federal government's IT infrastructure and brought about a bipartisan and bicameral letter to agencies requesting information on legacy IT systems.¹ In May 2017, the Modernizing Government Technology Act of 2017 passed the House. The bill sought to establish two types of funds to retire vulnerable IT systems and address evolving cybersecurity threats.² In the Fiscal Year 2019 NDAA, Congress passed requirements for the Department of Defense to report cybersecurity breaches.³

Thousands of the nation's vulnerable small businesses share sensitive data with the Small Business Administration to apply for government support. In October 2018, the SBA's Office of Inspector General issued a report indicating that the SBA still required action to effectively modernize its IT infrastructure.⁴

III. HEARINGS

While multiple hearings have been held by the Committee over the past few years exploring the cybersecurity challenges facing small firms, no specific hearings in the 116th Congress have been held to explore the reforms of SBA's cyber infrastructure. The legislation builds upon the Committee's work overseeing the SBA's Office of the Chief Information Officer that is responsible for modernizing and strengthening the Agency's information technology systems.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on May 1, 2019 and ordered H.R. 2331 favorably reported to the House. During the markup, no amendments were offered.

V. 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. The Committee

¹See Letter from the Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. Ron Johnson, Chairman, S. Comm. on Homeland Security & Gov't Affairs, et. al, to federal agencies (Dec. 22, 2015) (letter and agency responses on file with the Committee).

²See H.R. 2227, *See also* National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, Sec. 1077, 131 Stat. 1283 (2017). (Congress enacted a section of the Fiscal Year 2018 NDAA titled the Modernizing Government Technology Act authorizing two types of funds to modernize the federal government's legacy IT.).

³See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, Sec. 1639, 132 Stat. 1636 (2018).

⁴See U.S. SMALL BUS. ADMIN., OFFICE OF THE INSPECTOR GEN., 19-01, REPORT ON MOST SERIOUS MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2019 4 (2018). *See also* U.S. SMALL BUS. ADMIN., OFFICE OF THE INSPECTOR GEN., 18-01, REPORT ON MOST SERIOUS MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2018 4 (2017).

voted by voice vote to favorably report H.R. 2331 to the House at 12:22 P.M.

COMMITTEE ON SMALL BUSINESS
TALLY SHEET

12:22
agreed to

DATE: 05-01-19
BILL NUMBER: H.R. 2881
ROLL CALL: *Voice*
VOTE: (AYE) ✓ (NO)

QUORUM:
AMENDMENT NUMBER:

report to house

MEMBER AYE NO NOT VOTING

Ms. Velázquez, Chairwoman

Ms. Finkenauer

Mr. Golden

Mr. Kim

Mr. Crow

Ms. Davids

Ms. Chu

Mr. Veasey

Mr. Evans

Mr. Schneider

Mr. Espaillat

Mr. Delgado

Ms. Houlahan

Ms. Craig

MR. Chabot Ranking Member

Ms. Radewagen

Mr. Kelly

Mr. Balderson

Mr. Hern

Mr. Hagedorn

Mr. Stauber

Mr. Burchett

Mr. Spano

Mr. Joyce

TOTALS

On this vote there were _____ ayes and _____ nos.

VI. SECTION-BY-SECTION OF H.R. 2331

Section 1. Short title

This Act may be cited as the “SBA Cyber Awareness Act”.

Section 2. Cybersecurity awareness reporting

This section amends Section 10 of the Small Business Act by adding a Cyber Security Reporting Requirement for the Small Business Administration. The section requires the Small Business Administrator to issue a report not later than 180 days after the date of enactment of the subsection and every year thereafter including (1) an assessment of the SBA’s IT and cybersecurity infrastructure, (2) its strategy to improve cybersecurity protections, (3) a detailed account of any information technology equipment of the SBA that was manufactured by an entity with a principal place of business in the People’s Republic of China, and (4) a report of any cyber risk or incident occurring within the two years preceding the report and SBA’s actions to remediate the cyber risk or incident.

The Small Business Administrator is also instructed to notify the House and Senate small business committees within 7 days, and within 30 days (1) notify the individuals and small business concerns affected by the cybersecurity risk or incident and (2) submit a report summarizing how the cyber risk or incident occurred and how many parties were affected.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Congressional Budget Office pursuant to §402 of the Congressional Budget Act of 1974, submitted a cost estimate for H.R. 2331 that stated enacting the legislation would not increase net direct spending or on budget deficits in any of the four consecutive 10-year periods beginning in 2030.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 20, 2019.

Hon. NYDIA M. VELÁZQUEZ,
*Chairwoman, Committee on Small Business,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2331, the SBA Cyber Awareness Act. If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 2331—SBA Cyber Awareness Act

H.R. 2331 would require the Small Business Administration (SBA) to report annually to the Congress on the state of its information technology (IT) and cybersecurity systems, the methods it could use to improve cybersecurity, any IT equipment or systems it has that were produced by an entity doing business principally

in China, and any recent cybersecurity risks or incidents and subsequent responses. H.R. 2331 would also require the SBA to report all cybersecurity risks or incidents to the Congress as they occur and to notify the individuals and small businesses affected.

Under current law, the SBA is required to submit an annual performance report to the Congress that includes information concerning agency cybersecurity efforts. In addition, the Federal Information Security Modernization Act of 2014 requires federal agencies, including the SBA, to report on the effectiveness of their information security policies and practices each year. Although H.R. 2331 would impose new reporting requirements upon the SBA, the work required to fulfill most of those requirements would not be significant because the SBA already collects most of the information needed in those reports.

On April 23, 2019, CBO transmitted a cost estimate for S. 772, the SBA Cyber Awareness Act, as ordered by the Senate Committee on Small Business and Entrepreneurship on April 1, 2019. The two bills are similar and CBO's estimates of their cost are the same.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VIII. UNFUNDED MANDATES

H.R. 2331 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act, Public Law No. 104-4, and would impose no costs on state, local, or tribal governments.

IX. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 2331 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

X. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2331 are incorporated into the descriptive portions of this report.

XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 7 of rule XII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Art. I, § 8, cl. 3 of the Constitution of the United States.

XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2331 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Public Law No. 104–1.

XIII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 2331 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App. 2.

XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 2331 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in subsections (d), (e), or (f) of clause 9 of rule XXI of the Rules of the House.

XV. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3 of rule XIII of the Rules of the House, no provision of H.R. 2331 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 United States Government Accountability Office pursuant to § 21 of Pub. L. No. 111–139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

XVI. DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to clause 3 of rule XIII of the Rules of the House, H.R. 2331 does not direct any rulemaking.

XVII. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 2331 includes a number of provisions designed to improve the Small Business Administration's internal cybersecurity infrastructure and protect small businesses and other individuals impacted in the event that a cyber incident has occurred.

XVIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause (E) of rule XIII of the Rules of the House, 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, and existing law in which no change is proposed is shown in roman:

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ACT

* * * * *

SEC. 10. (a) The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this Act provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this Act.

(b) *CYBERSECURITY REPORTS.*—

(1) *ANNUAL REPORT.*—*Not later than 180 days after the date of enactment of this subsection, and every year thereafter, the Administrator shall submit a report to the appropriate congressional committees that includes—*

(A) *an assessment of the information technology (as defined in section 11101 of title 40, United States Code) and cybersecurity infrastructure of the Administration;*

(B) *a strategy to increase the cy-ber-se-cu-ri-ty infrastructure of the Administration;*

(C) *a detailed account of any information technology equipment or interconnected system or subsystem of equipment of the Administration that was manufactured by an entity that has its principal place of business located in the People's Republic of China; and*

(D) *an account of any cybersecurity risk or incident that occurred at the Administration during the 2-year period preceding the date on which the report is submitted, and any action taken by the Administrator to respond to or remediate any such cybersecurity risk or incident.*

(2) *ADDITIONAL REPORTS.*—If the Administrator determines that there is a reasonable basis to conclude that a cybersecurity risk or incident occurred at the Administration, the Administrator shall—

(A) not later than 7 days after the date on which the Administrator makes that determination, notify the appropriate congressional committees of the cybersecurity risk or incident; and

(B) not later than 30 days after the date on which the Administrator makes a determination under subparagraph (A)—

(i) provide notice to individuals and small business concerns affected by the cybersecurity risk or incident; and

(ii) submit to the appropriate congressional committees a report, based on information available to the Administrator as of the date which the Administrator submits the report, that includes—

(I) a summary of information about the cybersecurity risk or incident, including how the cybersecurity risk or incident occurred; and

(II) an estimate of the number of individuals and small business concerns affected by the cybersecurity risk or incident, including an assessment of the risk of harm to affected individuals and small business concerns.

(3) *RULE OF CONSTRUCTION.*—Nothing in this subsection shall be construed to affect the reporting requirements of the Administrator under chapter 35 of title 44, United States Code, in particular the requirement to notify the Federal information security incident center under section 3554(b)(7)(C)(ii) of such title, or any other provision of law.

(4) *DEFINITIONS.*—In this subsection:

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

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business of the House of Representatives.

(B) *CYBERSECURITY RISK; INCIDENT.*—The terms “cybersecurity risk” and “incident” have the meanings given such terms, respectively, under section 2209(a) of the Homeland Security Act of 2002.

(d) For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately

the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) The Administration and the Inspector General of the Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives or their duly authorized representatives.

(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 7(j) or 8(a). Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request by such office.

(f) To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

(g) The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(h) The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the num-

ber and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

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