

COMBATTING FOREIGN SURVEILLANCE SPYWARE
SANCTIONS ACT

DECEMBER 5, 2024.—Ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5557]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5557) to impose sanctions against certain persons engaged in the proliferation or use of foreign commercial spyware, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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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 “Combatting Foreign Surveillance Spyware Sanctions Act”.

SEC. 2. SANCTIONS FOR PROLIFERATION OR USE OF FOREIGN COMMERCIAL SPYWARE.

(a) **POLICY.**—It is the policy of the United States—

(1) to act decisively against counterintelligence threats posed by foreign commercial spyware by degrading the ability of companies selling foreign commercial spyware to provide their services to users who act contrary to the national security or foreign policy interests of the United States;

(2) to act decisively against the individuals who lead entities selling foreign commercial spyware and who are involved in activities contrary to the national security or foreign policy interests of the United States; and

(3) to deter the use of foreign commercial spyware for improper purposes, such as to—

(A) target and intimidate perceived opponents;

(B) curb dissent;

(C) limit freedoms of expression, peaceful assembly, or association;

(D) enable other human rights abuses or suppression of civil liberties; or

(E) track or target United States persons.

(b) **DISCRETIONARY SANCTIONS.**—In order to advance the policy objectives under subsection (a), the President may impose the sanctions described in subsection (c) with respect to—

(1) a covered entity the President determines to pose a risk to the national security of the United States which knowingly develops, maintains, owns, operates, brokers, markets, sells, leases, licenses, or otherwise makes available spyware that has enabled the targeting of United States Government officials, or personnel of the intelligence community;

(2) any foreign person who—

(A) is a current or former senior officer of an entity described in paragraph (1); and

(B) knowingly engages in the sale of foreign commercial spyware that allows for the targeting of United States government officials, or personnel of the intelligence community; or

(3) any foreign person who—

(A) is an official of a foreign government or is acting for or on behalf of such official; and

(B) knowingly engages in the targeting of United States Government officials, or personnel of the intelligence community through the use of foreign commercial spyware.

(c) **SANCTIONS DESCRIBED.**—The sanctions described in this subsection are the following:

(1) **BLOCKING OF PROPERTY.**—The President may exercise all of the powers granted to the President under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (except that the requirements of section 202 of such Act (50 U.S.C. 1701) shall not apply) to the extent necessary to block and prohibit all transactions in property and interests in property of a person determined by the President to be subject to subsection (b) if such property and interests in property are in the United States, come within the United States, or come within the possession or control of a United States person.

(2) **INADMISSIBILITY TO THE UNITED STATES AND REVOCATION OF VISA OR OTHER DOCUMENTATION.**—

(A) **INELIGIBILITY FOR VISA, ADMISSION, OR PAROLE.**—In the case of a foreign person determined by the President to be subject to subsection (b) who is an individual, the foreign person is—

(i) inadmissible to the United States;

(ii) ineligible to receive a visa or other documentation to enter the United States; and

(iii) otherwise ineligible to be admitted or paroled into the United States or to receive any other benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) **CURRENT VISA REVOKED.**—In the case of a foreign person determined by the President to be subject to subsection (b) who is an individual, the visa or other entry documentation of the person shall be revoked, regardless of when such visa or other entry documentation is or was issued. A revocation under this subparagraph shall take effect immediately and automatically cancel any other valid visa or entry documentation that is in the person's possession.

(C) **EXCEPTION TO COMPLY WITH INTERNATIONAL OBLIGATIONS.**—Sanctions under this subsection shall not apply with respect to a foreign person if admitting or paroling the person into the United States is necessary to permit the United States to comply with the Agreement regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and

entered into force November 21, 1947, between the United Nations and the United States, or other applicable international obligations.

- (d) IMPLEMENTATION; PENALTIES.—
- (1) IMPLEMENTATION.—The President may exercise all authorities provided under sections 203 and 205 of the International Emergency Economic Powers Act (50 U.S.C. 1702 and 1704) to carry out this subsection and shall issue such regulations, licenses, and orders as are necessary to carry out this subsection.
- (2) PENALTIES.—Any person that violates, attempts to violate, conspires to violate, or causes a violation of this subsection or any regulation, license, or order issued to carry out paragraph (1) shall be subject to the penalties provided for in subsections (b) and (c) of section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) to the same extent as a person that commits an unlawful act described in subsection (a) of that section.
- (e) INTELLIGENCE AND LAW ENFORCEMENT ACTIVITIES.—Sanctions under this section shall not apply with respect to—
- (1) any activity subject to the reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 3091 et seq.); or
- (2) any authorized intelligence or law enforcement activities of the United States.
- (f) UNITED STATES GOVERNMENT ACTIVITIES.—Nothing in this Act may be construed to prohibit transactions associated with the official business of the Federal Government as carried out by employees, grantees, or contractors.
- (g) HUMANITARIAN ACTIVITIES.—The President may not impose sanctions under this section with respect to any person for conducting or facilitating a transaction for the sale of agricultural commodities, food, medicine, or medical devices or for the provision of humanitarian assistance.
- (h) EXCEPTION RELATING TO IMPORTATION OF GOODS.—
- (1) IN GENERAL.—The authorities to impose sanctions authorized under this section shall not include the authority to impose sanctions on the importation of goods.
- (2) GOOD DEFINED.—In this subsection, the term “good” means any article, natural, or manmade substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technical data.
- (i) INTERNATIONAL FINANCIAL INSTITUTIONS.—The Secretary of the Treasury may instruct the United States Executive Director at the international financial institutions (as defined under section 1701(c) of the International Financial Institutions Act) to use the voice and vote of the United States to oppose financial assistance to a foreign government that the Secretary finds has targeted United States government officials or personnel of the intelligence community with foreign commercial spyware.
- (j) SUNSET.—The authority of the President to impose a new sanction under subsection (b) shall terminate on the date that is 7 years after the date of the enactment of this Act.
- (k) DEFINITIONS.—In this section:
- (1) FOREIGN COMMERCIAL SPYWARE; FOREIGN COMPANY; SPYWARE; COVERED ENTITY.—The terms “foreign commercial spyware”, “foreign company”, “spyware”, and “covered entity” have the meanings given those terms in section 1102A of the National Security Act of 1947 (50 U.S.C. 3231 et seq.).
- (2) FOREIGN PERSON.—The term “foreign person” means a person that is not a United States person.
- (3) KNOWINGLY.—The term “knowingly” with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result.
- (4) UNITED STATES PERSON.—The term “United States person” means—
- (A) a United States citizen or an alien lawfully admitted for permanent residence to the United States;
- (B) an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity; or
- (C) a person in the United States

PURPOSE AND SUMMARY

Introduced on September 19, 2023, by Representative Jim Himes, H.R. 5557, the *Combatting Foreign Surveillance Spyware Sanctions Act*, would authorize sanctions on individuals and entities that directly or indirectly facilitate spyware, including spyware

that could enable the targeting of United States Government officials or personnel of the Intelligence Community.

BACKGROUND AND NEED FOR LEGISLATION

The spread of foreign spyware is an increasing concern. It facilitates access to the contents and functions of individuals' computers and mobile devices. For example, in 2021, U.S. Embassy employees in Uganda were targeted by spyware. Foreign governments, such as Uganda, are suspected of continuing this and other kinds of spyware to target adversaries, dissidents, and journalists. The government of Bahrain is facing a lawsuit in London by two dissidents who accuse the government of hacking intrusions using FinSpy, which was developed by the British-German Gamma Group. This legislation would authorize sanctions against foreign persons complicit in the targeting of U.S. officials with spyware.

The proliferation of spyware threatens U.S. national security interests, particularly when government officials are targeted by foreign governments. Due to the increasing sophistication of such spyware, its presence can be difficult to detect, giving foreign countries potential access to sensitive documents, messages, and other communications. Authorizing sanctions against bad actors gives U.S. officials an effective counter tool in their campaign to limit the deployment of this technology.

HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 5557: The Subcommittee on National Security, Illicit Finance, and International Financial Institutions of the Committee on Financial Services held a hearing on April 27, 2023, titled "Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI)."

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 20, 2023, and ordered H.R. 5557 to be reported favorably to the House as amended by a recorded vote of 47 ayes to 0 nays (Record vote no. FC-102), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Himes by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 5557 was ordered reported favorably to the House as amended by a recorded vote of 47 ayes to 0 nays (Record vote no. FC-102), a quorum being present.

Record vote no. FC- 102

| Representative | Yea | Nay | Present | Representative | Yea | Nay | Present |
|-------------------|-----|-----|---------|-------------------|-----|-----|---------|
| Mr. McHenry | X | — | — | Ms. Waters | X | — | — |
| Mr. Hill | X | — | — | Mrs. Velázquez | — | — | — |
| Mr. Lucas | — | — | — | Mr. Sherman | X | — | — |
| Mr. Sessions | X | — | — | Mr. Meeks | X | — | — |
| Mr. Posey | X | — | — | Mr. Scott | X | — | — |
| Mr. Luetkeneyer | X | — | — | Mr. Lynch | X | — | — |
| Mr. Huizenga | X | — | — | Mr. Green | X | — | — |
| Mrs. Wagner | X | — | — | Mr. Cleaver | X | — | — |
| Mr. Barr | X | — | — | Mr. Himes | X | — | — |
| Mr. Williams (TX) | X | — | — | Mr. Foster | X | — | — |
| Mr. Emmer | X | — | — | Mrs. Beatty | X | — | — |
| Mr. Loudermilk | X | — | — | Mr. Vargas | X | — | — |
| Mr. Mooney | X | — | — | Mr. Gottheimer | X | — | — |
| Mr. Davidson | X | — | — | Mr. Gonzalez | X | — | — |
| Mr. Rose | X | — | — | Mr. Casten | X | — | — |
| Mr. Steil | X | — | — | Ms. Pressley | X | — | — |
| Mr. Timmons | X | — | — | Mr. Horsford | — | — | — |
| Mr. Norman | — | — | — | Ms. Thair | X | — | — |
| Mr. Meuser | X | — | — | Mr. Torres | — | — | — |
| Mr. Fitzgerald | X | — | — | Ms. Garcia | X | — | — |
| Mr. Garbarino | X | — | — | Ms. Williams (GA) | X | — | — |
| Mrs. Kim | X | — | — | Mr. Nickel | X | — | — |
| Mr. Donalds | X | — | — | Ms. Pettersen | X | — | — |
| Mr. Flood | X | — | — | | | | |
| Mr. Lawler | X | — | — | | | | |
| Mr. Nunn | X | — | — | | | | |
| Ms. De La Cruz | X | — | — | | | | |
| Mrs. Houchin | X | — | — | | | | |
| Mr. Ogles | X | — | — | | | | |

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 5557 is to authorize sanctions on individuals and entities that directly or indirectly facilitate spyware, including spyware that could enable the targeting of United States Government officials or personnel of the Intelligence Community.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

| H.R. 5557, Combatting Foreign Surveillance Spyware Sanctions Act | | | |
|--|-----------------|---|----------------------|
| As ordered reported by the House Committee on Financial Services on September 20, 2023 | | | |
| By Fiscal Year, Millions of Dollars | 2024 | 2024-2028 | 2024-2033 |
| Direct Spending (Outlays) | * | * | * |
| Revenues | * | * | * |
| Increase or Decrease (-) in the Deficit | * | * | * |
| Spending Subject to Appropriation (Outlays) | * | * | * |
| Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034? | < \$2.5 billion | Statutory pay-as-you-go procedures apply? Yes | |
| | | Mandate Effects | |
| Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | Yes, Under Threshold |
| * = between -\$500,000 and \$500,000. | | | |

H.R. 5557 would allow the Administration to impose sanctions on foreign companies and persons involved in proliferating foreign spyware that enables targeting U.S. government officials or intelligence community personnel. The bill also would authorize the Department of the Treasury to encourage international financial institutions such as the World Bank to deny assistance to foreign governments that facilitate such proliferation.

Using other authorities available under current law, the Administration can sanction companies and persons that threaten national security by facilitating the targeting of U.S. government officials and intelligence community personnel. If enactment of the bill leads the Administration to broaden those sanctions, more people would be denied visas by the Department of State, resulting in an insignificant decrease in revenues from fees. Although most visa fees are retained by the Department of State and spent, some col-

lections are deposited into the Treasury as revenues. Denying foreign nationals entry into the United States also would reduce direct spending on federal benefits (emergency Medicaid or federal subsidies for health insurance, for example) for which those people might otherwise be eligible.

Sanctions under the bill also would increase the number of people who are subject to civil or criminal monetary penalties. Those penalties are recorded as revenues, and a portion can be spent without further appropriation. In addition, the bill would block transactions in certain assets and property that are in the United States or that come under the control of people in the United States.

Using data about similar sanctions, CBO estimates that any additional sanctions would affect a small number of people; thus, enacting H.R. 5557 would have insignificant effects on revenues and direct spending, and would, on net, reduce deficits by insignificant amounts over the 2024–2033 period.

Based on the cost of similar actions, CBO estimates that efforts to influence the actions of international financial institutions would cost less than \$500,000 over the 2024–2028 period. Such spending would be subject to the availability of appropriated funds.

H.R. 5557 could impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) if the President imposes sanctions as a result of the bill. Sanctions could prohibit individuals or entities in the United States from engaging in transactions involving assets and property that have been frozen. Those transactions are otherwise permitted under current law. The cost of the mandate would be any income lost because of the prohibition. CBO expects that because a small number of people or entities would be affected, the loss of income from any incremental increase in restrictions imposed by the bill would be small as well. CBO estimates that the cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$198 million in 2023, adjusted annually for inflation).

H.R. 5557 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are Emma Uebelhor and Sunita D'Monte (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by Christina Hawley Anthony, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1973.

FEDERAL MANDATES STATEMENT

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

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.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the “Combatting Foreign Surveillance Spyware Sanctions Act”.

Section 2. Sanctions for proliferation or use of foreign commercial spyware

Section 2 identifies current U.S. policy in regard to foreign commercial spyware. This section also indicates areas in which the President has the discretion to impose sanctions. The sanctions include:

- Blocking of property
- Inadmissibility to the U.S. and revocation of visa or other documentation
- Revocation of current visa
- Exception to comply with international obligations.

Section 2 also identifies implementations, penalties, and exceptions relating to areas such as intelligence and law enforcement activities, U.S. government activities, humanitarian activities, and

importation of goods. This legislation has a sunset of 7 years after enactment.

