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118TH CONGRESS, 2d Session | SENATE | REPORT 118–301

STOP SECRET SPENDING ACT OF 2024

REPORT

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3926

TO AMEND THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006 TO ENSURE THAT OTHER TRANSACTION AGREEMENTS ARE REPORTED TO USASPENDING.GOV, AND FOR OTHER PURPOSES

DECEMBER 17 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

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R E P O R T

[To accompany S. 3926]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3926) to amend the Federal Funding Accountability and Transparency Act of 2006 to ensure that other transaction agreements are reported to USAspending.gov, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 3926, the *Stop Secret Spending Act of 2024,* amends the Federal Funding Accountability and Transparency Act of 2006 (FFATA) to require other transaction agreements (OTAs) to be reported on USAspending.gov (USAspending), the official data source of federal spending information. The bill also updates reporting requirements for Inspectors General and creates processes to clarify which agencies are responsible for posting data on USAspending under FFATA.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Congress directed the executive branch to create a centralized database of grant and contract awards in FFATA, and later amend-

ed those requirements to cover federal budget data in the Digital Accountability and Transparency (DATA) Act of 2014.[1] This bill seeks to respond to recent recommendations by the Government Accountability Office (GAO) to improve the completeness and quality of data posted to the website required under FFATA, USASpending.gov.

First, the bill addresses reporting of "other transaction agreements" (OTAs) under FFATA. OTAs are legally binding agreements other than standard contracts, cooperative agreements, and grants, that authorize federal government agencies to acquire technology and services. They are not subject to the Federal Acquisition Regulation and they are not required to be posted on USAspending under FFATA.[2] The use of OTAs has grown significantly, particularly at the Department of Defense.[3] Overall OTA obligations increased from $4.8 billion in 2018 to $11 billion in 2022, and reached as high as $18.4 billion in 2020.[4] Notably, the Department of Defense and the Department of Health and Human Services relied on OTAs to develop and procure COVID 19 vaccines under "Operation Warp Speed".[5]

Despite the growth in OTA authorization and usage, reporting and transparency requirements have not kept pace. Contract law scholars have indicated that agencies may over-rely on OTAs to avoid traditional contracting requirements for fair and open competition, conflict of interest protections, patent requirements under the Bayh-Dole Act, and transparency measures.[6] GAO found that agencies had no standard way to report OTA spending, which led to over $40 billion in OTA spending not being reported to USAspending.[7] Separately, GAO found that agencies did not properly identify at least $1.6 billion worth of OTA spending related to pandemic spending, including spending on vaccine development and procurement.[8] Thus, GAO recommended that OTAs be considered in the list of federal awards that agencies must report to USAspending.[9]

The bill responds to this recommendation by requiring public reporting of OTAs on USAspending. The bill adopts a phased approach over three years to permit the Office of Management and Budget (OMB), the General Services Administration, and the Department of the Treasury to update the necessary systems to in-

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[1] 31 U.S.C. 6101 note.

[2] Government Accountability Office, *Federal Spending Transparency: Opportunities to Improve USAspending.gov Data,* GAO–24–106214 (Nov. 7, 2023) (https://www.gao.gov/assets/d24106214.pdf).

[3] IBM Center for the Business of Government, *Other Transaction Authorities (2021)* (https://www.businessofgovernment.org/sites/default/files/Other%20Transactions%20Authorities.pdf); Government Accountability Office, *Other Transaction Agreements: DOD Can Improve Planning for Consortia Awards,* GAO–22–105357 (Sept. 20, 2022) (https://www.gao.gov/products/gao-22-105357).

[4] *Supra,* note 2.

[5] 5 National Public Radio, *How Operation Warp Speed's Big Vaccine Contracts Could Stay Secret* (Sep 19, 2020) (https://www.npr.org/sections/health-shots/2020/09/29/917899357/how-operation-warp-speeds-big-vaccine-contracts-could-stay-secret).

[6] Roza Sheffield, *Other Transactions Authority: Business Necessity that Needs a Minor Tune-up? Or Too Fast and Furious with Insufficient Compliance and Transparency Requirements?,* Public Contract Law Journal (Apr 12, 2024).

[7] *Supra,* note 2.

[8] Government Accountability Office, *COVID–19 Contracting: Actions Needed to Enhance Transparency and Oversight of Selected Awards,* GAO–21–501 (Jul. 26, 2021) (https://www.gao.gov/assets/gao-21-501.pdf).

[9] *Supra,* note 2.

clude OTAs. The bill also requires certain transparency measures during the phase-in period, including disclosure of all OTAs.

GAO also made recommendations to improve the quality and completeness of data on USAspending. The DATA Act required that Inspectors General review and report on the completeness, timeliness, quality, and accuracy of the data on USAspending, but these requirements expired in 2021.[10] In identifying ways to reduce federal financial management risks and increase transparency of federal spending data related to emergencies, GAO recommended extending these reporting requirements.[11] This bill responds to that recommendation by extending the requirements for ten years.

Finally, GAO found that 49 federal agencies do not report data to USAspending, limiting its quality and completeness.[12] Many of these agencies are small, are not executive branch agencies, or have complex statutory organizations, like the Smithsonian Institution.[13] GAO recommended that Congress direct the Department of the Treasury, in coordination with OMB, to assess and determine which agencies are responsible for reporting data under FFATA. This bill responds to the recommendation by requiring such an assessment, and by directing that agencies take steps to verify the quality of information and compliance with display standards on USAspending.

III. Legislative History

Senator Joni Ernst (R–IA) introduced S. 3926, the *Stop Secret Spending Act of 2024,* on March 12, 2024. The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senator James Lankford (R–OK) joined as an additional cosponsor on September 25, 2024. Senator Gary Peters (D–MI) joined as an additional cosponsor on November 12, 2024.

The Committee considered S. 3926 at a business meeting on September 25, 2024. At the business meeting, Senator Peters offered a substitute amendment, as well as a modification to the substitute amendment. The Peters substitute amendment, as modified, adds an implementation plan on reporting OTAs, limits Inspector General reports to agencies covered by the Chief Financial Officers Act of 1990, and adds a GAO report on recommendations for updating the Federal Acquisition Regulation for reporting of certain personnel information under FFATA.

The Committee adopted the modification to the Peters substitute amendment, and the Peters substitute amendment as modified, by unanimous consent, with Senators Peters, Hassan, Sinema, Rosen, Blumenthal, Butler, Paul, Lankford, and Hawley present. The bill, as amended by the Peters substitute, as modified, was ordered reported favorably by a roll call vote of 9 yeas and 0 nays, with Senators Peters, Hassan, Sinema, Rosen, Blumenthal, Butler, Paul, Lankford, and Hawley voting in the affirmative. Senators Carper,

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[10] Pub. L. No. 113–101, §§2–3, 128 Stat. 1146, 1146–51.

[11] Senate Committee on Homeland Security and Governmental Affairs, Testimony Submitted for the Record of General Gene Dodaro, Governmental Accountability Office, *Hearing on Pandemic Response and Accountability: Reducing Fraud and Expanding Access to COVID–19 Relief through Effective Oversight,* 117th Cong. (Mar. 17, 2022) (S. Hrg. 117–564).

[12] *Supra,* note 2.

[13] Email from Nina Rostro, Government Accountability Office to the Senate Committee on Homeland Security and Governmental Affairs staff. (Nov. 13, 2023).

Ossoff, Johnson, Romney, Scott, and Marshall voted yea by proxy, for the record only.

Consistent with Committee Rule 3(G), the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the "Stop Secret Spending Act of 2024."

Section 2. Other transaction agreement reporting

Subsection (a) amends section 2(a) of FFATA to require posting of other transaction agreements (OTAs).

Subsection (b) amends section 4 of FFATA to require OTA data be posted and centralized on USAspending within 3 years.

Subsection (c) amends section 2 of FFATA to require that the Secretary of the Treasury annually report a description of data not posted on USAspending.

Subsection (d) requires that if agencies have not yet posted OTA data on USAspending within one year of this bill's enactment, the Treasury Secretary, in coordination OMB and agencies, must publish a report including a list and a detailed description of the OTAs entered into by agencies in the previous year. If the data has not been posted within two years of enactment, the agencies must submit a plan to Congress describing the actions underway and planned to ensure OTA data is included on USAspending within three years of enactment.

Section 3. Other amendments

Subsection (a) amends section 6(a) of FFATA to direct Inspectors General to review spending data submitted to USAspending, and report to Congress every two years for ten years after enactment, to ensure accuracy and completeness of the data.

Subsection (b) amends section 3 of FFATA to require that the Treasury Secretary and the OMB Director, in consultation with other agency heads, assess and verify which federal agencies are responsible to submit data to USAspending under FFATA. This section also clarifies that agencies are responsible for verifying the accuracy of data on USAspending. The section also requires that the Treasury Secretary, in consultation with the OMB Director, ensure agencies post information that complies with display standards established by the Secretary.

Section 4. GAO Report

This section directs GAO to make recommendations to update clause 52.204.10 of the Federal Acquisition Regulation, which implements executive compensation reporting requirements under FFATA within 1 year.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will

have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill 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.

VI. Congressional Budget Office Cost Estimate

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 118th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation's estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATE INFORMATION

Bill number	Title	Status	Last action	Budget function	Direct spending, 2025–2034	Revenues, 2025–2034	Spending subject to appropriations, 2025–2029	Pay-as-you-go procedures apply?	Budgetary effects after 2034	Mandates	Contact
S. 3926	Stop Secret Spending Act of 2024 ..	Ordered reported	09/25/24	800	Between zero and $500,000	0	Not estimated	Yes	No	No	Kelly Durand

S. 3926 would increase the amount of information that the Department of the Treasury must publish each year concerning federal spending. The bill also would direct the department and the Office of Management and Budget to establish standards to ensure that federal agencies report complete, accurate financial data, and it would require agencies' inspectors general to assess and report to the Congress biennially on the quality of reported financial data. Enacting S. 3926 could affect direct spending by some agencies that are allowed to use fees, receipts from the sale of goods, and other collections to cover operating costs. CBO estimates that any net changes in direct spending by those agencies would be negligible because most of them can adjust amounts collected to reflect changes in operating costs. CBO estimates that enacting S. 3926 would have no effect on revenues. CBO has not estimated the bill's effects on spending subject to appropriation. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VII. Changes in Existing Law Made by the Bill, as Reported

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006

* * * * * * *

SEC. 2. FULL DISCLOSURES OF ENTITIES RECEIVING FEDERAL FUNDING.

(a) Definitions.—In this Act:

(1) * * *

(2) * * *

(3) * * *

(4) Federal award.—The term 'Federal award'—

(A) * * *

(i) * * *

(ii) includes contracts, subcontracts, purchase orders, task orders, and delivery orders; and

(iii) includes other transaction agreements;

(5) * * *

(6) * * *

(7) Searchable website.—The term 'searchable website' means a website that allows the public to—

(A) * * *

(B) ascertain through a single search the total amount of Federal funding awarded to an entity by a Federal award described in paragraph [(2)(A)(i)] *4(A)(i)*, by fiscal year;

(C) ascertain through a single search the total amount of Federal funding awarded to an entity by a Federal award described in paragraph [(2)(A)(ii)] *4(A)(ii)*, by fiscal year; and (b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *

(h) Annual Report.—Not later than 1 year after the date of enactment of the Stop Secret Spending Act of 2024, and annually thereafter, the Secretary shall post to the website established under this section a report that includes—

(1) the total amount of Federal spending on Federal awards for which data has not been posted to the website; and

(2) the reason data on the Federal spending described in paragraph (1) has not been posted to the website, including whether the Federal spending was—

(A) national security-related or classified;

(B) a grant or contract awarded or entered into by a legislative or judicial branch agency; or

(C) a subaward below a primary subaward.

SEC. 3. FULL DISCLOSURE OF FEDERAL FUNDS.

(a) * * *

(b) INFORMATION TO BE POSTED.—

(1) FUNDS.—For any funds made available to or expended by [a Federal agency or component of a Federal agency] *a Federal agency or a component of a Federal agency included on the list posted under subsection (e)(2)*, the information to be posted shall include—

(A) * * *

(B) * * *

(C) * * *

(D) * * *

(2) BUDGET JUSTIFICATIONS.—

(A) * * *

(B) INFORMATION.—The information [to be posted] *to be posted by a Federal agency or a component of a Federal agency included on the list posted under subsection (e)(2)*—

(i) shall include any budget justification materials—

(I) for the second fiscal year beginning after the date of enactment of this paragraph, and each fiscal year thereafter; and

(II) to the extent practicable, that were released for any fiscal year before the date of enactment of this paragraph; and

(ii) shall not include budget justification materials the disclosure of which is prohibited by law, that are classified, or that are exempt from disclosure under section 552(b) of title 5, United States Code.

(C) * * *

(D) * * *

(E) * * *

(c) QUALITY OF INFORMATION.—

(1) IN GENERAL.—The Secretary and the Director, in consultation with the heads of Federal agencies, shall establish requirements to ensure that the information to be posted under subsection (b) that is posted by a Federal agency or component of a Federal agency is complete and accurate.

(2) FEDERAL AGENCY RESPONSIBILITY.—The head of each Federal agency or component of a Federal agency posting data under subsection (b) shall ensure that the data is complete and accurate.

(3) AUTHORITY TO VERIFY ACCURACY.—The Secretary and the Director may verify that the data posted under subsection (b) by a Federal agency or component of a Federal agency are complete, accurate, and consistent.

(d) DISPLAY STANDARDS.—The Secretary, in consultation with the Director, shall ensure that the heads of Federal agencies that post information under subsection (b) comply with display standards established by the Secretary.

(e) AGENCY REPORTING DETERMINATION.—Not later than 1 year after the date of enactment of the Stop Secret Spending Act of 2024, and not less frequently than once every 2 years thereafter, the Secretary, in coordination with the Director, shall—

(1) assess and make a determination with respect to which Federal agencies and components of Federal agencies are required to post information under subsection (b);

(2) publish a list of the Federal agencies and components of Federal agencies determined under paragraph (1) on the website established under section 2(b)(1); and

(3) provide to the head and inspector general of each Federal agency or component of a Federal agency included on the list published under paragraph (2) written notice of the inclusion of the Federal agency or component of a Federal agency on the list.

SEC. 4. DATA STANDARDS.

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) OTHER TRANSACTION AGREEMENT DATA.—Not later than 3 years after the date of enactment of the Stop Secret Spending Act of 2024, the Secretary shall ensure that, with respect to the website established under section 2, or any successor website—

(1) data relating to other transaction agreements is automatically transmitted to the website; and

(2) a centralized view of the data described in paragraph (1) is available on the website.

* * * * * * *

SEC. 6. ACCOUNTABILITY FOR FEDERAL FUNDING.

(a) INSPECTOR GENERAL REPORTS.—

(1) *IN GENERAL*.—In accordance with paragraph (2), the Inspector General of ⟦each Federal agency⟧ *each agency described in paragraphs (1) and (2) of section 901(b) of title 31, United States Code*, in consultation with the Comptroller General of the United States, shall—

(A) review a statistically valid sampling of the spending data submitted under this Act by the ⟦Federal agency⟧ *agency*; and

(B) submit to Congress and make publically available a report assessing the completeness, timeliness, quality, and accuracy of the data sampled and the implementation and use of data standards by the ⟦Federal agency⟧ *agency*.

⟦(2) DEADLINES.—

⟦(A) FIRST REPORT.—Not later than 18 months after the date on which the Director and the Secretary issue guidance to Federal agencies under section 4(c)(1), the Inspector General of each Federal agency shall submit and make publically available a report as described in paragraph (1).

⟦(B) SUBSEQUENT REPORTS.—On the same date as the Inspector General of each Federal agency submits the second and fourth reports under sections 3521(f) and 9105(a)(3) of title 31, United States Code, that are submitted after the report under subparagraph (A), the Inspector General shall submit and make publically available a report as described in paragraph (1). The report submitted under this subparagraph may be submitted as

a part of the report submitted under section 3521(f) or 9105(a)(3) of title 31, United States Code.]

(2) DEADLINES.—The inspector general of each agency described in paragraphs (1) and (2) of section 901(b) of title 31, United States Code, shall submit to Congress and make publicly available a report described in paragraph (1)(B)—

(A) not later than 1 year after the date of enactment of the Stop Secret Spending Act of 2024; and

(B) not less than frequently than once every 2 years after the date described in subparagraph (A) until the date that is 10 years after the date of enactment of the Stop Secret Spending Act of 2024 on the date of submission of the report required under section 3521(f) or 9105(a)(3) of title 31, United States Code, for the applicable fiscal year.

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