

Sec.
[11332. Repealed.]

AMENDMENTS

2014—Pub. L. 113–291, div. A, title VIII, §831(b), Dec. 19, 2014, 128 Stat. 3440, added item 11319.

2002—Pub. L. 107–296, title X, §§1002(b), 1005(a)(2), Nov. 25, 2002, 116 Stat. 2269, 2272, and Pub. L. 107–347, title III, §§302(b), 305(a), Dec. 17, 2002, 116 Stat. 2957, 2960, amended table of sections identically, substituting “Responsibilities for Federal information systems standards” for “Responsibilities regarding efficiency, security, and privacy of federal computer systems” in item 11331 and striking out item 11332 “Federal computer system security training and plan”.

SUBCHAPTER I—DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

§ 11301. Responsibility of Director

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, the Director of the Office of Management and Budget shall comply with this chapter with respect to the specific matters covered by this chapter.

(Pub. L. 107–217, Aug. 21, 2002, 116 Stat. 1237.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 11301 | 40:1411. | Pub. L. 104–106, div. E, title LI, §5111, Feb. 10, 1996, 110 Stat. 680. |

MODERNIZING GOVERNMENT TECHNOLOGY

Pub. L. 115–91, div. A, title X, subtitle G, Dec. 12, 2017, 131 Stat. 1586, provided that:

“SEC. 1076. DEFINITIONS.

“In this subtitle:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of General Services.

“(2) BOARD.—The term ‘Board’ means the Technology Modernization Board established under section 1094(c)(1).

“(3) CLOUD COMPUTING.—The term ‘cloud computing’ has the meaning given the term by the National Institute of Standards and Technology in NIST Special Publication 800–145 and any amendatory or superseding document thereto.

“(4) DIRECTOR.—The term ‘Director’ means the Director of the Office of Management and Budget.

“(5) FUND.—The term ‘Fund’ means the Technology Modernization Fund established under section 1094(b)(1) [probably should be “1078(b)(1)”].

“(6) INFORMATION TECHNOLOGY.—The term ‘information technology’ has the meaning given the term in section 3502 of title 44, United States Code.

“(7) IT WORKING CAPITAL FUND.—The term ‘IT working capital fund’ means an information technology system modernization and working capital fund established under section 1093(b)(1) [probably should be “1077(b)(1)”].

“(8) LEGACY INFORMATION TECHNOLOGY SYSTEM.—The term ‘legacy information technology system’ means an outdated or obsolete system of information technology.

“SEC. 1077. ESTABLISHMENT OF AGENCY INFORMATION TECHNOLOGY SYSTEMS MODERNIZATION AND WORKING CAPITAL FUNDS.

“(a) DEFINITION.—In this section, the term ‘covered agency’ means each agency listed in section 901(b) of title 31, United States Code.

“(b) INFORMATION TECHNOLOGY SYSTEM MODERNIZATION AND WORKING CAPITAL FUNDS.—

“(1) ESTABLISHMENT.—The head of a covered agency may establish within the covered agency an information technology system modernization and working capital fund for necessary expenses described in paragraph (3).

“(2) SOURCE OF FUNDS.—The following amounts may be deposited into an IT working capital fund:

“(A) Reprogramming and transfer of funds made available in appropriations Acts enacted after the date of enactment of this Act [Dec. 12, 2017], including the transfer of any funds for the operation and maintenance of legacy information technology systems, in compliance with any applicable reprogramming law or guidelines of the Committees on Appropriations of the Senate and the House of Representatives or transfer authority specifically provided in appropriations law.

“(B) Amounts made available to the IT working capital fund through discretionary appropriations made available after the date of enactment of this Act.

“(3) USE OF FUNDS.—An IT working capital fund established under paragraph (1) may only be used—

“(A) to improve, retire, or replace existing information technology systems in the covered agency to enhance cybersecurity and to improve efficiency and effectiveness across the life of a given workload, procured using full and open competition among all commercial items to the greatest extent practicable;

“(B) to transition legacy information technology systems at the covered agency to commercial cloud computing and other innovative commercial platforms and technologies, including those serving more than 1 covered agency with common requirements;

“(C) to assist and support covered agency efforts to provide adequate, risk-based, and cost-effective information technology capabilities that address evolving threats to information security;

“(D) to reimburse funds transferred to the covered agency from the Fund with the approval of the Chief Information Officer, in consultation with the Chief Financial Officer, of the covered agency; and

“(E) for a program, project, or activity or to increase funds for any program, project, or activity that has not been denied or restricted by Congress.

“(4) EXISTING FUNDS.—An IT working capital fund may not be used to supplant funds provided for the operation and maintenance of any system within an appropriation for the covered agency at the time of establishment of the IT working capital fund.

“(5) PRIORITIZATION OF FUNDS.—The head of each covered agency—

“(A) shall prioritize funds within the IT working capital fund of the covered agency to be used initially for cost savings activities approved by the Chief Information Officer of the covered agency; and

“(B) may reprogram and transfer any amounts saved as a direct result of the cost savings activities approved under clause (i) [probably should be “subparagraph (A)”] for deposit into the IT working capital fund of the covered agency, consistent with paragraph (2)(A).

“(6) AVAILABILITY OF FUNDS.—

“(A) IN GENERAL.—Any funds deposited into an IT working capital fund shall be available for obligation for the 3-year period beginning on the last day of the fiscal year in which the funds were deposited.

“(B) TRANSFER OF UNOBLIGATED AMOUNTS.—Any amounts in an IT working capital fund that are unobligated at the end of the 3-year period described in subparagraph (A) shall be transferred to the general fund of the Treasury.

“(7) AGENCY CIO RESPONSIBILITIES.—In evaluating projects to be funded by the IT working capital fund of a covered agency, the Chief Information Officer of the covered agency shall consider, to the extent applicable, guidance issued under section 1094(b)(1)

[probably should be “1078(b)(1)”] to evaluate applications for funding from the Fund that include factors including a strong business case, technical design, consideration of commercial off-the-shelf products and services, procurement strategy (including adequate use of rapid, iterative software development practices), and program management.

“(c) REPORTING REQUIREMENT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and every 6 months thereafter, the head of each covered agency shall submit to the Director, with respect to the IT working capital fund of the covered agency—

“(A) a list of each information technology investment funded, including the estimated cost and completion date for each investment; and

“(B) a summary by fiscal year of obligations, expenditures, and unused balances.

“(2) PUBLIC AVAILABILITY.—The Director shall make the information submitted under paragraph (1) publicly available on a website.

“SEC. 1078. ESTABLISHMENT OF TECHNOLOGY MODERNIZATION FUND AND BOARD.

“(a) DEFINITION.—In this section, the term ‘agency’ has the meaning given the term in section 551 of title 5, United States Code.

“(b) TECHNOLOGY MODERNIZATION FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury a Technology Modernization Fund for technology-related activities, to improve information technology, to enhance cybersecurity across the Federal Government, and to be administered in accordance with guidance issued by the Director.

“(2) ADMINISTRATION OF FUND.—The Administrator, in consultation with the Chief Information Officers Council and with the approval of the Director, shall administer the Fund in accordance with this subsection.

“(3) USE OF FUNDS.—The Administrator shall, in accordance with recommendations from the Board, use amounts in the Fund—

“(A) to transfer such amounts, to remain available until expended, to the head of an agency for the acquisition of products and services, or the development of such products and services when more efficient and cost effective, to improve, retire, or replace existing Federal information technology systems to enhance cybersecurity and privacy and improve long-term efficiency and effectiveness;

“(B) to transfer such amounts, to remain available until expended, to the head of an agency for the operation and procurement of information technology products and services, or the development of such products and services when more efficient and cost effective, and acquisition vehicles for use by agencies to improve Governmentwide efficiency and cybersecurity in accordance with the requirements of the agencies;

“(C) to provide services or work performed in support of—

“(i) the activities described in subparagraph (A) or (B); and

“(ii) the Board and the Director in carrying out the responsibilities described in subsection (c)(2); and

“(D) to fund only programs, projects, or activities or to fund increases for any programs, projects, or activities that have not been denied or restricted by Congress.

“(4) AUTHORIZATION OF APPROPRIATIONS; CREDITS; AVAILABILITY OF FUNDS.—

“(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund \$250,000,000 for each of fiscal years 2018 and 2019.

“(B) CREDITS.—In addition to any funds otherwise appropriated, the Fund shall be credited with all reimbursements, advances, or refunds or recoveries relating to information technology or services provided for the purposes described in paragraph (3).

“(C) AVAILABILITY OF FUNDS.—Amounts deposited, credited, or otherwise made available to the Fund shall be available until expended for the purposes described in paragraph (3).

“(5) REIMBURSEMENT.—

“(A) REIMBURSEMENT BY AGENCY.—

“(i) IN GENERAL.—The head of an agency shall reimburse the Fund for any transfer made under subparagraph (A) or (B) of paragraph (3), including any services or work performed in support of the transfer under paragraph (3)(C), in accordance with the terms established in a written agreement described in paragraph (6).

“(ii) REIMBURSEMENT FROM SUBSEQUENT APPROPRIATIONS.—Notwithstanding any other provision of law, an agency may make a reimbursement required under clause (i) from any appropriation made available after the date of enactment of this Act [Dec. 12, 2017] for information technology activities, consistent with any applicable reprogramming law or guidelines of the Committees on Appropriations of the Senate and the House of Representatives.

“(iii) RECORDING OF OBLIGATION.—Notwithstanding section 1501 of title 31, United States Code, an obligation to make a payment under a written agreement described in paragraph (6) in a fiscal year after the date of enactment of this Act shall be recorded in the fiscal year in which the payment is due.

“(B) PRICES FIXED BY ADMINISTRATOR.—

“(i) IN GENERAL.—The Administrator, in consultation with the Director, shall establish amounts to be paid by an agency under this paragraph and the terms of repayment for activities funded under paragraph (3), including any services or work performed in support of that development under paragraph (3)(C), at levels sufficient to ensure the solvency of the Fund, including operating expenses.

“(ii) REVIEW AND APPROVAL.—Before making any changes to the established amounts and terms of repayment, the Administrator shall conduct a review and obtain approval from the Director.

“(C) FAILURE TO MAKE TIMELY REIMBURSEMENT.—The Administrator may obtain reimbursement from an agency under this paragraph by the issuance of transfer and counterwarrants, or other lawful transfer documents, supported by itemized bills, if payment is not made by the agency during the 90-day period beginning after the expiration of a repayment period described in a written agreement described in paragraph (6).

“(6) WRITTEN AGREEMENT.—

“(A) IN GENERAL.—Before the transfer of funds to an agency under subparagraphs (A) and (B) of paragraph (3), the Administrator, in consultation with the Director, and the head of the agency shall enter into a written agreement—

“(i) documenting the purpose for which the funds will be used and the terms of repayment, which may not exceed 5 years unless approved by the Director; and

“(ii) which shall be recorded as an obligation as provided in paragraph (5)(A).

“(B) Requirement for use of incremental funding, commercial products and services, and rapid, iterative development practices.—The Administrator shall ensure—

“(i) for any funds transferred to an agency under paragraph (3)(A), in the absence of compelling circumstances documented by the Administrator at the time of transfer, that such funds shall be transferred only on an incremental basis, tied to metric-based development milestones achieved by the agency through the use of rapid, iterative, development processes; and

“(ii) that the use of commercial products and services are incorporated to the greatest extent

practicable in activities funded under subparagraphs (A) and (B) of paragraph (3), and that the written agreement required under paragraph (6) documents this preference.

“(7) REPORTING REQUIREMENTS.—

“(A) LIST OF PROJECTS.—

“(i) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall maintain a list of each project funded by the Fund, to be updated not less than quarterly, that includes a description of the project, project status (including any schedule delay and cost overruns), financial expenditure data related to the project, and the extent to which the project is using commercial products and services, including if applicable, a justification of why commercial products and services were not used and the associated development and integration costs of custom development.

“(ii) PUBLIC AVAILABILITY.—The list required under clause (i) shall be published on a public website in a manner that is, to the greatest extent possible, consistent with applicable law on the protection of classified information, sources, and methods.

“(B) COMPTROLLER GENERAL REPORTS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Comptroller General of the United States shall submit to Congress and make publically available a report assessing—

“(i) the costs associated with establishing the Fund and maintaining the oversight structure associated with the Fund compared with the cost savings associated with the projects funded both annually and over the life of the acquired products and services by the Fund;

“(ii) the reliability of the cost savings estimated by agencies associated with projects funded by the Fund;

“(iii) whether agencies receiving transfers of funds from the Fund used full and open competition to acquire the custom development of information technology products or services; and

“(iv) the number of IT procurement, development, and modernization programs, offices, and entities in the Federal Government, including 18F and the United States Digital Services, the roles, responsibilities, and goals of those programs and entities, and the extent to which they duplicate work.

“(c) TECHNOLOGY MODERNIZATION BOARD.—

“(1) ESTABLISHMENT.—There is established a Technology Modernization Board to evaluate proposals submitted by agencies for funding authorized under the Fund.

“(2) RESPONSIBILITIES.—The responsibilities of the Board are—

“(A) to provide input to the Director for the development of processes for agencies to submit modernization proposals to the Board and to establish the criteria by which those proposals are evaluated, which shall include—

“(i) addressing the greatest security, privacy, and operational risks;

“(ii) having the greatest Governmentwide impact; and

“(iii) having a high probability of success based on factors including a strong business case, technical design, consideration of commercial off-the-shelf products and services, procurement strategy (including adequate use of rapid, agile iterative software development practices), and program management;

“(B) to make recommendations to the Administrator to assist agencies in the further development and refinement of select submitted modernization proposals, based on an initial evaluation performed with the assistance of the Administrator;

“(C) to review and prioritize, with the assistance of the Administrator and the Director, moderniza-

tion proposals based on criteria established pursuant to subparagraph (A);

“(D) to identify, with the assistance of the Administrator, opportunities to improve or replace multiple information technology systems with a smaller number of information technology services common to multiple agencies;

“(E) to recommend the funding of modernization projects, in accordance with the uses described in subsection (b)(3), to the Administrator;

“(F) to monitor, in consultation with the Administrator, progress and performance in executing approved projects and, if necessary, recommend the suspension or termination of funding for projects based on factors including the failure to meet the terms of a written agreement described in subsection (b)(6); and

“(G) to monitor the operating costs of the Fund.

“(3) MEMBERSHIP.—The Board shall consist of 7 voting members.

“(4) CHAIR.—The Chair of the Board shall be the Administrator of the Office of Electronic Government.

“(5) PERMANENT MEMBERS.—The permanent members of the Board shall be—

“(A) the Administrator of the Office of Electronic Government; and

“(B) a senior official from the General Services Administration having technical expertise in information technology development, appointed by the Administrator, with the approval of the Director.

“(6) ADDITIONAL MEMBERS OF THE BOARD.—

“(A) APPOINTMENT.—The other members of the Board shall be—

“(i) 1 employee of the National Protection and Programs Directorate of the Department of Homeland Security, appointed by the Secretary of Homeland Security; and

“(ii) 4 employees of the Federal Government primarily having technical expertise in information technology development, financial management, cybersecurity and privacy, and acquisition, appointed by the Director.

“(B) TERM.—Each member of the Board described in paragraph (A) shall serve a term of 1 year, which shall be renewable not more than 4 times at the discretion of the appointing Secretary or Director, as applicable.

“(7) PROHIBITION ON COMPENSATION.—Members of the Board may not receive additional pay, allowances, or benefits by reason of their service on the Board.

“(8) STAFF.—Upon request of the Chair of the Board, the Director and the Administrator may detail, on a reimbursable or nonreimbursable basis, any employee of the Federal Government to the Board to assist the Board in carrying out the functions of the Board.

“(d) RESPONSIBILITIES OF ADMINISTRATOR.—

“(1) IN GENERAL.—In addition to the responsibilities described in subsection (b), the Administrator shall support the activities of the Board and provide technical support to, and, with the concurrence of the Director, oversight of, agencies that receive transfers from the Fund.

“(2) RESPONSIBILITIES.—The responsibilities of the Administrator are—

“(A) to provide direct technical support in the form of personnel services or otherwise to agencies transferred amounts under subsection (b)(3)(A) and for products, services, and acquisition vehicles funded under subsection (b)(3)(B);

“(B) to assist the Board with the evaluation, prioritization, and development of agency modernization proposals.

“(C) to perform regular project oversight and monitoring of approved agency modernization projects, in consultation with the Board and the Director, to increase the likelihood of successful implementation and reduce waste; and

“(D) to provide the Director with information necessary to meet the requirements of subsection (b)(7).

“(e) EFFECTIVE DATE.—This section shall take effect on the date that is 90 days after the date of enactment of this Act.

“(f) SUNSET.—

“(1) IN GENERAL.—On and after the date that is 2 years after the date on which the Comptroller General of the United States issues the third report required under subsection (b)(7)(B), the Administrator may not award or transfer funds from the Fund for any project that is not already in progress as of such date.

“(2) TRANSFER OF UNOBLIGATED AMOUNTS.—Not later than 90 days after the date on which all projects that received an award from the Fund are completed, any amounts in the Fund shall be transferred to the general fund of the Treasury and shall be used for deficit reduction.

“(3) TERMINATION OF TECHNOLOGY MODERNIZATION BOARD.—Not later than 90 days after the date on which all projects that received an award from the Fund are completed, the Technology Modernization Board and all the authorities of subsection (c) shall terminate.”

§ 11302. Capital planning and investment control

(a) FEDERAL INFORMATION TECHNOLOGY.—The Director of the Office of Management and Budget shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.—The Director shall promote and improve the acquisition, use, security, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.—

(1) DEFINITIONS.—In this subsection:

(A) The term “covered agency” means an agency listed in section 901(b)(1) or 901(b)(2) of title 31.

(B) The term “major information technology investment” means an investment within a covered agency information technology investment portfolio that is designated by the covered agency as major, in accordance with capital planning guidance issued by the Director.

(C) The term “national security system” has the meaning provided in section 3542 of title 44.¹

(2) ANALYZING, TRACKING, AND EVALUATING CAPITAL INVESTMENTS.—As part of the budget process, the Director shall develop a process for analyzing, tracking, and evaluating the risks, including information security risks, and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks, including information security risks, associated with the investments.

(3) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The Director shall make available to the public a list of each major information technology investment, without regard to whether the investments are for

new information technology acquisitions or for operations and maintenance of existing information technology, including data on cost, schedule, and performance.

(B) AGENCY INFORMATION.—

(i) The Director shall issue guidance to each covered agency for reporting of data required by subparagraph (A) that provides a standardized data template that can be incorporated into existing, required data reporting formats and processes. Such guidance shall integrate the reporting process into current budget reporting that each covered agency provides to the Office of Management and Budget, to minimize additional workload. Such guidance shall also clearly specify that the investment evaluation required under subparagraph (C) adequately reflect the investment’s cost and schedule performance and employ incremental development approaches in appropriate cases.

(ii) The Chief Information Officer of each covered agency shall provide the Director with the information described in subparagraph (A) on at least a semi-annual basis for each major information technology investment, using existing data systems and processes.

(C) INVESTMENT EVALUATION.—For each major information technology investment listed under subparagraph (A), the Chief Information Officer of the covered agency, in consultation with other appropriate agency officials, shall categorize the investment according to risk, in accordance with guidance issued by the Director.

(D) CONTINUOUS IMPROVEMENT.—If either the Director or the Chief Information Officer of a covered agency determines that the information made available from the agency’s existing data systems and processes as required by subparagraph (B) is not timely and reliable, the Chief Information Officer, in consultation with the Director and the head of the agency, shall establish a program for the improvement of such data systems and processes.

(E) WAIVER OR LIMITATION AUTHORITY.—The applicability of subparagraph (A) may be waived or the extent of the information may be limited by the Director, if the Director determines that such a waiver or limitation is in the national security interests of the United States.

(F) ADDITIONAL LIMITATION.—The requirements of subparagraph (A) shall not apply to national security systems or to telecommunications or information technology that is fully funded by amounts made available—

(i) under the National Intelligence Program, defined by section 3(6) of the National Security Act of 1947 (50 U.S.C. 3003(6));

(ii) under the Military Intelligence Program or any successor program or programs; or

(iii) jointly under the National Intelligence Program and the Military Intelligence Program (or any successor program or programs).

¹ See References in Text note below.