

SBA CYBER AWARENESS ACT

OCTOBER 12, 2021.—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. 3462]

The Committee on Small Business, to whom was referred the bill (H.R. 3462) to require an annual report on the cybersecurity of the Small Business Administration, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 3462, the “SBA Cyber Awareness Act”, is to amend the Small Business Act (the Act)¹ to require the Small Business Administrator (SBA) to issue annual reports assessing its information technology (IT) and cybersecurity infrastructure and notify Congress and affected parties of cyber incidents when they occur. Specifically, the bill would require SBA to issue annual reports, which must include the following information: (1) an assessment of SBA’s IT and cybersecurity infrastructure; (2) its strategy to improve cybersecurity protections; (3) a detailed account of any IT equipment of SBA that was manufactured by an entity with a principal place of business in the People’s Republic of China; and 4) an account of any cybersecurity risk or incident occurring within the two years preceding the date the report is submitted, and SBA’s actions to remediate the cybersecurity risk or incident.

In addition, if a cybersecurity risk or incident occurred, SBA is instructed to notify the House and Senate small business committees (committees) within 7 days. And within 30 days notify the individuals and small business concerns affected by the cybersecurity risk or incident, and submit a report summarizing how the cybersecurity risk or incident occurred and how many parties were affected to the committees.

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.² In May 2017, the Modernizing Government Technology Act of 2017 passed the House of Representatives and was later enacted through the Fiscal Year 2018 National Defense Authorization Act (NDAA). The bill sought to establish two types of funds to retire vulnerable IT systems and address evolving cybersecurity threats.³ In the Fiscal Year 2019 NDAA, Congress passed requirements for the Department of Defense to report cybersecurity breaches.⁴

For more than twenty years, SBA’s Office of Inspector General (OIG) has listed IT security as a one of the most serious management and performance challenges facing the SBA.⁵ In the Fiscal Year 2020 management challenges report, the OIG found that the agency continued to face significant risks in deploying IT and cy-

¹Originally, title II of the Act of July 30, 1953, 67 Stat. 232, was designated as the Small Business Act of 1953. A plethora of amendments in subsequent Congresses led to a rewrite in 1958. Pub. L. No. 85-536, Sec. 1, 72 Stat. 384 (1958). The Act is codified at 15 U.S.C. Sec. 631-657s.

²Letter 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).

³National 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.).

⁴John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, Sec. 1639, 132 Stat. 1636 (2018).

⁵For the most recent report, see U.S. SMALL BUS. ADMIN., OFFICE OF THE INSPECTOR GEN., 21-01, REPORT ON MOST SERIOUS MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE SMALL BUSINESS ADMINISTRATION IN FISCAL YEAR 2021 (Oct. 16, 2020).

bersecurity controls.⁶ These vulnerabilities were exposed by the rollout of the SBA’s COVID 19 relief programs. The unprecedented demand for the SBA’s relief programs—the Economic Injury Disaster Loan Program (EIDL program) and the Paycheck Protection Program (PPP)—inundated SBA’s legacy systems, leading to backend system crashes, portals operating slowly, and a glitch that led to a data breach of applicants’ personal information.

On March 25, 2020, SBA detected a vulnerability in their EIDL application. They discovered that applicants’ personally identifiable information (PII) was accidentally disclosed to other applicants. On April 13, 2020, SBA sent a letter to the potentially affected individuals. According to SBA, almost 8,000 small businesses who applied for loans through the EIDL program may have had their information exposed during the data breach.⁷ PII that could have been divulged included email addresses, citizenship status, insurance information, birth dates, phone numbers, addresses, and Social Security Numbers.

After the data breach, version 2.0 of the EIDL program portal was created to fix the vulnerability that allowed for the breach. Businesses were directed to complete the application and upload scanned documents. Later, new guidance stated that SBA no longer needed the scanned documents and it advised businesses who had applied under version 2.0 and were not assigned a lending officer to reapply under the Rapid Portal. These applicants lost their place in the queue and were told to reapply once the EIDL program portal reopened.

Shortly after the launch of the PPP portal, the E-Tran system, SBA’s loan guarantee origination and servicing solution,⁸ was inundated by applicants causing it to go offline for as long as four hours, which caused applicants and lenders to lose their place in the queue and halted their ability to submit applications to E-Tran. The E-Tran system crashed a second time on April 27, 2020 upon the reopening of the PPP portal. These crashes cause concern about the backend capacity of the E-Tran system, the system not only crashed, but it also processed applications at a very slow rate.

This legislation would create new layers of Congressional oversight that will regularly assess SBA’s IT and cybersecurity systems and controls and ensure E-Transparency during future IT and cybersecurity incidents. H.R. 3462 was introduced by Reps. Jason Crow (D-CO) and Young Kim (R-CA) on May 21, 2021. The previous iteration of this bill, H.R. 2331, was introduced in the 116th Congress by Rep. Crow (D-CO) on March 18, 2019. The bill was approved by voice vote by the House on July 15, 2019.

III. HEARINGS

The committee hearing “Strengthening the Cybersecurity Posture of America’s Small Business Community,” held on July 20, 2021, evaluated the resources, training, and technical assistance needed to reduce small business cybersecurity vulnerabilities. Members

⁶*Id.*

⁷PYMNTS, *SBA May Have Exposed Data Of 8,000 SMBs Seeking Relief Loans*, (April 22, 2020) <https://www.pymnts.com/news/security-and-risk/2020/sba-may-have-exposed-data-of-8000-smbs-seeking-relief-loans/>.

⁸U.S. Small Bus. Admin., *E-Tran Electronic Loan Processing*, (2014) https://www.sba.gov/sites/default/files/articles/ETran_Origination_01_2014.pdf.

and witnesses discussed how SBA could play a larger role facilitating collaboration and information sharing between Federal agencies and the private sector, and the specific importance of strengthening SBA's internal IT and cybersecurity systems.

In the 116th Congress, the Committee examined SBA's IT infrastructure and technology systems and performed routine oversight of their performance during the coronavirus pandemic. On July 22, 2020, the Subcommittee on Investigations, Oversight, and Regulations met for a hearing titled "21st Century SBA: An Analysis of SBA's Technology Systems." The witness for the hearing was SBA's Chief Information Officer, Guy Cavallo. On September 24, 2020, the Subcommittee on Innovation and Workforce Development met for a hearing titled "Paycheck Protection Program: An Examination of Loan Forgiveness, SBA Legacy Systems, and Inaccurate Data." The witness for the hearing was William Manger, the Chief of Staff of SBA, and the Associate Administrator of the SBA Office of Capitol Access.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 29, 2021 and ordered H.R. 3462 favorably reported to the House of Representatives. 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 voted by voice vote to favorably report H.R. 3462 to the House of Representatives at 10:47 a.m.

VI. SECTION-BY-SECTION ANALYSIS FOR H.R. 3462

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 (15 U.S.C. § 639) by inserting subsection (b) "Cybersecurity Reports." SBA is required to submit an annual report on the cybersecurity of the Administration to the House Small Business Committee and the Senate Small Businesses and Entrepreneurship Committee. In the event of a cybersecurity risk or incident, the SBA is required to alert the Committees no later than seven days after the event and submit a report within thirty days. The SBA is also required to provide notice to affected individuals and small business concerns within thirty days.

VII. CONGRESSIONAL BUDGET COST ESTIMATE

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its 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. The Committee has requested but not received from the Director

of the Congressional Budget Office a cost estimate for the Committee's provisions.

VIII. 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 and section 308(a) of the Congressional Budget Act of 1974, 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 Sec. 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. 3462 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 3462 are incorporated into the descriptive portions of this report.

X. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 3462 is to improve the SBA's internal cybersecurity infrastructure and protect small businesses and other individuals impacted in the event that a cyber incident has occurred.

XI. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 3462 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XII. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. 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.

XIV. FEDERAL ADVISORY COMMITTEE STATEMENT

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

XV. 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.

XVI. CONSTITUTIONAL AUTHORITY STATEMENT

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. 1 of the Constitution of the United States.

XVII. 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, as shown as follows: existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italics*, 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 *italics* 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 cybersecurity 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 number 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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