

1 **SEC. __. DEPARTMENT OF DEFENSE PROBATIONARY PERIODS.**

2 (a) IN GENERAL.—Section 1599e of title 10, United States Code, is amended—

3 (1) in subsection (a)—

4 (A) by striking “Notwithstanding” and inserting “(1) Subject to paragraph

5 (2) and notwithstanding”;

6 (B) in paragraph (1), as so designated, by striking the second sentence; and

7 (C) by adding at the end the following:

8 “(2)(A) The Secretary concerned may extend for a maximum of one year the

9 probationary period of a covered employee under this subsection.

10 “(B) Such an extension shall be made at the sole and exclusive discretion of the Secretary

11 concerned, consistent with regulations promulgated by the Secretary of Defense.

12 “(C) If such an extension is made, the appointment of a covered employee shall become

13 final only after the extended period has been successfully completed.”;

14 (2) by redesignating subsections (c) and (d) as subsections (d) and (e),

15 respectively;

16 (3) by inserting after subsection (b) the following new subsection:

17 “(c) CREDIT FOR PROBATIONARY PERIOD SERVED.—A covered employee who completes

18 less than the required two-year probationary period prior to being appointed to another position

19 within the Department of Defense may be credited with the amount of the probationary period

20 successfully completed consistent with regulations promulgated by the Secretary of Defense. The

21 requirement to complete a new two-year probationary period shall be at the sole and exclusive

22 discretion of the Secretary concerned.”;

1 (4) in subsection (d) (as redesignated by paragraph (2) of this subsection) by
2 inserting “including any extension thereof,” after “subsection (a),”; and

3 (5) in subsection (e) (as redesignated by paragraph (2) of this subsection) by
4 inserting “(or the duration of an extended probationary period as applicable)” after
5 “completed 2 years”.

6 (b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any covered
7 employee (as that term is defined in section 1599e of title 10, United States Code) appointed
8 after the date of the enactment of this section.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend section 1599e of title 10, United States Code (U.S.C.), to further modify the definition of “employee” to allow the Department of Defense to more effectively extend a probationary period beyond two years, for a maximum of one additional year, as well as to allow credit for any completed amount of a probationary period served within the Department to be applied to the remainder of the full two-year requirement in the event an employee is appointed to another position prior to the completion of the probationary period that commenced with the initial appointment. The probationary period may only be extended under regulations promulgated by the Secretary of Defense that ensure extensions are not made arbitrarily or capriciously. A reasonable basis for an extension would be an extended absence from the workplace by the employee during the probationary period. Decisions on extensions are at the sole and exclusive discretion of the Secretary of Defense. Decisions on completing a new two-year probationary period are at the sole and exclusive discretion of the Secretary concerned.

Section 1105 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92) amended chapter 81 of title 10, U.S.C., by adding a new section 1599e, requiring that the appointment of covered individuals becomes final after the appointee has served a probationary period of two years. Section 1599e also allows the Secretaries of Defense and the Military Departments to extend probationary periods past the two year requirement. Section 1599e inhibits the effectiveness of the probationary period extension since, based on the current language, a covered individual becomes an “employee” with full appeal rights to the Merit Systems Protection Board (MSPB) upon completion of 2 years of service – regardless of whether or not the probationary period is extended past the two-year requirement. In addition, current

language in section 315.802 of title 5, Code of Federal Regulations (C.F.R.), allows credit of prior service toward completion of a probationary period only under certain circumstances; this conflicts with precedence established by MSPB case law, which provides that individuals who complete a competitive service probationary period attain full appeal rights to the MSPB - rights that those serving on probationary periods do not possess. The C.F.R. also defines "agency" for the purposes of crediting service for completion of a probationary period as below the Executive agency, which does not allow the Department to credit service toward completion of a probationary period when current employees move from one DoD agency to another.

Budget Implications: There is no anticipated budgetary impact by enacting this law modification.

Changes to Existing Law: This proposal would make the following changes to section 1599e of title 10, United States Code:

§1599e. Probationary period for employees

(a) IN GENERAL.—~~Notwithstanding~~(1) Subject to paragraph (2) and notwithstanding sections 3321 and 3393(d) of title 5, the appointment of a covered employee shall become final only after such employee has served a probationary period of two years. ~~The Secretary concerned may extend a probationary period under this subsection at the discretion of such Secretary.~~

(2)(A) The Secretary concerned may extend for a maximum of one year the probationary period of a covered employee under this subsection.

(B) Such an extension shall be made at the sole and exclusive discretion of the Secretary concerned, consistent with regulations promulgated by the Secretary of Defense.

(C) If such an extension is made, the appointment of a covered employee shall become final only after the extended period has been successfully completed.

(b) DEFINITIONS.—In this section:

(1) The term "covered employee" means any individual-

(A) appointed to a permanent position within the competitive service at the Department of Defense; or

(B) appointed as a career appointee (as that term is defined in section 3132(a)(4) of title 5) within the Senior Executive Service at the Department.

(2) The term "Secretary concerned" includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(c) CREDIT FOR PROBATIONARY PERIOD SERVED.—A covered employee who completes less than the required two-year probationary period prior to being appointed to another position within the Department of Defense may be credited with the amount of the probationary period successfully completed consistent with regulations and standards promulgated by the Secretary of Defense. The requirement to complete a new two-year probationary period shall be at the sole and exclusive discretion of the Secretary concerned.

~~(e)~~ (d) EMPLOYMENT BECOMES FINAL.—Upon the expiration of a covered employee’s probationary period under subsection (a), including any extension thereof, the supervisor of the employee shall determine whether the appointment becomes final based on regulations prescribed for such purpose by the Secretary of Defense.

~~(d)~~(e) Application of Chapter 75 of Title 5 for Employees in the Competitive Service.—With respect to any individual described in subsection (b)(1)(A) and to whom this section applies, section 7501(1) and section 7511(a)(1)(A)(ii) of title 5 shall be applied to such individual by substituting “completed 2 years (or the duration of an extended probationary period as applicable)” for “completed 1 year” in each instance it appears.

1 **SEC. ____. MODIFICATION OF OFFICE OF PERSONNEL MANAGEMENT’S ROLE**
2 **IN DEVELOPMENT OF DEPARTMENT OF DEFENSE REGULATIONS**
3 **REGARDING CIVILIAN PERSONNEL IN CIVILIAN CYBER**
4 **WORKFORCE.**

5 Subsection (g) of section 1599f of title 10, United States Code, is amended by striking “in
6 coordination with” and inserting “in consultation with”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend subsection (g) of section 1599f of title 10, United States Code (U.S.C.), to modify the Office of Personnel Management’s (OPM’s) role in the development of Department of Defense (DoD) Cyber Excepted Service personnel regulations.

Section 1599f of title 10, U.S.C., titled “United States Cyber Command recruitment and retention”, authorizes the Secretary of Defense to establish and appoint qualified individuals to excepted service positions at the United States Cyber Command, Joint Task Force-Department of Defense Information Networks, and elements of the Defense Information Systems Agency, Department of Defense Chief Information Officer, and Military Departments supporting United States Cyber Command. Subsection (g) of section 1599f requires DoD to coordinate all associated Cyber Excepted Service personnel regulations with OPM. This coordination requirement has the effect of impeding the Department’s ability to quickly and effectively adapt its personnel policies and instructions in response to the cyber mission. Given the authority granted to the Secretary of Defense to establish and manage the Cyber Excepted Service workforce, and the critical demand for qualified individuals to work on emergent national security requirements related to cyber, the Department must have autonomy and flexibility to design and implement the new Cyber Excepted Service personnel system across the Department in as timely a manner as possible. By amending section 1599f to direct the Secretary of Defense to work “in consultation with” rather than “in coordination with” OPM, the necessary autonomy and flexibility can be achieved.

Budget Implications: This proposal has no significant budgetary impact. Incidental costs or savings are accounted for within the Fiscal Year (FY) 2020 President’s Budget.

Changes to Existing Law: This proposal would make the following changes to title 10, U.S.C.:

§ 1599f. United States Cyber Command recruitment and retention

(a) General Authority.-(1) The Secretary of Defense may-

(A) establish, as positions in the excepted service, such qualified positions in the Department of Defense as the Secretary determines necessary to carry out the responsibilities of the United States Cyber Command, including-

(i) positions held by staff of the headquarters of the United States Cyber Command;

(ii) positions held by elements of the United States Cyber Command enterprise relating to cyberspace operations, including elements assigned to the Joint Task Force-Department of Defense Information Networks; and

(iii) positions held by elements of the military departments supporting the United States Cyber Command;

(B) appoint an individual to a qualified position (after taking into consideration the availability of preference eligibles for appointment to the position); and

(C) subject to the requirements of subsections (b) and (c), fix the compensation of an individual for service in a qualified position.

(2) The authority of the Secretary under this subsection applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(b) Basic Pay.-(1) In accordance with this section, the Secretary shall fix the rates of basic pay for any qualified position established under subsection (a)-

(A) in relation to the rates of pay provided for employees in comparable positions in the Department, in which the employee occupying the comparable position performs, manages, or supervises functions that execute the cyber mission of the Department; and

(B) subject to the same limitations on maximum rates of pay established for such employees by law or regulation.

(2) The Secretary may-

(A) consistent with section 5341 of title 5, adopt such provisions of that title to provide for prevailing rate systems of basic pay; and

(B) apply those provisions to qualified positions for employees in or under which the Department may employ individuals described by section 5342(a)(2)(A) of such title.

(c) Additional Compensation, Incentives, and Allowances.-(1) The Secretary may provide employees in qualified positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(2) An employee in a qualified position whose rate of basic pay is fixed under subsection (b)(1) shall be eligible for an allowance under section 5941 of title 5 on the same basis and to the same extent as if the employee was an employee covered by such section, including eligibility conditions, allowance rates, and all other terms and conditions in law or regulation.

(d) Implementation Plan Required.-The authority granted in subsection (a) shall become effective 30 days after the date on which the Secretary of Defense provides to the congressional defense committees a plan for implementation of such authority. The plan shall include the following:

(1) An assessment of the current scope of the positions covered by the authority.

(2) A plan for the use of the authority.

(3) An assessment of the anticipated workforce needs of the United States Cyber Command across the future-years defense plan.

(4) Other matters as appropriate.

(e) Collective Bargaining Agreements.-Nothing in subsection (a) may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an office, component, subcomponent, or equivalent of the Department that is a successor to an office, component, subcomponent, or equivalent of the Department covered by the agreement before the succession.

(f) Training.-
(1) The Secretary shall provide training to covered personnel on hiring and pay matters relating to authorities under this section.

(2) For purposes of this subsection, covered personnel are employees of the Department who-

(A) carry out functions relating to-

(i) the management of human resources and the civilian workforce of the Department; or

(ii) the writing of guidance for the implementation of authorities regarding hiring and pay under this section; or

(B) are employed in supervisory positions or have responsibilities relating to the hiring of individuals for positions in the Department and to whom the Secretary intends to delegate authority under this section.

(g) Required Regulations.-The Secretary, ~~in coordination with~~ in consultation with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

(h) Annual Report.-
(1) Not later than one year after the date of the enactment of this section and not less frequently than once each year thereafter until the date that is five years after the date of the enactment of this section, the Director of the Office of Personnel Management, in coordination with the Secretary, shall submit to the appropriate committees of Congress a detailed report on the administration of this section during the most recent one-year period.

(2) Each report submitted under paragraph (1) shall include, for the period covered by the report, the following:

(A) A discussion of the process used in accepting applications, assessing candidates, ensuring adherence to veterans' preference, and selecting applicants for vacancies to be filled by an individual for a qualified position.

(B) A description of the following:

(i) How the Secretary plans to fulfill the critical need of the Department to recruit and retain employees in qualified positions.

(ii) The measures that will be used to measure progress.

(iii) Any actions taken during the reporting period to fulfill such critical need.

(C) A discussion of how the planning and actions taken under subparagraph (B) are integrated into the strategic workforce planning of the Department.

(D) The metrics on actions occurring during the reporting period, including the following:

(i) The number of employees in qualified positions hired, disaggregated by occupation, grade, and level or pay band.

(ii) The placement of employees in qualified positions, disaggregated by military department, Defense Agency, or other component within the Department.

(iii) The total number of veterans hired.

(iv) The number of separations of employees in qualified positions, disaggregated by occupation and grade and level or pay band.

(v) The number of retirements of employees in qualified positions, disaggregated by occupation, grade, and level or pay band.

(vi) The number and amounts of recruitment, relocation, and retention incentives paid to employees in qualified positions, disaggregated by occupation, grade, and level or pay band.

(E) A description of the training provided to employees described in subsection (f)(2) on the use of authorities under this section.

(i) Three-year Probationary Period.-The probationary period for all employees hired under the authority established in this section shall be three years.

(j) Incumbents of Existing Competitive Service Positions.-(1) An individual occupying a position on the date of the enactment of this section that is selected to be converted to a position in the excepted service under this section shall have the right to refuse such conversion.

(2) After the date on which an individual who refuses a conversion under paragraph (1) stops serving in the position selected to be converted, the position may be converted to a position in the excepted service.

(k) Definitions.-In this section:

(1) The term "appropriate committees of Congress" means-

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(2) The term "collective bargaining agreement" has the meaning given that term in section 7103(a)(8) of title 5.

(3) The term "excepted service" has the meaning given that term in section 2103 of title 5.

(4) The term "preference eligible" has the meaning given that term in section 2108(3) of title 5.

(5) The term "qualified position" means a position, designated by the Secretary for the purpose of this section, in which the individual occupying such position performs, manages, or supervises functions that execute the responsibilities of the United States Cyber Command relating to cyber operations.

(6) The term "Senior Executive Service" has the meaning given that term in section 2101a of title 5.

1 **SEC. ____. PERMANENT SUPPLY CHAIN RISK MANAGEMENT AUTHORITY.**

2 Section 2339a(d)(2) of title 10, United States Code, is amended—

3 (1) by striking “head shall—” and inserting “head—”;

4 (2) in subparagraph (A), by inserting “shall” after “(A)”;

5 (3) in subparagraph (B)—

6 (A) by inserting “shall” after “(B)”; and

7 (B) by inserting after “responsible for” the following: “, and may notify
8 potential contractors and subcontractors that may submit offers for,
9 other”; and

10 (4) in subparagraph (C), by inserting “shall” after “(C)”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would modify 10 USC 2339a to authorize DoD to share sensitive information regarding its determination that “covered procurement actions” are necessary to reduce supply chain risks to DoD national security systems with potential contractors and subcontractors for future procurements that may be subject to the same or similar supply chain risk.

10 USC 2339a allows the Department of Defense to execute “covered procurement actions,” which include excluding a source and withholding consent to subcontract, when certain authorized senior DoD officials determine in writing that there is significant supply chain risk to a national security system (NSS), that it is necessary to protect national security by reducing that supply chain risk, and that there are no less intrusive means reasonably available to do so. Those authorized officials are further authorized to limit disclosure of information relating to the basis for any such determination when necessary to protect national security. When exercising the authority to limit disclosure, the statute places further restrictions on sharing that information, allowing disclosure to “notify appropriate parties of the covered procurement action only to the extent necessary to effectuate the covered procurement action,” and to notify other DoD components or other Federal agencies responsible for procurements that may be subject to the same or similar supply chain risk. In all cases, the confidentiality of the authorized notices must be protected.

Without the revisions contained in this legislative proposal, these procedures may result in a covered procurement action to exclude an offeror due to a significant supply chain risk caused by the use of malicious or compromised products or services from an untrustworthy or otherwise compromised source in that offeror's supply chain. The offeror will be notified of this previously unknown significant supply chain risk pursuant to the current statute's authorized notice to affected parties that is necessary to effectuate the covered procurement action. After being notified of the risk, the Department presumes that the defense contractor will take steps to eliminate or mitigate that supply chain risk in future procurements for NSS, to avoid being excluded again by the § 2339a process. Although this is the desired result for the Department and offeror for future procurements, the initial covered procurement action still resulted in excluding the offeror due to a supply chain risk that was known to the Department, but not yet known to the offeror/contractor.

In seeking to avoid the unnecessary exclusion of contractors, the Department may seek to share the information about the supply chain risk with the offeror earlier in the covered procurement action (e.g., including notice in the solicitation to contact the contracting officer for information regarding the covered procurement action or during discussions regarding elements of the offer that would render the offer ineligible for award), by leveraging the statute's authority to notify parties that would be affected by such covered procurement action. However, given the complexity and time-sensitivity of NSS source selections, many defense contractors establish agreements with their subcontractors well in advance of a solicitation's release. Sharing that information only after issuance of the solicitation during source selection may be too late for the offeror to eliminate or mitigate the supply chain risk for that particular procurement.

Accordingly, the Department proposes to amend § 2339a to authorize the limited sharing of such known supply chain risk information with defense contractors earlier in the process of an NSS procurement for which covered procurement actions may occur. More specifically, the proposal would allow the Department to share the supply chain risk information with potential contractors and subcontractors for relevant future NSS procurements, to better facilitate those entities' actions to eliminate or effectively mitigate those supply chain risks. This is accomplished by adding the "potential contractors and subcontractors that may submit offers for" to paragraph (d)(2)(B) of the statute, which currently authorizes disclosure of such information only to other DoD components or other Federal agencies responsible for other procurements that may be subject to the same or similar supply chain risks. The proposal ensures that these additional disclosures are subject to the existing statutory protections that the disclosure must be made in a manner and to the extent consistent with national security, and the confidentiality of such notice is protected (see paragraphs (d)(2)(B) and (C), respectively).

Budget Implications: This proposal has insignificant budget impact. Any incidental costs are accounted for within the Fiscal Year (FY) 2020 President's Budget.

Changes to Existing Law: This proposal would amend chapter 137 of title 10, United States Code, as follows:

§ 2339a. Requirements for information relating to supply chain risk

(a) AUTHORITY.—Subject to subsection (b), the head of a covered agency may—

- (1) carry out a covered procurement action; and
- (2) limit, notwithstanding any other provision of law, in whole or in part, the disclosure of information relating to the basis for carrying out a covered procurement action.

(b) DETERMINATION AND NOTIFICATION.—The head of a covered agency may exercise the authority provided in subsection (a) only after—

(1) obtaining a joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(2) making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition and Sustainment, that—

(A) use of the authority in subsection (a)(1) is necessary to protect national security by reducing supply chain risk;

(B) less intrusive measures are not reasonably available to reduce such supply chain risk; and

(C) in a case where the head of the covered agency plans to limit disclosure of information under subsection (a)(2), the risk to national security due to the disclosure of such information outweighs the risk due to not disclosing such information; and

(3) providing a classified or unclassified notice of the determination made under paragraph (2) to the appropriate congressional committees, which notice shall include—

(A) the information required by section 2304(0)(3) of this title;

(B) the joint recommendation by the Under Secretary of Defense for Acquisition and Sustainment and the Chief Information Officer of the Department of Defense as specified in paragraph (1);

(C) a summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph(1); and

(D) a summary of the basis for the determination, including a discussion of less intrusive measures that were considered and why they were not reasonably available to reduce supply chain risk.

(c) DELEGATION.—The head of a covered agency may not delegate the authority provided in subsection (a) or the responsibility to make a determination under subsection (b) to an official below the level of the service acquisition executive for the agency concerned.

(d) LIMITATION ON DISCLOSURE.—If the head of a covered agency has exercised the authority provided in subsection (a)(2) to limit disclosure of information—

(1) no action undertaken by the agency head under such authority shall be subject to review in a bid protest before the Government Accountability Office or in any Federal court; and

(2) the agency head ~~shall~~

(A) shall notify appropriate parties of a covered procurement action and the basis for such action only to the extent necessary to effectuate the covered procurement action;

(B) shall notify other Department of Defense components or other Federal agencies responsible for, and may notify potential contractors and subcontractors that may submit offers for, other procurements that may be subject to the same or similar supply chain risk, in a manner and to the extent consistent with the requirements of national security; and

(C) shall ensure the confidentiality of any such notifications.

(e) DEFINITIONS.—In this section:

(1) HEAD OF A COVERED AGENCY.—The term “head of a covered agency” means each of the following:

- (A) The Secretary of Defense.
- (B) The Secretary of the Army.
- (C) The Secretary of the Navy.
- (D) The Secretary of the Air Force.

(2) COVERED PROCUREMENT ACTION.— The term “covered procurement action” means any of the following actions, if the action takes place in the course of conducting a covered procurement:

(A) The exclusion of a source that fails to meet qualification standards established in accordance with the requirements of section 2319 of this title for the purpose of reducing supply chain risk in the acquisition of covered systems.

(B) The exclusion of a source that fails to achieve an acceptable rating with regard to an evaluation factor providing for the consideration of supply chain risk in the evaluation of proposals for the award of a contract or the issuance of a task or delivery order.

(C) The decision to withhold consent for a contractor to subcontract with a particular source or to direct a contractor for a covered system to exclude a particular source from consideration for a subcontract under the contract.

(3) COVERED PROCUREMENT.—The term “covered procurement” means—

(A) a source selection for a covered system or a covered item of supply involving either a performance specification, as provided in section 2305(a)(1)(C)(ii) of this title, or an evaluation factor, as provided in section 2305(a)(2)(A) of this title, relating to supply chain risk;

(B) the consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item of supply, as provided in section 2304c(d)(3) of this title, where the task or delivery order contract concerned includes a contract clause establishing a requirement relating to supply chain risk; or

(C) any contract action involving a contract for a covered system or a covered item of supply where such contract includes a clause establishing requirements relating to supply chain risk.

(4) SUPPLY CHAIN RISK.—The term “supply chain risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.

(5) COVERED SYSTEM.—The term “covered system” means a national security system, as that term is defined in section 3542(b) of title 44.

(6) COVERED ITEM OF SUPPLY.—The term “covered item of supply” means an item of information technology (as that term is defined in section 11101 of title 40) that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system.

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

(A) in the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(B) in the case of a covered system not otherwise included in subparagraph (A), the congressional defense committees.

1 **SEC. ____. ADDITION OF RUSSIAN FEDERATION TO PROHIBITION ON CERTAIN**
2 **TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES**
3 **OR EQUIPMENT.**

4 Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year
5 2019. (Public Law 115-232; 132 Stat. 1917; 41 U.S.C. 3901 note prec.) is amended—

6 (1) in subsection (b)—

7 (A) in the heading, by striking “AND GRANT” and inserting “, GRANT, AND
8 SUBSIDY”; and

9 (B) in paragraph (1), by striking “or grant” and inserting “, grant, or
10 subsidy”; and

11 (2) in subsection (f)(2), by adding “, the Russian Federation, and such other
12 countries as the President may determine from time to time” before the period at the end.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would modify the definition of a ‘covered foreign country’ to include Russia. The current definition is limited to the People’s Republic of China.

Section 889 prohibits the use or procurement of covered telecommunications equipment or services, effective one year after the enactment of the FY 2019 NDAA. The prohibition is an important tool for the mitigation of supply chain risks. The revision provides the discretion to address cybersecurity risks introduced through the supply chain from Russia, as well as People’s Republic of China.

Budget Implications: This proposal has no budgetary implications.

Changes to Existing Law: This proposal would amend the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232; 132 Stat. 1917; 41 U.S.C. 3901 note prec.) as follows:

SEC. 889. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

(a) **PROHIBITION ON USE OR PROCUREMENT.**— (1) The head of an executive agency may not—

(A) procure or obtain or extend or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(B) enter into a contract (or extend or renew a contract) with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(2) Nothing in paragraph (1) shall be construed to—

(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(b) **PROHIBITION ON LOAN ~~AND GRANT~~, GRANT, AND SUBSIDY FUNDS.**— (1) The head of an executive agency may not obligate or expend loan ~~or grant, grant, or subsidy~~ funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems described in subsection (a).

(2) In implementing the prohibition in paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs, including the heads of the Federal Communications Commission, the Department of Agriculture, the Department of Homeland Security, the Small Business Administration, and the Department of Commerce, shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(3) Nothing in this subsection shall be construed to—

(A) prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(B) cover telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) **EFFECTIVE DATES.**—The prohibition under subsection (a)(1)(A) shall take effect one year after the date of the enactment of this Act, and the prohibitions under subsections (a)(1)(B) and (b)(1) shall take effect two years after the date of the enactment of this Act.

(d) **WAIVER AUTHORITY.**—

(1) **EXECUTIVE AGENCIES.**—The head of an executive agency may, on a one-time basis, waive the requirements under subsection (a) with respect to an entity that requests such a waiver. The waiver may be provided, for a period of not more than two years after the effective dates described in subsection (c), if the entity seeking the waiver—

(A) provides a compelling justification for the additional time to implement the requirements under such subsection, as determined by the head of the executive agency; and

(B) submits to the head of the executive agency, who shall not later than 30 days thereafter submit to the appropriate congressional committees, a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the entity's systems.

(2) DIRECTOR OF NATIONAL INTELLIGENCE.—The Director of National Intelligence may provide a waiver on a date later than the effective dates described in subsection (c) if the Director determines the waiver is in the national security interests of the United States.

(f) DEFINITIONS.—In this section:

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

(A) the Committee on Banking, Housing, and Urban Affairs, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(B) the Committee on Financial Services, the Committee on Foreign Affairs, and the Committee on Oversight and Government Reform of the House of Representatives.

(2) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means the People’s Republic of China, the Russian Federation, and such other countries as the President may determine from time to time.

(3) COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.—The term “covered telecommunications equipment or services” means any of the following:

(A) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(B) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(C) Telecommunications or video surveillance services provided by such entities or using such equipment.

(D) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(4) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given the term in section 133 of title 41, United States Code.