

117TH CONGRESS
2^D SESSION

H. R. 6861

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2022

Mr. CLYDE (for himself, Mr. KATKO, Mr. GUEST, Mr. LAMALFA, Mrs. HARSHBARGER, and Mr. HIGGINS of Louisiana) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To amend the Homeland Security Act of 2002 to provide for congressional notification regarding major acquisition program breaches, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reducing Costs of
5 DHS Acquisitions Act”.

6 **SEC. 2. CONGRESSIONAL NOTIFICATION FOR MAJOR AC-**
7 **QUISITION PROGRAM BREACH.**

8 (a) DEFINITIONS.—

1 (1) IN GENERAL.—Subtitle D of title VIII of
2 the Homeland Security Act of 2002 (6 U.S.C. 391
3 et seq.) is amended by inserting before section 831
4 the following new section:

5 **“SEC. 830. DEFINITIONS.**

6 “In this subtitle:

7 “(1) ACQUISITION.—The term ‘acquisition’ has
8 the meaning given such term in section 131 of title
9 41, United States Code.

10 “(2) ACQUISITION DECISION AUTHORITY.—The
11 term ‘acquisition decision authority’ means the au-
12 thority, in addition to the authorities and functions
13 specified in subsection (b) of section 1702 of title
14 41, United States Code, held by the Secretary acting
15 through the Under Secretary for Management to—

16 “(A) ensure compliance with Federal law,
17 the Federal Acquisition Regulation, and De-
18 partment acquisition management directives;

19 “(B) review (including approving, pausing,
20 modifying, or canceling) an acquisition program
21 throughout the life-cycle of such program;

22 “(C) ensure that acquisition program man-
23 agers have the resources necessary to success-
24 fully execute an approved acquisition program;

1 “(D) ensure appropriate acquisition pro-
2 gram management of cost, schedule, risk, and
3 system or service performance of the acquisition
4 program at issue, including assessing acquisi-
5 tion program baseline breaches and directing
6 any corrective action for such breaches;

7 “(E) ensure that acquisition program man-
8 agers, on an ongoing basis, monitor cost, sched-
9 ule, and performance against established base-
10 lines and use tools to assess risks to an acquisi-
11 tion program at all phases of the life-cycle of
12 such program; and

13 “(F) establish policies and procedures for
14 major acquisition programs of the Department.

15 “(3) ACQUISITION DECISION MEMORANDUM.—
16 The term ‘acquisition decision memorandum’, with
17 respect to an acquisition, means the official docu-
18 mented record of decisions, including the rationale
19 for such decisions and any assigned actions for such
20 acquisition, as determined by the individual exer-
21 cising acquisition decision authority for such acquisi-
22 tion.

23 “(4) ACQUISITION PROGRAM.—The term ‘acqui-
24 sition program’ means the conceptualization, initi-
25 ation, design, development, test, contracting, produc-

1 tion, deployment, logistics support, modification, or
2 disposal of systems, supplies, or services (including
3 construction) to satisfy the Department’s needs.

4 “(5) ACQUISITION PROGRAM BASELINE.—The
5 term ‘acquisition program baseline’, with respect to
6 an acquisition program, means the cost, schedule,
7 and performance parameters, expressed in standard,
8 measurable, quantitative terms, which shall be satis-
9 fied to accomplish the goals of such program.

10 “(6) APPROPRIATE COMMITTEES OF CON-
11 GRESS.—The term ‘appropriate committees of Con-
12 gress’ means—

13 “(A) the Committee on Homeland Security
14 and the Committee on Appropriations of the
15 House of Representatives and the Committee
16 on Homeland Security and Governmental Af-
17 fairs and the Committee on Appropriations of
18 the Senate; and

19 “(B) in the case of notice or a report relat-
20 ing to the Coast Guard or the Transportation
21 Security Administration, the committees speci-
22 fied in subparagraph (A) and the Committee on
23 Transportation and Infrastructure of the House
24 of Representatives and the Committee on Com-

1 merce, Science, and Transportation of the Sen-
2 ate.

3 “(7) BREACH.—The term ‘breach’, with respect
4 to a major acquisition program, means a failure to
5 satisfy any cost, schedule, or performance threshold
6 specified in the most recently approved acquisition
7 program baseline.

8 “(8) CHIEF ACQUISITION OFFICER.—The term
9 ‘Chief Acquisition Officer’ means the Chief Acquisi-
10 tion Officer pursuant to section 1702 of title 41,
11 United States Code.

12 “(9) COMPONENT ACQUISITION EXECUTIVE.—
13 The term ‘Component Acquisition Executive’ means
14 the senior acquisition official within a component
15 who is designated in writing by the Under Secretary
16 for Management, in consultation with the component
17 head, with authority and responsibility for leading a
18 process and staff to provide acquisition and program
19 management oversight, policy, and guidance to en-
20 sure that statutory, regulatory, and higher level pol-
21 icy requirements are fulfilled, including compliance
22 with Federal law, the Federal Acquisition Regula-
23 tion, and Department acquisition management direc-
24 tives established by the Under Secretary for Man-
25 agement.

1 “(10) LIFE-CYCLE COST.—The term ‘life-cycle
2 cost’ means the total ownership cost of an acquisi-
3 tion, including all relevant costs related to acquiring,
4 deploying, operating, maintaining, supporting, and
5 (if applicable) disposing of the system, project, or
6 product at issue over a specified period of time.

7 “(11) MAJOR ACQUISITION PROGRAM.—The
8 term ‘major acquisition program’ means a Depart-
9 ment capital asset, service, or hybrid acquisition pro-
10 gram that is estimated by the Secretary to require
11 an eventual total expenditure of at least
12 \$300,000,000 (based on fiscal year 2022 constant
13 dollars) over the life-cycle cost of the program, or an
14 acquisition program identified by the Chief Acquisi-
15 tion Officer as a program of special interest.”.

16 (2) CLERICAL AMENDMENT.—The table of con-
17 tents in section 1(b) of the Homeland Security Act
18 of 2002 is amended by inserting before the item re-
19 lating to section 831 the following new item:

“Sec. 830. Definitions.”.

20 (b) CONGRESSIONAL NOTIFICATION FOR MAJOR AC-
21 QUISSION PROGRAM BREACH.—

22 (1) IN GENERAL.—Subtitle D of title VIII of
23 the Homeland Security Act of 2002 (6 U.S.C. 391
24 et seq.) is amended by adding at the end the fol-
25 lowing new section:

1 **“SEC. 836. CONGRESSIONAL NOTIFICATION AND OTHER RE-**
2 **QUIREMENTS FOR MAJOR ACQUISITION PRO-**
3 **GRAM BREACH.**

4 “(a) NOTIFICATIONS WITHIN DEPARTMENT IN
5 EVENT OF BREACH.—

6 “(1) NOTIFICATION OF BREACH.—If a breach
7 occurs, or is expected to occur, in a major acquisi-
8 tion program, the program manager for such pro-
9 gram shall notify the Component Acquisition Execu-
10 tive for such program, the head of the component
11 concerned, and the Executive Director of the Pro-
12 gram Accountability and Risk Management office in
13 writing not later than 30 calendar days after the
14 date on which such breach is identified.

15 “(2) NOTIFICATION TO UNDER SECRETARY.—
16 Not later than five business days after receipt of a
17 notification pursuant to paragraph (1), the Compo-
18 nent Acquisition Executive for the major acquisition
19 program at issue shall notify the Under Secretary
20 for Management in writing of the breach that is the
21 subject of such notification.

22 “(3) PAUSING ACTIVITIES.—Upon notification
23 to the Under Secretary under paragraph (2), the
24 major acquisition program that is the subject of the
25 breach at issue shall pause all activities relating to
26 such program except those activities necessary to de-

1 velop the remediation plan required under subsection
2 (b) until the Under Secretary for Management ap-
3 proves such plan or provides alternative corrective
4 actions for such program pursuant to subsection (c).

5 “(b) NOTIFICATION TO CONGRESS IN EVENT OF
6 BREACH.—Not later than 30 days after the date on which
7 a notification to the Under Secretary for Management is
8 made under subsection (a)(1) relating to a breach in a
9 major acquisition program, the Under Secretary shall no-
10 tify in writing the appropriate committees of Congress of
11 such breach.

12 “(c) REMEDIATION PLAN AND ROOT CAUSE ANAL-
13 YSIS.—

14 “(1) IN GENERAL.—If a breach occurs, or is ex-
15 pected to occur, in a major acquisition program, the
16 program manager for such program shall, in coordi-
17 nation with the Component Acquisition Executive for
18 such program, submit in writing to the head of the
19 component concerned, the Executive Director of the
20 Program Accountability and Risk Management of-
21 fice, and the Under Secretary for Management, at a
22 date established by the Under Secretary, a remedi-
23 ation plan and root cause analysis relating to such
24 breach and program.

1 “(2) REMEDIATION PLAN.—The remediation
2 plan required under subparagraph (A) shall—

3 “(A) explain the circumstances of the
4 breach at issue;

5 “(B) provide prior cost estimating informa-
6 tion;

7 “(C) include a root cause analysis that de-
8 termines the underlying cause or causes of such
9 breach, including—

10 “(i) unrealistic performance expecta-
11 tions;

12 “(ii) unrealistic baseline estimates for
13 cost or schedule or changes in program re-
14 quirements;

15 “(iii) immature technologies or exces-
16 sive manufacturing or integration risk;

17 “(iv) unanticipated design, engineer-
18 ing, manufacturing, or technology integra-
19 tion issues arising during program per-
20 formance;

21 “(v) inadequate program funding or
22 changes in planned out-year funding from
23 one five-year funding plan to the next five-
24 year funding plan as outlined in the Fu-

1 ture Years Homeland Security Program
2 required under section 874;

3 “(vi) legislative, legal, or regulatory
4 changes;

5 “(vii) inadequate program manage-
6 ment personnel, including lack of sufficient
7 number of staff, training, credentials, or
8 certifications; or

9 “(viii) inadequate assessment or miti-
10 gation of program risk;

11 “(C) propose corrective action to address
12 the underlying cause or causes of the breach
13 identified pursuant to subparagraph (C);

14 “(D) explain the rationale for why a pro-
15 posed corrective action is recommended com-
16 pared to other options considered; and

17 “(E) identify the estimated impact on pro-
18 gram cost, schedule, or performance goals of
19 implementing such proposed corrective action,
20 and the extent to which funding from other ac-
21 quisition programs would need to be reduced to
22 cover the cost growth of the major acquisition
23 program at issue.

24 “(d) REVIEW OF REMEDIATION PLANS.—

1 “(1) IN GENERAL.—Not later than 30 days
2 after the date on which the Under Secretary for
3 Management receives a remediation plan pursuant to
4 subsection (c)(1), the Under Secretary shall review
5 such plan and either approve such plan for continu-
6 ation or provide an alternative proposed corrective
7 action, including cancelling the major acquisition
8 program at issue.

9 “(2) DOCUMENTATION.—

10 “(A) ACQUISITION DECISION MEMO-
11 RANDUM.—The Under Secretary for Manage-
12 ment shall document the review under para-
13 graph (1) in an acquisition decision memo-
14 randum.

15 “(B) PROGRAM CONTINUATION AP-
16 PROVAL.—If the Under Secretary for Manage-
17 ment approves a major acquisition program
18 pursuant to paragraph (1) for continuation or
19 alternate proposed corrective action rather than
20 cancellation, the Under Secretary shall certify
21 in the acquisition decision memorandum re-
22 quired under subparagraph (A) that—

23 “(i) such program is essential to the
24 mission of the Department;

1 “(ii) there are no alternatives to the
2 capability or asset provided by such pro-
3 gram that will provide equal or greater ca-
4 pability in a more cost-effective and timely
5 manner;

6 “(iii) the estimated impact on pro-
7 gram cost, schedule, or performance goals
8 are reasonable of continuing or imple-
9 menting the alternative proposed corrective
10 action, as the case may be; and

11 “(iv) the management structure for
12 such program is adequate to manage and
13 control cost, schedule, or performance.

14 “(3) SUBMISSION TO CONGRESS.—Not later
15 than 30 days after the date on which the Under Sec-
16 retary for Management completes a review of a re-
17 mediation plan under paragraph (1), the Under Sec-
18 retary shall submit to the appropriate committees of
19 Congress—

20 “(A) a copy of such remediation plan; and

21 “(B) a statement describing the corrective
22 action or actions in such remediation plan in
23 accordance with such paragraph for the major
24 acquisition program at issue, with a justifica-

1 tion for each such action in accordance with
2 paragraph (2).”.

3 (2) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1(b) of the Homeland Security Act
5 of 2002 is amended by inserting after the item relat-
6 ing to section 835 the following new item:

“Sec. 836. Congressional notification and other requirements for major acqui-
 sition program breach.”.

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