



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 4, 2019

The Honorable Michael R. Pence  
President of the Senate  
United States Senate  
Washington, DC 20510

Dear Mr. President:

The Administration is transmitting to Congress the enclosed legislative proposal to address national security-related prohibitions set forth in section 889 of Public Law 115-232, regarding the use of covered telecommunications equipment and services by government contractors or Federal award recipients. We seek enactment of the proposal as part of the National Defense Authorization Act for Fiscal Year 2020 or as part of other appropriate Congressional bills.

The Federal Acquisition Regulatory Council is developing rules to address the acquisition-related requirements of section 889 and the Office of Management and Budget is evaluating changes that will be required to the coverage on Federal awards involving grants and loans in title 2 of the Code of Federal Regulation. The enclosed proposal would adjust certain implementation deadlines set forth in section 889 to allow for additional stakeholder engagement. The Administration believes, based on feedback from impacted stakeholders, that this additional preparatory work will better ensure the effective implementation of the prohibition without compromising desired security objectives.

The Administration shares Congress' goal of strengthening protections for the networks and information of Federal agencies, as reflected in the important bi-partisan effort that led to the passage of the Federal Acquisition Supply Chain Security Act. We hope the Congress will give prompt and favorable consideration to this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vought".

Russell T. Vought  
Acting Director

Enclosure

Identical Letter Sent to:

The Honorable Michael R. Pence  
The Honorable Nancy Pelosi  
The Honorable Ron Johnson  
The Honorable Gary C. Peters  
The Honorable Elijah E. Cummings  
The Honorable Jim Jordan  
The Honorable James M. Inhofe  
The Honorable Adam Smith  
The Honorable Jack Reed  
The Honorable Mac Thornberry

1 **SEC. \_\_. MODIFICATIONS TO PROHIBITION ON CERTAIN**  
2 **TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR**  
3 **EQUIPMENT.**

4 (a) Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law  
5 115-232) is amended –

6 (1) in subsection (b)(1) by striking “The head of an executive agency may not  
7 obligate or expend loan or grant” and inserting “Recipients of Federal loan or grant funds  
8 may not use Federal”;

9 (2) in subsection (b)(3)(A) by striking “The head of an executive agency” and  
10 inserting “Recipient of Federal loan or grant funds”;

11 (3) in subsection (c) by –

12 (A) striking “two” and inserting “four”;

13 (B) by designating the existing text of the subsection as paragraph (1); and

14 (C) by inserting the following new paragraphs (2) and (3):

15 “(2) The Federal Acquisition Regulatory Council shall take the following  
16 actions addressing the implementation of subsection (a)(1)(B) in the Federal  
17 Acquisition Regulation:

18 “(A) Not later than one year after the date of enactment of this Act,  
19 conduct a public meeting to solicit input on a proposed rulemaking;

20 “(B) Not later than eighteen months after the date of enactment of this Act,  
21 publish a proposed rule to implement subsection (a)(1)(B), followed by a  
22 second public meeting, held in a timely manner, to solicit additional input on  
23 the proposed rulemaking; and

24                   “(C) Not later than two years after the date of enactment of this Act,  
25                   consult with the Federal Acquisition Security Council concerning the input  
26                   received pursuant to paragraphs (A) and (B).

27                   “(3) The Office of Management and Budget shall take the following actions  
28                   addressing implementation of subsection (b)(1) in OMB guidance:

29                   “(A) OMB will solicit public feedback on proposed changes to existing  
30                   guidance governing grants and loans.

31                   “(B) OMB will consider public comments and feedback prior to finalizing  
32                   changes to OMB guidance.”.

33                   (b) Not later than twenty-eight months after the enactment of Public Law 115-232, the  
34                   Federal Acquisition Security Council shall, if necessary, submit to the Congressional  
35                   Committees identified in section 889 of that Act a report containing a discussion and  
36                   recommendations regarding any changes required for effective implementation of that section.

37

**[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 the effective date for certain requirements set forth in section 889 of Public Law 115-232. Section 889 prohibits agencies from procuring or obtaining certain technology that includes equipment, systems, or services provided by specified entities. The statute provides for three distinct prohibitions: the first, set forth at section (a)(1)(A) prevents the Government from procuring or obtaining covered technology from specified entities; the second and third, set forth at section (a)(1)(B) and (b)(1), prevent the Government and Federal award recipients from contracting with or using grant or loan funds to contract with an entity that uses covered technology.

Section (a)(1) of the proposal would amend subsection (b) of section 889 to provide a technical clarification to the coverage of federal loan and grant funds recognizing that agencies make awards to non-federal entities that enter into contracts or subcontracts.

Section (a)(2) of the proposal would amend subsection (c) of section 889 to extend the effective date for implementing the second and third prohibitions, in subsection (a)(1)(B) and (b)(1), from two years to four years after the enactment of the original provision. No change would be made to the effective date for subsection (a)(1)(A), which is being implemented through a separate regulatory action.

Sections (a)(2) and (a)(3) would further amend subsection 889(c) to require certain actions prior to the original effective date. Specifically, the Federal Acquisition Regulatory Council would be required to hold a public meeting, issue a notice of proposed rulemaking, hold a second public meeting to obtain further public input, and consult with the Federal Acquisition Security Council on the input received. The Office of Management and Budget would be required to solicit public feedback on proposed changes to existing guidance governing grants and loans and consider such feedback prior to finalizing changes.

Section (b) would require the Federal Acquisition Security Council to submit a report to Congress containing a discussion and recommendations if it concludes that changes are necessary for effective implementation of section 889.

While the Administration recognizes the importance of these prohibitions to national security, a number of agencies have heard significant concerns from a wide range of potentially impacted stakeholders who would be affected by section 889, which the Administration believes could be addressed with a modified implementation schedule. Challenges that could arise under the current schedule potentially include a dramatic reduction in the available industrial base (including small business suppliers), who will no longer be able to sell to the Government, either because their non-government business is more valuable, or due to the cost of the potential regulatory burdens associated with compliance with subsections (a)(1)(B) and (b)(1). Further, rural Federal grants recipients may be disproportionately impacted by the prohibition from using

Federal funds to enter into contracts with entities that use covered telecommunications equipment or services due to the limited number of market options in rural areas.

This proposal would require identified avenues for additional public interaction and additional time to think through the associated potential impacts and possible solutions to achieve effective implementation without compromising the desired security outcomes.

**Budget Implications:** The proposal only addresses Federal award processes and not amounts appropriated for awards.

**Changes to Existing Law:** This proposal would make the following changes to Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115–232):

**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 FUNDS.—

(1) ~~The head of an executive agency~~ Recipients of Federal loan or grant funds may not ~~obligate or expend loan or grant~~ use Federal 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~~ recipient of Federal loan or grant funds 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.—

(1) 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~~ four years after the date of the enactment of this Act.

(2) The Federal Acquisition Regulatory Council shall take the following actions addressing the implementation of subsection (a)(1)(B) in the Federal Acquisition Regulation:

(A) Not later than one year after the date of enactment of this Act, conduct a public meeting to solicit input on a proposed rulemaking;

(B) Not later than eighteen months after the date of enactment of this Act, publish a proposed rule to implement subsection (a)(1)(B), followed by a second public meeting, held in a timely manner, to solicit additional input on the proposed rulemaking; and

(C) Not later than two years after the date of enactment of this Act, consult with the Federal Acquisition Security Council concerning the input received pursuant to paragraphs (A) and (B).

(3) The Office of Management and Budget shall take the following actions addressing implementation of subsection (b)(1) in OMB guidance:

(A) OMB will solicit public feedback on proposed changes to existing guidance governing grants and loans.

(B) OMB will consider public comments and feedback prior to finalizing changes to OMB guidance.

(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.

(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.