



Research Administration
Contract & Grant Administration

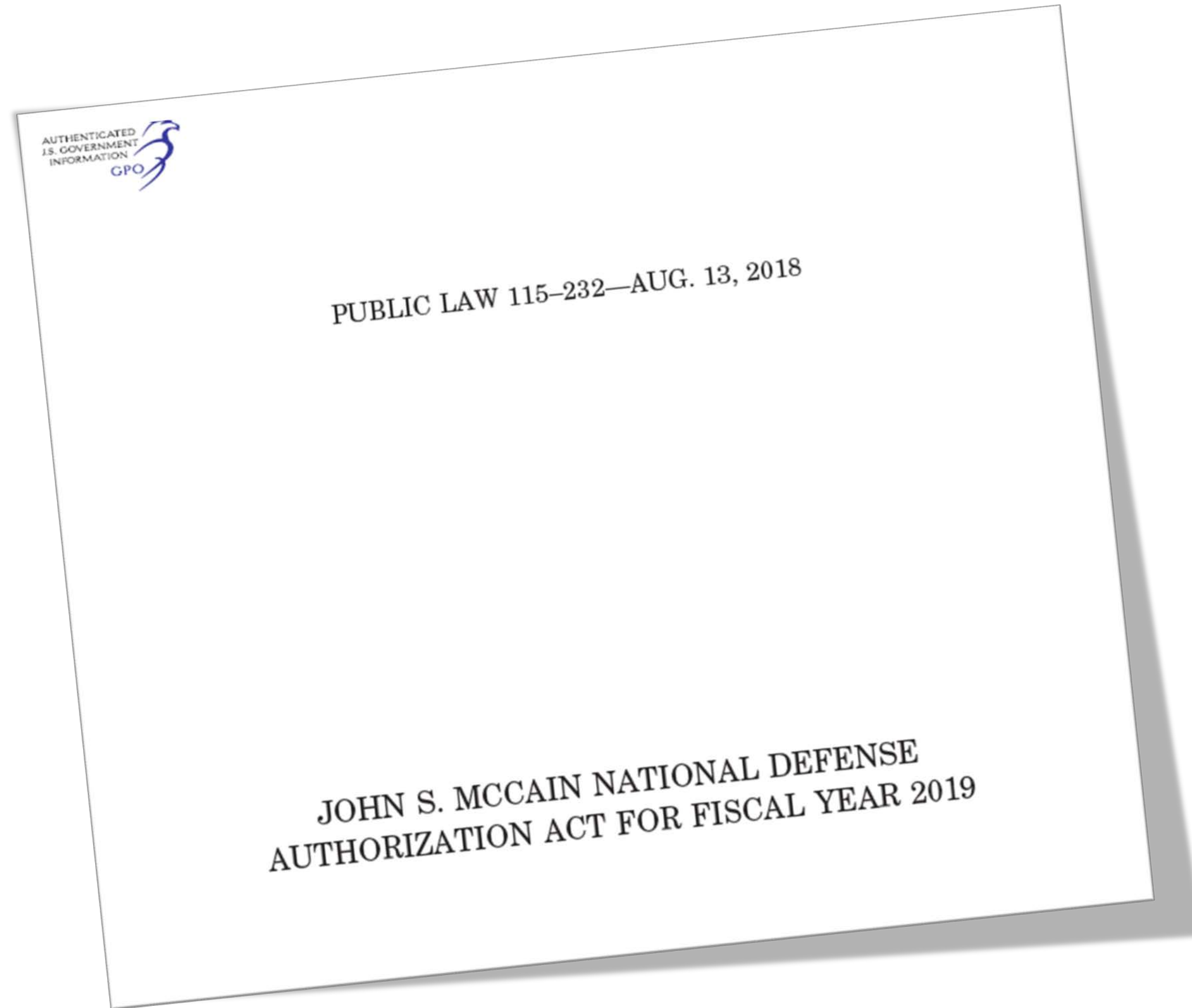
Section 889 of the National Defense Authorization Act of Fiscal Year 2019

December 10, 2020

(slides updated December 11, 2020 based upon an NIH update)

NDAA 2019

Requirement for August 13, 2019



Section (a)(1)(A) shall take effect one year after the date of the enactment of this Act

- Prohibits a federal agency 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”

NDAA 2019

Covered Telecommunications Equipment or Services



Telecommunications or video surveillance services provided by the below entities or using their equipment:

- Huawei Technologies Company
- ZTE Corporation
- Hytera Communications Corporation
- Hangzhou Hikvision Digital Technology Company
- Dahua Technology Company

(or any subsidiary or affiliate of the above)

NDAA 2019

Federal Contracts - August 13, 2020

FAR 52.204-24 – Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Oct 2020)

- Offerer represents that it “will not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument”
- Offerer represents that it “does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services”

FAR 52.204-25 – Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

- Prohibits a federal agency from entering into a contract with an **entity that uses** any equipment, system, or services that uses covered telecommunications equipment

NDAA 2019

Federal Grants – August 13, 2020

2 CFR §200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems 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. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

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

NDAA 2019

Federal Grants – August 13, 2020

NSF language included in new awards and modification on or around **October 8, 2020**

“In accordance with the newly revised 2 CFR § 200.216 and § 200.471, a recipient and subrecipient are prohibited from entering into contracts (or extending or renewing contracts) with **entities that use** covered telecommunications equipment or services. This prohibition shall apply even if the contract is not intended to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services.”

NDAA 2019

Federal Grants – August 13, 2020

NIH NOT-OD-21-030 – Prohibition on Expending NIH Grant Funds for Covered Telecommunications Equipment or Services, dated November 23, 2020 (RESCINDED December 11, 2020 and reissued under NOT-OD-21-041)

In accordance with the newly revised 2 CFR 200.216 and 200.471, a recipient and subrecipient are prohibited from expending grant funds to:

- a. **Procure or obtain; ~~any covered telecommunications equipment, system, or services.~~**
- b. **~~Extend or renew a contract to procure or obtain; or~~**
- c. **Enter contracts (or extend or renew contracts) ~~to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).~~ with entities that use covered telecommunications equipment or services.**

~~Note, this prohibition shall apply even if the contract is not intended to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services.~~

NDAAs 2019

Federal Grants – August 13, 2020

NIH NOT-OD-21-041 – Clarification on Prohibition on Expending NIH Grant Funds for Covered Telecommunications Equipment or Services, dated December 11, 2020.

In accordance with the newly revised 2 CFR 200.216 and 200.471, a recipient and subrecipient are prohibited from expending grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter contracts (or extend or renew contracts) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

NDAAs 2019

Federal Grants – August 13, 2020

FAQ from the Office of Management and Budget (OMB) on December 2, 2020

Q-12. Can a Federal award be used to procure goods or services, unrelated to prohibited services or equipment, from an entity that uses such equipment and services?

Yes.

Q-13. Do recipients need to certify that goods or services procured under a Federal award are not for covered telecommunications equipment or services?

Yes, when the recipient signs an award agreement they are certifying that they will comply with all applicable laws, rules, and regulations, including the prohibition on covered telecommunications equipment and services. If the Federal agency suspects that the goods and services being procured under the award may in fact be prohibited, it must follow its own policies and procedures to take appropriate action that aligns with the guidance in 2 CFR Part 200. OMB is separately evaluating the certifications and representations statement in SAM and will make any necessary updates.

Section 889

Contact

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