

114TH CONGRESS  
1ST SESSION

# S. 434

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, to prevent conflicts of interest relating to contractors providing background investigation fieldwork services and investigative support services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. TESTER (for himself, Mrs. MCCASKILL, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, to prevent conflicts of interest relating to contractors providing background investigation fieldwork services and investigative support services, 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 “Security Clearance Ac-  
5       countability, Reform, and Enhancement Act of 2015”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- 3 Sec. 1. Short title.
- 4 Sec. 2. Table of contents.

5 **TITLE I—SECURITY CLEARANCE ACCOUNTABILITY, REFORM, AND  
6 ENHANCEMENT**

- 7 Sec. 101. Definitions.
- 8 Sec. 102. Accountability of individuals involved in misconduct affecting the in-  
9 tegrity of agency background investigations.
- 10 Sec. 103. Review and update of position designation guidance.

11 **TITLE II—PREVENTING CONFLICTS OF INTEREST WITH  
12 CONTRACTORS**

- 13 Sec. 201. Definitions.
- 14 Sec. 202. Limitation on contracting to prevent organizational conflicts of inter-  
15 est.

16 **TITLE I—SECURITY CLEARANCE**  
17 **ACCOUNTABILITY, REFORM,**  
**AND ENHANCEMENT**

18 **SEC. 101. DEFINITIONS.**

19 In this title—

20 (1) the term “agency” has the meaning given  
21 the term in Executive Order 13467 (73 Fed. Reg.  
22 38103), or any successor thereto;

23 (2) the term “appropriate agency” means—

- 24 (A) in the case of a prime contractor for
- 25 a covered contract, the agency with which the
- 26 prime contractor entered the covered contract;
- 27 or

- 28 (B) in the case of a subcontractor for a
- 29 covered contract, any agency on whose behalf

1 the subcontractor is performing work under the  
2 covered contract;

3 (3) the term “appropriate congressional com-  
4 mittees” means—

5 (A) the Committee on Homeland Security  
6 and Governmental Affairs and the Select Com-  
7 mittee on Intelligence of the Senate; and

8 (B) the Committee on Oversight and Gov-  
9 ernment Reform and the Permanent Select  
10 Committee on Intelligence of the House of Rep-  
11 resentatives;

12 (4) the term “background investigation” means  
13 any investigation required for the purpose of deter-  
14 mining the—

15 (A) eligibility of a covered individual for  
16 logical and physical access to federally con-  
17 trolled facilities or information systems;

18 (B) suitability or fitness of a covered indi-  
19 vidual for Federal employment;

20 (C) eligibility of a covered individual for  
21 access to classified information or to hold a na-  
22 tional security sensitive position; or

23 (D) fitness of a covered individual to per-  
24 form work for or on behalf of the United States  
25 Government as a contractor employee;

1           (5) the term “covered contract” means a con-  
2           tract to conduct background investigations—

3                   (A) between an agency and a prime con-  
4           tractor;

5                   (B) between a prime contractor and a sub-  
6           contractor, if the prime contractor has a con-  
7           tract with an agency; or

8                   (C) between subcontractors, if one of the  
9           subcontractors has a contract with a prime con-  
10          tractor that has a contract with an agency;

11          (6) the term “covered individual” means an in-  
12          dividual who—

13                   (A) performs work for or on behalf of an  
14          agency; or

15                   (B) seeks to perform work for or on behalf  
16          of an agency;

17          (7) the term “covered misconduct” means mis-  
18          conduct affecting the integrity of a background in-  
19          vestigation conducted by or for an agency with in-  
20          vestigative authority to conduct background inves-  
21          tigations, including—

22                   (A) falsification of any information relat-  
23          ing to a background investigation; or

1 (B) other serious misconduct that com-  
2 promises the integrity of a background inves-  
3 tigation;

4 (8) the term “prime contractor” means an indi-  
5 vidual who enters into a contract with an agency;  
6 and

7 (9) the term “subcontractor” means an indi-  
8 vidual who has contracted with a prime contractor  
9 or with another subcontractor to perform a contract  
10 on behalf of an agency.

11 **SEC. 102. ACCOUNTABILITY OF INDIVIDUALS INVOLVED IN**  
12 **MISCONDUCT AFFECTING THE INTEGRITY OF**  
13 **AGENCY BACKGROUND INVESTIGATIONS.**

14 (a) MISCONDUCT BY FEDERAL EMPLOYEES.—

15 (1) UNFIT FOR FEDERAL EMPLOYMENT.—If an  
16 agency determines that an employee of the agency  
17 has engaged in covered misconduct, the employee  
18 shall be found unfit for Federal employment.

19 (2) FITNESS DETERMINATIONS.—An agency  
20 shall make a determination under paragraph (1) in  
21 accordance with any statutory, regulatory, or inter-  
22 nal agency procedures applicable to investigating al-  
23 leged misconduct by employees of the agency.

24 (3) PROHIBITION ON REEMPLOYMENT TO CON-  
25 DUCT BACKGROUND INVESTIGATIONS.—If an agency

1 determines under paragraph (1) that an individual is  
2 unfit for Federal employment, the individual shall  
3 not be appointed to or continue to occupy a position,  
4 as an employee of any agency, that requires its occu-  
5 pant to perform background investigations.

6 (b) MISCONDUCT BY EMPLOYEES UNDER CON-  
7 TRACT.—

8 (1) INELIGIBILITY FOR PERFORMANCE OF  
9 WORK UNDER A COVERED CONTRACT.—If an appro-  
10 priate agency, prime contractor, or subcontractor de-  
11 termines that an individual performing work under  
12 a covered contract has engaged in covered mis-  
13 conduct, the individual shall be ineligible to perform  
14 background investigations under a covered contract.

15 (2) MANDATORY DISCLOSURE.—A covered con-  
16 tract shall include a provision requiring a prime con-  
17 tractor or subcontractor to disclose to each appro-  
18 priate agency any allegation of covered misconduct  
19 by an employee of the prime contractor or subcon-  
20 tractor not later than 24 hours after the prime con-  
21 tractor or subcontractor discovers the alleged cov-  
22 ered misconduct.

23 (3) INVESTIGATION OF COVERED MIS-  
24 CONDUCT.—

1 (A) CONTRACTOR INVESTIGATION.—A cov-  
2 ered contract shall include a provision requiring  
3 that, not later than 5 business days after the  
4 date on which a prime contractor or subcon-  
5 tractor discloses an allegation under paragraph  
6 (2), the prime contractor or subcontractor shall  
7 refer the allegation of covered misconduct to  
8 the agency for investigation.

9 (B) AGENCY INVESTIGATION.—Nothing in  
10 subparagraph (A) shall be construed to prohibit  
11 an appropriate agency from conducting its own  
12 investigation into an allegation of covered mis-  
13 conduct.

14 (4) PROHIBITION ON REEMPLOYMENT TO CON-  
15 DUCT BACKGROUND INVESTIGATIONS.—If an appro-  
16 priate agency determines, based on an investigation  
17 conducted under paragraph (3), that an individual is  
18 ineligible to perform work under a covered contract  
19 under paragraph (1), the individual shall be prohib-  
20 ited from performing background investigations  
21 under any covered contract.

22 (5) MODIFICATION OF EXISTING CONTRACTS.—  
23 Not later than 30 days after the date of enactment  
24 of this Act, any covered contract that is in effect  
25 and was entered into before the date of enactment

1 of this Act shall be modified to include the provi-  
2 sions required under paragraphs (2) and (3).

3 (c) REPORTING.—Not later than 1 year after the date  
4 of enactment of this Act, and annually thereafter, the  
5 President shall submit to the appropriate congressional  
6 committees a report providing—

7 (1) the number of individuals determined to  
8 be—

9 (A) unfit for Federal employment under  
10 subsection (a); or

11 (B) ineligible to perform work under a cov-  
12 ered contract under subsection (b); and

13 (2) details of the covered misconduct that re-  
14 sulted in each determination described in paragraph  
15 (1).

16 **SEC. 103. REVIEW AND UPDATE OF POSITION DESIGNATION**

17 **GUIDANCE.**

18 (a) GUIDELINES.—

19 (1) INITIAL REVIEW AND UPDATE OF GUID-  
20 ANCE.—Not later than 180 days after the date of  
21 enactment of this Act, the President shall review  
22 and, if appropriate, update the guidance the Presi-  
23 dent issues to assist agencies in determining—

24 (A) position sensitivity designation; and

1 (B) the appropriate background investiga-  
 2 tion to initiate for each position designation.

3 (2) **REVIEWS AND REVISIONS OF POSITION DES-**  
 4 **IGNATIONS.**—Not less frequently than every 5 years,  
 5 the President, acting through relevant agencies (as  
 6 determined by the President) and in accordance with  
 7 the guidance described in paragraph (1), shall review  
 8 and, if necessary, revise the position designation of  
 9 positions within agencies.

10 (b) **REPORTS TO CONGRESS.**—Not later than 30 days  
 11 after completing a review under subsection (a)(2), the  
 12 President shall submit to the appropriate congressional  
 13 committees a report on—

14 (1) any issues identified in the review; and

15 (2) the number of position designations revised  
 16 as a result of the review.

17 (c) **NO CHANGE IN AUTHORITY.**—Nothing in this  
 18 section limits or expands the authority of any agency to  
 19 designate a position as sensitive or as requiring its occu-  
 20 pant to have access to classified information.

21 **TITLE II—PREVENTING CON-**  
 22 **FLICTS OF INTEREST WITH**  
 23 **CONTRACTORS**

24 **SEC. 201. DEFINITIONS.**

25 In this title—

1 (1) the term “agency” means—

2 (A) an Executive agency (as defined in sec-  
3 tion 105 of title 5, United States Code);

4 (B) a military department (as defined in  
5 section 102 of title 5, United States Code);

6 (C) an element of the intelligence commu-  
7 nity (as that term is defined in section 3 of the  
8 National Security Act of 1947 (50 U.S.C.  
9 3003));

10 (D) the United States Postal Service; and

11 (E) the Postal Regulatory Commission;

12 (2) the term “background investigation  
13 fieldwork services” means the investigatory fieldwork  
14 conducted to determine the eligibility of an indi-  
15 vidual for logical and physical access to federally  
16 controlled facilities or information systems, suit-  
17 ability or fitness for Federal employment, eligibility  
18 for access to classified information or to hold a na-  
19 tional security sensitive position, or fitness to per-  
20 form work for or on behalf of the Federal Govern-  
21 ment as a contractor or employee, including—

22 (A) interviews of the individual, the em-  
23 ployer of the individual, former employers of  
24 the individual, and friends, family, and other

1 sources who might have relevant knowledge of  
2 the individual; and

3 (B) reviews of—

4 (i) educational and employment  
5 records;

6 (ii) criminal and other legal records;

7 and

8 (iii) credit history;

9 (3) the term “background investigation support  
10 services” means the clerical, administrative, and  
11 technical support services provided to various func-  
12 tions critical to the background investigation proc-  
13 ess, including—

14 (A) initial processing and scheduling of in-  
15 vestigative requests;

16 (B) information technology and informa-  
17 tion technology support;

18 (C) file maintenance;

19 (D) imaging or copying of investigation  
20 documents; and

21 (E) mail processing; and

22 (4) the term “quality review process” means  
23 performing the final quality review of a background  
24 investigation to ensure investigative, administrative,  
25 and other required standards have been met before

1 the completed background investigation is delivered  
2 to the adjudicating agency.

3 **SEC. 202. LIMITATION ON CONTRACTING TO PREVENT OR-**  
4 **GANIZATIONAL CONFLICTS OF INTEREST.**

5 Notwithstanding any other provision of law, after the  
6 date of enactment of this Act, a contract may not be en-  
7 tered into, and an extension of or option on a contract  
8 may not be exercised, with a contractor to conduct a qual-  
9 ity review process relating to background investigation  
10 fieldwork services or background investigation support  
11 services if the contractor is performing the services to be  
12 reviewed.

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