

Calendar No. 606

113TH CONGRESS }
2d Session }

SENATE

{ REPORT
113-276 }

SECURITY CLEARANCE ACCOUNTABILITY,
REFORM AND ENHANCEMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1744

TO STRENGTHEN THE ACCOUNTABILITY OF INDIVIDUALS INVOLVED IN MISCONDUCT AFFECTING THE INTEGRITY OF BACKGROUND INVESTIGATIONS, TO UPDATE GUIDELINES FOR SECURITY CLEARANCES, AND FOR OTHER PURPOSES



DECEMBER 1, 2014.—Ordered to be printed

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Mr. CARPER, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1744]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1744), to strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, and for other purposes, having considered the same, reports favorably thereon with a substitute amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

This bill seeks to make the vetting of federal government personnel more reliable by requiring that, if someone works for an agency or a contractor on conducting background investigations and submits false information into the record of an investigation, or otherwise engages in conduct that undermines the integrity of the investigation, the individual must be removed from performing further work on background investigations. Moreover, to help ensure that personnel are vetted appropriately for security-sensitive jobs, the bill requires the President to issue updated guidance to

or otherwise engages in conduct that undermines the integrity of the investigation, the individual must be removed from performing further work on background investigations. Moreover, to help ensure that personnel are vetted appropriately for security-sensitive jobs, the bill requires the President to issue updated guidance to assist agencies in designating the level of sensitivity of positions in the government and in determining what level of background investigation to conduct for positions with various levels of sensitivity.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Processes for Vetting Government Personnel. Federal agencies conduct background investigations for the purpose of vetting individuals to provide service to the government. The level of detail of the investigation depends on the nature of the job. Background checks help determine whether an individual is appropriate for employment by a federal agency or a federal contractor, and investigations are also used to determine whether to allow an individual to have access to government facilities or information technology systems. More intensive investigations are used to determine whether an individual is eligible to hold a “Public Trust” position (*i.e.*, a position that could have a relatively large adverse impact on an agency’s efficiency or integrity),¹ to have access to classified information, or to occupy a national security sensitive position with the government.

Because unauthorized disclosure of classified information can cause damage to national security and loss of human life, federal civilian employees, military personnel, and contractor employees are allowed access to classified information only after the government conducts a rigorous background investigation and issues them a security clearance.² The levels of security clearance correspond to the levels of sensitivity of classified information to which the individual may have access—“Top Secret,” “Secret,” and “Confidential.”³ Some security clearances allow access to “Sensitive Compartmented Information,” which involves intelligence matters and is particularly sensitive.⁴

Moreover, positions within an agency are designated as “sensitive positions” if an individual occupying a position could bring

¹Agency positions are designated at a “high, moderate, or low risk level as determined by the position’s potential for adverse impact to the efficiency or integrity of the service,” and those at the high or moderate risk levels would normally be designated as “Public Trust” positions. 5 C.F.R. 731.106 (a)–(b). OPM’s regulations explain: “Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities or other duties demanding a significant degree of public trust, and positions involving access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain.” *Id.*

²See Exec. Ord. 12968 “Access to Classified Information” (Aug. 2, 1995) (50 U.S.C. 3161 note).
³See Exec. Ord. 13526 “Classified National Security Information” (Dec. 29, 2009) (50 U.S.C. 3161 note). To indicate access to sensitive nuclear information and materials, “Q” clearances and “L” clearances are issued, with Q clearances allowing access to the more highly sensitive level. See U.S. Department of Energy, Order DOE O 472.2, Personnel Security” (Approved: July 21, 2011). <https://www.directives.doe.gov/directives-documents/400-series/0472.2-BOrder>; U.S. Nuclear Regulatory Commission, Information Security (Last Reviewed/Updated October 31, 2013), <http://www.nrc.gov/security/info-security.html>.

⁴See Office of the Director of National Intelligence, Number 704.1, Intelligence Community Policy Guidance, Personnel Security Investigative Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information (ICPG 704.1, Oct. 2, 2008), http://www.ncix.gov/publications/policy/docs/ICPG_704-1_Investigative%20Standards.pdf.

about “a material adverse effect on the national security.”⁵ Most sensitive career civil-service positions and some others are categorized among three levels of sensitivity: “Noncritical-Sensitive,” “Critical-Sensitive,” and “Special-Sensitive.”⁶ Positions that require access to classified information are always considered sensitive positions. And aside from whether a position may have an impact on national security, positions within an agency are “moderate risk public trust” positions or “high risk public trust positions,” depending on the level of risk that someone in the position could harm the efficiency or integrity of the agency.⁷

The head of each agency must designate positions in terms of whether they require access to classified information (and, if so, at what level of classification), whether the positions are national-security sensitive (and, if so, at what level of sensitivity), and whether it is a position of public trust (and, if so, at what level of risk). Then, when an individual is under consideration for a position, the scope of the background investigation for the individual must be appropriate for the designations associated with the position.⁸ In addition, individuals in security-sensitive positions (including those requiring access to classified information) or in public-trust positions are subject to routine periodic reinvestigations, and agencies may require reinvestigations any time there is reason to believe the individual may no longer meet the standards for the position.

The great majority of background investigations (over 90 percent) are performed by the Federal Investigative Services (FIS) within the Office of Personnel Management (OPM), at the request of other agencies,⁹ though several agencies, many of which are in the Intelligence Community, are authorized to conduct their own.¹⁰ OPM hires contractors to conduct much of the information collection, and other agencies also use a mix of contractors and federal employees to gather the information needed for a background investigation.¹¹

Following a background investigation, and based on the information collected, comes the adjudication stage, in which the sponsoring agency assesses the information collected and determines whether to allow the individual to occupy the position, and, if relevant, have access to classified information.

Integrity of Background Investigations by Federal and Contractor Employees. Several high-profile leaks of classified information and other crimes in the last few years by individuals with security

⁵ See Exec. Ord. 10450 (April 27, 1953) (5 U.S.C. 7311 note).

⁶ See 5 C.F.R. part 732 (The requirement to designate sensitive positions at one of these three levels of sensitivity applies to positions in the competitive service (i.e., positions filled according to the Office of Personnel Management’s competitive-hiring regulations) and to Senior Executive Service positions filled by career appointment, and agencies may apply the requirement to other positions); Office of Personnel Management, Position Designation Tool, Position Designation of National Security and Public Trust Positions (October 2010), <http://www.opm.gov/investigations/background-investigations/position-designation-tool/oct2010.pdf>.

⁷ See 5 C.F.R. 731.106.

⁸ See, e.g., Memorandum for Heads of Agencies, subject: “Aligning OPM Investigative Levels with Reform Concepts,” from John P. Fitzpatrick, Asst. Dep. Director of National Intelligence for Security, Office of the Director of National Intelligence, and from Kathy L. Dillaman, Assoc. Director, Federal Investigative Services, Office of Personnel Management (Aug. 24, 2010), <http://www.opm.gov/investigations/background-investigations/federal-investigations-notice/2010/aligning-opm-investigative-levels.pdf>.

⁹ Office of Management and Budget, “Suitability and Security Processes Review: Report to the President,” conducted by the Suitability and Security Clearance Performance Accountability Council (February 2014) (“120-day Suitability and Security Report”), at page 2.

¹⁰ See *id.* at pages 2–3, <http://www.whitehouse.gov/sites/default/files/omb/reports/suitability-and-security-process-review-report.pdf>.

¹¹ See *id.*

clearances have highlighted weakness in our processes for vetting federal personnel and have demonstrated the urgent need to strengthen these processes:

- During 2010 and 2011, an Army intelligence analyst, then named Bradley Manning, stole and leaked enormous quantities of classified documents regarding military operations in Iraq and Afghanistan to a whistleblower website called Wikileaks.¹²
- During June 2013, computer systems administrator Edward Snowden leaked to the news media enormous quantities of National Security Agency classified documents that he obtained while working for intelligence contractors Dell and Booz Allen.¹³
- Most recently, on September 16, 2013, Aaron Alexis, while a Navy contractor with a Secret-level security clearance, fatally shot 12 U.S. Navy civilian and contractor employees and wounded several others in a mass shooting inside the Washington Navy Yard in Washington, D.C.¹⁴

On June 20, 2013, shortly after the massive release of classified information by Mr. Snowden, very troubling information about the integrity of the background-investigation program was presented at a joint hearing before two of this Committee's subcommittees.¹⁵ The Inspector General of OPM, Patrick McFarland, testified at the hearing about the fabrication of background investigations within OPM's Federal Investigative Services.¹⁶ Mr. McFarland stated that "one of the most flagrant criminal violations that we encounter is the falsification of background investigation reports" and that there are situations where the "Federal Investigative Services' background investigators, either Federal employees or contractors, report interviews that never occurred, record answers to questions

¹² See Department of Defense, "Internal Review of the Washington Navy Yard Shooting: A Report to the Secretary of Defense" (November 20, 2013) ("DoD Internal Review") at page 16, <http://www.defense.gov/pubs/DoD-Internal-Review-of-the-WNY-Shooting-20-Nov-2013.pdf>. In April 2014, Manning's name was legally changed to Chelsea Elizabeth Manning, at Manning's request. See Ernesto Londoño, "Convicted leaker Bradley Manning changes legal name to Chelsea Elizabeth Manning," *Washington Post* (April 23, 2014), http://www.washingtonpost.com/world/national-security/convicted-leaker-bradley-manning-changes-legal-name-to-chelsea-elizabeth-manning/2014/04/23/e2a96546-cb1c-11e3-a75e-463587891b57_story.html.

¹³ See "Safeguarding our Nation's Secrets: Examining the Security Clearance Process," joint hearing before the Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce and the Subcommittee on Financial and Contracting Oversight, Senate Committee on Homeland Security and Governmental Affairs, 113th Cong, 1st Sess. (June 20, 2013), S.Hrg. 113-316; testimony of James R. Clapper, Director of National Intelligence, "Open Hearing: Current and Projected National Security Threats Against the United States," before the Senate Intelligence Committee, January 29, 2014, <http://www.intelligence.senate.gov/hearings.cfm?hearingid=138603a26950ad873303535a630ec9c9&witnessId=138603a26950ad873303535a630ec9c9-0-1>, unofficial transcript at http://www.washingtonpost.com/world/national-security/transcript-senate-intelligence-hearing-on-national-security-threats/2014/01/29/b5913184-8912-11e3-833c-33098f9e5267_story.html. See also, Mark Hosenball, "Snowden downloaded NSA secrets while working for Dell, sources say," *Reuters* (Aug. 15, 2013), <http://www.reuters.com/article/2013/08/15/usa-security-snowden-dell-idUSL2N0GF11220130815>.

¹⁴ See DoD Internal Review, note 12 above, <http://www.defense.gov/pubs/DoD-Internal-Review-of-the-WNY-Shooting-20-Nov-2013.pdf>; Department of Defense, "Security from Within: Independent Review of the Washington Navy Yard Shooting" (November 2013) ("DoD External Review"), <http://www.defense.gov/pubs/Independent-Review-of-the-WNY-Shooting-14-Nov-2013.pdf>.

¹⁵ Joint hearing of the Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, and the Subcommittee on Financial and Contracting Oversight, of the Senate Committee on Homeland Security and Governmental Affairs, "Safeguarding our Nation's Secrets: Examining the Security Clearance Process" (June 20, 2013) ("June 20, 2013 hearing").

¹⁶ Testimony of Patrick McFarland, Inspector General, U.S. Office of Personnel Management, before the Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, "Safeguarding our Nation's Secrets: Examining the Security Clearance Process" (June 20, 2013), <http://www.hsgac.senate.gov/download/?id=c11fa433-8f01-440f-a306-741e879ce8a8>.

that were never asked, and document records checks that were never conducted.”¹⁷

Among the examples Mr. McFarland provided was a record searcher who fabricated 1,600 credit checks that she never actually completed. Moreover, her own background investigation had been falsified by a background investigator who had been convicted in a different fabrication case. Since the OPM Office of the Inspector General began investigating that type of case in 2006, twenty-four background investigators and records searchers have been criminally convicted, resulting in court-ordered restitution of at least \$1,866,382 to OPM’s Revolving Fund.¹⁸

Further troubling allegations questioning the integrity of the background check program emerged on October 30, 2013, when the Department of Justice joined a civil fraud lawsuit claiming that a contractor, which was performing a large share of the investigative work contracted out by OPM and other agencies, had engaged in a systemic failure to adequately conduct security clearance background investigations.¹⁹ Specifically, the Department of Justice alleged that the senior management of the company “dumped” incomplete investigations on OPM in order to increase the company’s revenue and profit. This began at least as early as March 2008, according to the complaint, and continued through at least September 2012, and involved 665,000 background investigations—approximately 40 percent of the total investigations conducted by the contractor during that time frame.²⁰

In situations where misconduct by an employee of an OPM contractor was found, the Federal Investigative Services has shown itself to be able to take prompt administrative action to remove the employee from the contract. However, just removing the individual from the contract is, as Mr. McFarland said, “insufficient,”²¹ because such an employee may obtain a position performing background investigations working under another contract. In one instance, for example, the OPM Office of the Inspector General found that a contract background investigator, who had been removed by OPM for falsifying reports, was later granted contract employment performing background investigations for another federal agency while awaiting criminal indictment for fabricating reports.

To prevent this kind of abuse in the future, S. 1744 would require agencies that hire background investigators, whether as employees of the agency or as a contractor to the agency, to implement certain practices to help keep these employees accountable. Any federal employee who is found to have engaged in misconduct affecting the integrity of a background investigation would be deemed unfit for such employment and would be permanently barred from conducting background investigations as an employee of any agency. Likewise, if an employee under a contract has engaged in such misconduct, that individual would then be deemed ineligible to perform a background investigation for any contractor from that point forward.

¹⁷*Id.*

¹⁸Information provided to Committee staff by the OPM Office of Inspector General on November 13, 2014.

¹⁹U.S. Department of Justice press release (Oct. 30, 2013), <http://www.justice.gov/opa/pr/2013/October/13-civ-1158.html>.

²⁰*See id.* and the United States’ Complaint in the case referred to there.

²¹*See* testimony of McFarland, note 16 above.

This bill also requires that a contract to provide background-investigation services must require that, if the contractor discovers any instance of misconduct affecting the integrity of a background investigation, the contractor must disclose the situation to the agency within 24 hours. Finally, the bill requires annual Presidential reports to the appropriate congressional committees detailing the number of individuals determined unfit for federal employment or ineligible to perform background investigation work, and the details of the covered misconduct that resulted in their removal.

Guidance for Designating the Sensitivity Level of Positions. A further source of vulnerability in the vetting of federal personnel arises from the absence of updated and consistent guidance for agencies to use in designating the sensitivity level of positions that require security clearances or are otherwise sensitive in terms of national security. The Government Accountability Office (GAO) explained this weakness at the joint subcommittee hearing on June 20, 2013, and provided further explanation at a second subcommittee hearing on November 20, 2013.²²

At these hearings, Brenda Farrell, Director of GAO's Defense Capabilities and Management team, explained that applying the currently available methods have resulted in inconsistency in position designations, such as designating positions at too high a level or at too low a level. Both kinds of errors are harmful. If a position is designated as more sensitive than it should be, the background investigation will be more costly and time-consuming than necessary for the position. For example, Ms. Farrell told the Committee that a background investigation for a top secret clearance requires 10 times as many investigative staff hours as a secret clearance.²³ And on the other hand, if a position is designated as less sensitive than it should be, the background investigation may not be sufficiently thorough and rigorous to ensure that an individual is sufficiently trustworthy to be given the highly sensitive national-security responsibilities of the position.

To address this deficiency, GAO recommend that clearly defined policies and procedures should be issued that federal agencies could follow in determining whether federal civilian positions require a security clearance or should be designated as a national security position. Moreover, since circumstances and the duties of positions change over time, GAO recommends that these designations of positions be reevaluated periodically.

The Director of National Intelligence and the Director of OPM are currently working to finalize regulations, which were published in proposed form on May 28, 2013, to establish policies and procedures for agencies to follow in designating the sensitivity of federal civilian positions. Ms. Farrell testified that the proposed rules would, if finalized, meet the intent of GAO's recommendation to

²² See testimony of Brenda S. Farrell, Director, Defense Capabilities and Management, GAO, "Personnel Security Clearances: Further Actions Needed to Improve the Process and Realize Efficiencies," GAO-13-728T (June 20, 2013), submitted at June 20, 2013 hearing, note—above; testimony of Brenda S. Farrell, Director, Defense Capabilities and Management, GAO, "Personnel Security Clearances: Actions Needed to Help Ensure Correct Designations of National Security Positions," GAO-14-139T (November 20, 2013), submitted at hearing before the Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, Senate Committee on Homeland Security and Governmental Affairs, "Safeguarding our Nation's Secrets: Examining the National Security Workforce" (November 20, 2014).

²³ See Farrell, testimony submitted at November 20, 2013, hearing, note 16 above, at page 18.

issue clearly defined policies and procedures for determining whether civilian positions need security clearances.²⁴ However, the regulations have not yet been issued in final form, and they do not require a periodic reassessment of whether a position continues to need access to classified information or to otherwise be security sensitive.

The Committee agrees with these recommendations put forth by GAO and has included requirements in S. 1744 that are similar to those recommendations. Specifically, the bill would require that, not later than 180 days after enactment, the President must review and update guidance for agencies in determining the sensitivity designation of positions and the appropriate background investigation to initiate for each position designation. The bill also provides that, at least every 5 years, the President must review and, if necessary, revise the position designations in accordance with the guidance. The President would act through relevant agencies, as determined by the President.²⁵

III. LEGISLATIVE HISTORY

On November 20, 2013, Senators Tester, Baucus, Begich, Ron Johnson, McCaskill, Nelson, and Portman introduced S. 1744, and the bill was referred to the Committee on Homeland Security and Governmental Affairs. (S. 1744 is based on two provisions that Senator Tester had originally introduced on July 10, 2013, as part of, S. 1276, the Security Clearance Oversight and Reform Enforcement Act, but that were removed from that bill before it was ordered to be reported on July 31, 2013.)²⁶

The Committee considered S. 1744 at a business meeting on May 21, 2014. Senators Tester, McCaskill, Begich, and Portman offered a substitute amendment. As introduced, S. 1744 required the Director of OPM to terminate or debar an individual intentionally involved in misconduct affecting the integrity of background investigations. The substitute directs this requirement more broadly across the government in order to include other agencies that conduct background investigations. The substitute also tightens dead-

²⁴ Farrel testimony at November 20, 2013 hearing, note 16 above, at page 13.

²⁵ Under current delegations, the President would be expected to issue updated guidance through a collaboration of the Director of National Intelligence, as Security Executive Agent, and the Director of the Office of Personnel Management, as Suitability Executive Agency. See Ex. Ord. No. 13467 (June 30, 38103) (50 U.S.C. 3161 note) (designating the Director of National Security as the Security Executive Agent, responsible for developing policies and procedures with respect to eligibility for access to classified information and eligibility to hold a sensitive position; and designating the Director of the Office of Personnel Management as Suitability Executive Agent, responsible for developing policies and procedures with respect to determinations of suitability for federal employment and eligibility for access to facilities and systems). On the designation of positions, the President would be expected to act through the heads of each agency.

²⁶ On July 10, 2013, Senator Tester introduced S. 1276, the Security Clearance Oversight and Reform Enforcement Act, with Senators McCaskill, Portman, Coburn and Ron Johnson as co-sponsors, and the bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. As introduced, S. 1276 contained three provisions: (1) a provision providing the Inspector General of the OPM funds from OPM's Revolving Fund to perform oversight of the Revolving Fund; (2) a provision requiring OPM to terminate or debar a federal or contractor employee involved in misconduct affecting the integrity of background investigations; and (3) a provision requiring the federal government to update its policies for determining which employees require a security clearance. The Committee considered S. 1276 at a business meeting on July 31, 2013. Senator Tester offered a substitute amendment striking the provisions other than the one authorizing the use of Revolving Fund resources for oversight activities. The Committee adopted the substitute amendment, as modified, and ordered the underlying bill reported favorably, both by voice vote. The Senate passed S. 1276 on October 10, 2013. Similar legislation introduced in the House of Representatives regarding oversight of the Revolving Fund, H.R. 2860, was signed into law on February 12, 2014 (Public Law 113-80).

lines for contractors to report misconduct from the requirements included in S. 1744 as introduced. The substitute also makes a number of changes to terminology based on staff discussion with the agencies that participate in the Suitability and Security Performance Accountability Council (PAC), which is the inter-agency committee responsible for promoting reforms related to background investigations and the decisions that are based on those investigations.²⁷ Senator Tester also offered an amendment to change the title of the bill.

The Committee adopted the substitute amendment, as modified, and the amendment to change the title, both by voice vote. The Committee reported the bill, as amended, favorably by voice vote. Senators present for the votes were Senators Carper, Pryor, Landrieu, McCaskill, Tester, Begich, Coburn, Johnson, Portman, and Enzi.

IV. SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section establishes the short title of the legislation as the “Security Clearance Accountability, Reform and Enhancement Act.”

Section 2—Definitions

This section establishes that, for purposes of this Act:

(1) The term “agency” has the meaning given in Executive Order 13467 (73 Fed. Reg. 38103), Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employment, and Eligibility for Access to Classified National Security Information. This is a broad definition, encompassing Executive agencies, military departments, and other entities in the executive branch that come into possession of classified information or have designated positions as sensitive.

(2) The term “appropriate agency” means, an agency with which a prime contractor enters a contract for background investigation work, or an agency on whose behalf a subcontractor is performing background investigation work.

(3) The term “appropriate congressional committees” means the Committee on Homeland Security and Governmental Affairs and the Select Committee on Intelligence of the Senate, and the Committee on Oversight and Government Reform and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term “background investigation” means any investigation required for determining the eligibility of a covered individual for logical and physical access to federally controlled facilities or information systems; suitability or fitness of a covered individual for federal employment; eligibility of a covered individual for access to classified information or to hold a national security sensitive position; or fitness of a covered individual to perform work on or behalf of the United States Government as a contractor employee.

²⁷The PAC was established by Executive Order 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees and Eligibility for Access to Classified National Security Information (June 30, 2008). The PAC is chaired by the Deputy Director for Management of the Office of Management and Budget and also includes, among other agencies, the Office of the Director of National Intelligence and the Office of Personnel Management.

(5) The term “covered contract” is defined to include both prime and subcontracts to conduct background investigations.

(6) The term “covered individual” means an individual who performs work, or seeks to perform work, for or on behalf of an agency.

(7) The term “covered misconduct” is defined as misconduct affecting the integrity of a background investigation, including falsification or other serious misconduct that compromises the integrity of a background investigation.

(8) The term “prime contractor” means an individual who enters a contract with an agency.

(9) The term “subcontractor” means an individual who has contracted with a prime contractor or with another subcontractor to perform a contract on behalf of an agency.

Section 3—Accountability of individuals involved in misconduct affecting the integrity of agency background investigations

Section 3(a) establishes that an employee found to have engaged in covered misconduct affecting the integrity of a background investigation is unfit for federal employment. Section 3(a) requires agencies, in determining whether an employee has engaged in such conduct, to act in accordance with any statutory, regulatory, or internal agency procedures applicable to investigating alleged misconduct by employees. The subsection further provides that if an individual has been deemed unfit for federal employment because of such misconduct, that individual may no longer occupy a position as a federal employee performing background investigations.

Section 3(b) makes accountability measures similar to those in subsection (a) apply to contract employees performing background investigations. In doing so, it establishes that if an agency, prime contractor or subcontractor determines that an individual performing work under contract has engaged in covered misconduct, the individual shall be ineligible to perform background investigations under a contract. Section (3)(b) also requires any background investigation contract to include a mandatory disclosure provision requiring a prime contractor or subcontractor to disclose any allegation of covered misconduct by an employee within 24 hours to the agency responsible for the contract. The subsection also requires covered contracts to include a provision requiring that, not later than 5 business days after the date on which a prime contractor or subcontractor discloses an allegation of covered misconduct, the prime contractor or subcontractor must refer the allegation of covered misconduct to the agency for investigation. The subsection also clarifies that nothing in the provision shall be construed to prohibit an agency from conducting its own investigation into an allegation of misconduct.

Subsection 3(c) requires the President to submit an annual report to the appropriate congressional committees on the number of individuals determined to be unfit for federal employment or ineligible to perform work under a covered contract as a result of this legislation, including the specific covered misconduct that led to such a determination.

Section 4—Review and update of position designation guidance

Section 4 requires the President, at least every five years, to review and update, if appropriate, the guidance for agencies to deter-

mine position sensitivity designation and whether a position requires a security clearance. It further requires the President to submit a report to Congress on the content of the results of such a review.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JUNE 20, 2014.

Hon. TOM CARPER,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1744, the Security Clearance Accountability, Reform, and Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1744—Security Clearance Accountability, Reform, and Enhancement Act

S. 1744 would require the Office of Personnel Management (OPM) to terminate or place on administrative leave any OPM employee that is involved in misconduct involving the security clearance process and debar employees of contractors and subcontractors involved in similar misconduct. Based on information from OPM, CBO estimates that implementing this legislation would have an insignificant cost. Enacting S. 1744 could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net changes in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

A security clearance is a determination that an individual (whether a federal employee or contractor) is eligible for access to classified national security information. A security clearance may be granted only by a federal agency, and generally only upon completion of a background investigation. Most background investigations are overseen by OPM's Federal Investigative Services (actual investigations may be conducted by private investigative firms).

S. 1744 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING STATUTE MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

