

DEPARTMENT OF HOMELAND SECURITY CLEARANCE
MANAGEMENT AND ADMINISTRATION ACT

NOVEMBER 2, 2015.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 3505]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3505) to amend the Homeland Security Act of 2002 to improve the management and administration of the security clearance processes throughout the Department of Homeland Security, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 3505, the “Department of Homeland Security Clearance Management and Administration Act” is to amend the Homeland Security Act of 2002 to require the Secretary of the Department of Homeland Security (DHS) to conduct a review of all sensitivity level designations of national security positions within the Department. The bill seeks to take targeted steps at improving critical aspects of how DHS administers its security clearance program. The bill ensures that DHS conduct a thorough accounting of workforce needs to better manage the costs of unnecessary background investigations and limit the number of positions that maybe vulnerable to insider threats and targeting by foreign intelligence services.

BACKGROUND AND NEED FOR LEGISLATION

In 2013, Director of National Intelligence James Clapper called the number of individuals with clearances ‘too high.’ In a memo to government agencies, Clapper reportedly expressed his concern with the growing number of individuals with access to classified information, particularly Top Secret clearances.¹ This bill directs DHS to conduct an inventory of the Department’s positions that require security clearances, and assess what positions may no longer necessary require access to classified material.

The bill recognizes that the massive proliferation of original and derivative classified material and the exponential growth in the number of individuals with security clearances present significant costs and homeland security and national security challenges that warrant timely action. In addition to the high costs incurred by the Federal government to investigate the large number of individuals for positions requiring security clearances, over-designations have undoubtedly resulted in the Federal government recruiting, hiring, and paying individuals at rates that are higher than necessary and not hiring individuals who otherwise have the required knowledge and skills.

This bill seeks to make specific reforms at the Department with respect to security clearance and position designations practices. The reforms at DHS are targeted at the designations of positions and the investigations, adjudications, denials, suspensions, revocations, and appeals processes for security clearances.

HEARINGS

The Committee did not hold any hearing specifically on H.R. 3505. However, the Committee did hold the following oversight hearing in the 113th Congress:

On November 13, 2013, the Subcommittee on Counterterrorism and Intelligence held a hearing entitled, “The Insider Threat to Homeland Security: Examining Our Nation’s Security Clearances Processes.” The Subcommittee received testimony from Mr. Merton W. Miller, Associate Director of Investigations, Federal Investigative Services, U.S. Office of Personnel Management; Mr. Gregory Marshall, Chief Security Officer, U.S. Department of Homeland Se-

¹Josh Gerstein, “W.H. Looks to Scrub Clearance List”, *Politico*, 11/12/2013, available at: <http://www.politico.com/story/2013/11/government-security-clearance-list-100195>.

curity; Mr. Brian Prioletti, Assistant Director, Special Security Directorate, National Counterintelligence Executive, Office of the Director of National Intelligence; Ms. Brenda Farrell, Director, Military and DOD Civilian Personnel Issues, U.S. Government Accountability Office.

COMMITTEE CONSIDERATION

The Committee met on September 30, 2015, to consider H.R. 3505, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

The Subcommittee on Counterterrorism and Intelligence met on September 17, 2015, to consider H.R. 3505 and reported the measure to the Full Committee with a favorable recommendation, without amendment, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 3505.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3505, the Department of Homeland Security Clearance Management and Administration Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3505 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The goal of H.R. 3505 is to require the Secretary of Homeland Security to conduct a review of all sensitivity level designations of

national security positions within the Department. The bill seeks to improve critical aspects of how DHS administers its security clearance program and make it a leader among Federal agencies with respect to security clearance and position designations practices. By conducting the sensitivity designation review, the bill seeks to limit the number of positions that may be vulnerable to insider threats and targeting by foreign intelligence services.

H.R. 3505 also requires the Department Chief Security Officer to audit national security positions periodically to ensure that such security designations are still necessary.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 3505 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 3505 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 3505 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that the bill may be cited as the “Department of Homeland Security Clearance Management and Administration Act”.

Section 2. Security clearance management and administration

This section amends the Homeland Security Act to create a new Subtitle B in the Homeland Security Act to include the following new sections:

SUBTITLE B—SECURITY CLEARANCES.

SEC. 711. DESIGNATION OF NATIONAL SECURITY SENSITIVE AND PUBLIC TRUST POSITIONS.

This section requires the Secretary in accordance with part 1400 of title 5, Code of Federal Regulations,² to conduct a designation of the sensitivity level of national security positions consistently throughout the Department and component agencies. Additionally, it requires the Secretary to utilize uniform designation tools throughout the Department and to provide training to the appropriate staff for the use of these tools. The training will include guidance on factors for determining eligibility for access to classified information and eligibility to hold a national security position.

SEC. 712. REVIEW OF POSITION DESIGNATIONS.

Not later than July 6, 2017, and then every five years thereafter, the Secretary is required to review all sensitivity level designations of national security positions within the Department. If the Secretary determines that a change in the sensitivity level of a position is warranted, the access to the classified information will be adjusted to an appropriate level and a periodic reinvestigation will be completed as necessary.

The Secretary is required to report to the House Committee on Homeland Security and the Senate Committee on Homeland Security and Government Affairs after completion of each review to include the number of positions, by classification and component and office, as well as the determination of whether the position requires access to classified information, no longer requires access to classified information, or requires a different level of access.

Security clearances are costly to investigate, adjudicate and maintain. The Committee believes that it is now prudent for DHS, and the U.S. Government to conduct a thorough audit of its workforce and security clearance holders and match that to its current needs and requirements.

²This section of the Code of Federal Regulations relates to regulations issued by the Office of Personnel Management (OPM) and the Office of the Director of National Intelligence (ODNI) regarding the designation of national security positions. The Final Rule was released on June 5, 2015.

SEC. 713. AUDITS.

This section requires the Inspector General of the Department of Homeland Security, not later than 180 days after the enactment of this section, to conduct regular audits of DHS compliance with part 1400 of title 5, Code of Federal Regulations.

SEC. 714. REPORTING.

This section requires the Secretary to submit annual reports through fiscal year 2021 to the House Committee on Homeland Security and the Senate Committee on Homeland Security and Government Affairs regarding (1) the number of denials, suspensions, revocations, and appeals of the eligibility for access to classified information; (2) the date, and status of each reported denial, suspension, revocation, and appeal, as well as the identification of the security clearance sponsoring entity and the grounds for each action; (3) demographic data including race, sex, national origin and disability of each individual whose access was adversely affected as well as the number of years the individual accessed classified information; and (4) an explanation of suspensions of more than 180 days. This report is required to be submitted in an unclassified format and, if necessary, with a classified annex.

SEC. 715. UNIFORM ADJUDICATION, SUSPENSION, DENIAL, AND REVOCATION.

This section requires, within one year of the enactment, the Secretary, in consultation with the Homeland Advisory Committee, to develop a plan to create greater uniformity across the Department in the security adjudication process. The plan shall consider: (1) mechanisms to foster greater compliance with uniform adjudication standards; (2) establishment of an internal appeals panel responsible for final security clearance denial and revocation determinations comprised of designees with the authority to adjudicate access to classified information.

SEC. 716. DATA PROTECTION.

This section requires the Secretary to ensure that all information received for the adjudication of eligibility or an individual for access to classified information is protected against misuse.

SEC. 717. REFERENCE.

This section clarifies that, except as otherwise noted, all references to the Department throughout the section, includes all components and offices of the Department.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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TITLE VII—MANAGEMENT

Subtitle A—Headquarters Activities

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Subtitle B—Security Clearances

Sec. 711. Designation of national security sensitive and public trust positions.

Sec. 712. Review of position designations.

Sec. 713. Audits.

Sec. 714. Reporting.

Sec. 715. Uniform adjudication, suspension, denial, and revocation.

Sec. 716. Data protection.

Sec. 717. Reference.

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TITLE VII—MANAGEMENT

Subtitle A—Headquarters Activities

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Subtitle B—Security Clearances

SEC. 711. DESIGNATION OF NATIONAL SECURITY SENSITIVE AND PUBLIC TRUST POSITIONS.

(a) *IN GENERAL.*—The Secretary shall require the designation of the sensitivity level of national security positions (pursuant to part 1400 of title 5, Code of Federal Regulations, or similar successor regulation) be conducted in a consistent manner with respect to all components and offices of the Department, and consistent with Federal guidelines.

(b) *IMPLEMENTATION.*—In carrying out subsection (a), the Secretary shall require the utilization of uniform designation tools throughout the Department and provide training to appropriate staff of the Department on such utilization. Such training shall include guidance on factors for determining eligibility for access to classified information and eligibility to hold a national security position.

SEC. 712. REVIEW OF POSITION DESIGNATIONS.

(a) *IN GENERAL.*—Not later than July 6, 2017, and every five years thereafter, the Secretary shall review all sensitivity level designations of national security positions (pursuant to part 1400 of title 5, Code of Federal Regulations, or similar successor regulation) at the Department.

(b) *DETERMINATION.*—If during the course of a review required under subsection (a), the Secretary determines that a change in the

sensitivity level of a position that affects the need for an individual to obtain access to classified information is warranted, such access shall be administratively adjusted and an appropriate level periodic reinvestigation completed, as necessary.

(c) **CONGRESSIONAL REPORTING.**—Upon completion of each review required under subsection (a), the Secretary shall report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate on the findings of each such review, including the number of positions by classification level and by component and office of the Department in which the Secretary made a determination in accordance with subsection (b) to—

- (1) require access to classified information;
- (2) no longer require access to classified information; or
- (3) otherwise require a different level of access to classified information.

SEC. 713. AUDITS.

Beginning not later than 180 days after the date of the enactment of this section, the Inspector General of the Department shall conduct regular audits of compliance of the Department with part 1400 of title 5, Code of Federal Regulations, or similar successor regulation.

SEC. 714. REPORTING.

(a) **IN GENERAL.**—The Secretary shall annually through fiscal year 2021 submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the following:

- (1) The number of denials, suspensions, revocations, and appeals of the eligibility for access to classified information of an individual throughout the Department.
- (2) The date and status or disposition of each reported action under paragraph (1).
- (3) The identification of the sponsoring entity, whether by a component, office, or headquarters of the Department, of each action under paragraph (1), and description of the grounds for each such action.
- (4) Demographic data, including data relating to race, sex, national origin, and disability, of each individual for whom eligibility for access to classified information was denied, suspended, revoked, or appealed, and the number of years that each such individual was eligible for access to such information.
- (5) In the case of a suspension in excess of 180 days, an explanation for such duration.

(b) **FORM.**—The report required under subsection (a) shall be submitted in unclassified form and be made publicly available, but may include a classified annex for any sensitive or classified information if necessary.

SEC. 715. UNIFORM ADJUDICATION, SUSPENSION, DENIAL, AND REVOCATION.

Not later than one year after the date of the enactment of this section, the Secretary, in consultation with the Homeland Security Advisory Committee, shall develop a plan to achieve greater uniformity within the Department with respect to the adjudication of eligibility

of an individual for access to classified information that are consistent with the Adjudicative Guidelines for Determining Access to Classified Information published on December 29, 2005, or similar successor regulation. The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate the plan. The plan shall consider the following:

(1) Mechanisms to foster greater compliance with the uniform Department adjudication, suspension, denial, and revocation standards by the head of each component and office of the Department with the authority to adjudicate access to classified information.

(2) The establishment of an internal appeals panel responsible for final national security clearance denial and revocation determinations that is comprised of designees who are career, supervisory employees from components and offices of the Department with the authority to adjudicate access to classified information and headquarters, as appropriate.

SEC. 716. DATA PROTECTION.

The Secretary shall ensure that all information received for the adjudication of eligibility of an individual for access to classified information that is consistent with the Adjudicative Guidelines for Determining Access to Classified Information published on December 29, 2005, or similar successor regulation, and is protected against misappropriation.

SEC. 717. REFERENCE.

Except as otherwise provided, for purposes of this subtitle, any reference to the "Department" includes all components and offices of the Department.

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