

SOCIAL MEDIA USE IN CLEARANCE INVESTIGATIONS ACT
 OF 2017

JANUARY 11, 2018.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government
 Reform, submitted the following

R E P O R T

[To accompany H.R. 3737]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
 was referred the bill (H.R. 3737) to provide for a study on the use
 of social media in security clearance investigations, having consid-
 ered the same, report favorably thereon without amendment and
 recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 3737, The Social Media Use in Clearance Investigations Act
 of 2017 requires the Office of Management and Budget (OMB) to

provide pertinent data on the current and potential use of social media for clearance investigation purposes. Specifically, the bill requires OMB to submit a one-time report describing the current use of social media for investigative purposes, the legal impediments related to the use of social media for that purpose, and the results of any pilot programs conducted to incorporate social media into background investigations. Additionally, the report will include the available options for broader implementation of social media checks and the cost estimates for such a program.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3737 is a much needed first step in modernizing federal security clearance background investigations. In recent years, there have been several cases in which federal contractor employees with security clearances leaked classified information after previously sharing suspicious posts on publicly available social media sites. Two high profile examples are the cases of Edward Snowden and Reality Winner, both of whom were National Security Agency (NSA) insiders with access to very sensitive information.¹

Examining the options available to implement these social media investigations will help inform and expedite security clearance reform. A preliminary check of a subject's social media could prove more effective than many current parts of clearance investigations.

Over roughly the past decade, other agencies have created similar programs including the Army,² the Office of the Director of National Intelligence (ODNI),³ and the NSA.⁴ Only some of the results of these programs are publicly available, and what is available does not contain clear analyses or conclusions.

OMB oversees the security clearance system as a whole through its delegation of responsibility to the Suitability and Security Executive Agents (the Office of Personnel Management [OPM] and ODNI, respectively). OMB is thus well positioned to analyze and report on the results of the disparate pilot programs, allowing Congress to understand what worked previously and what needs improvement.

LEGISLATIVE HISTORY

On May 13, 2016, the Committee on Oversight and Government Reform, Subcommittee on Government Operations held a hearing entitled, "Incorporating Social Media into Federal Background Investigations."⁵ The hearing largely discussed the legality of performing investigative practices such as examining someone's social

¹See Donie O'Sullivan and David Shortell, *Accused leaker Reality Winner called Trump an 'orange fascist' on Twitter*, CNN, June 6, 2017, <http://www.cnn.com/2017/06/06/politics/reality-winner-twitter-account/index.html>; Joe Mullin, *NSA leaker Ed Snowden's life on Ars Technica*, ARS TECHNICA, Jun. 12, 2013, <https://arstechnica.com/tech-policy/2013/06/nsa-leaker-ed-snowdens-life-on-ars-technica/>.

²DEFENSE PERSONNEL AND SECURITY RESEARCH CENTER, TR 13-04, ARMY G2 CONTINUOUS EVALUATION PILOT, (June 2013).

³CORPORATE RISK INTERNATIONAL, FINAL REPORT & ANALYSIS, OPEN SOURCE RESEARCH PROJECT, (June 10, 2009), https://www.eff.org/files/20100514_odni_socialnetworking.pdf.

⁴Aliya Sternstein, *What's your 'insider threat score'? It could determine if you keep your clearance*, NEXTGOV, Apr. 29, 2016, <http://www.nextgov.com/cybersecurity/2016/04/cleared-personnel-fico-score-will-decide-what-secrets-you-can-see/127903/>.

⁵H. Comm. on Oversight & Gov't Reform, Subcomm. on Gov't Operations, *Hearing: Incorporating Social Media into Federal Background Investigations*, Ser. No. 114-158, 114th Cong. (May 13, 2016).

media postings. The challenge of finding a balance between privacy and national security is one that still remains today.

On September 13, 2017, Representative Ron DeSantis (R-FL) introduced H.R. 3737, the Social Media Use in Clearance Investigations Act of 2017, with Representative Stephen Lynch (D-MA). H.R. 3737 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 3737 at a business meeting on September 13, 2017, and ordered the bill reported favorably, without amendment, by voice vote.

SECTION-BY-SECTION

Section 1. Short title

Section 1 establishes the short title of the bill as the “Social Media Use in Clearance Investigations Act of 2017.”

Section 2. Study on use of social media in security clearance investigations

Section 2 requires the Director of OMB to submit a report within six months of enactment regarding the examination of social media activity as part of the security clearance investigation process. The report must include information on: (1) the current use of publicly available social media in clearance investigations; (2) any legal impediments to examining the social media activity of clearance applicants; (3) the results of pilot programs for the incorporation of social media data into clearance investigations; (4) options for widespread implementation of social media checks in clearance investigations; and (5) cost estimates for some of those options.

EXPLANATION OF AMENDMENTS

There were no amendments to H.R. 3737 offered or adopted during Committee consideration of the bill.

COMMITTEE CONSIDERATION

On September 13, 2017, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported by voice vote.

ROLL CALL VOTES

There were no roll call votes requested or conducted during Committee consideration of H.R. 3737.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides for a study on the use of social media in security clearance investigations. As such, this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget and Impoundment Control Act (Pub. L. 113-67) the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 2017.

Hon. TREY GOWDY,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3737, the Social Media Use in Clearance Investigations Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3737—Social Media Use in Clearance Investigations Act of 2017

H.R. 3737 would require the Office of Management and Budget (OMB) to report to the Congress within six months on how social media activity is examined during security clearance investigations and related matters. Based on the cost of similar activities, CBO estimates that implementing the bill would cost less than \$500,000; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 3737 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3737 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3737 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 H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.