

108TH CONGRESS
1ST SESSION

H. R. 2867

To reform the Federal Bureau of Investigation.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. CONYERS (for himself, Mr. BERMAN, Ms. JACKSON-LEE of Texas, Mr. DELAHUNT, Mr. BLUMENAUER, Mr. FARR, Ms. CARSON of Indiana, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform the Federal Bureau of Investigation.

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 “Federal Bureau of In-
5 vestigation Reform Act of 2003”.

1 **TITLE I—WHISTLEBLOWER**
2 **PROTECTION**

3 **SEC. 101. INCREASING PROTECTIONS FOR FBI WHISTLE-**
4 **BLOWERS.**

5 Section 2303 of title 5, United States Code, is
6 amended to read as follows:

7 **“§ 2303. Prohibited personnel practices in the Fed-**
8 **eral Bureau of Investigation**

9 “(a) DEFINITION.—In this section, the term ‘per-
10 sonnel action’ means any action described in clauses (i)
11 through (x) of section 2302(a)(2)(A).

12 “(b) PROHIBITED PRACTICES.—Any employee of the
13 Federal Bureau of Investigation who has the authority to
14 take, direct others to take, recommend, or approve any
15 personnel action, shall not, with respect to such authority,
16 take or fail to take a personnel action with respect to any
17 employee of the Bureau or because of—

18 “(1) any disclosure of information by the em-
19 ployee to the Attorney General (or an employee des-
20 ignated by the Attorney General for such purpose),
21 a supervisor of the employee, the Inspector General
22 for the Department of Justice, or a Member of Con-
23 gress that the employee reasonably believes evi-
24 dences—

1 “(A) a violation of any law, rule, or regula-
2 tion; or

3 “(B) mismanagement, a gross waste of
4 funds, an abuse of authority, or a substantial
5 and specific danger to public health or safety;
6 or

7 “(2) any disclosure of information by the em-
8 ployee to the Special Counsel of information that the
9 employee reasonably believes evidences—

10 “(A) a violation of any law, rule, or regula-
11 tion; or

12 “(B) mismanagement, a gross waste of
13 funds, an abuse of authority, or a substantial
14 and specific danger to public health or safety,
15 if such disclosure is not specifically prohibited by law
16 and if such information is not specifically required
17 by Executive order to be kept secret in the interest
18 of national defense or the conduct of foreign affairs.

19 “(c) INDIVIDUAL RIGHT OF ACTION.—Chapter 12 of
20 this title shall apply to an employee of the Federal Bureau
21 of Investigation who claims that a personnel action has
22 been taken under this section against the employee as a
23 reprisal for any disclosure of information described in sub-
24 section (b)(2).

1 “(d) REGULATIONS.—The Attorney General shall
 2 prescribe regulations to ensure that a personnel action
 3 under this section shall not be taken against an employee
 4 of the Federal Bureau of Investigation as a reprisal for
 5 any disclosure of information described in subsection
 6 (b)(1), and shall provide for the enforcement of such regu-
 7 lations in a manner consistent with applicable provisions
 8 of sections 1214 and 1221, and in accordance with the
 9 procedures set forth in sections 554 through 557 and 701
 10 through 706.”.

11 **TITLE II—FBI SECURITY CAREER** 12 **PROGRAM**

13 **SEC. 201. SECURITY MANAGEMENT POLICIES.**

14 The Attorney General shall establish policies and pro-
 15 cedures for the effective management (including accession,
 16 education, training, and career development) of persons
 17 serving in security positions in the Federal Bureau of In-
 18 vestigation.

19 **SEC. 202. DIRECTOR OF THE FEDERAL BUREAU OF INVES-** 20 **TIGATION.**

21 (a) IN GENERAL.—Subject to the authority, direc-
 22 tion, and control of the Attorney General, the Director of
 23 the Federal Bureau of Investigation (referred to in this
 24 title as the “Director”) shall carry out all powers, func-
 25 tions, and duties of the Attorney General with respect to

1 the security workforce in the Federal Bureau of Investiga-
2 tion.

3 (b) POLICY IMPLEMENTATION.—The Director shall
4 ensure that the policies of the Attorney General estab-
5 lished in accordance with this Act are implemented
6 throughout the Federal Bureau of Investigation at both
7 the headquarters and field office levels.

8 **SEC. 203. DIRECTOR OF SECURITY.**

9 The Director shall appoint a Director of Security, or
10 such other title as the Director may determine, to assist
11 the Director in the performance of the duties of the Direc-
12 tor under this Act.

13 **SEC. 204. SECURITY CAREER PROGRAM BOARDS.**

14 (a) ESTABLISHMENT.—The Director acting through
15 the Director of Security shall establish a security career
16 program board to advise the Director in managing the hir-
17 ing, training, education, and career development of per-
18 sonnel in the security workforce of the Federal Bureau
19 of Investigation.

20 (b) COMPOSITION OF BOARD.—The security career
21 program board shall include—

22 (1) the Director of Security (or a representative
23 of the Director of Security);

1 (2) the senior officials, as designated by the Di-
2 rector, with responsibility for personnel manage-
3 ment;

4 (3) the senior officials, as designated by the Di-
5 rector, with responsibility for information manage-
6 ment;

7 (4) the senior officials, as designated by the Di-
8 rector, with responsibility for training and career de-
9 velopment in the various security disciplines; and

10 (5) such other senior officials for the intel-
11 ligence community as the Director may designate.

12 (c) CHAIRPERSON.—The Director of Security (or a
13 representative of the Director of Security) shall be the
14 chairperson of the board.

15 (d) SUBORDINATE BOARDS.—The Director of Secu-
16 rity may establish a subordinate board structure to which
17 functions of the security career program board may be del-
18 egated.

19 **SEC. 205. DESIGNATION OF SECURITY POSITIONS.**

20 (a) DESIGNATION.—The Director shall designate, by
21 regulation, those positions in the Federal Bureau of Inves-
22 tigation that are security positions for purposes of this
23 Act.

24 (b) REQUIRED POSITIONS.—In designating security
25 positions under subsection (a), the Director shall include,

1 at a minimum, all security-related positions in the areas
2 of—

3 (1) personnel security and access control;

4 (2) information systems security and informa-
5 tion assurance;

6 (3) physical security and technical surveillance
7 countermeasures;

8 (4) operational, program, and industrial secu-
9 rity; and

10 (5) information security and classification man-
11 agement.

12 **SEC. 206. CAREER DEVELOPMENT.**

13 (a) CAREER PATHS.—The Director shall ensure that
14 appropriate career paths for personnel who wish to pursue
15 careers in security are identified in terms of the education,
16 training, experience, and assignments necessary for career
17 progression to the most senior security positions and shall
18 make available published information on those career
19 paths.

20 (b) LIMITATION ON PREFERENCE FOR SPECIAL
21 AGENTS.—

22 (1) IN GENERAL.—Except as provided in the
23 policy established under paragraph (2), the Attorney
24 General shall ensure that no requirement or pref-
25 erence for a Special Agent of the Federal Bureau of

1 Investigation (referred to in this title as a “Special
2 Agent”) is used in the consideration of persons for
3 security positions.

4 (2) POLICY.—The Attorney General shall estab-
5 lish a policy that permits a particular security posi-
6 tion to be specified as available only to Special
7 Agents, if a determination is made, under criteria
8 specified in the policy, that a Special Agent—

9 (A) is required for that position by law;

10 (B) is essential for performance of the du-
11 ties of the position; or

12 (C) is necessary for another compelling
13 reason.

14 (3) REPORT.—Not later than December 15 of
15 each year, the Director shall submit to the Attorney
16 General a report that lists—

17 (A) each security position that is restricted
18 to Special Agents under the policy established
19 under paragraph (2); and

20 (B) the recommendation of the Director as
21 to whether each restricted security position
22 should remain restricted.

23 (c) OPPORTUNITIES TO QUALIFY.—The Attorney
24 General shall ensure that all personnel, including Special
25 Agents, are provided the opportunity to acquire the edu-

1 cation, training, and experience necessary to qualify for
2 senior security positions.

3 (d) BEST QUALIFIED.—The Attorney General shall
4 ensure that the policies established under this Act are de-
5 signed to provide for the selection of the best qualified
6 individual for a position, consistent with other applicable
7 law.

8 (e) ASSIGNMENTS POLICY.—The Attorney General
9 shall establish a policy for assigning Special Agents to se-
10 curity positions that provides for a balance between—

11 (1) the need for personnel to serve in career en-
12 hancing positions; and

13 (2) the need for requiring service in each such
14 position for sufficient time to provide the stability
15 necessary to carry out effectively the duties of the
16 position and to allow for the establishment of re-
17 sponsibility and accountability for actions taken in
18 the position.

19 (f) LENGTH OF ASSIGNMENT.—In implementing the
20 policy established under subsection (b)(2), the Director
21 shall provide, as appropriate, for longer lengths of assign-
22 ments to security positions than assignments to other po-
23 sitions.

24 (g) PERFORMANCE APPRAISALS.—The Director shall
25 provide an opportunity for review and inclusion of any

1 comments on any appraisal of the performance of a person
2 serving in a security position by a person serving in a secu-
3 rity position in the same security career field.

4 (h) **BALANCED WORKFORCE POLICY.**—In the devel-
5 opment of security workforce policies under this Act with
6 respect to any employees or applicants for employment,
7 the Attorney General shall, consistent with the merit sys-
8 tem principles set out in paragraphs (1) and (2) of section
9 2301(b) of title 5, United States Code, take into consider-
10 ation the need to maintain a balanced workforce in which
11 women and members of racial and ethnic minority groups
12 are appropriately represented in Government service.

13 **SEC. 207. GENERAL EDUCATION, TRAINING, AND EXPERI-**
14 **ENCE REQUIREMENTS.**

15 (a) **IN GENERAL.**—The Director shall establish edu-
16 cation, training, and experience requirements for each se-
17 curity position, based on the level of complexity of duties
18 carried out in the position.

19 (b) **QUALIFICATION REQUIREMENTS.**—Before being
20 assigned to a position as a program manager or deputy
21 program manager of a significant security program, a per-
22 son—

23 (1) must have completed a security program
24 management course that is accredited by the Intel-
25 ligence Community-Department of Defense Joint Se-

1 security Training Consortium or is determined to be
2 comparable by the Director; and

3 (2) must have not less than 6 years experience
4 in security, of which not less than 2 years were per-
5 formed in a similar program office or organization.

6 **SEC. 208. EDUCATION AND TRAINING PROGRAMS.**

7 (a) IN GENERAL.—The Director, in consultation with
8 the Director of Central Intelligence and the Secretary of
9 Defense, shall establish and implement education and
10 training programs for persons serving in security positions
11 in the Federal Bureau of Investigation.

12 (b) OTHER PROGRAMS.—The Director shall ensure
13 that programs established under subsection (a) are estab-
14 lished and implemented, to the maximum extent prac-
15 ticable, uniformly with the programs of the Intelligence
16 Community and the Department of Defense.

17 **SEC. 209. OFFICE OF PERSONNEL MANAGEMENT AP-**
18 **PROVAL.**

19 (a) IN GENERAL.—The Attorney General shall sub-
20 mit any requirement that is established under section 207
21 to the Director of the Office of Personnel Management
22 for approval.

23 (b) FINAL APPROVAL.—If the Director does not dis-
24 approve the requirements established under section 207
25 within 30 days after the date on which the Director re-

1 ceives the requirement, the requirement is deemed to be
2 approved by the Director of the Office of Personnel Man-
3 agement.

4 **TITLE III—FBI COUNTERINTEL-**
5 **LIGENCE POLYGRAPH PRO-**
6 **GRAM**

7 **SEC. 301. DEFINITIONS.**

8 In this title:

9 (1) POLYGRAPH PROGRAM.—The term “poly-
10 graph program” means the counterintelligence
11 screening polygraph program established under sec-
12 tion 302.

13 (2) POLYGRAPH REVIEW.—The term “Poly-
14 graph Review” means the review of the scientific va-
15 lidity of the polygraph for counterintelligence screen-
16 ing purposes conducted by the Committee to Review
17 the Scientific Evidence on the Polygraph of the Na-
18 tional Academy of Sciences.

19 **SEC. 302. ESTABLISHMENT OF PROGRAM.**

20 Not later than 6 months after the date of enactment
21 of this Act, the Attorney General, in consultation with the
22 Director of the Federal Bureau of Investigation and the
23 Director of Security of the Federal Bureau of Investiga-
24 tion, shall establish a counterintelligence screening poly-

1 graph program for the Federal Bureau of Investigation
2 that consists of periodic polygraph examinations of—

3 (1) employees, contractor employees, of the
4 Federal Bureau of Investigation who are in positions
5 specified by the Director of the Federal Bureau of
6 Investigation as exceptionally sensitive in order to
7 minimize the potential for unauthorized release or
8 disclosure of exceptionally sensitive information; or

9 (2) paid or unpaid informants with whom the
10 Bureau has had an ongoing relationship for more
11 than one year.

12 **SEC. 303. REGULATIONS.**

13 (a) IN GENERAL.—The Attorney General shall pre-
14 scribe regulations for the polygraph program in accord-
15 ance with subchapter II of chapter 5 of title 5, United
16 States Code (commonly referred to as the Administrative
17 Procedures Act).

18 (b) CONSIDERATIONS.—In prescribing regulations
19 under subsection (a), the Attorney General shall—

20 (1) take into account the results of the Poly-
21 graph Review; and

22 (2) include procedures for—

23 (A) identifying and addressing false posi-
24 tive results of polygraph examinations;

1 (B) ensuring that adverse personnel ac-
2 tions are not taken against an individual solely
3 by reason of the physiological reaction of the in-
4 dividual to a question in a polygraph examina-
5 tion, unless—

6 (i) reasonable efforts are first made
7 independently to determine through alter-
8 native means, the veracity of the response
9 of the individual to the question; and

10 (ii) the Director of the Federal Bu-
11 reau of Investigation determines personally
12 that the personnel action is justified;

13 (C) ensuring quality assurance and quality
14 control in accordance with any guidance pro-
15 vided by the Department of Defense Polygraph
16 Institute and the Director of Central Intel-
17 ligence; and

18 (D) allowing any employee or contractor
19 who is the subject of a counterintelligence
20 screening polygraph examination under the
21 polygraph program, upon written request, to
22 have prompt access to any unclassified reports
23 regarding an examination that relates to any
24 adverse personnel action taken with respect to
25 the individual.

1 **SEC. 304. REPORT ON FURTHER ENHANCEMENT OF FBI**
2 **PERSONNEL SECURITY PROGRAM.**

3 (a) IN GENERAL.—Not later than 9 months after the
4 date of enactment of this Act, the Director of the Federal
5 Bureau of Investigation shall submit to Congress a report
6 setting forth recommendations for any legislative action
7 that the Director considers appropriate in order to en-
8 hance the personnel security program of the Federal Bu-
9 reau of Investigation.

10 (b) POLYGRAPH REVIEW RESULTS.—Any rec-
11 ommendation under subsection (a) regarding the use of
12 polygraphs shall take into account the results of the Poly-
13 graph Review.

14 **TITLE IV—REPORTS**

15 **SEC. 401. REPORT ON LEGAL AUTHORITY FOR FBI PRO-**
16 **GRAMS AND ACTIVITIES.**

17 (a) IN GENERAL.—Not later than 9 months after the
18 date of enactment of this Act, the Attorney General shall
19 submit to Congress a report describing the statutory and
20 other legal authority for all programs and activities of the
21 Federal Bureau of Investigation.

22 (b) CONTENTS.—The report submitted under sub-
23 section (a) shall describe—

24 (1) the titles within the United States Code and
25 the statutes for which the Federal Bureau of Inves-
26 tigation exercises investigative responsibility;

1 (2) each program or activity of the Federal Bu-
2 reau of Investigation that has express statutory au-
3 thority and the statute which provides that author-
4 ity; and

5 (3) each program or activity of the Federal Bu-
6 reau of Investigation that does not have express
7 statutory authority, and the source of the legal au-
8 thority for that program or activity.

9 (c) RECOMMENDATIONS.—The report submitted
10 under subsection (a) shall recommend whether—

11 (1) the Federal Bureau of Investigation should
12 continue to have investigative responsibility for each
13 statute for which the Federal Bureau of Investiga-
14 tion currently has investigative responsibility;

15 (2) the legal authority for any program or ac-
16 tivity of the Federal Bureau of Investigation should
17 be modified or repealed;

18 (3) the Federal Bureau of Investigation should
19 have express statutory authority for any program or
20 activity of the Federal Bureau of Investigation for
21 which the Federal Bureau of Investigation does not
22 currently have express statutory authority; and

23 (4) the Federal Bureau of Investigation
24 should—

1 (A) have authority for any new program or
2 activity; and

3 (B) express statutory authority with re-
4 spect to any new programs or activities.

5 **TITLE V—ENDING THE DOUBLE**
6 **STANDARD**

7 **SEC. 501. ALLOWING DISCIPLINARY SUSPENSIONS OF MEM-**
8 **BERS OF THE SENIOR EXECUTIVE SERVICE**
9 **FOR 14 DAYS OR LESS.**

10 Section 7542 of title 5, United States Code, is
11 amended by striking “for more than 14 days”.

12 **SEC. 502. SUBMITTING OFFICE OF PROFESSIONAL RESPON-**
13 **SIBILITY REPORTS TO CONGRESSIONAL COM-**
14 **MITTEES.**

15 (a) IN GENERAL.—For each of the 5 years following
16 the date of enactment of this Act, the Office of the Inspec-
17 tor General shall submit to the chairperson and ranking
18 member of the Committees on the Judiciary of the Senate
19 and the House of Representatives an annual report to be
20 completed by the Federal Bureau of Investigation, Office
21 of Professional Responsibility and provided to the Inspec-
22 tor General, which sets forth—

23 (1) basic information on each investigation
24 completed by that Office;

1 (2) the findings and recommendations of that
 2 Office for disciplinary action; and

3 (3) what, if any, action was taken by the Direc-
 4 tor of the Federal Bureau of Investigation or the
 5 designee of the Director based on any such rec-
 6 ommendation.

7 (b) CONTENTS.—In addition to all matters already
 8 included in the annual report described in subsection (a),
 9 the report shall also include an analysis of—

10 (1) whether senior Federal Bureau of Investiga-
 11 tion employees and lower level Federal Bureau of In-
 12 vestigation personnel are being disciplined and inves-
 13 tigated similarly; and

14 (2) whether any double standard is being em-
 15 ployed to more senior employees with respect to alle-
 16 gations of misconduct.

17 **TITLE VI—ENHANCING SECU-**
 18 **RITY AT THE DEPARTMENT**
 19 **OF JUSTICE**

20 **SEC. 601. REPORT ON THE PROTECTION OF SECURITY AND**
 21 **INFORMATION AT THE DEPARTMENT OF JUS-**
 22 **TICE.**

23 Not later than 9 months after the date of enactment
 24 of this Act, the Attorney General shall submit to Congress
 25 a report on the manner in which the Security and Emer-

1 gency Planning Staff, the Office of Intelligence Policy and
2 Review, and the Chief Information Officer of the Depart-
3 ment of Justice plan to improve the protection of security
4 and information at the Department of Justice, including
5 a plan to establish secure electronic communications be-
6 tween the Federal Bureau of Investigation and the Office
7 of Intelligence Policy and Review for processing informa-
8 tion related to the Foreign Intelligence Surveillance Act
9 of 1978 (50 U.S.C. 1801 et seq.).

10 **SEC. 602. AUTHORIZATION FOR INCREASED RESOURCES TO**
11 **PROTECT SECURITY AND INFORMATION.**

12 There are authorized to be appropriated to the De-
13 partment of Justice for the activities of the Security and
14 Emergency Planning Staff to meet the increased demands
15 to provide personnel, physical, information, technical, and
16 litigation security for the Department of Justice, to pre-
17 pare for terrorist threats and other emergencies, and to
18 review security compliance by components of the Depart-
19 ment of Justice—

20 (1) \$13,000,000 for fiscal years 2003 and
21 2004;

22 (2) \$17,000,000 for fiscal year 2005; and

23 (3) \$22,000,000 for fiscal year 2006.

1 **SEC. 603. AUTHORIZATION FOR INCREASED RESOURCES TO**
2 **FULFILL NATIONAL SECURITY MISSION OF**
3 **THE DEPARTMENT OF JUSTICE.**

4 There are authorized to be appropriated to the De-
5 partment of Justice for the activities of the Office of Intel-
6 ligence Policy and Review to help meet the increased per-
7 sonnel demands to combat terrorism, process applications
8 to the Foreign Intelligence Surveillance Court, participate
9 effectively in counterespionage investigations, provide pol-
10 icy analysis and oversight on national security matters,
11 and enhance secure computer and telecommunications fa-
12 cilities—

- 13 (1) \$7,000,000 for fiscal years 2003 and 2004;
14 (2) \$7,500,000 for fiscal year 2005; and
15 (3) \$8,000,000 for fiscal year 2006.

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