

Calendar No. 610

113TH CONGRESS
2^D SESSION

S. 1618

[Report No. 113–283]

To enhance the Office of Personnel Management background check system for the granting, denial, or revocation of security clearances or access to classified information of employees and contractors of the Federal Government.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2013

Ms. COLLINS (for herself, Mrs. McCASKILL, Ms. AYOTTE, Ms. HEITKAMP, Mrs. BOXER, Mrs. SHAHEEN, Ms. LANDRIEU, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 2, 2014

Reported by Mr. CARPER, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To enhance the Office of Personnel Management background check system for the granting, denial, or revocation of security clearances or access to classified information of employees and contractors of the Federal Government.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Enhanced Security
3 Clearance Act of 2013”.

4 **SEC. 2. OFFICE OF PERSONNEL MANAGEMENT ENHANCED**
5 **SECURITY CLEARANCE SYSTEM.**

6 (a) IN GENERAL.—Part III of title 5, United States
7 Code, is amended by adding at the end the following:

8 **“Subpart J—Office of Personnel Management**
9 **Enhanced Security Clearance System**

10 **“CHAPTER 110—OFFICE OF PERSONNEL**
11 **MANAGEMENT ENHANCED SECURITY**
12 **CLEARANCE SYSTEM**

“Sec.

“11001. Office of Personnel Management enhanced security clearance system.

13 **“§ 11001. Office of Personnel Management enhanced**
14 **security clearance system.**

15 **“(a) DEFINITIONS.—In this section—**

16 **“(1) the term ‘agency’ has the meaning given**
17 **that term in section 3001 of the Intelligence Reform**
18 **and Terrorism Prevention Act of 2004 (50 U.S.C.**
19 **3341);**

20 **“(2) the term ‘consumer reporting agency’ has**
21 **the same meaning given that term in section 603 of**
22 **the Fair Credit Reporting Act (15 U.S.C. 1681a);**

23 **“(3) the term ‘covered individual’ means an in-**
24 **dividual who is being considered for, or has been,**

1 appointed to a position as an employee or contractor
 2 of an agency that requires its occupant to have ac-
 3 cess to classified information;

4 “(4) the term ‘enhanced security clearance sys-
 5 tem’ means the database established by the Director
 6 of the Office of Personnel Management under sec-
 7 tion 3001(e) of the Intelligence Reform and Ter-
 8 rorism Prevention Act of 2004 (50 U.S.C. 3341(e)),
 9 including the enhancements thereto required under
 10 this section; and

11 “(5) the term ‘major consumer reporting agen-
 12 cy’ means a major consumer reporting agency as de-
 13 termined by the Director of the Office of Personnel
 14 Management.

15 “(b) ENHANCED SECURITY CLEARANCE SYSTEM.—

16 Not later than 1 year after the date of enactment of the
 17 Enhanced Security Clearance Act of 2013, the Director
 18 of the Office of Personnel Management shall implement
 19 the enhanced security clearance system.

20 “(c) COMPREHENSIVENESS.—

21 “(1) SOURCES OF INFORMATION.—The en-
 22 hanced security clearance system shall integrate in-
 23 formation obtained from various sources, including
 24 government, publically available, and commercial

1 data sources, the major consumer reporting agen-
2 cies, and social media.

3 ~~“(2) TYPES OF INFORMATION.—~~Information
4 obtained and integrated from sources described in
5 paragraph (1) shall include—

6 ~~“(A) information relating to any criminal~~
7 ~~or civil legal proceeding to which the covered in-~~
8 ~~dividual is or becomes a party or witness;~~

9 ~~“(B) financial information relating to the~~
10 ~~covered individual, including information relat-~~
11 ~~ing to—~~

12 ~~“(i) any bankruptcy proceeding of the~~
13 ~~covered individual;~~

14 ~~“(ii) any lien against property of the~~
15 ~~covered individual;~~

16 ~~“(iii) credit reports from the major~~
17 ~~consumer reporting agencies relating to the~~
18 ~~covered individual;~~

19 ~~“(iv) mortgage fraud engaged in by~~
20 ~~the covered individual;~~

21 ~~“(v) high-value assets, including fi-~~
22 ~~nancial assets, obtained by the covered in-~~
23 ~~dividual from an unknown source; and~~

24 ~~“(vi) bank accounts and the bank ac-~~
25 ~~count balances of the covered individual;~~

1 “(C) associations, past or present, of the
2 covered individual with any individual or group
3 that may suggest ill intent, vulnerability to
4 blackmail, compulsive behavior, allegiance to
5 another country, or change in ideology of the
6 covered individual;

7 “(D) public information, including news
8 articles or reports, that includes derogatory in-
9 formation about the covered individual;

10 “(E) information posted on any social
11 media website or forum that may suggest ill in-
12 tent, vulnerability to blackmail, compulsive be-
13 havior, allegiance to another country, or change
14 in ideology of the covered individual; and

15 “(F) data maintained on any terrorist or
16 criminal watch list maintained by any agency,
17 State or local government, or international or-
18 ganization, including any such list maintained
19 by—

20 “(i) the Office of Foreign Assets Con-
21 trol of the Department of the Treasury;

22 “(ii) the Federal Bureau of Investiga-
23 tion; and

24 “(iii) the International Criminal Po-
25 lice Organization.

1 “(3) WEALTH INDICATOR.—The enhanced secu-
 2 rity clearance system shall have the ability to pro-
 3 vide a wealth indicator for a covered individual
 4 about whom the major credit reporting agencies
 5 have little or no information.

6 “(4) PAST CONTACTS.—The enhanced security
 7 clearance system shall have the ability to provide the
 8 contact information of family members and present
 9 and former associates, co-habitants, and neighbors
 10 of the covered individual that has not been provided
 11 by the covered individual.

12 “(d) REVIEWS OF SECURITY CLEARANCES AND AC-
 13 CESS.—

14 “(1) REVIEWS.—

15 “(A) IN GENERAL.—Not less than 2 times
 16 every 5 years, the Director of the Office of Per-
 17 sonnel Management, using the enhanced secu-
 18 rity clearance system, shall review the accuracy
 19 and comprehensiveness of information relating
 20 to the security clearance or access to classified
 21 information of each covered individual who is
 22 appointed to a position that requires its occu-
 23 pant to have such security clearance or access.

24 “(B) INDIVIDUAL REVIEWS.—A review of
 25 the information relating to the security clear-

1 ance or access to classified information of a
2 covered individual under subparagraph (A) may
3 not be conducted until after the end of the 120-
4 day period beginning on the date such covered
5 individual receives the required notification
6 under paragraph (4).

7 “(2) REPORTING RESULTS.—The Director of
8 the Office of Personnel Management shall—

9 “(A) notify the agency that employs or
10 contracts a covered individual if a review under
11 paragraph (1) finds information pertinent to
12 the revocation of the security clearance or ac-
13 cess to classified information of the covered in-
14 dividual; and

15 “(B) provide such information to the agen-
16 cy.

17 “(3) ACTIVE SECURITY CLEARANCES AND AC-
18 CESS.—Each agency that employs or contracts a
19 covered individual who has an active security clear-
20 ance or access to classified information shall provide
21 the names of such individuals to the Director of the
22 Office of Personnel Management at intervals deter-
23 mined appropriate by the Director of the Office of
24 Personnel Management.

1 “(4) INFORMATION FOR COVERED INDIVID-
 2 UALS.—The Director of the Office of Personnel
 3 Management, in consultation with the head of each
 4 agency that employs or contracts with covered indi-
 5 viduals who have an active security clearance or ac-
 6 cess to classified information, shall ensure that each
 7 such individual is adequately advised of what types
 8 of information the individual is required to report to
 9 the head of the agency that may be pertinent to the
 10 continuation of the security clearance or access to
 11 classified information of the individual.

12 “(5) LIMITATION.—Nothing in this subsection
 13 shall be construed as requiring increased consider-
 14 ation of information relating to minor financial or
 15 mental health issues of a covered individual in evalu-
 16 ating the security clearance or access to classified in-
 17 formation of such individual.

18 “(e) CUSTOMIZATION.—An agency may provide to
 19 the Director of the Office of Personnel Management spe-
 20 cific parameters, including specifications relating to the
 21 types of information to be monitored by the enhanced se-
 22 curity clearance system, to create a method for evaluating
 23 the potential risk posed by a covered individual based on
 24 the position to which the covered individual is being con-
 25 sidered for appointment or has been appointed.

1 “(f) INDIVIDUALS UNDER INVESTIGATION.—

2 “(1) REQUIREMENTS FOR INSPECTOR GEN-
3 ERAL.—The Inspector General of each agency
4 shall—

5 “(A) maintain a list of each individual em-
6 ployed by or contracted with the agency who—

7 “(i) has an active security clearance
8 or access to classified information; and

9 “(ii) is the subject of a completed in-
10 vestigation by the Director of the Office of
11 Personnel Management or such Inspector
12 General; and

13 “(B) provide the list required under sub-
14 paragraph (A) to the Director of the Office of
15 Personnel Management upon request.

16 “(2) REQUIREMENTS FOR DIRECTOR OF THE
17 OFFICE OF PERSONNEL MANAGEMENT.—The Direc-
18 tor of the Office of Personnel Management shall—

19 “(A) request the list required under para-
20 graph (1)(A) before any notification under sub-
21 section (d)(2)(A); and

22 “(B) include in any notification regarding
23 a covered individual under subsection (d)(2)(A)
24 information indicating that the covered indi-

1 vidual is included on a list maintained under
2 paragraph (1)(A).

3 “(g) AUDIT.—Beginning 2 years after the date of im-
4 plementation of the enhanced security clearance system
5 under subsection (b), the Inspector General of the Office
6 of Personnel Management shall conduct an audit of the
7 enhanced security clearance system to assess the effective-
8 ness of the enhanced security clearance system, and its
9 fairness to covered individuals.”.

10 (b) FUNDING FROM THE REVOLVING FUND OF THE
11 OFFICE OF PERSONNEL MANAGEMENT.—Section
12 1304(e)(1) of title 5, United States Code, is amended by
13 inserting “implementation of the enhanced security clear-
14 ance system under section 11001 and” after “including”.

15 (c) AMENDMENT TO THE FAIR CREDIT REPORTING
16 ACT.—Section 603(d) of the Fair Credit Reporting Act
17 (15 U.S.C. 1681a(d)) is amended—

18 (1) in paragraph (2)—

19 (A) in the matter preceding subparagraph
20 (A), by striking “paragraph (3)” and inserting
21 “paragraphs (3) and (4)”;

22 (B) in subparagraph (C), by striking “or”
23 at the end;

24 (C) in subparagraph (D), by striking the
25 period and inserting “; or”; and

1 (D) by adding at the end the following:

2 “(E) any communication made in connec-
3 tion with the granting, denial, review, or revoca-
4 tion of a Federal security clearance or access to
5 classified information of a covered individual
6 (as that term is defined in section 11001 of
7 title 5, United States Code), if that communica-
8 tion is made to—

9 “(i) an agency (as that term is de-
10 fined in section 3001 of the Intelligence
11 Reform and Terrorism Prevention Act of
12 2004 (50 U.S.C. 3341)); or

13 “(ii) an authorized contractor or sub-
14 contractor of the Federal Government.”;
15 and

16 (2) by adding at the end the following:

17 “(4) COMMUNICATIONS RELATING TO FEDERAL
18 SECURITY CLEARANCES AND ACCESS TO CLASSIFIED
19 INFORMATION.—The exclusion under paragraph
20 (2)(E) shall not apply with respect to information
21 originating from a major consumer reporting agency
22 (as that term is defined in section 11001 of title 5,
23 United States Code) relating to a credit account or
24 the credit history of a covered individual (as that

1 term is defined in section ~~11001~~ of title 5, United
 2 States Code).”.

3 ~~(d) TECHNICAL AND CONFORMING AMENDMENT.—~~

4 The table of chapters for part III of title 5, United States
 5 Code, is amended by adding at the end following:

“Subpart J—Office of Personnel Management Enhanced Security Clearance
 System

“110. Office of Personnel Management Enhanced Security Clearance System11001”.

6 **SECTION 1. SHORT TITLE.**

7 *This Act may be cited as the “Enhanced Security*
 8 *Clearance Act of 2014”.*

9 **SEC. 2. ENHANCING GOVERNMENT PERSONNEL SECURITY**
 10 **PROGRAMS.**

11 *(a) DEFINITIONS.—In this section—*

12 *(1) the term “covered individual” means an in-*
 13 *dividual who has been determined eligible for access*
 14 *to classified information or eligible to hold a sensitive*
 15 *position; and*

16 *(2) the term “periodic reinvestigations” means*
 17 *investigations conducted periodically, with a fre-*
 18 *quency as required by the Director of National Intel-*
 19 *ligence, for the purpose of updating a previously com-*
 20 *pleted background investigation.*

21 *(b) RESOLUTION OF BACKLOG OF OVERDUE PERIODIC*
 22 *REINVESTIGATIONS.—*

1 (1) *IN GENERAL.*—*The Director of National In-*
 2 *telligence shall develop and implement a plan to*
 3 *eliminate the backlog of overdue periodic reinvestiga-*
 4 *tions of covered individuals.*

5 (2) *REQUIREMENTS.*—*The plan developed under*
 6 *paragraph (1) shall—*

7 (A) *use a risk-based approach to—*

8 (i) *identify high-risk populations; and*

9 (ii) *prioritize reinvestigations that are*
 10 *due or overdue to be conducted; and*

11 (B) *use random automated record checks of*
 12 *covered individuals that shall include all covered*
 13 *individuals in the pool of individuals subject to*
 14 *a one-time check.*

15 (c) *ENHANCED SECURITY CLEARANCE PROGRAMS.*—
 16 *Part III of title 5, United States Code, is amended by add-*
 17 *ing at the end the following:*

18 **“Subpart J—Enhanced Personnel Security Programs**

19 **“CHAPTER 110—ENHANCED PERSONNEL**
 20 **SECURITY PROGRAMS**

“Sec.

“11001. *Enhanced personnel security programs.*

21 **“§ 11001. *Enhanced personnel security programs***

22 “(a) *DEFINITIONS.*—*In this section—*

23 “(1) *the term ‘agency’ has the meaning given*
 24 *that term in section 3001 of the Intelligence Reform*

1 *and Terrorism Prevention Act of 2004 (50 U.S.C.*
2 *3341);*

3 “(2) the term ‘consumer reporting agency’ has
4 *the meaning given that term in section 603 of the*
5 *Fair Credit Reporting Act (15 U.S.C. 1681a);*

6 “(3) the term ‘covered individual’ means an in-
7 *dividual who has been determined eligible for access*
8 *to classified information or eligible to hold a sensitive*
9 *position;*

10 “(4) the term ‘enhanced personnel security pro-
11 *gram’ means a program implemented by an agency*
12 *at the direction of the Director of National Intel-*
13 *ligence under subsection (b); and*

14 “(5) the term ‘periodic reinvestigations’ means
15 *investigations conducted periodically, with a fre-*
16 *quency as required by the Director of National Intel-*
17 *ligence, for the purpose of updating a previously com-*
18 *pleted background investigation.*

19 “(b) *ENHANCED PERSONNEL SECURITY PROGRAM.—*
20 *The Director of National Intelligence shall direct each agen-*
21 *cy to implement a program to provide enhanced security*
22 *review of covered individuals—*

23 “(1) *in accordance with this section; and*

24 “(2) *not later than the earlier of—*

1 “(A) the date that is 5 years after the date
2 of enactment of the Enhanced Security Clearance
3 Act of 2014; or

4 “(B) the date on which the backlog of over-
5 due periodic reinvestigations of covered individ-
6 uals is eliminated, as determined by the Director
7 of National Intelligence.

8 “(c) COMPREHENSIVENESS.—

9 “(1) SOURCES OF INFORMATION.—The enhanced
10 personnel security program of an agency shall inte-
11 grate relevant information from various sources, in-
12 cluding government, publicly available, and commer-
13 cial data sources, consumer reporting agencies, social
14 media, and such other sources as determined by the
15 Director of National Intelligence.

16 “(2) TYPES OF INFORMATION.—Information ob-
17 tained and integrated from sources described in para-
18 graph (1) may include—

19 “(A) information relating to any criminal
20 or civil legal proceeding;

21 “(B) financial information relating to the
22 covered individual, including the credit worthi-
23 ness of the covered individual;

24 “(C) public information, including news ar-
25 ticles or reports, that includes relevant security

1 *or counterintelligence information about the cov-*
 2 *ered individual;*

3 *“(D) publicly available electronic informa-*
 4 *tion, to include relevant security or counterintel-*
 5 *ligence information on any social media website*
 6 *or forum, that may suggest ill intent, vulner-*
 7 *ability to blackmail, compulsive behavior, alle-*
 8 *giance to another country, change in ideology, or*
 9 *any other information that may suggest the cov-*
 10 *ered individual lacks good judgment, reliability*
 11 *or trustworthiness; and*

12 *“(E) data maintained on any terrorist or*
 13 *criminal watch list maintained by any agency,*
 14 *State or local government, or international orga-*
 15 *nization.*

16 *“(d) REVIEWS OF COVERED INDIVIDUALS.—*

17 *“(1) REVIEWS.—*

18 *“(A) IN GENERAL.—The enhanced personnel*
 19 *security program of an agency shall require that,*
 20 *not less than 2 times every 5 years, the head of*
 21 *the agency shall conduct or request the conduct*
 22 *of automated record checks and checks of infor-*
 23 *mation from sources under subsection (c) to en-*
 24 *sure the continued eligibility of each covered in-*
 25 *dividual employed by the agency or a contractor*

1 *of the agency, unless more frequent reviews of*
2 *automated record checks and checks of informa-*
3 *tion from sources under subsection (c) are con-*
4 *ducted on the covered individual.*

5 “(B) *SCOPE OF REVIEWS.*—*Except for a*
6 *covered individual who is subject to more fre-*
7 *quent reviews to ensure the continued eligibility*
8 *of the covered individual, the reviews under sub-*
9 *paragraph (A) shall consist of random or aperi-*
10 *odic checks of covered individuals, such that each*
11 *covered individual is subject to at least 2 reviews*
12 *during the 5-year period beginning on the date*
13 *on which the agency implements the enhanced*
14 *personnel security program of an agency, and*
15 *during each 5-year period thereafter.*

16 “(C) *INDIVIDUAL REVIEWS.*—*A review of*
17 *the information relating to the continued eligi-*
18 *bility of a covered individual under subpara-*
19 *graph (A) may not be conducted until after the*
20 *end of the 120-day period beginning on the date*
21 *the covered individual receives the notification*
22 *required under paragraph (3).*

23 “(2) *RESULTS.*—*The head of an agency shall*
24 *take appropriate action if a review under paragraph*

1 (1) *finds relevant information that may affect the*
 2 *continued eligibility of a covered individual.*

3 “(3) *INFORMATION FOR COVERED INDIVID-*
 4 *UALS.—The head of an agency shall ensure that each*
 5 *covered individual employed by the agency or a con-*
 6 *tractor of the agency is adequately advised of the*
 7 *types of relevant security or counterintelligence infor-*
 8 *mation the covered individual is required to report to*
 9 *the head of the agency.*

10 “(4) *LIMITATION.—Nothing in this subsection*
 11 *shall be construed to affect the authority of an agency*
 12 *to determine the appropriate weight to be given to in-*
 13 *formation relating to a covered individual in evalu-*
 14 *ating the continued eligibility of the covered indi-*
 15 *vidual.*

16 “(5) *GUIDANCE FOR MINOR FINANCIAL OR MEN-*
 17 *TAL HEALTH ISSUES.—The Director of National In-*
 18 *telligence shall issue guidance defining minor finan-*
 19 *cial or mental health issues, in accordance with this*
 20 *section and any direction from the President.*

21 “(6) *AUTHORITY OF THE PRESIDENT.—Nothing*
 22 *in this subsection shall be construed as limiting the*
 23 *authority of the President to direct or perpetuate*
 24 *periodic reinvestigations of a more comprehensive na-*

1 *ture or to delegate the authority to direct or perpet-*
 2 *uate such reinvestigations.*

3 “(e) *AUDIT.*—

4 “(1) *IN GENERAL.*—Beginning 2 years after the
 5 *date of implementation of the enhanced personnel se-*
 6 *curity program of an agency under subsection (b), the*
 7 *Inspector General of the agency shall conduct at least*
 8 *1 audit to assess the effectiveness and fairness, which*
 9 *shall be determined in accordance with performance*
 10 *measures and standards established by the Director of*
 11 *National Intelligence, to covered individuals of the en-*
 12 *hanced personnel security program of the agency.*

13 “(2) *SUBMISSIONS TO THE DNI.*—The results of
 14 *each audit conducted under paragraph (1) shall be*
 15 *submitted to the Director of National Intelligence to*
 16 *assess the effectiveness and fairness of the enhanced*
 17 *personnel security programs across the Federal Gov-*
 18 *ernment.”.*

19 (d) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 20 *table of chapters for part III of title 5, United States Code,*
 21 *is amended by adding at the end following:*

“Subpart J—Enhanced Personnel Security Programs

“110. Enhanced personnel security programs 11001”.

Amend the title so as to read: “A bill to enhance background checks for the granting, denial, or revocation of eligibility for access to classified information for employees and contractors of the Federal Government, or

eligibility to hold a sensitive position for Federal employees.”.

Calendar No. 610

113TH CONGRESS
2^D Session

S. 1618

[Report No. 113-283]

A BILL

To enhance the Office of Personnel Management background check system for the granting, denial, or revocation of security clearances or access to classified information of employees and contractors of the Federal Government.

DECEMBER 2, 2014

Reported with an amendment and an amendment to the
title