

113TH CONGRESS
2D SESSION

S. 1744

AN ACT

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for position designation, and for other purposes.

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 “Security Clearance Ac-
3 countability, Reform, and Enhancement Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act—

6 (1) the term “agency” has the meaning given
7 the term in Executive Order 13467 (73 Fed. Reg.
8 38103);

9 (2) the term “appropriate agency” means—

10 (A) in the case of a prime contractor for
11 a covered contract, the agency with which the
12 prime contractor entered the covered contract;
13 or

14 (B) in the case of a subcontractor for a
15 covered contract, any agency on whose behalf
16 the subcontractor is performing work under the
17 covered contract;

18 (3) the term “appropriate congressional com-
19 mittees” means—

20 (A) the Committee on Homeland Security
21 and Governmental Affairs and the Select Com-
22 mittee on Intelligence of the Senate; and

23 (B) the Committee on Oversight and Gov-
24 ernment Reform and the Permanent Select
25 Committee on Intelligence of the House of Rep-
26 resentatives;

1 (4) the term “background investigation” means
2 any investigation required for the purpose of deter-
3 mining the—

4 (A) eligibility of a covered individual for
5 logical and physical access to federally con-
6 trolled facilities or information systems;

7 (B) suitability or fitness of a covered indi-
8 vidual for Federal employment;

9 (C) eligibility of a covered individual for
10 access to classified information or to hold a na-
11 tional security sensitive position; or

12 (D) fitness of a covered individual to per-
13 form work for or on behalf of the United States
14 Government as a contractor employee;

15 (5) the term “covered contract” means a con-
16 tract to conduct background investigations—

17 (A) between an agency and a prime con-
18 tractor;

19 (B) between a prime contractor and a sub-
20 contractor, if the prime contractor has a con-
21 tract with an agency; or

22 (C) between subcontractors, if one of the
23 subcontractors has a contract with a prime con-
24 tractor that has a contract with an agency;

1 (6) the term “covered individual” means an in-
2 dividual who—

3 (A) performs work for or on behalf of an
4 agency; or

5 (B) seeks to perform work for or on behalf
6 of an agency;

7 (7) the term “covered misconduct” means mis-
8 conduct affecting the integrity of a background in-
9 vestigation conducted by or for an agency with in-
10 vestigative authority to conduct background inves-
11 tigations, including—

12 (A) falsification of any information relat-
13 ing to a background investigation; or

14 (B) other serious misconduct that com-
15 promises the integrity of a background inves-
16 tigation;

17 (8) the term “prime contractor” means an indi-
18 vidual who enters into a contract with an agency;
19 and

20 (9) the term “subcontractor” means an indi-
21 vidual who has contracted with a prime contractor
22 or with another subcontractor to perform a contract
23 on behalf of an agency.

1 **SEC. 3. ACCOUNTABILITY OF INDIVIDUALS INVOLVED IN**
2 **MISCONDUCT AFFECTING THE INTEGRITY OF**
3 **AGENCY BACKGROUND INVESTIGATIONS.**

4 (a) MISCONDUCT BY FEDERAL EMPLOYEES.—

5 (1) UNFIT FOR FEDERAL EMPLOYMENT.—If an
6 agency determines that an employee of the agency
7 has engaged in covered misconduct, the employee
8 shall be found unfit for Federal employment.

9 (2) FITNESS DETERMINATIONS.—An agency
10 shall make a determination under paragraph (1) in
11 accordance with any statutory, regulatory, or inter-
12 nal agency procedures applicable to investigating al-
13 leged misconduct by employees of the agency.

14 (3) PROHIBITION ON REEMPLOYMENT TO CON-
15 DUCT BACKGROUND INVESTIGATIONS.—If an agency
16 determines under paragraph (1) that an individual is
17 unfit for Federal employment, the individual shall
18 not be appointed to or continue to occupy a position,
19 as an employee of any agency, that requires its occu-
20 pant to perform background investigations.

21 (b) MISCONDUCT BY EMPLOYEES UNDER CON-
22 TRACT.—

23 (1) INELIGIBILITY FOR PERFORMANCE OF
24 WORK UNDER A COVERED CONTRACT.—If an appro-
25 priate agency, prime contractor, or subcontractor de-
26 termines that an individual performing work under

1 a covered contract has engaged in covered mis-
2 conduct, the individual shall be ineligible to perform
3 background investigations under a covered contract.

4 (2) MANDATORY DISCLOSURE.—A covered con-
5 tract shall include a provision requiring a prime con-
6 tractor or subcontractor to disclose to each appro-
7 priate agency any allegation of covered misconduct
8 by an employee of the prime contractor or subcon-
9 tractor not later than 24 hours after the prime con-
10 tractor or subcontractor discovers the alleged cov-
11 ered misconduct.

12 (3) INVESTIGATION OF COVERED MIS-
13 CONDUCT.—

14 (A) CONTRACTOR INVESTIGATION.—A cov-
15 ered contract shall include a provision requiring
16 that, not later than 5 business days after the
17 date on which a prime contractor or subcon-
18 tractor discloses an allegation under paragraph
19 (2), the prime contractor or subcontractor shall
20 refer the allegation of covered misconduct to
21 the agency for investigation.

22 (B) AGENCY INVESTIGATION.—Nothing in
23 subparagraph (A) shall be construed to prohibit
24 an appropriate agency from conducting its own

1 investigation into an allegation of covered mis-
2 conduct.

3 (4) PROHIBITION ON REEMPLOYMENT TO CON-
4 DUCT BACKGROUND INVESTIGATIONS.—If an appro-
5 priate agency determines, based on an investigation
6 conducted under paragraph (3), that an individual is
7 ineligible to perform work under a covered contract
8 under paragraph (1), the individual shall be prohib-
9 ited from performing background investigations
10 under any covered contract.

11 (5) MODIFICATION OF EXISTING CONTRACTS.—
12 Not later than 30 days after the date of enactment
13 of this Act, any covered contract that is in effect
14 and was entered into before the date of enactment
15 of this Act shall be modified to include the provi-
16 sions required under paragraphs (2) and (3).

17 (c) REPORTING.—Not later than 1 year after the date
18 of enactment of this Act, and annually thereafter, the
19 President shall submit to the appropriate congressional
20 committees a report providing—

21 (1) the number of individuals determined to
22 be—

23 (A) unfit for Federal employment under
24 subsection (a); or

1 (B) ineligible to perform work under a cov-
 2 ered contract under subsection (b); and
 3 (2) details of the covered misconduct that re-
 4 sulted in each determination described in paragraph
 5 (1).

6 **SEC. 4. REVIEW AND UPDATE OF POSITION DESIGNATION**
 7 **GUIDANCE.**

8 (a) GUIDELINES.—

9 (1) INITIAL REVIEW AND UPDATE OF GUID-
 10 ANCE.—Not later than 180 days after the date of
 11 enactment of this Act, the President shall review
 12 and, if appropriate, update the guidance the Presi-
 13 dent issues to assist agencies in determining—

14 (A) position sensitivity designation; and

15 (B) the appropriate background investiga-
 16 tion to initiate for each position designation.

17 (2) REVIEWS AND REVISIONS OF POSITION DES-
 18 IGNATIONS.—Not less frequently than every 5 years,
 19 the President, acting through relevant agencies (as
 20 determined by the President) and in accordance with
 21 the guidance described in paragraph (1), shall review
 22 and, if necessary, revise the position designation of
 23 positions within agencies.

24 (b) REPORTS TO CONGRESS.—Not later than 30 days
 25 after completing a review under subsection (a)(2), the

1 President shall submit to the appropriate congressional
2 committees a report on—

- 3 (1) any issues identified in the review; and
4 (2) the number of position designations revised
5 as a result of the review.

6 (c) NO CHANGE IN AUTHORITY.—Nothing in this
7 section limits or expands the authority of any agency to
8 designate a position as sensitive or as requiring its occu-
9 pant to have access to classified information.

Passed the Senate December 15, 2014.

Attest:

Secretary.

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