

114TH CONGRESS
2D SESSION

S. 434

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2016

Referred to the Committee on Oversight and Government Reform

AN ACT

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, to prevent conflicts of interest relating to contractors providing background investigation fieldwork services and investigative support services, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Security Clearance Ac-
 5 countability, Reform, and Enhancement Act of 2015”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—SECURITY CLEARANCE ACCOUNTABILITY, REFORM, AND
 ENHANCEMENT

Sec. 101. Definitions.

Sec. 102. Accountability of individuals involved in misconduct affecting the in-
 tegrity of agency background investigations.

Sec. 103. Review and update of position designation guidance.

TITLE II—PREVENTING CONFLICTS OF INTEREST WITH
 CONTRACTORS

Sec. 201. Definitions.

Sec. 202. Limitation on contracting to prevent organizational conflicts of inter-
 est.

8 **TITLE I—SECURITY CLEARANCE**
 9 **ACCOUNTABILITY, REFORM,**
 10 **AND ENHANCEMENT**

11 **SEC. 101. DEFINITIONS.**

12 In this title—

13 (1) the term “agency” has the meaning given
 14 the term in Executive Order 13467 (73 Fed. Reg.
 15 38103), or any successor thereto;

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

17 (A) in the case of a prime contractor for
 18 a covered contract, the agency with which the

1 prime contractor entered the covered contract;
2 or

3 (B) in the case of a subcontractor for a
4 covered contract, any agency on whose behalf
5 the subcontractor is performing work under the
6 covered contract;

7 (3) the term “appropriate congressional com-
8 mittees” means—

9 (A) the Committee on Homeland Security
10 and Governmental Affairs and the Select Com-
11 mittee on Intelligence of the Senate; and

12 (B) the Committee on Oversight and Gov-
13 ernment Reform and the Permanent Select
14 Committee on Intelligence of the House of Rep-
15 resentatives;

16 (4) the term “background investigation” means
17 any investigation required for the purpose of deter-
18 mining the—

19 (A) eligibility of a covered individual for
20 logical and physical access to federally con-
21 trolled facilities or information systems;

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

1 (C) eligibility of a covered individual for
2 access to classified information or to hold a na-
3 tional security sensitive position; or

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

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

9 (A) between an agency and a prime con-
10 tractor;

11 (B) between a prime contractor and a sub-
12 contractor, if the prime contractor has a con-
13 tract with an agency; or

14 (C) between subcontractors, if one of the
15 subcontractors has a contract with a prime con-
16 tractor that has a contract with an agency;

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

19 (A) performs work for or on behalf of an
20 agency; or

21 (B) seeks to perform work for or on behalf
22 of an agency;

23 (7) the term “covered misconduct” means mis-
24 conduct affecting the integrity of a background in-
25 vestigation conducted by or for an agency with in-

1 vestigative authority to conduct background inves-
2 tigations, including—

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

5 (B) other serious misconduct that com-
6 promises the integrity of a background inves-
7 tigation;

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

11 (9) the term “subcontractor” means an indi-
12 vidual who has contracted with a prime contractor
13 or with another subcontractor to perform a contract
14 on behalf of an agency.

15 **SEC. 102. ACCOUNTABILITY OF INDIVIDUALS INVOLVED IN**
16 **MISCONDUCT AFFECTING THE INTEGRITY OF**
17 **AGENCY BACKGROUND INVESTIGATIONS.**

18 (a) MISCONDUCT BY FEDERAL EMPLOYEES.—

19 (1) UNFIT FOR FEDERAL EMPLOYMENT.—If an
20 agency determines that an employee of the agency
21 has engaged in covered misconduct, the employee
22 shall be found unfit for Federal employment.

23 (2) FITNESS DETERMINATIONS.—An agency
24 shall make a determination under paragraph (1) in
25 accordance with any statutory, regulatory, or inter-

1 nal agency procedures applicable to investigating al-
2 leged misconduct by employees of the agency.

3 (3) PROHIBITION ON REEMPLOYMENT TO CON-
4 DUCT BACKGROUND INVESTIGATIONS.—If an agency
5 determines under paragraph (1) that an individual is
6 unfit for Federal employment, the individual shall
7 not be appointed to or continue to occupy a position,
8 as an employee of any agency, that requires its occu-
9 pant to perform background investigations.

10 (b) MISCONDUCT BY EMPLOYEES UNDER CON-
11 TRACT.—

12 (1) INELIGIBILITY FOR PERFORMANCE OF
13 WORK UNDER A COVERED CONTRACT.—If an appro-
14 priate agency, prime contractor, or subcontractor de-
15 termines that an individual performing work under
16 a covered contract has engaged in covered mis-
17 conduct, the individual shall be ineligible to perform
18 background investigations under a covered contract.

19 (2) MANDATORY DISCLOSURE.—A covered con-
20 tract shall include a provision requiring a prime con-
21 tractor or subcontractor to disclose to each appro-
22 priate agency any allegation of covered misconduct
23 by an employee of the prime contractor or subcon-
24 tractor not later than 24 hours after the prime con-

1 tractor or subcontractor discovers the alleged cov-
2 ered misconduct.

3 (3) INVESTIGATION OF COVERED MIS-
4 CONDUCT.—

5 (A) CONTRACTOR INVESTIGATION.—A cov-
6 ered contract shall include a provision requiring
7 that, not later than 5 business days after the
8 date on which a prime contractor or subcon-
9 tractor discloses an allegation under paragraph
10 (2), the prime contractor or subcontractor shall
11 refer the allegation of covered misconduct to
12 the agency for investigation.

13 (B) AGENCY INVESTIGATION.—Nothing in
14 subparagraph (A) shall be construed to prohibit
15 an appropriate agency from conducting its own
16 investigation into an allegation of covered mis-
17 conduct.

18 (4) PROHIBITION ON REEMPLOYMENT TO CON-
19 DUCT BACKGROUND INVESTIGATIONS.—If an appro-
20 priate agency determines, based on an investigation
21 conducted under paragraph (3), that an individual is
22 ineligible to perform work under a covered contract
23 under paragraph (1), the individual shall be prohib-
24 ited from performing background investigations
25 under any covered contract.

1 (5) MODIFICATION OF EXISTING CONTRACTS.—

2 Not later than 30 days after the date of enactment
 3 of this Act, any covered contract that is in effect
 4 and was entered into before the date of enactment
 5 of this Act shall be modified to include the provi-
 6 sions required under paragraphs (2) and (3).

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

11 (1) the number of individuals determined to
 12 be—

13 (A) unfit for Federal employment under
 14 subsection (a); or

15 (B) ineligible to perform work under a cov-
 16 ered contract under subsection (b); and

17 (2) details of the covered misconduct that re-
 18 sulted in each determination described in paragraph
 19 (1).

20 **SEC. 103. REVIEW AND UPDATE OF POSITION DESIGNATION**
 21 **GUIDANCE.**

22 (a) GUIDELINES.—

23 (1) INITIAL REVIEW AND UPDATE OF GUID-
 24 ANCE.—Not later than 180 days after the date of
 25 enactment of this Act, the President shall review

1 and, if appropriate, update the guidance the Presi-
2 dent issues to assist agencies in determining—

3 (A) position sensitivity designation; and

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

6 (2) REVIEWS AND REVISIONS OF POSITION DES-
7 IGNATIONS.—Not less frequently than every 5 years,
8 the President, acting through relevant agencies (as
9 determined by the President) and in accordance with
10 the guidance described in paragraph (1), shall review
11 and, if necessary, revise the position designation of
12 positions within agencies.

13 (b) REPORTS TO CONGRESS.—Not later than 30 days
14 after completing a review under subsection (a)(2), the
15 President shall submit to the appropriate congressional
16 committees a report on—

17 (1) any issues identified in the review; and

18 (2) the number of position designations revised
19 as a result of the review.

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

1 **TITLE II—PREVENTING CON-**
2 **FLICTS OF INTEREST WITH**
3 **CONTRACTORS**

4 **SEC. 201. DEFINITIONS.**

5 In this title—

6 (1) the term “agency” means—

7 (A) an Executive agency (as defined in sec-
8 tion 105 of title 5, United States Code);

9 (B) a military department (as defined in
10 section 102 of title 5, United States Code);

11 (C) an element of the intelligence commu-
12 nity (as that term is defined in section 3 of the
13 National Security Act of 1947 (50 U.S.C.
14 3003));

15 (D) the United States Postal Service; and

16 (E) the Postal Regulatory Commission;

17 (2) the term “background investigation
18 fieldwork services” means the investigatory fieldwork
19 conducted to determine the eligibility of an indi-
20 vidual for logical and physical access to federally
21 controlled facilities or information systems, suit-
22 ability or fitness for Federal employment, eligibility
23 for access to classified information or to hold a na-
24 tional security sensitive position, or fitness to per-

1 form work for or on behalf of the Federal Govern-
2 ment as a contractor or employee, including—

3 (A) interviews of the individual, the em-
4 ployer of the individual, former employers of
5 the individual, and friends, family, and other
6 sources who might have relevant knowledge of
7 the individual; and

8 (B) reviews of—

9 (i) educational and employment
10 records;

11 (ii) criminal and other legal records;

12 and

13 (iii) credit history;

14 (3) the term “background investigation support
15 services” means the clerical, administrative, and
16 technical support services provided to various func-
17 tions critical to the background investigation proc-
18 ess, including—

19 (A) initial processing and scheduling of in-
20 vestigative requests;

21 (B) information technology and informa-
22 tion technology support;

23 (C) file maintenance;

24 (D) imaging or copying of investigation
25 documents; and

1 (E) mail processing; and

2 (4) the term “quality review process” means
3 performing the final quality review of a background
4 investigation to ensure investigative, administrative,
5 and other required standards have been met before
6 the completed background investigation is delivered
7 to the adjudicating agency.

8 **SEC. 202. LIMITATION ON CONTRACTING TO PREVENT OR-**
9 **GANIZATIONAL CONFLICTS OF INTEREST.**

10 Notwithstanding any other provision of law, after the
11 date of enactment of this Act, a contract may not be en-
12 tered into, and an extension of or option on a contract
13 may not be exercised, with a contractor to conduct a qual-
14 ity review process relating to background investigation
15 fieldwork services or background investigation support
16 services if the contractor is performing the services to be
17 reviewed.

Passed the Senate November 17, 2016.

Attest:

JULIE E. ADAMS,
Secretary.