

*Administration of Barack Obama, 2017*

**Executive Order 13764—Amending the Civil Service Rules, Executive Order 13488, and Executive Order 13467 To Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment, and Credentialing, and Related Matters**

*January 17, 2017*

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as part of continuing efforts to modernize the overarching executive branch enterprise to ensure that all persons performing work for or on behalf of the Government are and continue to be loyal to the United States, reliable, trustworthy, and of good conduct and character, and by using mutually consistent standards and procedures, it is hereby ordered as follows:

*Section 1. Amendments to the Civil Service Rules.* (a) Civil Service Rule II is amended as follows:

(i) The title to 5 CFR Part 2 is revised to read as follows:

"PART 2—APPOINTMENT THROUGH THE COMPETITIVE SERVICE; RELATED MATTERS (RULE II)"

(ii) The title to 5 CFR 2.1 is revised to read as follows:

"§2.1 Competitive examinations and eligible registers; suitability and fitness for civil service employment."

(iii) 5 CFR 2.1(a) is revised to read as follows:

"(a) OPM shall be responsible for:

"(i) Open competitive examinations for admission to the competitive service that will fairly test the relative capacity and fitness of the persons examined for the position to be filled.

"(ii) Standards with respect to citizenship, age, education, training and experience, physical and mental fitness, and for residence or other requirements that applicants must meet to be admitted to or rated in examinations.

"(iii) Standards of suitability based on character and conduct for appointment to a position in the competitive service, for appointment to a position in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and for career appointment to a position in the Senior Executive Service.

"(iv) Minimum standards of fitness based on character and conduct for appointment in any other position in the excepted service of the executive branch, except for (A) positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to OPM appointing authorities, and (B) positions where OPM is statutorily precluded from prescribing such standards."

(b) Civil Service Rule V is amended as follows:

(i) 5 CFR 5.2(a) is revised to read as follows:

"(a) Investigating the qualifications, suitability, and fitness of applicants for positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, career appointments to positions in the Senior Executive Service, and any other positions in the excepted service of the executive branch for which the Director has standard-setting responsibility under Civil Service Rule II.

"(i) The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the Civil Service Rules and Regulations have been met.

"(ii) The Director may cause positions to be designated based on risk to determine the appropriate level of investigation, and may prescribe investigative standards, policies, and procedures.

"(iii) The Director may prescribe standards for reciprocal acceptance by agencies of investigations and adjudications of suitability and fitness, except to the extent authority to apply additional fitness standards is vested by statute in an agency."

(ii) 5 CFR 5.3(a)(1) is revised by striking "disqualified for Federal employment" and inserting in lieu thereof "disqualified or unsuitable for Federal employment."

(c) Civil Service Rule VI is amended as follows:

(i) 5 CFR 6.3(b) is revised to read as follows:

"(b) To the extent permitted by law and the provisions of this part, and subject to the suitability and fitness requirements of the applicable Civil Service Rules and Regulations, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary."

*Sec. 2. Amendment to Executive Order 13488 of January 16, 2009.* (a) Section 1(a) of Executive Order 13488 is revised to read as follows:

*"Section 1. Policy.* (a) When agencies conduct fitness determinations, prior favorable fitness or suitability determinations shall be granted reciprocal recognition, to the extent practicable."

(b) Section 2 of Executive Order 13488 is revised to read as follows:

"(a) 'Agency' means an executive agency as defined in section 105 of title 5, United States Code, but does not include the Government Accountability Office.

"(b) 'Contractor employee' means an individual who performs work for or on behalf of any agency under a contract and who, in order to perform the work specified under the contract, will require access to space, information, information technology systems, staff, or other assets of the Federal Government, and who could, by the nature of his or her access or duties, adversely affect the integrity or efficiency of the Government. Such contracts, include, but are not limited to:

- "(i) personal services contracts;
  - "(ii) contracts between any non-Federal entity and any agency; and
  - "(iii) sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the agency.
- "(c) 'Excepted service' has the meaning provided in section 2103 of title 5, United States Code, but does not include those positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to Office of Personnel Management appointing authorities.
- "(d) 'Fitness' is the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability), as a contractor employee, or as a nonappropriated fund employee.
- "(e) 'Fitness determination' means a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability), as a contractor employee, or as a nonappropriated fund employee. A favorable fitness determination is not a decision to appoint or contract with an individual.
- "(f) 'Nonappropriated fund employee' means an employee paid from nonappropriated funds of an instrumentality of the United States under the jurisdiction of the Armed Forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Armed Forces as described in section 2105 of title 5, United States Code.
- "(g) 'Position of Public Trust' has the meaning provided in 5 CFR Part 731.
- "(h) 'Suitability' has the meaning and coverage provided in 5 CFR Part 731.

(c) Section 3 of Executive Order 13488 is revised to read as follows:

"OPM and Agency Authority.

"(a) *Adjudications for determining fitness for contractual or nonappropriated fund employment.* While the Office of Personnel Management establishes the minimum adjudicative criteria for suitability and fitness determinations for employment in the civil service pursuant to the Civil Service Rules, the heads of agencies retain the discretion to establish adjudicative criteria for determining fitness to perform work as a contractor employee or as a nonappropriated fund employee. Such discretion shall be exercised with due regard to the regulations and guidance prescribed by the Office of Personnel Management for the civil service and, for contractual work, subject to applicable regulations and directives of the Office of Management and Budget.

"(b) *Investigations for determining fitness for contractual or nonappropriated fund employment.* Contractor employee fitness or nonappropriated fund employee fitness is subject to the same position designation requirements and investigative standards, policies, and procedures as fitness determinations for civil service employees, as prescribed by the Office of Personnel Management under the Civil Service Rules.

"(c) *Reciprocity*. Fitness determinations and investigations for fitness determinations for contractor employees and for nonappropriated fund employees are subject to the same reciprocity requirements as those for employment in the civil service, as prescribed by the Office of Personnel Management under the Civil Service Rules."

(d) Executive Order 13488 is revised by striking section 4 in its entirety, and redesignating sections 5 through 8 as sections 4 through 7, respectively.

*Sec. 3. Amendments to Executive Order 13467 of June 30, 2008, as amended.* (a) The preamble to Executive Order 13467 is revised to read as follows:

"By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301, 7103(b), and 7301 of title 5, United States Code, and in order to strengthen and ensure a secure, efficient, timely, reciprocal, and aligned system for investigating and determining suitability or fitness for Government employment, fitness to work as a contractor or a nonappropriated fund employee, eligibility for access to classified information or to hold a sensitive position, and authorization to be issued a Federal credential, while providing fair, impartial, and equitable treatment, and protecting individual rights under the Constitution and laws of the United States, and taking appropriate account of title III of Public Law 108–458, it is hereby ordered as follows:"

(b) Section 1.1 of Executive Order 13467 is revised to read as follows:

*"Section 1.1. Policy.* (a) Executive branch vetting policies and procedures relating to suitability, contractor or Federal employee fitness, eligibility to hold a sensitive position, authorization to be issued a Federal credential for access to federally controlled facilities and information systems, and eligibility for access to classified information shall be aligned using consistent standards to the extent possible, shall provide for reciprocal recognition, and shall ensure cost-effective, timely, and efficient protection of the national interest, while providing fair treatment to those upon whom the Federal Government relies to conduct our Nation's business and protect national security.

"(b) The Government's tools, systems, and processes for conducting these background investigations and managing sensitive investigative information should keep pace with technological advancements, regularly integrating current best practices to better anticipate, detect, and counter malicious activities, and threats posed by external or internal actors who may seek to do harm to the Government's personnel, property, and information. To help fulfill these responsibilities, there shall be a primary executive branch investigative service provider whose mission is to provide effective, efficient, and secure background investigations for the Federal Government.

"(c) Executive branch vetting policies and procedures shall be sustained by an enhanced risk-management approach that facilitates early detection of issues by an informed, aware, and responsible Federal workforce; results in quality decisions enabled by improved vetting capabilities; and advances Government-wide capabilities through enterprise approaches.

"(d) The appointment or retention of each covered individual shall be subject to an investigation. Federal investigative standards established pursuant to this order shall be designed to develop information as to whether the employment or retention in

employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security, and the scope of the investigation shall be determined in the first instance according to the degree of material adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security."

"(e) Investigative agencies shall control the reports, information, and other investigative materials that are developed during the vetting process. Recipient departments and agencies may retain and use the received reports, information, and other investigative material within that recipient for authorized purposes (including, but not limited to, adjudications, hearings and appeals, continuous evaluation, inspector general functions, counterintelligence, research, and insider threat programs), in compliance with the Privacy Act of 1974, as amended (section 552a of title 5, United States Code). Investigative agencies shall ensure that their applicable System of Records Notices include, at a minimum, the authorized uses of the recipient departments and agencies such as those set forth above. Recipient departments and agencies shall not make any external releases of received information, other than to an investigative subject for the purpose of providing procedural rights or administrative due process; and shall direct any other requests for external releases of copies of the reports, information, and other investigative materials to the investigative agency. In the event redisclosure by the recipient agency is required by compulsory legal process, the recipient agency shall consult with the investigating agency. The investigative agency shall maintain the reports, information, and other investigative material in a system of records subject to the Privacy Act and ensure that any re-disclosure does not violate statutory restrictions or result in the unauthorized disclosure of: classified information, information subject to a claim of privilege, or information that is otherwise lawfully exempt from disclosure. Subject to Security Executive Agent authorizations consistent with section 3341(e)(5) of title 50, United States Code, the investigative agencies shall make reports, information, and other investigative material available, as necessary, to carry out the responsibilities set forth in this order, including but not limited to, authorized executive branch-sponsored research and initiatives for enterprise-wide continuous performance improvement of vetting policy and procedures, as permitted by law."

(c) Section 1.2 of Executive Order 13467 is revised to read as follows:

*"Sec. 1.2. Applicability.* (a) This order applies to vetting of all covered individuals as defined in section 1.3(h), except that:

"(i) the provisions regarding eligibility for physical access to federally controlled facilities and logical access to federally controlled information systems do not apply to individuals exempted in accordance with guidance pursuant to the Federal Information Security Management Act (title III of Public Law 107-347) and Homeland Security Presidential Directive 12 of August 27, 2004; and

"(ii) the qualification standards for enlistment, appointment, and induction into the Armed Forces pursuant to title 10, United States Code, are unaffected by this order.

"(b) This order also applies to vetting for employees of agencies working in or for the legislative or judicial branches when the vetting is conducted by the executive branch."

(d) Section 1.3(a) of Executive Order 13467 is revised to read as follows:

"(a) 'Adjudication' means the evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether a covered individual is:

- "(i) suitable for Government employment;
- "(ii) eligible for logical and physical access;
- "(iii) eligible for access to classified information;
- "(iv) eligible to hold a sensitive position; or
- "(v) fit to perform work for or on behalf of the Government as a Federal employee, contractor, or nonappropriated fund employee."

(e) Sections 1.3(c) and 1.3(d) of Executive Order 13467 are revised to read as follows:

"(c) 'Classified information' means information that has been determined pursuant to Executive Order 13526 of December 29, 2009, or a successor or predecessor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to require protection against unauthorized disclosure.

"(d) 'Continuous evaluation (CE)' means a vetting process to review the background of an individual who has been determined to be eligible for access to classified information or to hold a sensitive position at any time during the period of eligibility. CE leverages a set of automated record checks and business rules to assist in the ongoing assessment of an individual's continued eligibility. CE is intended to complement continuous vetting efforts."

(f) Section 1.3(f) of Executive Order 13467 is deleted.

(g) Sections 1.3(j), (k), (l), and (m) are redesignated as sections 1.3(m), (n), (o), and (p); sections 1.3(g), (h), and (i) are redesignated as sections 1.3(h), (i), and (j); and section 1.3(e) is redesignated as section 1.3(g).

(h) New sections 1.3(e) and 1.3(f) are added to Executive Order 13467 to read as follows:

"(e) 'Continuous performance improvement' means assessing national policy and operations, adverse events, and emerging trends and technology throughout the Government's end-to-end vetting program. It relies on research to generate data-driven decisions and uses outcome-based measurements to adjust policy and operations.

"(f) 'Continuous vetting' means reviewing the background of a covered individual at any time to determine whether that individual continues to meet applicable requirements."

(i) Redesignated section 1.3(h) of Executive Order 13467 is revised to read as follows:

"(h) 'Covered individual' means a person who performs, or who seeks to perform, work for or on behalf of the executive branch (e.g., Federal employee, military member, or contractor), or otherwise interacts with the executive branch such that the individual must undergo vetting, but does not include:

"(i) the President or (except to the extent otherwise directed by the President) employees of the President under section 105 or 107 of title 3, United States Code;

"(ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 106 of title 3, United States Code, or annual legislative branch appropriations acts; or

"(iii) with respect to background investigations only, duly elected or appointed governor of a State or territory, or an official who has succeeded to that office under applicable law in accordance with Executive Order 13549 of August 18, 2010, and its implementing directive."

(j) New sections 1.3(k) and 1.3(l) are added to Executive Order 13467 to read as follows:

"(k) 'Fitness' means the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability), or as a 'contractor employee' or a 'nonappropriated fund employee' as those terms are defined in Executive Order 13488 of January 16, 2009, as amended.

"(l) 'Investigation' means the collection and analysis of pertinent facts and data to support a determination of whether a covered individual is, and continues to be:

"(i) eligible for access to classified information;

"(ii) eligible to hold a sensitive position;

"(iii) suitable or fit for Federal employment;

"(iv) fit to perform work for or on behalf of the Federal Government as a contractor or nonappropriated fund employee; or

"(v) authorized to be issued a Federal credential."

(k) Redesignated section 1.3(n) of Executive Order 13467 is revised to read as follows:

"(n) 'National Background Investigations Bureau' (NBIB) means the National Background Investigations Bureau, established within the Office of Personnel Management under section 1103(a)(3) of title 5, United States Code, or a successor entity, with responsibility for conducting effective, efficient, and secure personnel background investigations pursuant to law, rule, regulation, or Executive Order."

(l) Redesignated section 1.3(o) of Executive Order 13467 is revised to read as follows:

"(o) 'Sensitive Position' means any position within or in support of a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security, regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, a military service member, or a contractor.

(m) New section 1.3(q) is added to Executive Order 13467 to read as follows:

"(q) 'Vetting' is the process by which covered individuals undergo investigation, evaluation, and adjudication of whether they are, and remain over time, suitable or fit for Federal employment, eligible to occupy a sensitive position, eligible for access to classified information, eligible to serve as a nonappropriated fund employee or a

contractor, eligible to serve in the military, or authorized to be issued a Federal credential. Vetting includes all steps in the end-to-end process, including determining need (appropriate position designation), validating need (existence of a current investigation or adjudication), collecting background information via standard forms, investigative activity, adjudication, providing administrative due process or other procedural rights, and ongoing assessments to ensure that individuals continue to meet the applicable standards for the position for which they were favorably adjudicated."

- (n) The title to Part 2 of Executive Order 13467 is revised to read as follows:

**"PART 2—VETTING ENTERPRISE, RECIPROCITY, CONTINUOUS PERFORMANCE IMPROVEMENT, AND GOVERNANCE"**

- (o) Section 2.1 of Executive Order 13467 is revised to read as follows:

*"Sec. 2.1. Vetting Enterprise.* (a) The executive branch-wide vetting enterprise shall use, to the greatest extent practicable, aligned and consistent vetting policies, procedures, and standards, as determined by the Council and the Executive Agents. The Executive Agents shall issue guidance to implement this provision.

(b) The aligned executive branch-wide vetting enterprise shall employ modern and consistent standards and methods, enable innovations with enterprise information technology capabilities and end-to-end automation to the extent practicable, and ensure that relevant information maintained by agencies can be accessed and shared rapidly across the executive branch, while protecting national security, protecting privacy-related information, protecting civil rights and civil liberties, ensuring resulting decisions are in the national interest and in accordance with due process requirements, and providing the Federal Government with an effective trusted workforce.

(c) The investigative and adjudicative standards for fitness shall, to the extent practicable, be consistent with the standards for suitability. The Executive Agents shall establish in Federal investigative standards the elements of the level of investigation necessary for vetting for fitness.

(d) All covered individuals shall be subject to continuous vetting under standards (including, but not limited to, the frequency of such vetting) as determined by the Security Executive Agent or the Suitability and Credentialing Executive Agent exercising its Suitability Executive Agent functions, as applicable.

(e) Vetting shall include a search of records of the Federal Bureau of Investigation, including a fingerprint-based search, and any other appropriate biometric or database searches not precluded by law."

- (p) Sections 2.2, 2.3, 2.4, and 2.5 of Executive Order 13467 are redesignated as sections 2.4, 2.5, 2.6, and 2.7.

- (q) New sections 2.2 and 2.3 are added to Executive Order 13467 to read as follows:

*"Sec. 2.2. Reciprocity.* Except as otherwise authorized by law or policy issued by the applicable Executive Agent, agencies shall accept background investigations and adjudications conducted by other authorized agencies unless an agency determines that a particular background investigation or adjudication does not sufficiently

address the standards used by that agency in determining the fitness of its excepted service employees who cannot be noncompetitively converted to the competitive service. Except as described above and except to the extent authority to apply additional requirements is vested by statute in an agency, an agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination consistent with law, directive, or regulation) that exceed existing requirements without the approval of the Suitability and Credentialing Executive Agent exercising its Suitability Executive Agent functions or Security Executive Agent, as appropriate. Any additional requirements approved by the appropriate Executive Agent shall be limited to those that are necessary to address significant needs unique to the agency involved, to protect national security, or to satisfy a requirement imposed by law."

"*Sec. 2.3. Continuous Performance Improvement.* Executive branch vetting policies, processes, and procedures shall be supported by institutionalized enterprise-wide continuous performance improvement, which shall align with and support process improvements."

(r) Redesignated section 2.4 of Executive Order 13467 is revised to read as follows:

"*Sec. 2.4. Establishment and Functions of Performance Accountability Council.* (a) There is hereby established a Security, Suitability, and Credentialing Performance Accountability Council (Council).

"(b) The Deputy Director for Management, Office of Management and Budget, shall serve as Chair of the Council and shall have authority, direction, and control over the Council's functions. Membership on the Council shall include the Suitability and Credentialing Executive Agent, the Security Executive Agent, and the Under Secretary of Defense for Intelligence. These four officials collectively shall constitute 'the Security, Suitability, and Credentialing Performance Accountability Council Principals.' The Director of the National Background Investigations Bureau shall also serve as a member of the Council. The Chair shall select a Vice Chair to act in the Chair's absence. The Chair shall have authority to designate officials from additional agencies who shall serve as members of the Council. Council membership shall be limited to Federal Government employees in leadership positions.

"(c) The Council shall be accountable to the President to achieve, consistent with this order, the goals of the executive branch vetting enterprise, and is responsible for driving implementation of reform efforts and enterprise development, ensuring accountability by agencies, ensuring the Executive Agents align their respective processes, and sustaining continuous performance improvement and reform momentum.

"(d) The Council shall:

- "(i) ensure enterprise-wide alignment of suitability, security, credentialing, and as appropriate, fitness processes;
- "(ii) hold agencies accountable for the implementation of suitability, security, fitness, and credentialing processes and procedures;

"(iii) define requirements for enterprise-wide reciprocity management information technology, and develop standards for enterprise-wide information technology;

"(iv) work with agencies to implement continuous performance improvement programs, policies, and procedures; establish annual goals and progress metrics; and prepare annual reports on results;

"(v) ensure and oversee the development of tools and techniques for enhancing background investigations and adjudications;

"(vi) enable discussion and consensus resolution of differences in processes, policies, and procedures among the Council Principals, and other agencies as appropriate;

"(vii) share best practices;

"(viii) advise the Executive Agents on policies affecting the alignment of investigations and adjudications;

"(ix) work with agencies to develop agency policies and procedures to enable sharing of vetting information consistent with the law and the protection of privacy and civil liberties and to the extent necessary for enterprise-wide efficiency, effectiveness, and security;

"(x) monitor performance to identify and drive enterprise-level process enhancements, and make recommendations for changes to executive branch-wide guidance and authorities to resolve overlaps or close policy gaps where they may exist;

"(xi) promote data-driven, transparent, and expeditious policy-making processes; and

"(xii) develop and continuously reevaluate and revise outcome-based metrics that measure the quality, efficiency and effectiveness of the vetting enterprise.

"(e) The Chair shall, to further the goals of the vetting enterprise and to the extent consistent with law, establish subordinate entities, mechanisms, and policies to support and assist in exercising the Council's authorities and responsibilities, and facilitate, consistent with the executive branch's enterprise strategy, adoption of enterprise-wide standards and solutions to ensure security, quality, reciprocity, efficiency, effectiveness, and timeliness. The Chair may assign, in whole or in part, to the head of any agency (solely or jointly) any function within the Council's authority or responsibilities pursuant to this order."

(s) Redesignated section 2.5 of Executive Order 13467 is revised to read as follows:

*"Sec. 2.5. Establishment, Designation, and Functions of Executive Agents.* (a) There are hereby established a Suitability and Credentialing Executive Agent and a Security Executive Agent.

"(b) The Director of the Office of Personnel Management shall serve as the Suitability and Credentialing Executive Agent. With respect to the Suitability Executive Agent functions, the Director:

"(i) shall, pursuant to sections 1103 and 1104 of title 5, United States Code, and the Civil Service Rules, be responsible for suitability and fitness by prescribing suitability standards and minimum standards of fitness for employment; prescribing position designation requirements with regard to the risk to the efficiency and integrity of the service; prescribing applicable investigative standards, policies, and procedures for suitability and fitness; prescribing suitability and fitness reciprocity standards; making suitability determinations; and taking suitability actions;

"(ii) shall issue regulations, guidance, and standards to fulfill the Director's responsibilities related to suitability and fitness under Executive Order 13488 of January 16, 2009, as amended;

"(iii) shall promote reciprocal recognition of suitability or fitness determinations among the agencies, including acting as the final authority to arbitrate and resolve disputes among the agencies involving the reciprocity of investigations and adjudications of suitability and fitness;

"(iv) shall continue to initially approve, and periodically review for renewal, agencies' requests to administer polygraphs in connection with appointment in the competitive service, in consultation with the Security Executive Agent as appropriate;

"(v) shall make a continuing review of agency programs for suitability and fitness vetting to determine whether they are being implemented according to this order;

"(vi) may issue guidelines and instructions to the heads of agencies to promote appropriate uniformity, centralization, efficiency, effectiveness, reciprocity, timeliness, and security in processes relating to determining suitability or fitness; and

"(vii) shall, pursuant to section 1104 of title 5, United States Code, prescribe performance standards and a system of oversight for any suitability or fitness function delegated by the Director to the head of another agency, including uniform and consistent policies and procedures to ensure the effective, efficient, timely, and secure completion of delegated functions.

"(c) With respect to the Credentialing Executive Agent functions, the Director of the Office of Personnel Management:

"(i) shall develop standards for investigations, reinvestigations, and continuous vetting for a covered individual's eligibility for a personal identity verification credential permitting logical and physical access to federally controlled facilities and federally controlled information systems (PIV credential);

"(ii) shall develop adjudicative guidelines for a covered individual's eligibility for a PIV credential;

"(iii) shall develop guidelines on reporting and recording determinations of eligibility for a PIV credential;

"(iv) shall develop standards for unfavorable determinations of eligibility for a PIV credential, including procedures for denying and revoking the eligibility for

a PIV credential, for reconsideration of unfavorable determinations, and for rendering the PIV credential inoperable;

"(v) shall develop standards and procedures for suspending eligibility for a PIV credential when there is a reasonable basis to believe there may be an unacceptable risk pending an inquiry or investigation, including special standards and procedures for imminent risk;

"(vi) shall be responsible for developing uniform and consistent policies and procedures to ensure the effective, efficient, timely, and secure completion of investigations and adjudications relating to eligibility for a PIV credential;

"(vii) may develop guidelines and instructions to the heads of agencies as necessary to ensure appropriate uniformity, centralization, efficiency, effectiveness, and timeliness in processes relating to eligibility for a PIV credential;

"(viii) shall monitor and make a continuing review of agency programs for determining eligibility for a PIV credential to determine whether they are being implemented according to this order; and

"(ix) shall consult to the extent practicable with other agencies with responsibilities related to PIV credentials to ensure that policies and procedures are consistent with law including:

"(A) the Office of Management and Budget, in exercising its responsibilities under section 11331 of title 40, United States Code, section 3553(a) of title 44, United States Code, division A, sections 1086(b)(2) and (b)(3) of Public Law 114–92, and Homeland Security Presidential Directive 12 of August 27, 2004;

"(B) the Department of Homeland Security, in exercising its responsibilities under sections 3553(b), (f), and (g) of title 44, United States Code;

"(C) the Department of Defense, in exercising its responsibilities under section 3553(e) of title 44, United States Code, and division A, sections 1086(a)(1)(E), (b)(1), and (b)(2) of Public Law 114–92;

"(D) the Office of the Director of National Intelligence, in exercising its responsibilities under section 3553(e) of title 44, United States Code, and division A, section 1086(b)(2) of Public Law 114–92;

"(E) the Department of Commerce and the National Institute of Standards and Technology, in exercising their responsibilities under section 278g–3 of title 15, United States Code, and Homeland Security Presidential Directive 12 of August 27, 2004;

"(F) the General Services Administration, in exercising its responsibilities under division A, section 1086(b)(2) of Public Law 114–92; and

"(G) the Federal Acquisition Regulation agencies, in exercising their responsibilities under chapter 137 of title 10, section 121(c) of title 40, and section 20113 of title 51, United States Code.

"(d) In fulfilling the Credentialing Executive Agent function of developing policies and procedures for determining eligibility for a PIV credential and to protect the national security, the Director of the Office of Personnel Management shall coordinate with and obtain the concurrence of the other Council Principals. Agencies with authority to establish standards or guidelines or issue instructions related to PIV credentials shall retain the discretion as to whether to establish policies, guidelines, or instructions developed by the Credentialing Executive Agent.

"(e) The Director of National Intelligence shall serve as the Security Executive Agent. The Security Executive Agent:

- "(i) shall direct the oversight of investigations, reinvestigations, adjudications, and, as applicable, polygraphs for eligibility for access to classified information or eligibility to hold a sensitive position made by any agency;
- "(ii) shall make a continuing review of agencies' national security background investigation and adjudication programs to determine whether they are being implemented according to this order;
- "(iii) shall be responsible for developing and issuing uniform and consistent policies and procedures to ensure the effective, efficient, timely, and secure completion of investigations, polygraphs, and adjudications relating to determinations of eligibility for access to classified information or eligibility to hold a sensitive position;
- "(iv) may issue guidelines and instructions to the heads of agencies to ensure appropriate uniformity, centralization, efficiency, effectiveness, timeliness, and security in processes relating to determinations by agencies of eligibility for access to classified information or eligibility to hold a sensitive position, to include such matters as investigations, polygraphs, adjudications, and reciprocity;
- "(v) may, if consistent with the national security, authorize exceptions to or waivers of national security investigative requirements, and may issue implementing or clarifying guidance as necessary;
- "(vi) shall serve as the final authority to designate an agency or agencies, to the extent that it is not practicable to use the National Background Investigations Bureau, to conduct investigations of persons who are proposed for access to classified information or for eligibility to hold a sensitive position to ascertain whether such persons satisfy the criteria for obtaining and retaining access to classified information or eligibility to hold a sensitive position;
- "(vii) shall serve as the final authority to designate an agency or agencies to determine eligibility for access to classified information or eligibility to hold a sensitive position in accordance with Executive Order 12968 of August 2, 1, 1995, as amended;
- "(viii) shall ensure reciprocal recognition of eligibility for access to classified information or eligibility to hold a sensitive position among the agencies, including acting as the final authority to arbitrate and resolve disputes among the agencies involving the reciprocity of investigations and adjudications of eligibility; and

"(ix) may assign, in whole or in part, to the head of any agency (solely or jointly) any of the functions detailed in (i) through (viii) of this subsection, with the agency's exercise of such assigned functions to be subject to the Security Executive Agent's oversight and with such terms and conditions (including approval by the Security Executive Agent) as the Security Executive Agent determines appropriate.

"(f) Nothing in this section shall be construed in a manner that would limit the authorities of the Director of the Office of Personnel Management, the Director of National Intelligence, or the Secretary of Defense under law."

(t) Redesignated section 2.6 of Executive Order 13467 is revised to read as follows:

*"Sec. 2.6. Roles and Responsibilities of the National Background Investigations Bureau and the Department of Defense.*

"(a) The National Background Investigations Bureau shall:

"(1) serve as the primary executive branch service provider for background investigations for eligibility for access to classified information; eligibility to hold a sensitive position; suitability or, for employees in positions not subject to suitability, fitness for Government employment; fitness to perform work for or on behalf of the Government as a contractor; fitness to work as a nonappropriated fund employee, as defined in Executive Order 13488 of January 16, 2009, as amended; and authorization to be issued a Federal credential for logical and physical access to federally controlled facilities or information systems;

"(2) provide effective, efficient, and secure personnel background investigations for the Federal Government;

"(3) provide the Council information, to the extent permitted by law, on matters of performance, timeliness, capacity, information technology modernization, continuous performance improvement, and other relevant aspects of NBIB operations;

"(4) be headquartered in or near Washington, District of Columbia;

"(5) have dedicated resources, including but not limited to a senior privacy and civil liberties official;

"(6) institutionalize interagency collaboration and leverage expertise across the executive branch;

"(7) continuously improve investigative operations, emphasizing information accuracy and protection, and regularly integrate best practices, including those identified by subject matter experts from industry, academia, or other relevant sources;

"(8) conduct personnel background investigations in accordance with uniform and consistent policies, procedures, standards, and requirements established by the Security Executive Agent and the Suitability and Credentialing Executive Agent exercising its Suitability Executive Agent functions; and

"(9) conduct other personnel background investigations as authorized by law, rule, regulation, or Executive Order."

"(b) The Secretary of Defense shall design, develop, deploy, operate, secure, defend, and continuously update and modernize, as necessary, vetting information technology systems that support all background investigation processes conducted by the National Background Investigations Bureau. Design and operation of the information technology systems for the National Background Investigations Bureau shall comply with applicable information technology standards and, to the extent practicable, ensure security and interoperability with other background investigation information technology systems. The Secretary of Defense shall operate the database in the information technology systems containing appropriate data relevant to the granting, denial, or revocation of eligibility for access to classified information or eligibility for a sensitive position pertaining to military, civilian, or Government contractor personnel, see section 3341(e) of title 50, United States Code, consistent with and following an explicit delegation from the Director of the Office of Personnel Management pursuant to section 1104 of title 5, United States Code."

"(c) Delegations and designations of investigative authority in place on the date of establishment of the National Background Investigations Bureau shall remain in effect until amended or revoked. The National Background Investigations Bureau, through the Director of the Office of Personnel Management, shall be subject to the oversight of the Security Executive Agent in the conduct of investigations for eligibility for access to classified information or to hold a sensitive position; and to the oversight of the Suitability and Credentialing Executive Agent in the conduct of investigations of suitability or fitness and logical and physical access, as provided in section 2.5 of this order. The Council shall hold the National Background Investigations Bureau accountable for the fulfillment of the responsibilities set forth in section 2.6(a) of this order."

(u) Subsections (b) and (c) of redesignated section 2.7 of Executive Order 13467 are revised to read as follows:

"(b) Heads of agencies shall:

"(i) designate, or cause to be designated, as a 'sensitive position,' any position occupied by a covered individual in which the occupant could bring about by virtue of the nature of the position, a material adverse effect on the national security;

"(ii) establish and maintain within their respective agencies, an effective program to ensure that employment and retention of any covered individual within the agency is clearly consistent with the interests of national security and, as applicable, meets standards for eligibility for access to classified information or to hold a sensitive position, suitability, fitness, or credentialing, established by the respective Executive Agent;

"(iii) carry out any function assigned to the agency head by the Chair, and shall assist the Chair, the Council, the Executive Agents, the National Background Investigations Bureau, and the Department of Defense in carrying out any function under sections 2.4, 2.5, and 2.6 of this order;

"(iv) implement any policy or procedure established pursuant to this order;

"(v) to the extent permitted by law, make available to the Council, the Executive Agents, the National Background Investigations Bureau, and the Department of Defense such information as may be requested to implement this order, including information necessary to implement enterprise-wide vetting policies and procedures;

"(vi) except as authorized by section 3341(e)(5) of title 50, United States Code, promptly furnish, or cause to be promptly furnished, to the Office of Personnel Management the information deemed by the Executive Agents to be necessary for purposes of record keeping and reciprocity including, but not limited to, the date on which a background investigation is initiated, the date on which the background investigation is closed, and the specific adjudicative or access decision made. The Executive Agents shall determine the appropriate timeline pursuant to which this information must be reported to the Office of Personnel Management. The Executive Agents shall maintain discretion to determine the scope of information needed for record keeping and reciprocity purposes. The Office of Personnel Management shall regularly provide this information to the Director of National Intelligence for national security purposes.

"(vii) ensure that all actions taken under this order take account of the counterintelligence interests of the United States, as appropriate; and

"(viii) ensure that actions taken under this order are consistent with the President's constitutional authority to:

"(A) conduct the foreign affairs of the United States;

"(B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties;

"(C) recommend for congressional consideration such measures as the President may judge necessary or expedient; and

"(D) supervise the unitary executive branch.

"(c) All investigations being conducted by agencies that develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information that the individual may pose a counterintelligence or terrorist threat, or as otherwise provided by law, shall be referred to the Federal Bureau of Investigation for potential investigation, and may also be referred to other agencies where appropriate."

(v) Section 3 of Executive Order 13467 is revised to read as follows:

*"Sec. 3. General Provisions.* (a) Executive Order 13381 of June 27, 2005, as amended, and Executive Order 10450 of April 27, 1953, as amended, are revoked. By revoking Executive Order 10450 of April 27, 1953, as amended, there is no intent to alter the requirement for an investigation for national security purposes or the "clearly consistent with the interest of national security" standard prescribed by that Executive Order for making the determinations referenced in section 2.7(b)(ii). Further, suitability, fitness, credentialing, and national security eligibility regulations, standards and guidance issued by, or interagency agreements entered into by, the Council, the Executive Agents, or any agency pursuant to Executive Order 10450 of

April 27, 1953, as amended, shall remain valid until superseded. Nothing in this order shall:

- "(i) supersede, impede, or otherwise affect:
    - "(A) Executive Order 10577 of November 23, 1954, as amended;
    - "(B) Executive Order 12333 of December 4, 1981, as amended;
    - "(C) Executive Order 12829 of January 6, 1993, as amended; or
    - "(D) Executive Order 13526 of December 29, 2009; or
  - "(ii) diminish or otherwise affect the denial and revocation procedures provided to individuals covered by Executive Order 10865 of February 20, 1960, as amended; or
  - "(iii) be applied in such a way as to affect any administrative proceeding pending on the date of this order.
- "(b) Executive Order 12968 of August 2, 1995, is amended:
- "(i) by inserting: 'Sec. 3.5. Continuous Evaluation. An individual who has been determined to be eligible for or who currently has access to classified information shall be subject to continuous evaluation as further defined by and under standards (including, but not limited to, the frequency of such evaluation) as determined by the Director of National Intelligence.'; and
  - "(ii) by striking 'the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs' in section 6.3(a) and inserting in lieu thereof 'the Director of National Intelligence shall serve as the final authority';
  - "(iii) by striking 'Security Policy Board' and inserting in lieu thereof 'Security Executive Agent' in each instance;
  - "(iv) by striking 'the Board' in section 1.1(j) and inserting in lieu thereof 'the Security Executive Agent'; and
  - "(v) by inserting 'or appropriate automated procedures' in section 3.1(b) after 'by appropriately trained adjudicative personnel'.
- "(c) Provisions of Executive Order 12968 of August 2, 1995, as amended, that apply to eligibility for access to classified information shall apply to eligibility to hold any sensitive position regardless of whether that sensitive position requires access to classified information, subject to the Security Executive Agent issuing implementing or clarifying guidance regarding requirements for sensitive positions. Nothing in this order shall supersede, impede, or otherwise affect the remainder of Executive Order 12968 of August 2, 1995, as amended.
- "(d) Nothing in this order shall be construed to impair or otherwise affect the:
- "(i) authority granted by law to a department or agency, or the head thereof; or
  - "(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

"(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

"(f) Existing delegations of authority made pursuant to Executive Order 13381 of June 27, 2005, as amended, to any agency relating to granting eligibility for access to classified information shall remain in effect, subject to the exercise of authorities pursuant to this order to revise or revoke such delegation.

"(g) Existing delegations of authority made by the Office of Personnel Management to any agency relating to suitability or fitness shall remain in effect, subject to the exercise of authorities to revise or revoke such delegations.

"(h) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

"(i) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person."

*Sec. 4. General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

The White House,  
January 17, 2017.

[Filed with the Office of the Federal Register, 11:15 a.m., January 19, 2017]

NOTE: This Executive order was published in the *Federal Register* on January 23.

*Categories:* Executive Orders : Executive Branch process for security clearances, suitability and fitness for appointment, and credentialing, modernization efforts.

*Subjects:* Government organization and employees : Executive Branch process for security clearances, suitability and fitness for appointment, and credentialing, modernization efforts.

*DCPD Number:* DCPD201700051.