

113TH CONGRESS
2D SESSION

H. R. 4022

To provide for a strategic plan to reform and improve the security clearance and background investigation processes of the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2014

Mr. LYNCH (for himself and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for a strategic plan to reform and improve the security clearance and background investigation processes of the Federal Government, 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 Re-
5 form Act of 2014”.

1 **SEC. 2. SECURITY CLEARANCE PROCESS REFORM PLAN.**

2 (a) PLAN.—Not later than 6 months after the date
3 of enactment of this Act, the President shall submit a
4 strategic plan to the appropriate congressional committees
5 to improve security clearance and background investiga-
6 tion activities carried out by the Federal Government.

7 (b) CONTENTS OF PLAN.—The plan submitted under
8 subsection (a) shall—

9 (1) develop and establish a continuous evalua-
10 tion or monitoring system that shall—

11 (A) on a continual basis, access Federal,
12 State, and local government and commercially
13 available information, including financial credit
14 history, currency transactions, court records,
15 traffic violations, arrest records, terrorist and
16 criminal watch lists, foreign travel, and online
17 social media;

18 (B) provide real-time updates or notifica-
19 tions with respect to information relevant to ad-
20 judication guidelines concerning whether a
21 cleared individual is eligible for such individ-
22 ual's security clearance; and

23 (C) reduce or eliminate the scope or sched-
24 ule of any periodic reinvestigation of a cleared
25 individual;

26 (2) ensure that—

1 (A) the background of each cleared indi-
2 vidual is monitored on a continual basis; and

3 (B) any covered individual who is not a
4 cleared individual is not subject to continuous
5 evaluation or monitoring;

6 (3) ensure the effective, efficient, and timely
7 completion of background investigations relating to a
8 covered individual's eligibility for a security clear-
9 ance;

10 (4) improve procedures to require information
11 sharing between agencies concerning—

12 (A) potentially derogatory security infor-
13 mation regarding a covered individual that may
14 impact the eligibility of any such individual for
15 a security clearance; and

16 (B) adjudications with respect to any cov-
17 ered individual;

18 (5) enhance cooperation and information shar-
19 ing between any State or local law enforcement
20 agency and any agency;

21 (6) enhance methods for reducing or elimi-
22 nating manual processes with respect to security
23 clearance background investigations, and automating
24 and integrating the elements of such investigations
25 and adjudication processes, including—

1 (A) the security clearance application proc-
2 ess;

3 (B) field investigator reporting;

4 (C) investigation case management;

5 (D) the collection, analysis, storage, re-
6 trieval, and transfer of data and records;

7 (E) the submission of any background in-
8 vestigation report to an agency for adjudication;
9 and

10 (F) records management for security clear-
11 ance adjudication determinations;

12 (7) reduce or eliminate the use of databases
13 and information sources that cannot be accessed and
14 processed electronically, or modify such databases
15 and information sources to enable electronic access
16 and processing;

17 (8) increase the use of digitally processed fin-
18 gerprints as a substitute for ink or paper prints to
19 reduce error rates and improve portability of data;

20 (9) develop Federal Government-wide perform-
21 ance measures, based on the Federal Investigative
22 Standards (as promulgated by the Director and the
23 Director of National Intelligence), to measure the
24 quality of background investigations conducted by
25 the Federal Government;

1 (10) require that, with respect to any back-
2 ground investigation activities, a Federal employee
3 conducts—

4 (A) any final quality or integrity assurance
5 review conducted by an agency of a background
6 investigation;

7 (B) any interview of a covered individual
8 with respect to a background investigation; and

9 (C) any background investigation of a cov-
10 ered individual to determine the person’s eligi-
11 bility for a security clearance at the Top Secret
12 level or higher;

13 (11) develop procedures that ensure that any
14 information collected pursuant to the plan with re-
15 spect to a covered individual, including information
16 collected from online social media, shall be verified
17 for authenticity; and

18 (12) provide a detailed description of the esti-
19 mated costs of implementing the plan.

20 (c) DELEGATION.—The President may select at least
21 one agency to develop or implement the plan required
22 under this section. In the preceding sentence, the term
23 “agency” means—

24 (1) any agency as that term is defined in sec-
25 tion 6(1), but does not include any military depart-

1 ment (as that term is defined in section 102 of title
2 5, United States Code); or

3 (2) the Suitability and Security Clearance Per-
4 formance Accountability Council (as established by
5 Executive Order No. 13467).

6 (d) LEVELS OF SCRUTINY.—The plan required under
7 this section may require different levels of continuous eval-
8 uation scrutiny with respect to Confidential, Secret, or
9 Top Secret or higher security clearances.

10 (e) USE OF PRE-EXISTING SYSTEMS OR DATA-
11 BASES.—In carrying out the requirements of this section,
12 the President may incorporate or enhance any systems or
13 databases operated by the Federal Government, including
14 the database established under section 3001(e) of Public
15 Law 108–458.

16 (f) IMPLEMENTATION.—The President shall fully im-
17 plement the plan required under this section not later than
18 1 year after the date of submission of such plan to the
19 appropriate congressional committees.

20 **SEC. 3. ORGANIZATIONAL CONFLICT OF INTEREST.**

21 Beginning on the date of the enactment of this Act
22 for contracts entered into after such date, the Director
23 of the Office of Personnel Management may not award
24 a contract for—

1 (1) investigative support services to an entity if
2 that entity also has, at the time of award of the con-
3 tract or at any time during the performance of the
4 contract, another contract in effect with the Federal
5 Government (or with another contractor of the Gov-
6 ernment at any tier) to provide background inves-
7 tigation fieldwork services; or

8 (2) background investigation fieldwork services
9 to an entity if that entity also has, at the time of
10 award of the contract or at any time during the per-
11 formance of the contract, another contract in effect
12 with the Federal Government (or with another con-
13 tractor of the Government at any tier) to provide in-
14 vestigative support services.

15 **SEC. 4. STATE AND LOCAL COOPERATION.**

16 (a) REPORT.—Not later than 90 days after the date
17 of enactment of this Act and each year thereafter, the Di-
18 rector shall submit a report to the appropriate congres-
19 sional committees listing any State or local entity covered
20 by the definition of “criminal justice agency” in section
21 9101(a)(1) of title 5, United State Code, that has failed
22 to cooperate with three or more requests of the Director
23 issued under section 9101(b)(1) of such title.

24 (b) WITHHOLDING OF BYRNE-JAG FUNDS.—

1 (1) IN GENERAL.—For any fiscal year after fis-
2 cal year 2015, a jurisdiction that fails, as deter-
3 mined by the Director to substantially comply with
4 criminal history record information requests shall
5 not receive the percentage specified in paragraph (2)
6 of the funds that would otherwise be allocated for
7 the subsequent fiscal year to the jurisdiction under
8 subpart 1 of part E of title I of the Omnibus Crime
9 Control and Safe Streets Act of 1968 (42 U.S.C.
10 3750 et seq.). The Director shall provide the Attor-
11 ney General with a list of any jurisdictions that
12 failed to substantially comply with the criminal his-
13 tory record information requests in the prior fiscal
14 year and the Attorney General shall make the appro-
15 priate amount of reductions.

16 (2) APPLICABLE PERCENTAGES.—The applica-
17 ble percentages are as follows:

18 (A) FIRST YEAR OF NONCOMPLIANCE.—
19 Except as provided in subparagraph (B), for
20 each fiscal year that a jurisdiction fails to sub-
21 stantially comply with criminal history record
22 information requests, the percentage specified is
23 10 percent.

24 (B) SUBSEQUENT YEAR OF NONCOMPLI-
25 ANCE.—For each succeeding consecutive fiscal

1 year after a fiscal year referred to in subpara-
2 graph (A) that a jurisdiction fails to substan-
3 tially comply with criminal history record infor-
4 mation requests, the percentage specified is 10
5 percent multiplied by the number of such con-
6 secutive fiscal years that the jurisdiction has
7 failed to substantially comply with criminal his-
8 tory record information requests (not to exceed
9 100 percent).

10 (3) REALLOCATION.—Amounts not allocated
11 under a program referred to in this section to a ju-
12 risdiction for failure to substantially comply with
13 criminal history record information requests, shall be
14 reallocated under that program to jurisdictions that
15 have not failed to substantially comply with criminal
16 history record information requests, or may be re-
17 allocated to a jurisdiction from which they were
18 withheld to be used solely for the purpose of com-
19 plying with section 9101(b)(1) of title 5, United
20 States Code.

21 (4) NONCOMPLIANCE.—For purposes of this
22 subsection, the term “fails to substantially comply
23 with criminal history record information requests”
24 means failure to comply with 3 or more requests re-
25 ceived during a fiscal year under section 9101(b)(1)

1 of title 5, United States Code, during that fiscal
2 year.

3 (5) RULE OF ATTRIBUTION.—In the case of a
4 jurisdiction that fails to substantially comply with
5 criminal history record information requests, if that
6 jurisdiction is subject to the requirements of section
7 505(d)(4) of the Omnibus Crime Control and Safe
8 Streets Act of 1968 (42 U.S.C. 3755(d)(4)), then
9 the amount of funds that would be provided to other
10 jurisdictions that are party to the joint application
11 required under such section 505(d)(4) may not be
12 reduced and only the funds for the jurisdiction that
13 has failed to substantially comply may be reduced.

14 (c) REQUESTS FROM CONTRACTORS ACTING ON BE-
15 HALF OF COVERED AGENCIES; CLARIFICATION OF PO-
16 LICE RECORDS.—Section 9101 of title 5, United States
17 Code, is amended—

18 (1) by adding at the end the following new sub-
19 section:

20 “(g) Criminal justice agencies shall accept and com-
21 ply with requests for criminal history record information
22 pursuant to this section regardless of whether a request
23 is submitted directly by a covered agency or by a con-
24 tractor of a covered agency acting on the agency’s be-
25 half.”; and

1 (2) in subsection (a)(2),

2 (A) after “criminal charges”, by inserting
3 the following: “(including descriptions of the in-
4 cidents or events leading to or on which the ar-
5 rests, indictments, informations, or other formal
6 charges are based)”; and

7 (B) by adding at the end the following:
8 “The term also includes information pertaining
9 to arrests that do not result in the arrestee
10 being charged with or convicted of a criminal
11 offense.”.

12 **SEC. 5. REPORTS.**

13 (a) **QUALITY REVIEW.**—Not later than 90 days after
14 the date of submission of the plan under section 2 and
15 each year thereafter, the Director shall submit a report
16 to the appropriate congressional committees that—

17 (1) evaluates the quality of background inves-
18 tigations conducted by OPM during the previous
19 year based on the performance measures developed
20 pursuant to the plan submitted under section 2; and

21 (2) includes information on the percentage of
22 background investigations conducted by OPM that
23 meet Federal Investigative Standards (as promul-
24 gated by the Director and the Director of National
25 Intelligence).

1 (b) REPORTS UNDER THE INTELLIGENCE REFORM
2 AND TERRORISM PREVENTION ACT OF 2004.—Section
3 3001(h)(1) of the Intelligence Reform and Terrorism Pre-
4 vention Act of 2004 (50 U.S.C. 3341(h)(1)) is amended
5 by striking “through 2011”.

6 **SEC. 6. DEFINITIONS.**

7 In this Act:

8 (1) AGENCY.—Except as provided otherwise in
9 this Act, the term “agency” has the meaning given
10 that term in section 3001(a)(1) of Public Law 108–
11 458 and includes the United States Postal Service
12 and the Postal Regulatory Commission.

13 (2) APPROPRIATE CONGRESSIONAL COMMIT-
14 TEES.—The term “appropriate congressional com-
15 mittees” means—

16 (A) the Committee on Oversight and Gov-
17 ernment Reform of the House of Representa-
18 tives;

19 (B) the Committee on Homeland Security
20 and Governmental Affairs of the Senate;

21 (C) the Permanent Select Committee on
22 Intelligence of the House of Representatives;
23 and

24 (D) the Select Committee on Intelligence
25 of the Senate.

1 (3) BACKGROUND INVESTIGATION.—The term
2 “background investigation” means any investigation
3 or reinvestigation required for the purpose of deter-
4 mining whether a covered individual may hold a se-
5 curity clearance issued by an agency.

6 (4) BACKGROUND INVESTIGATION FIELDWORK
7 SERVICES.—The term “background investigation
8 fieldwork services” means the investigatory fieldwork
9 conducted to determine a covered individual’s eligi-
10 bility for a security clearance, including interviews of
11 the applicant or friends and family of such appli-
12 cant, reviews of educational or employment records,
13 law checks, or reviews of credit history.

14 (5) CLEARED INDIVIDUAL.—The term “cleared
15 individual” means an individual, including any em-
16 ployee of an agency, member of the uniformed serv-
17 ices, contractor of an agency, or individual employee
18 of such a contractor, who holds a valid security
19 clearance issued by an agency.

20 (6) COVERED INDIVIDUAL.—The term “covered
21 individual” means an individual, including any em-
22 ployee of an agency, member of the uniformed serv-
23 ices, contractor of an agency, or individual employee
24 of such a contractor, who—

1 (A) is being considered by an agency for a
2 security clearance; or

3 (B) is a cleared individual.

4 (7) DIRECTOR.—The term “Director” means
5 the Director of the Office of Personnel Management.

6 (8) FEDERAL EMPLOYEE.—The term “Federal
7 employee” has the meaning given the term “em-
8 ployee” in section 2105 of title 5, United States
9 Code, and includes—

10 (A) any member of the uniformed services;
11 and

12 (B) any officer or employee of the United
13 States Postal Service or the Postal Regulatory
14 Commission.

15 (9) INVESTIGATIVE SUPPORT SERVICES.—The
16 term “investigative support services” means the cler-
17 ical, administrative, and technical support services
18 provided to various functions critical to the back-
19 ground investigative process, including initial proc-
20 essing and scheduling of investigative requests, per-
21 forming file maintenance, imaging case documents,
22 processing mail, performing quality review of back-
23 ground investigations, and executing case closing
24 processes.

1 (10) JURISDICTION.—The term “jurisdiction”
2 means a State or unit of local government, as such
3 terms are defined in section 901 of the Omnibus
4 Crime Control and Safe Streets Act of 1968.

5 (11) OPM.—The term “OPM” means the Of-
6 fice of Personnel Management.

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