

Calendar No. 606113TH CONGRESS
2^D SESSION**S. 1744**

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2013

Mr. TESTER (for himself, Mr. PORTMAN, Mrs. MCCASKILL, Mr. BEGICH, Mr. BAUCUS, Mr. NELSON, Mr. JOHNSON of Wisconsin, and Ms. AYOTTE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 20, 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 *italic*]

A BILL

To strengthen the accountability of individuals involved in misconduct affecting the integrity of background investigations, to update guidelines for security clearances, 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 “administrative leave”—

7 (A) means a period of administratively au-
8 thorized absence from official duties by an em-
9 ployee of an agency without loss of pay or
10 charge to the leave account of the employee;
11 and

12 (B) does not include the absence of an em-
13 ployee of an agency who is performing officially
14 sanctioned duties away from the usual work site
15 or that are different from the regular duties of
16 the employee;

17 (2) the term “agency” has the meaning given
18 that term in section 3001 of the Intelligence Reform
19 and Terrorism Prevention Act of 2004 (50 U.S.C.
20 3341);

21 (3) the term “appropriate congressional com-
22 mittees” means—

23 (A) the Committee on Homeland Security
24 and Governmental Affairs and the Select Com-
25 mittee on Intelligence of the Senate; and

1 (B) the Committee on Oversight and Gov-
2 ernment Reform and the Permanent Select
3 Committee on Intelligence of the House of Rep-
4 resentatives;

5 (4) the term “background investigation” means
6 any investigation required for the purpose of deter-
7 mining whether an individual may be appointed to,
8 or continue to occupy, a position, as an employee or
9 contractor of an agency, that requires its occupant
10 to have access to classified information or secure
11 government facilities;

12 (5) the term “covered contract” means a con-
13 tract—

14 (A) between an agency and a prime con-
15 tractor;

16 (B) between a prime contractor and a sub-
17 contractor; and

18 (C) between subcontractors;

19 (6) the term “debar”—

20 (A) means to prohibit an individual from
21 being appointed to, or continuing to occupy, a
22 position, as a contractor of an agency, that re-
23 quires its occupant to supervise, conduct, or
24 otherwise administer background investigations;
25 and

1 (B) shall be construed within the param-
 2 eters and scope of debarment under subpart 9.4
 3 of part 9 of title 48, Code of Federal Regula-
 4 tions, or any successor thereto;

5 (7) the term “Director” means the Director of
 6 the Office of Personnel Management;

7 (8) the term “prime contractor” means a per-
 8 son who enters into a contract with an agency;

9 (9) the term “subcontractor” means a person
 10 who has contracted with a prime contractor or with
 11 another subcontractor to perform a contract with an
 12 agency; and

13 (10) the term “terminate” means to prohibit an
 14 individual from being appointed to, or continuing to
 15 occupy, a position, as an employee of an agency,
 16 that requires its occupant to supervise, conduct, or
 17 otherwise administer background investigations.

18 **SEC. 3. TERMINATION AND DEBARMENT OF INDIVIDUALS**
 19 **INVOLVED IN MISCONDUCT AFFECTING THE**
 20 **INTEGRITY OF THE BACKGROUND INVES-**
 21 **TIGATIONS PROGRAM OF THE OFFICE OF**
 22 **PERSONNEL MANAGEMENT.**

23 (a) **TERMINATION.**—The Director shall terminate an
 24 individual employed by the Office of Personnel Manage-
 25 ment if the Director determines, based upon a preponder-

1 anee of the evidence, that the individual was intentionally
2 involved in misconduct affecting the integrity of the back-
3 ground investigations program of the Office of Personnel
4 Management, including—

5 (1) falsification of a background investigation
6 report;

7 (2) fraud relating to a background investigation
8 report; or

9 (3) other serious misconduct that compromises
10 the integrity of a background investigation report.

11 (b) DEBARMENT.—The Director shall debar an indi-
12 vidual employed or contracted by a person under contract
13 with the Office of Personnel Management if the Director
14 determines, based upon a preponderance of the evidence,
15 that the individual was intentionally involved in mis-
16 conduct that has the potential to affect the integrity of
17 the background investigations program of the Office of
18 Personnel Management, including—

19 (1) falsification of a background investigation
20 report;

21 (2) fraud relating to a background investigation
22 report; or

23 (3) other serious misconduct that compromises
24 the integrity of a background investigation report.

25 (c) SUSPENSION.—

1 (1) IN GENERAL.—The Director shall suspend
2 an individual employed or contracted by a person
3 under contract with the Office of Personnel Manage-
4 ment if the Director determines, based upon a pre-
5 ponderance of the evidence, that an investigation is
6 required to determine whether the individual was in-
7 tentionally involved in misconduct affecting the in-
8 tegrity of the background investigations program of
9 the Office of Personnel Management, including—

10 (A) falsification of a background investiga-
11 tion report;

12 (B) fraud relating to a background inves-
13 tigation report; or

14 (C) other serious misconduct that com-
15 promises the integrity of a background inves-
16 tigation report.

17 (2) DURATION OF SUSPENSION.—An individual
18 suspended under paragraph (1) shall remain sus-
19 pended until such time that the Director determines
20 that the individual was not intentionally involved in
21 misconduct affecting the integrity of the background
22 investigations program of the Office of Personnel
23 Management.

24 (d) ADMINISTRATIVE LEAVE.—

1 (1) IN GENERAL.—The Director shall place on
2 administrative leave an individual employed by the
3 Office of Personnel Management if the Director de-
4 termines, based upon a preponderance of the evi-
5 dence, that an investigation is required to determine
6 whether the individual was intentionally involved in
7 misconduct affecting the integrity of the background
8 investigations program of the Office of Personnel
9 Management, including—

10 (A) falsification of a background investiga-
11 tion report;

12 (B) fraud relating to a background inves-
13 tigation report; or

14 (C) other serious misconduct that com-
15 promises the integrity of a background inves-
16 tigation report.

17 (2) PERIOD OF ADMINISTRATIVE LEAVE.—An
18 individual placed on administrative leave under para-
19 graph (1) shall remain on administrative leave until
20 such time that the Director determines that the indi-
21 vidual was not intentionally involved in misconduct
22 affecting the integrity of the background investiga-
23 tions program of the Office of Personnel Manage-
24 ment.

1 (e) ~~PROCEDURES.~~—The Director shall establish pro-
2 cedures under which subsections (a) through (d) shall be
3 carried out, which shall—

4 (1) with respect to employees—

5 (A) ensure that—

6 (i) the employee is provided with no-
7 tice and opportunity to be heard; and

8 (ii) the determination whether to ter-
9 minate or reinstate the employee is made
10 expeditiously; and

11 (B) be in accordance with chapters 5 and
12 75 of title 5, United States Code; and

13 (2) with respect to individuals employed or con-
14 tracted by persons under contract with the Office of
15 Personnel Management, shall be carried out in ac-
16 cordance with section 9.406-3 of title 48, Code of
17 Federal Regulations, or any successor thereto.

18 (f) ~~MANDATORY DISCLOSURE.~~—Any covered contract
19 shall include a provision requiring the prime contractor
20 or subcontractor to disclose any misconduct of the type
21 described under subsections (a) through (d) and any viola-
22 tion of Federal law to the agency in a timely manner, and
23 in no event later than 90 days after the date that the mis-
24 conduct is discovered by the prime contractor or subcon-
25 tractor.

1 (g) REPORTING.—Not later than 1 year after the
2 date of enactment of this Act, and annually thereafter,
3 the Director shall submit to the appropriate congressional
4 committees a report providing—

5 (1) the number of individuals terminated under
6 subsection (a);

7 (2) the number of individuals debarred under
8 subsection (b);

9 (3) the number of individuals suspended under
10 subsection (c);

11 (4) the number of individuals placed on admin-
12 istrative leave under subsection (d); and

13 (5) details of the misconduct that resulted in
14 each termination under subsection (a), debarment
15 under subsection (b), suspension under subsection
16 (c), and placement on administrative leave under
17 subsection (d).

18 **SEC. 4. REVIEW AND UPDATE OF CLASSIFIED INFORMA-**
19 **TION GUIDANCE.**

20 (a) GUIDELINES.—Not later than 180 days after the
21 date of enactment of this Act, the President shall review
22 and update guidance for agencies that shall be used to—

23 (1) determine whether a position requires its
24 occupant to have a security clearance;

1 (2) implement the guidance provided in para-
2 graph (1), including quality controls; and

3 ~~(3) not less frequent than every 5 years, review~~
4 and, if necessary, revise the designation of a position
5 as requiring its occupant to have access to classified
6 information or secure government facilities.

7 (b) **REPORTS TO CONGRESS.**—Not later than 30 days
8 after a review under subsection (a)(2), the President shall
9 submit to the appropriate congressional committees a re-
10 port on any issues identified in the review, and any up-
11 dates made, under subsection (a)(2).

12 (c) **NO CHANGE IN AUTHORITY.**—Nothing in this
13 section limits or expands the authority of any agency to
14 designate a position as requiring its occupant to have ac-
15 cess to classified information or secure government facili-
16 ties.

17 **SECTION 1. SHORT TITLE.**

18 *This Act may be cited as the “Security Clearance Ac-
19 countability, Reform, and Enhancement Act”.*

20 **SEC. 2. DEFINITIONS.**

21 *In this Act—*

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

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

1 (A) *in the case of a prime contractor for a*
2 *covered contract, the agency with which the*
3 *prime contractor entered the covered contract; or*

4 (B) *in the case of a subcontractor for a cov-*
5 *ered contract, any agency on whose behalf the*
6 *subcontractor is performing work under the cov-*
7 *ered contract;*

8 (3) *the term “appropriate congressional commit-*
9 *tees” means—*

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

13 (B) *the Committee on Oversight and Gov-*
14 *ernment Reform and the Permanent Select Com-*
15 *mittee on Intelligence of the House of Represent-*
16 *atives;*

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

20 (A) *eligibility of a covered individual for*
21 *logical and physical access to federally controlled*
22 *facilities or information systems;*

23 (B) *suitability or fitness of a covered indi-*
24 *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 contract*
8 *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 contract*
13 *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 inves-*
25 *tigation conducted by or for an agency with inves-*

1 *tigative authority to conduct background investiga-*
 2 *tions, including—*

3 *(A) falsification of any information relating*
 4 *to a background investigation; or*

5 *(B) other serious misconduct that com-*
 6 *promises the integrity of a background investiga-*
 7 *tion;*

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 or*
 13 *with another subcontractor to perform a contract on*
 14 *behalf of an agency.*

15 **SEC. 3. 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 has*
 21 *engaged in covered misconduct, the employee shall be*
 22 *found unfit for Federal employment.*

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

1 *agency procedures applicable to investigating alleged*
2 *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 WORK*
13 *UNDER A COVERED CONTRACT.—If an appropriate*
14 *agency, prime contractor, or subcontractor determines*
15 *that an individual performing work under a covered*
16 *contract has engaged in covered misconduct, the indi-*
17 *vidual shall be ineligible to perform background in-*
18 *vestigations 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 by*
23 *an employee of the prime contractor or subcontractor*
24 *not later than 24 hours after the prime contractor or*

1 *subcontractor discovers the alleged covered mis-*
2 *conduct.*

3 (3) *INVESTIGATION OF COVERED MISCONDUCT.—*

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

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

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

1 (5) *MODIFICATION OF EXISTING CONTRACTS.*—
 2 *Not later than 30 days after the date of enactment of*
 3 *this Act, any covered contract that is in effect and*
 4 *was entered into before the date of enactment of this*
 5 *Act shall be modified to include the provisions re-*
 6 *quired 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 Presi-*
 9 *dent shall submit to the appropriate congressional commit-*
 10 *tees a report providing—*

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

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

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

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

19 **SEC. 4. REVIEW AND UPDATE OF POSITION DESIGNATION**
 20 **GUIDANCE.**

21 (a) *GUIDELINES.*—

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

1 *if appropriate, update the guidance the President*
 2 *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 de-*
 9 *termined 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 Presi-*
 15 *dent shall submit to the appropriate congressional commit-*
 16 *tees 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 sec-*
 21 *tion limits or expands the authority of any agency to des-*
 22 *ignate a position as sensitive or as requiring its occupant*
 23 *to have access to classified information.*

Amend the title so as to read: “A bill 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.”.

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2^D SESSION

S. 1744

A BILL

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title