

113TH CONGRESS
1ST 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, and Mr. JOHNSON of Wisconsin) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “administrative leave”—

2 (A) means a period of administratively au-
3 thorized absence from official duties by an em-
4 ployee of an agency without loss of pay or
5 charge to the leave account of the employee;
6 and

7 (B) does not include the absence of an em-
8 ployee of an agency who is performing officially
9 sanctioned duties away from the usual work site
10 or that are different from the regular duties of
11 the employee;

12 (2) the term “agency” has the meaning given
13 that term in section 3001 of the Intelligence Reform
14 and Terrorism Prevention Act of 2004 (50 U.S.C.
15 3341);

16 (3) the term “appropriate congressional com-
17 mittees” means—

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

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

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

8 (5) the term “covered contract” means a con-
9 tract—

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

12 (B) between a prime contractor and a sub-
13 contractor; and

14 (C) between subcontractors;

15 (6) the term “debar”—

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

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

1 (7) the term “Director” means the Director of
2 the Office of Personnel Management;

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

5 (9) the term “subcontractor” means a person
6 who has contracted with a prime contractor or with
7 another subcontractor to perform a contract with an
8 agency; and

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

14 **SEC. 3. TERMINATION AND DEBARMENT OF INDIVIDUALS**
15 **INVOLVED IN MISCONDUCT AFFECTING THE**
16 **INTEGRITY OF THE BACKGROUND INVES-**
17 **TIGATIONS PROGRAM OF THE OFFICE OF**
18 **PERSONNEL MANAGEMENT.**

19 (a) **TERMINATION.**—The Director shall terminate an
20 individual employed by the Office of Personnel Manage-
21 ment if the Director determines, based upon a preponder-
22 ance of the evidence, that the individual was intentionally
23 involved in misconduct affecting the integrity of the back-
24 ground investigations program of the Office of Personnel
25 Management, including—

1 (1) falsification of a background investigation
2 report;

3 (2) fraud relating to a background investigation
4 report; or

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

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

15 (1) falsification of a background investigation
16 report;

17 (2) fraud relating to a background investigation
18 report; or

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

21 (c) SUSPENSION.—

22 (1) IN GENERAL.—The Director shall suspend
23 an individual employed or contracted by a person
24 under contract with the Office of Personnel Manage-
25 ment if the Director determines, based upon a pre-

1 ponderance of the evidence, that an investigation is
2 required to determine whether the individual was in-
3 tentiously involved in misconduct affecting the in-
4 tegrity of the background investigations program of
5 the Office of Personnel Management, including—

6 (A) falsification of a background investiga-
7 tion report;

8 (B) fraud relating to a background inves-
9 tigation report; or

10 (C) other serious misconduct that com-
11 promises the integrity of a background inves-
12 tigation report.

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

20 (d) ADMINISTRATIVE LEAVE.—

21 (1) IN GENERAL.—The Director shall place on
22 administrative leave an individual employed by the
23 Office of Personnel Management if the Director de-
24 termines, based upon a preponderance of the evi-
25 dence, that an investigation is required to determine

1 whether the individual was intentionally involved in
2 misconduct affecting the integrity of the background
3 investigations program of the Office of Personnel
4 Management, including—

5 (A) falsification of a background investiga-
6 tion report;

7 (B) fraud relating to a background inves-
8 tigation report; or

9 (C) other serious misconduct that com-
10 promises the integrity of a background inves-
11 tigation report.

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

20 (e) PROCEDURES.—The Director shall establish pro-
21 cedures under which subsections (a) through (d) shall be
22 carried out, which shall—

23 (1) with respect to employees—

24 (A) ensure that—

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

3 (ii) the determination whether to ter-
4 minate or reinstate the employee is made
5 expeditiously; and

6 (B) be in accordance with chapters 5 and
7 75 of title 5, United States Code; and

8 (2) with respect to individuals employed or con-
9 tracted by persons under contract with the Office of
10 Personnel Management, shall be carried out in ac-
11 cordance with section 9.406–3 of title 48, Code of
12 Federal Regulations, or any successor thereto.

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

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

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

3 (2) the number of individuals debarred under
4 subsection (b);

5 (3) the number of individuals suspended under
6 subsection (c);

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

9 (5) details of the misconduct that resulted in
10 each termination under subsection (a), debarment
11 under subsection (b), suspension under subsection
12 (c), and placement on administrative leave under
13 subsection (d).

14 **SEC. 4. REVIEW AND UPDATE OF CLASSIFIED INFORMA-**
15 **TION GUIDANCE.**

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

19 (1) determine whether a position requires its
20 occupant to have a security clearance;

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

23 (3) not less frequent than every 5 years, review
24 and, if necessary, revise the designation of a position

1 as requiring its occupant to have access to classified
2 information or secure government facilities.

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

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

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