



B-132376

Released.

The Honorable Warren G. Magnuson
Chairman, Committee on
Appropriations
United States Senate

JUN 9 1978

Dear Mr. Chairman:

Our December 16, 1977, report, "Proposals to Resolve Long-standing Problems in Investigations of Federal Employees" (FPCD-77-64) discussed the Federal program for investigating the suitability of Federal employees, its problems and the actions needed. The Civil Service Commission is primarily responsible for conducting the investigations. Our recommendations in the report, when implemented, would establish a sound statutory base for the investigations; provide a means to identify and adequately investigate persons in positions with sensitive duties, and greatly reduce the investigation, potential for invasion of privacy, and collection, use and dissemination of information for the vast majority of Government employees.

We obtained formal comments on the report from the Commission and the Department of Justice. Their comments and our position were discussed in the original report. After the report was issued, the Department of Defense provided comments that generally agreed with our position. DOD is heavily involved in personnel investigations, and it uses the Commission's investigations for its civilian employees.

On February 16, 1978, the Commission advised you of their proposed corrective actions, as required by Section 236 of the Legislative Reorganization Act of 1970. The Commission agrees with the findings and principles recommended in our report, and some of the actions taken by it appear adequate. Other proposed actions remain inadequate and will not solve several of the critical issues we identified in our report.

Our reasons why we believe some of the Commission's proposed actions are inadequate are in enclosure I. The views of Defense and Justice are also provided in enclosures II and III.

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This information is also being furnished today to the Chairmen, House Committee on Appropriations; Senate Committee on Governmental Affairs; House Committee on Government Operations; and House Committee on Post Office and Civil Service. It is also being sent to the Director, Office of Management and Budget; the Attorney General; and the Chairman, Civil Service Commission.

Sincerely yours,

R.F.KELLER

Acting

Comptroller General
of the United States

Enclosures

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EVALUATION OF THE CIVIL SERVICE COMMISSION'SCOMMENTS ON OUR DECEMBER 16, 1977, REPORTBACKGROUND

Almost everyone entering Federal service is investigated to make sure he or she is reliable, trustworthy, loyal, and of good character. Executive Order 10450, dated April 27, 1953, authorizes investigations by the Civil Service Commission (CSC). The results of these investigations are adjudicated under separate and unrelated Civil Service laws and regulations. Other authority for investigations and adjudications is dispersed through various laws, regulations, and Executive orders.

Executive Order 10450 united previously separate suitability, security, and loyalty programs under the framework of a security program. The consolidation of the three programs under one Executive order has been a source of confusion since shortly after it was issued. Also, CSC has had to modify its investigative process to comply with constraints in new laws and court decisions. The cumulative effect of such constraints has been to

- reduce the authority of employing agencies to remove employees under the provisions of Executive Order 10450 and
- limit CSC's ability to obtain information bearing on an applicant's or employee's suitability for employment.

Executive Order 10450 authorizes two kinds of investigations--(1) full field and (2) national agency check and inquiry (NACI). Full field investigations include a check by CSC of Federal agency arrest and investigative records and personal interviews and checks of local sources by CSC investigators. The NACI also includes a check of Federal agency arrest and investigative records but uses only written inquiries to check local sources.

Federal regulations make agency heads responsible for analyzing and classifying positions according to whether the positions are

- critical sensitive,
- noncritical sensitive, or
- nonsensitive.

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The current regulations provide clear criteria as to how to categorize high-level policymaking positions and positions with duties requiring access to classified defense information. However, they are unclear as to how the agencies should categorize other positions, and CSC has only three people to help the agencies in this program. Consequently, the agencies have not used the categories consistently.

CSC regulations require agencies to identify positions as noncritical sensitive if they require access to secret or confidential defense information. The regulations do not discuss other sensitive duties which should be classified as noncritical sensitive. We think this category should include those positions with potential to adversely affect agency operations on less than a national scope.

These classifications control whether employees appointed to the positions must be subjected to a full field investigation or to a less intense NACI. CSC conducts a full field investigation for all positions classified critical sensitive. These positions have duties critical to national security or require the highest degree of trust. CSC conducts a NACI for positions classified noncritical sensitive or nonsensitive.

Since agencies rely on the NACI investigation for information to determine the suitability of occupants of sensitive positions, CSC needs to establish controls to make sure that

- responses to requests for information are obtained,
- additional investigations are made when appropriate, and
- the investigation is not arbitrarily reduced.

On the other hand, the scope of the present NACI investigation seems excessive for the vast majority of positions which have no duties materially affecting agency operations.

Because agencies have authority to adjudicate the suitability of nonsensitive employees, CSC disseminates all the derogatory information collected to the employing agency, even though much of it is irrelevant to suitability, security, or loyalty determinations. Yet, some agencies have no way to gather additional information to put the derogatory information into perspective. CSC keeps the information for at least 20 years, and many

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agencies retain it throughout the employee's career. CSC has no overview on how the agencies use the information.

RECOMMENDATION TO THE CONGRESS

We recommended that the Congress consolidate into one law the authority to investigate and judge the suitability of Federal employees, including the potential of employees in sensitive positions to impair national security. We said the Congress should consider:

- Restrictions imposed on personnel investigations by other laws, such as the Privacy Act of 1974, and court decisions protecting individuals' constitutional rights.
- Whether CSC should investigate occupants of nonsensitive positions only to determine prior criminal conduct, leaving to employing agencies the responsibility for assessing applicants' efficiency.
- The need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment.
- The scope of investigation needed for the several levels of security clearances granted Federal employees.
- Whether there is a need in the legislation for provisions to aid CSC in gathering local law enforcement information; for example, reimbursing local law enforcement agencies for supplying information, receiving assistance from Federal law enforcement agencies, or clarifying CSC's legal authority to have local arrest information.

CSC comments

CSC agrees that a consolidation of investigative authority is needed. However, CSC believes the consolidation can best be accomplished by an Executive order. On the other hand CSC says it needs help from the Congress regarding several of the problems we think the Congress should consider in drafting legislation. For example CSC said:

- There is a need for the Congress or the Attorney General to reconcile any conflicts between the intent and application of restrictions imposed on personnel investigations by other laws, such as the Privacy

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Act, and court decisions. There is also a need to prescribe the extent to which information related to exercise of first amendment rights may be collected, maintained, disseminated, and used in the adjudicative process.

--It needs definitive guidelines from the Congress or the Attorney General regarding disloyal acts which should bar Federal employment.

--It would welcome assistance from the Congress in obtaining information from local enforcement agencies.

Evaluation of CSC comments

We do not agree that an Executive order would be adequate for more than an interim period until legislation could be drafted. Since new authority must consider restrictions placed on personnel investigations by other laws and court decisions, we believe it is imperative that Congress define the basic requirements for investigating and adjudicating the suitability and security of Government employees.

One problem facing CSC and other investigative agencies is the difficulties in balancing the goals of protecting our national security and welfare and the recent legislation and court decisions protecting the constitutional rights and privacy of individuals. In this regard, the Supreme Court has said:

"Whenever constitutional limits upon the investigative power of Congress have to be drawn by this court, it ought only to be done after Congress has demonstrated its full awareness of what is at stake by unequivocally authorizing an inquiry of dubious limits. Experience admonishes us to tread warily in this domain."

We believe that only the Congress should authorize investigations which are designed to protect the welfare and security of the Government. Since investigations almost

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inevitably infringe on the rights and privacy of individuals, the extent of such infringement should be determined only after careful consideration by the Congress. It should be expected, as has happened in the past, that the necessity, scope, and use of investigations will be tested in the courts. For these reasons we believe another Executive order would eventually result in another fragmented approach to solving the problems.

Department of Justice comments

Justice stated it agrees on the need for legislation to consolidate the authority for suitability investigations into one law. This law would not conflict with the Privacy Act and would define in a manner acceptable to the courts the kinds of acts which disqualify an individual from Federal employment. Justice emphasized the need for legislation to establish goals and limitations of personnel investigations and the criteria for judging the suitability and trustworthiness of Federal employees. Justice also agrees the legislation should contain guidelines for the collection and dissemination of information by investigative agencies.

Department of Defense (DOD) comments

DOD agrees there is a need for a new and consolidated legislative basis for the Federal personnel security program. DOD states that if loyalty is to continue as a standard for Federal employment, as well as access to classified information, then it must be specifically defined so that Federal investigative agencies will understand their investigative authority and Federal personnel security adjudicators will know which activities are disqualifying.

RECOMMENDATION TO CSC TO IMPROVE
EMPLOYING AGENCIES' CONSISTENCY
IN CLASSIFYING POSITIONS

To improve employing agencies' consistency in classifying positions so that occupants of those positions are appropriately investigated, we recommended that CSC establish criteria which will provide agencies clear instructions on how to classify positions into three categories based on whether the position duties would enable an occupant to have (1) a materially adverse effect on national security and/or a materially adverse effect on other national interests, (2) a materially adverse effect on agency operations, or (3) no materially adverse

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effect on agency national interest. These classifications should then be used as the communication tool for designating the scope of the investigation needed, the responsibility for adjudication, and the need to disseminate investigative results.

CSC comments

CSC has proposed two classification categories, sensitive and nonsensitive, to replace the three existing categories. The CSC proposal calls for the following criteria to be applied in designating a position as sensitive, which would require a full field investigation. All other positions would be nonsensitive and require an NACI.

- (1) Access to information classified as Secret or Top Secret under Executive Order 11652.
- (2) Duties involved in the conduct of foreign affairs.
- (3) Approval of plans, policies, or programs which affect the overall operations of a department, agency, or organizational component; that is, policymaking or policy-determining positions.
- (4) Investigative duties, the issuance of personnel security clearances, or the making of personnel security determinations.
- (5) Duties involved in approving the collection, grant, loan, payment, or other use of property or funds of high value, or other duties demanding the highest degree of public trust and confidence.
- (6) Duties involved in the enforcement of laws, or responsibilities for the protection of individuals or property.
- (7) Duties, whether performed by Federal employees or contractors, involved in the design, operation, or maintenance of Federal computer systems, or access to data contained in manual or automated files and records or Federal computer systems, when such data relates to national security, personal, proprietary or economically valuable information, or when the duties or data relate to distribution of funds, requisition of supplies, or similar functions.

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- (8) Duties involved in or access to areas which have a critical impact on the national security, economic well-being of the Nation, or public health or safety.

CSC also said that regardless of criteria, placing a position in a specific designation is judgmental, and the agency is in the best position to make that decision. CSC would be glad to provide assistance to the extent it is able.

Evaluation of CSC comments

In our original report we disagreed with CSC's proposed action to use only two classifications, sensitive and nonsensitive. After reviewing the detailed criteria CSC now proposes as corrective action, we still believe that CSC's proposal is inadequate.

It is very important to provide for two levels of positions which have sensitive duties, instead of the one recommended by CSC. Recognizing this necessity will require more definitive guidelines by CSC than proposed in the previous criteria. These criteria do not provide definitive guidelines for some duties which CSC believes are sensitive, nor does it recognize that there are degrees of sensitivity. Duties described in criteria 5, 7, and 8 are particularly vague and could be interpreted to cover vast numbers of Federal employees or even entire agencies. Although some classifications may be subjective, we believe that better criteria will reduce the number of such judgmental decisions.

Using two sensitive categories instead of one can greatly reduce the overall cost of investigating Federal employees while providing the protection the Government needs. Using our recommendation, fewer expensive full field investigations would be required, with greater use of less expensive controlled NACI.

We agree with CSC that those positions which have very sensitive duties having an impact on national welfare or security should be sensitive and subject to a full field investigation. Examples are top agency officials and other positions with access to top-secret defense information. We agree with CSC that distinct and different reasons are needed to categorize positions based on access to classified defense information from those which can affect accomplishment of agency missions.

However, there needs to be a separate classification for positions which have sensitive duties which can have less

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than a national impact on agency operations or DOD security matters. CSC does not agree, and its proposal does not prescribe specific criteria for these positions. As a result, we believe agencies will continue to be confused on which positions to classify as sensitive. In addition, the proposed criteria will require that a full field investigation be conducted for all sensitive positions and, as previously noted, at significantly higher costs over that of an NACI. The NACI, if improved as we have recommended, would be an adequate and cost-effective investigation. The primary difference between the full field investigation and improved NACI would be the use of controlled written inquiries for the NACI instead of investigators. Followups by personal investigation should be made as necessary. Further, we do not believe that CSC has sufficiently analyzed this situation to satisfactorily determine the level of investigation needed for access to secret information.

For the third classification CSC should provide agencies with adequate criteria to identify positions which are nonsensitive. A criterion to be used would consider the nature of the duties of such positions where close supervision can prevent the compromise or successful achievement of agency missions. For such positions a check of criminal misconduct should be adequate. As a result of court decisions, adverse action can rarely be taken against occupants of these positions except for prior criminal conduct.

Justice comments

Justice states that our recommendations are realistic. Justice also emphasizes the need to identify in a specific group those positions which are really sensitive. Justice agrees with us that three categories are needed to improve the consistency in classifying positions and to insure that persons in sensitive positions are appropriately investigated.

DOD comments

DOD states that CSC's proposal for two categories is inconsistent with the concept of structuring the scope of investigations according to the degree of sensitivity. Further it would be inconsistent with DOD investigative policy, which has long been applied in the military and industrial personnel security programs. DOD also cites the overwhelming cost increases which would result from requiring a full field investigation for all occupants of sensitive positions.

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RECOMMENDATIONS TO CSC TO INSURE
THAT OCCUPANTS OF SENSITIVE POSITIONS
ARE PROPERLY INVESTIGATED

CSC responded to our original report describing several actions under way or planned to correct the weaknesses in the NACI process. We disagree with some of the actions. CSC's subsequent response regarding corrective action are the same as those we believe are inadequate.

First recommendation

We recommended that CSC establish controls which insure that written inquiries are responded to and used for adjudication.

CSC comments

CSC commented that although it is now retaining all vouchers (responses to inquiries) and using them in the adjudicative process, it cannot insure that all vouchers sent will produce a response. It believes it cannot require a response from those reluctant to respond, nor spend the time and money to track down addressees who have relocated.

Evaluation of CSC comments

CSC describes a realistic problem, but its response does not show it has established controls and criteria to adequately investigate occupants of noncritical sensitive positions.

Retaining all vouchers received and using them in adjudication is a positive action, but this action alone does not assure that any responses are received. Criteria based on studies of relevant and productive sources should be developed to make sure additional effort is expended to obtain needed information. We believe that if it is necessary to ask for information, it is necessary to have alternative approaches, such as using telephone calls, followup written inquiries, and investigators to obtain the information. An example of a problem which will not be solved by CSC's action is not receiving criminal records from law enforcement agencies because they will not respond to written inquiries. Investigators can often obtain this information.

Second recommendation

We recommended that CSC establish controls which insure that classifiable fingerprints for the FBI check are obtained.

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CSC comments

CSC has requested improvements from agencies. CSC is currently offering training in this area and stated it will monitor agency performance to identify those having problems. However, it stated it must be realized that many agency people who take prints are less than expert in the field. CSC does not believe that refusing to process cases until classifiable prints are obtained is a viable alternative, since several agencies grant interim clearance on the basis of a name check only.

Evaluation of CSC comments

We agree that training programs are necessary to reduce the rate of unreadable prints submitted by agencies for occupants of sensitive positions. However, training alone will not assure that FBI files will be successfully checked for criminal records. As pointed out in our report, the FBI locates 93 percent of the arrest records it finds in its files by name check. The other 7 percent would not have been found without readable fingerprints. In dealing with occupants of sensitive positions, we do not think that agencies should judge whether to resubmit prints for classification. Specific criteria and controls are needed for resubmission.

RECOMMENDATIONS TO INSURE THAT THE
INVESTIGATIVE INFORMATION COLLECTED
AND DISSEMINATED IS LIMITED TO ONLY
THAT WHICH IS NEEDED

To eliminate the dual adjudication of NACI investigations and reduce the gathering and dissemination of investigative information for occupants of nonsensitive positions, we recommended that CSC:

- Assign adjudication responsibility for all sensitive positions to employing agencies.
- Assume complete responsibility of adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and retain investigative results.
- Establish criteria on the completeness, accuracy, and age of information which can be used by CSC for adjudication or be disseminated to an employing agency for its adjudication. Also, restrict the collection of information to that which can be used.

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CSC comments

CSC agrees agencies should adjudicate the investigative results for all sensitive positions. But CSC does not agree it should assume complete adjudication responsibility for occupants of nonsensitive positions. CSC has approved but not implemented the delegation to employing agencies of the responsibility to evaluate suitability information in all appointee cases. CSC agrees with us that any delegation of adjudication authority requires controls on the information which will be disseminated.

CSC stated its investigators have received instructions on the collection and reporting of information bearing on exercise of individual rights. The CSC is reviewing files established before the Privacy Act prior to release to insure that first amendment information is not disseminated. In addition CSC stated it was developing guidelines to be used in determining what information will be used by CSC or released to agencies.

Evaluation of CSC comments

We believe that if CSC would determine that a person in a nonsensitive position is suitable for Government employment, the investigative results could be retained at CSC, and employing agencies could accept that decision. This would improve the consistency of adjudications and stop the dissemination of information. Our opinion rests on the court decision which requires that adverse actions must be based on a relationship between conduct and an individual's ability to perform the duties of the position. Also, before an investigation is initiated the employing agency has already determined the person's job qualifications, and by the time the investigation is completed, the employing agency has monitored several weeks of performance.

employer is in the best position to weigh the information at issue against the duties of the position and the mission of the agency.

As part of its recommendation, GAO suggested several specific program areas for consideration by Congress:

Congress should consider restrictions imposed on personnel investigations by other laws, such as the Privacy Act of 1974, and court decisions protecting individuals' constitutional rights.

There is a need for review in this area, especially with respect to striking a balance between the constitutional rights of the individual and the responsibilities and needs of the Government as an employer. The Congress or the Attorney General should attempt to reconcile any conflicts between the intent and application of the restrictions, and prescribe the extent to which information related to exercise of First Amendment rights may be collected, maintained, disseminated, and used in the adjudicative process.

Congress should consider whether CSC should investigate occupants of nonsensitive positions only to determine prior criminal conduct, leaving to employing agencies the responsibility for assessing applicants' efficiency.

The requirement of employee trustworthiness demands that honesty, integrity, loyalty, and general fitness receive consideration, even for nonsensitive positions. Experience shows that not all criminal conduct leads to prosecution; e.g., thieving employees are fired or allowed to resign, drug or alcohol abusers are placed in rehabilitation programs, etc. A great deal of information bearing on fitness is furnished by sources other than those charged with enforcing the law.

Congress should consider (the) need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment.

There is a need for definitive guidelines in the area of investigating and adjudicating information with loyalty connotations. We would welcome any definitions that could be provided by Congress or the Department of Justice.

Congress should consider the scope of investigation needed for the several levels of security clearances granted Federal employees.

The scope of any personnel security investigation is directly related to position sensitivity and job requirements; it should therefore be set by the investigative and adjudicative community within the Executive

Branch. A proposed Executive Order to replace 10450 provides for sensitivity classification of positions at the department or agency level, gives criteria to be applied in designating a position as sensitive, and allows the Civil Service Commission to prescribe scope.

Congress should consider whether there is a need in the legislation for provisions to aid CSC in gathering local law enforcement information; e.g., reimbursing local law enforcement agencies for supplying information, receiving assistance from Federal law enforcement agencies, or clarifying CSC's legal authority to have local arrest information.

We would welcome assistance in obtaining information from local law enforcement agencies. We have found that local sources provide an appreciable amount of actionable information not recorded elsewhere. However, our access to such information has been reduced or restricted by overzealous application of related Federal guidelines, or by adoption of state or local restrictions on dissemination. As a minimum, state and local agencies should be made aware of CSC's legal authority to obtain such information. Any financial consideration provided to state or local agencies should be in the form of grants or other assistance; direct reimbursement would prove too costly.

Recommendations to the Chairman, Civil Service Commission

Recommendations to improve employing agencies' consistency in classifying positions.

Establish criteria which will provide agencies clear instructions on how to classify positions into three categories based on whether the position duties would enable an occupant to have (1) a materially adverse effect on national security and/or a materially adverse effect on other national interests, (2) a materially adverse effect on agency operations, or (3) no materially adverse effect on agency or national interests. These classifications should then be used as the communication tool for designating the scope of the investigation needed, the responsibility for adjudication, and the need to disseminate investigative results.

The term "materially adverse effect" appeared in the first proposed Executive Order to replace 10450 but was not included in the rewrite, the feeling being that it is vague, difficult to define, and would lead to confusion in classification and designation. The rewrite calls for two classification categories, sensitive and nonsensitive, with the following criteria to be applied in designating a position as sensitive:

- (1) Access to information classified as Secret or Top Secret under Executive Order 11652;

- (2) Duties involved in the conduct of foreign affairs;
- (3) Approval of plans, policies or programs which affect the overall operations of a department, agency, or organizational component; that is, policy-making or policy-determining positions;
- (4) Investigative duties, the issuance of personnel security clearances, or the making of personnel security determinations;
- (5) Duties involved in approving the collection, grant, loan, payment or other use of property or funds of high value, or other duties demanding the highest degree of public trust and confidence;
- (6) Duties involved in the enforcement of laws, or responsibilities for the protection of individuals or property;
- (7) Duties, whether performed by Federal employees or contractors, involved in the design, operation or maintenance of Federal computer systems, or access to data contained in manual or automated files and records or Federal computer systems, when such data relates to national security, personal, proprietary or economically valuable information, or when the duties or data relate to distribution of funds, requisition of supplies or similar functions; or
- (8) Duties involved in or access to areas which have a critical impact on the national security, economic well-being of the nation, or public health or safety.

Regardless of criteria, the placing of a position in a specific designation is a judgment call; the agency is in the best position to make it. The Civil Service Commission would be glad to provide assistance to the extent it is able.

Assign more people to the review of agency classifications to bring about consistent use of the categories and thus appropriate investigations.

We agree that this part of our function needs to be strengthened, and we anticipate that our Security Appraisal staff will be increased. The proposed Executive Order would give CSC more authority in this area and would require that agencies implement corrective action or modification prescribed by the Commission. This authority is not currently contained in Executive Order 10450.

Recommendations to insure that occupants of sensitive positions are properly investigated.

Establish controls which insure that written inquiries are responded to and used for adjudication.

Although we are now retaining all vouchers and using them in the adjudicative process, we cannot insure that all vouchers sent will produce response. We cannot require response from those reluctant to respond; nor can we spend the time and money to track down addressees who have relocated.

Establish controls which insure that classifiable fingerprints for the FBI check are obtained.

We have requested improvement from agencies, we are currently offering training in this area, and we anticipate that a 95 percent rate of proficiency will be met. We will monitor agency performance to identify those having problems, however, it must be realized that many agency people who take prints are less-than-expert in the field. We do not feel that refusing to process cases until classifiable prints are obtained is a viable alternative, since several agencies grant interim clearance on the basis of a name check only.

Establish clear criteria for determining when cases should be further investigated to obtain complete and accurate information and to ascertain if a pattern of misconduct is continuing or if rehabilitation has been accomplished.

We have developed criteria to be used in making a determination as to whether additional investigation should be accomplished; they are currently being evaluated and we anticipate they will be issued in early April.

Establish controls to prevent arbitrary reductions in scope of investigations.

We feel that the consolidation of the NAC/NACI operation and the application of the criteria for initiating additional investigation will insure that scope requirements are met.

Recommendations to insure that loyalty investigations protect the interests of the Government and the rights of individuals.

Order loyalty investigations only when the type of information being pursued will be disqualifying if verified.

We agree that there is a need for guidance in this area. The proposed Executive Order would require the Department of Justice to issue guidelines

for the referral of cases to the Federal Bureau of Investigation and establish criteria for the use of the information developed by these investigations in the adjudication of such cases.

Obtain authorization from the Congress for the files on alleged subversive and radical organizations or destroy the files.

We have decided to dispose of all our organization files.

Recommendations to insure that the investigative information collected and disseminated is limited to only that which is needed.

Assume complete responsibility for adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and retain the investigative results.

The Commission has approved delegating to employing agencies the responsibility for evaluating suitability information in all appointee cases. At present, agencies adjudicate information in critical-sensitive cases, and share jurisdiction with CSC in noncritical-sensitive and nonsensitive cases. Given the approved delegation, the question remains as to what information will be disseminated to agencies; this will be addressed following the next item.

Assign adjudication responsibility for all sensitive positions to employing agencies.

We endorse this recommendation and will issue an implementing directive should the proposed order be approved with its sensitive/nonsensitive classification provision. As indicated above, agencies now have adjudicative authority, by delegation from the Commission, in critical-sensitive positions.

Establish criteria on the completeness, accuracy, and age of information which can be used by CSC for adjudication or be disseminated to an employing agency for its adjudication. Also, restrict the collection of information to that which can be used.

Our investigators have received instructions on the collection and reporting of information bearing on exercise of individual rights. We are reviewing files established before the Privacy Act prior to release to insure that First Amendment information is not disseminated. In addition, we are developing guidelines to be used in making a determination as to what information will be used by the CSC or released to agencies.

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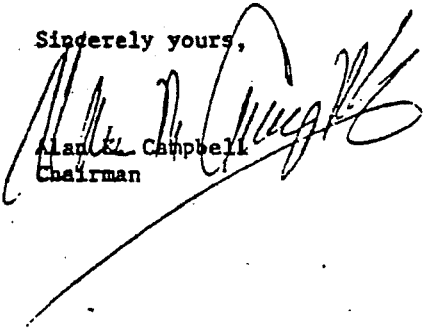
When needed to determine the qualifications of potential appointees, direct employing agencies to make appropriate inquiries of prior employment and educational sources.

Agencies already have this authority in the case of applicants, and are instructed to refer all investigative information to the Commission when requesting an NACL. In the case of appointees, qualifications have already been determined; the making of inquiries is a required part of suitability screening. Also to be considered is the cost factor; the cost difference in processing written inquiries from thousands of agency installations and from one central location (Boyers, Pennsylvania) would be enormous.

In summary, we agree with the principles contained in the GAO study. We hope that the recommendations contained therein will provide the impetus for the establishment of a strong, consistent, and equitable personnel investigations program.

I will be happy to supply any additional information you desire.

Sincerely yours,


Alan L. Campbell
Chairman



COMPTROLLER

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

31 MAR 1978

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Honorable Elmer B. Staats
Comptroller General of the United States
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

On behalf of the Secretary of Defense, I am forwarding Department comments concerning your report to the Congress entitled "Proposals to Resolve Longstanding Problems in Investigations of Federal Employees," dated December 16, 1977, (OSD Case # 4792)(FRCD 77-64).

We find the report to be a very thorough assessment of various long-standing problems that have beset the Federal personnel investigative program. Moreover, we agree that the program's foundation, as expressed in an Executive Order (E. O. 10450) promulgated almost 25 years ago, falls short of meeting current personnel security needs of the Government and is much in need of overhaul. We understand that the Office of Management and Budget, in recognition of this shortcoming, has under consideration a proposed draft Order to replace E. O. 10450 which is expected to be coordinated in the near future.

We do support your recommendation for legislation to consolidate the authority to investigate and adjudicate the suitability of Federal employees and believe this is a particularly important option with respect to sensitive positions involving national security.

Pending the development of this legislation, we believe that an up-dated Order to replace Executive Order 10450 would provide the most practical and expeditious means of bringing about a revitalization of the Federal personnel security program.

We must take particular exception with the recommendation that Full Field Investigations be a requirement for all sensitive positions. As

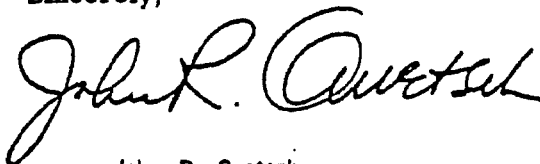
GAO Note: In regard to the last complete sentence on this page, DOD is taking exception to the CSC proposal that all sensitive positions require a Full Field Investigation. See page 24 for DOD's discussion of the CSC proposal.



pointed out in the attachment, it is an unrealistic requirement which would necessitate enormous expenditure of investigative resources which simply are not available.

The attachment sets forth the Department's specific comments concerning individual recommendations contained in your report as well as other overall observations on this subject. We greatly appreciate your providing us the opportunity to comment upon your proposals.

Sincerely,

A handwritten signature in cursive script, reading "John R. Curtich". The signature is written in dark ink and is positioned above the typed name and title.

John R. Curtich
Acting Assistant Secretary of Defense
(Comptroller)

Attachment

Department of Defense Comments
on the Report of the
Comptroller General of the United States
entitled

"Proposals to Resolve Longstanding Problems in Investigations
of Federal Employees"

GENERAL OBSERVATIONS

The original amalgamation of suitability, loyalty and security programs into a single Executive Order (10450), combined with subsequent legislation and court decisions, has had the effect of producing an overall maze of regulatory requirements that make the Federal personnel investigative program confusing, conflictive and essentially ineffective. As a result, actions to remove Federal employees on security grounds are practically nonexistent -- as are denials or revocations of security clearance on national security grounds.

Although we recognize that there is no simple panacea in this complex area of personnel security, we do believe that the approach we have outlined below should go a long way toward overcoming the shortcomings presently existing in the program.

There is a need to develop regulations that establish and separate the authority to investigate and adjudicate suitability matters from security matters. In doing so, careful consideration must be given to developing realistic criteria that may be used in evaluating trustworthiness with respect to access to classified information or assignment to sensitive duties.

Once such criteria are agreed upon, it will become clear what kind of investigative information is needed by adjudicators to make trustworthiness determinations. Personnel security program investigations can then be scoped in accordance with actual needs of the adjudicators. Emphasis can be placed upon the collection of relevant information. Sources of information most likely to produce relevant information would be identified. Investigative elements that are unproductive, redundant or irrelevant would be eliminated. As a result, restructured investigative requirements would be developed that should be more efficient, less costly, and would avoid unnecessary intrusions of privacy.

Finally, clear authority must be given to heads of departments and agencies to take decisive action after evaluating the investigative information against established disqualifying criteria.

RECOMMENDATIONS TO THE CONGRESS

1. Consolidate into one law the authority to investigate and judge the suitability of Federal employees, including the potential of employees in sensitive positions to impair national security.

DoD Comment

We agree that there is a need for a new and consolidated legislative basis for the Federal personnel security program. The current program is ineffective largely because of the dichotomy created by using E. O. 10450, essentially a security Order, as the basis for conducting personnel investigations while the results of those investigations are adjudicated on suitability criteria issued under separate and unrelated civil service laws and regulations. Criteria used in the adjudicative process should logically relate to the original basis for the investigation.

We feel that an upgraded Executive Order would best insure the needed program revision on a timely basis.

2. Consider restrictions imposed on personnel security investigations by other laws, such as the Privacy Act of 1974, and court decisions protecting individual constitutional rights.

DoD Comment

This is a difficult problem and we agree that it should be considered by Congress. Specific effects of the Privacy Act of 1974 include denial of needed criminal history record information (at local and state jurisdictions), educational and employment data and an overall tendency to restrict the ability of Federal investigative agencies to conduct relevant personnel security interviews with certain sources of information such as former teachers, employers or co-workers. Signed releases or waivers by the subject of the investigation are frequently not honored.

3. Consider whether the CSC should investigate occupants of non-sensitive positions only to determine prior criminal conduct, leaving to employing agencies the responsibility for assessing efficiency.

DoD Comment

We believe that the CSC investigation for nonsensitive positions should be limited to a National Agency Check consisting of a FBI-ID (name check

only), FBI-HQ check, and other national agencies as may be pertinent. Letters of inquiry, as appropriate, and other traditional personnel management verification techniques can be utilized by employing agencies to assess job qualifications. Most agencies currently do this -- thus, to ask CSC to do more is redundant and not cost-effective.

4. Consider the need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment.

DoD Comment

E. O. 10450 requires that all persons privileged to be employed by the Federal government shall be of "complete and unswerving loyalty to the United States." We feel this is a reasonable standard for any government to set for its public servants; however, experience in the personnel security arena has shown that it is an elusive concept when a specific and legal definition is sought.

Nevertheless, in the day-to-day world, there is continuing evidence that Federal employees, although few in number, engage in acts which are inimical to the national security interests of the United States, would deny others their constitutional rights, and which serve the interest of potential adversaries. It is agreed, however, that when seeking to identify such conduct, the boundaries may become blurred as to what is constitutionally protected and what is illegitimate.

If we are to continue to set loyalty as a standard pre-requisite to Federal employment, as well as access to classified information, then it must be specifically defined (or other criteria spelled out to achieve the intended purpose) so that Federal investigative agencies will understand their investigative authority and so that Federal personnel security adjudicators will know exactly which activities are disqualifying.

5. Consider the scope of investigation needed for the several levels of security clearances granted Federal employees.

DoD Comment

We do not believe this is a matter needed to be treated by the Congress in law. We feel that the 3 levels of position categories are appropriate -- that is, nonsensitive, noncritical sensitive, and critical sensitive. Once precise and relevant disqualifying criteria are established, the scope of the personnel security investigation may be tailored to position sensitivity as a logical sequence and incorporated into the revised Executive Order.

6. Consider whether there is a need in the legislation for provisions to aid the CSC in gathering local law enforcement information; e.g. reimbursing local law enforcement agencies for supplying information, receiving assistance from Federal law enforcement agencies, or clarifying the Commission's legal authority to have local arrest information.

DoD Comment

We concur with the CSC comment that any legislation pertaining to the personnel investigative program (as well as any revision of E. O. 10450) should contain a provision authorizing the Commission and other designated Federal personnel security investigative agencies to collect and disseminate (within the Federal government) criminal justice information from local law enforcement agencies. Similarly, we would support reimbursing such local agencies directly for the information in the form of grants through the Law Enforcement Assistance Administration.

RECOMMENDATIONS TO THE CIVIL SERVICE COMMISSION

1. To improve employing agencies' consistency in classifying positions as to the scope of investigation needed, establish criteria which will provide agencies clear instructions on how to classify positions into three categories based on sensitivity of duties and assign more people to the review of agency classifications.

DoD Comment

We agree that national criteria for classifying positions at the three levels of sensitivity must be carefully spelled out. General guidelines for each level should be incorporated into either legislation or a revised E. O. 10450. Detailed instructions would more logically fit in a CSC regulation (such as the Federal Personnel Manual) issued in implementation of the basic statutory requirement that may be changed as time and experience dictate.

We strongly disagree with the CSC proposal that all sensitive positions require a Full Field Investigation. This is inconsistent with the basic idea of levels of sensitivity as well as the proven concept of structuring scope of investigation according to degree of sensitivity. Further, this would be inconsistent with investigative policy which has long applied in the military and industrial personnel security programs where a National Agency Check is the investigative requirement for access to Secret or Confidential classified information (identical to the current E. O. 10450 investigative requirement for noncritical sensitive positions). There is no logic in requiring one standard for Federal employees and another for military and contractor employees.

The investigative costs of requiring Full Field Investigations of all persons requiring access to Secret and Confidential information would be overwhelming and grossly prohibitive. For example, the cost of a National Agency Check is about \$10. The cost of a DoD Background Investigation (comparable to a Full Field Investigation) is currently \$221. This compares with the cost of approximately \$1000 for a Full Field Investigation conducted by the FBI or approximately \$700 by the CSC. In DoD alone this requirement would apply to approximately 500,000 civilian employees and 1,200,000 military. In the industrial security area, involving contractor employees of DoD and 16 other Departments and Agencies of the Executive Branch, the requirement would impact on approximately one million contractor employees.

2. To insure that occupants of sensitive positions are investigated properly:

a. establish controls over written inquiries and see that classifiable fingerprints are obtained;

b. establish clear criteria for determining when cases should be further investigated; and

c. establish controls to prevent arbitrary reductions in scope of investigations.

DoD Comment

2a. It was only through the GAO report that DoD learned of the CSC unilateral reduction in the scope of NACI investigations. This was done apparently without notifying the various agencies and resulted in a situation where even the CSC could not determine whether any part of the inquiries portion of the NACI had been accomplished. We feel that the requirements of E. O. 10450 (or any subsequent reissuance) prescribing the scope of investigations should be strictly implemented.

We recommend that investigative requirements for nonsensitive positions match those established in DoD for enlisted personnel entering the Armed Forces. That is: an Entrance National Agency Check consisting of a FBI-ID (name check only), a FBI-HQ check, and checks with other national agencies. All checks for sensitive positions should include a technical fingerprint check.

We do not feel that requiring classifiable fingerprints for all non-critical sensitive positions would be cost-effective. Indeed, experience has shown that it is not possible to obtain classifiable fingerprints from some individuals. If a second effort to obtain classifiable prints fails,

there should be no further requirement unless there are special factors in a particular case which warrant additional effort. The overall security risk factor in such cases is negligible.

2b. We agree that clear criteria for determining when cases are to be further investigated should be established. In DoD, for example, the Defense Investigative Service has specific guidelines to be followed in expanding derogatory National Agency Checks. Requiring such procedures on a national basis would result in more consistent investigations, avoid unnecessary privacy intrusion, and result in greater cost-effectiveness.

2c. We agree that controls should be established to prevent arbitrary reductions in scope of investigations because there is considerable inconsistency among the various Federal agencies in investigative scope with respect to E. O. 10450 "Full Field" Investigation requirements. This is particularly true with respect to investigations conducted for Sensitive Compartmented Information under the requirements of Director of Central Intelligence Directive 1/14. With respect to any reductions in the scope of Background Investigations made by DoD, it should be noted they have been based on comprehensive studies that have demonstrated that the reduced or eliminated elements were either irrelevant, redundant or not productive.

3. To insure that loyalty investigations protect the interests of the Government and the rights of individuals, order loyalty investigations only when the type of information being pursued will be disqualifying if verified.

DoD Comment

We agree with this recommendation because it is a necessary extension of the development of criteria for determining loyalty.

4. To insure that the investigative information is limited to only that which is needed to make suitability, security and loyalty information:

a. CSC assume complete responsibility for adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and retain the investigative results.

b. CSC assign adjudicative responsibility for all sensitive positions to employing agencies.

c. CSC establish criteria on the completeness, accuracy and age of information which can be collected, used, or disseminated to an employing agency.

d. When needed to determine the qualifications of potential appointees, the CSC direct employing agencies to make appropriate inquiries of prior appointment and educational sources.

DOD Comment

4a and b. Because the individual agencies would in any event have adjudicators to make sensitive position determinations, we do not see the need to set up a duplicate set of adjudicators within CSC to determine suitability for nonsensitive positions. We agree with CSC that the employing agency should be provided all of the investigative data and make their own determination. This would be consistent with the recommendation that CSC assign adjudicative responsibility for all sensitive positions to employing agencies, a recommendation we agree with.

4c. We do not agree that CSC should establish such criteria, rather they should be incorporated into the revision of E. O. 10450 and/or any subsequent consolidated legislation and the criteria should apply to all Federal agencies conducting personnel security investigations.

4d. We feel the responsibility for determining the qualifications of potential employees, as against a personnel security determination, may best be accomplished through traditional personnel (in contrast to investigative) procedures as indicated in our comment on item 3, "RECOMMENDATIONS TO THE CONGRESS," above.