

111TH CONGRESS
1ST SESSION

S. 2834

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to establish a Security Clearance and Suitability Performance Accountability Council and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2009

Mr. AKAKA (for himself and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to establish a Security Clearance and Suitability Performance Accountability Council 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
5 Modernization and Reporting Act of 2009”.

1 **SEC. 2. DEFINITIONS.**

2 Subsection (a) of section 3001 of the Intelligence Re-
3 form and Terrorism Prevention Act of 2004 (50 U.S.C.
4 435b) is amended—

5 (1) in the matter preceding paragraph (1) by
6 striking “In this section:” and inserting “Except as
7 otherwise specifically provided, in this title:”;

8 (2) by redesignating paragraph (1) as para-
9 graph (2);

10 (3) by redesignating paragraph (2) as para-
11 graph (5);

12 (4) by redesignating paragraph (3) as para-
13 graph (4);

14 (5) by redesignating paragraph (4) as para-
15 graph (12);

16 (6) by redesignating paragraph (5) as para-
17 graph (10);

18 (7) by redesignating paragraph (6) as para-
19 graph (15);

20 (8) by redesignating paragraph (7) as para-
21 graph (14);

22 (9) by redesignating paragraph (8) as para-
23 graph (3);

24 (10) by inserting before paragraph (2), as re-
25 designated by paragraph (2), the following:

1 “(1) ADJUDICATION.—The term ‘adjudication’
2 means the evaluation of pertinent data in a back-
3 ground investigation and any other available infor-
4 mation that is relevant and reliable to determine
5 whether an individual is—

6 “(A) suitable for Federal Government em-
7 ployment;

8 “(B) eligible for logical and physical access
9 to federally controlled information systems;

10 “(C) eligible for physical access to federally
11 controlled facilities;

12 “(D) eligible for access to classified infor-
13 mation;

14 “(E) eligible to hold a sensitive position; or

15 “(F) fit to perform work for or on behalf
16 of the Federal Government as a contractor em-
17 ployee.”;

18 (11) by inserting after paragraph (5), as redes-
19 igned by paragraph (3), the following:

20 “(6) CLASSIFIED INFORMATION.—The term
21 ‘classified information’ means information that has
22 been determined, pursuant to Executive Order
23 12958 (60 Fed. Reg. 19825) or a successor or pred-
24 ecessor order, or the Atomic Energy Act of 1954 (42

1 U.S.C. 2011 et seq.), to require protection against
2 unauthorized disclosure.

3 “(7) CONTINUOUS EVALUATION.—The term
4 ‘continuous evaluation’ means a review of the back-
5 ground of an individual who has been determined to
6 be eligible for access to classified information (in-
7 cluding additional or new checks of commercial data-
8 bases, Government databases, and other information
9 lawfully available to security officials) at any time
10 during the period of eligibility to determine whether
11 that individual continues to meet the requirements
12 for eligibility for access to classified information.

13 “(8) CONTRACTOR.—The term ‘contractor’
14 means an expert or consultant, who is not subject to
15 section 3109 of title 5, United States Code, to an
16 agency, an industrial or commercial contractor, li-
17 censee, certificate holder, or grantee of any agency,
18 including all subcontractors, a personal services con-
19 tractor, or any other category of person who per-
20 forms work for or on behalf of an agency and who
21 is not an employee of an agency.

22 “(9) CONTRACTOR EMPLOYEE FITNESS.—The
23 term ‘contractor employee fitness’ means fitness
24 based on character and conduct for work for or on
25 behalf of an agency as a contractor employee.”;

1 (12) by inserting after paragraph (10), as re-
2 designated by paragraph (6), the following:

3 “(11) **FEDERALLY CONTROLLED FACILITIES;**
4 **FEDERALLY CONTROLLED INFORMATION SYS-**
5 **TEMS.**—The term ‘federally controlled facilities’ and
6 ‘federally controlled information systems’ have the
7 meanings prescribed in guidance pursuant to the
8 Federal Information Security Management Act of
9 2002 (title III of Public Law 107–347; 116 Stat.
10 2946), the amendments made by that Act, and
11 Homeland Security Presidential Directive 12, or any
12 successor Directive.”;

13 (13) by inserting after paragraph (12), as re-
14 designated by paragraph (5), the following:

15 “(13) **LOGICAL ACCESS.**—The term ‘logical ac-
16 cess’ means, with respect to federally controlled in-
17 formation systems, access other than occasional or
18 intermittent access to federally controlled informa-
19 tion systems.”; and

20 (14) by inserting after paragraph (15), as re-
21 designated by paragraph (7), the following:

22 “(16) **PHYSICAL ACCESS.**—The term ‘physical
23 access’ means, with respect to federally controlled
24 facilities, access other than occasional or intermit-
25 tent access to federally controlled facilities.

1 “(17) SENSITIVE POSITION.—The term ‘sen-
 2 sitive position’ means any position designated as a
 3 sensitive position under Executive Order 10450 or
 4 any successor Executive Order.

5 “(18) SUITABILITY.—The term ‘suitability’ has
 6 the meaning of that term in part 731, of title 5,
 7 Code of Federal Regulations or any successor simi-
 8 lar regulation.”.

9 **SEC. 3. SECURITY CLEARANCE AND SUITABILITY DETER-**
 10 **MINATION REPORTING.**

11 (a) EXTENSION OF REPORTING REQUIREMENTS.—
 12 Paragraph (1) of section 3001(h) of the Intelligence Re-
 13 form and Terrorism Prevention Act of 2004 (50 U.S.C.
 14 435b(h)) is amended by striking “through 2011,” and in-
 15 serting “until the earlier of the date that is 2 years after
 16 the date that the Comptroller General of the United States
 17 has removed all items related to security clearances from
 18 the list maintained by the Comptroller General known as
 19 the High-Risk List or 2017,”.

20 (b) REPORTS ON SECURITY CLEARANCE REVIEW
 21 PROCESSES.—Paragraph (2) of such section 3001(h) is
 22 amended—

23 (1) by redesignating subparagraphs (B) and
 24 (C) as subparagraphs (E) and (F), respectively; and

1 (2) by striking subparagraph (A) and inserting
2 the following:

3 “(A) a description of the full range of time re-
4 quired to complete initial clearance applications, in-
5 cluding time required by each authorized investiga-
6 tive agency and each authorized adjudicative agen-
7 cy—

8 “(i) to respond to requests for security
9 clearances for individuals, including the periods
10 required to initiate security clearance investiga-
11 tions, conduct security clearance investigations,
12 deliver completed investigations to the request-
13 ing agency, adjudicate such requests, make
14 final determinations on such requests, and no-
15 tify individuals and individuals’ employers of
16 such determinations, from date of submission of
17 the requests to the date of the ultimate disposi-
18 tion of the requests and notifications,
19 disaggregated by the type of security clearance,
20 including Secret, Top Secret, and Top Secret
21 with Special Program Access, including sen-
22 sitive compartmented information clearances—

23 “(I) for civilian employees of the
24 United States;

1 “(II) for members of the Armed
2 Forces of the United States; and

3 “(III) for contractor employees; and
4 “(ii) to conduct investigations for suit-
5 ability determinations for individuals from suc-
6 cessful submission of applications to ultimate
7 disposition of applications and notifications to
8 the individuals—

9 “(I) for civilian employees of the
10 United States;

11 “(II) for members of the Armed
12 Forces of the United States; and

13 “(III) for contractor employees;

14 “(B) a listing of the agencies and departments
15 of the United States that have established and uti-
16 lize policies to accept all security clearance back-
17 ground investigations and determinations completed
18 by an authorized investigative agency or authorized
19 adjudicative agency;

20 “(C) a description of the progress in imple-
21 menting the strategic plan referred to in section
22 3004; and

23 “(D) a description of the progress made in im-
24 plementing the information technology strategy re-
25 ferred to in section 3005;”.

1 **SEC. 4. SECURITY CLEARANCE AND SUITABILITY PER-**
2 **FORMANCE ACCOUNTABILITY COUNCIL.**

3 Title III of the Intelligence Reform and Terrorism
4 Prevention Act of 2004 (50 U.S.C. 435b et seq.) is amend-
5 ed by adding at the end the following new section:

6 **“SEC. 3003. SECURITY CLEARANCE AND SUITABILITY PER-**
7 **FORMANCE ACCOUNTABILITY COUNCIL.**

8 “(a) ESTABLISHMENT.—There is established a Secu-
9 rity Clearance and Suitability Performance Accountability
10 Council (hereinafter referred to as the ‘Council’).

11 “(b) CHAIR.—

12 “(1) DESIGNATION.—The Deputy Director for
13 Management, Office of Management and Budget,
14 shall serve as Chair of the Council.

15 “(2) AUTHORITY.—The Chair of the Council
16 shall have authority, direction, and control over the
17 functions of the Council.

18 “(c) VICE CHAIR.—The Chair of the Council shall se-
19 lect a Vice Chair to act in the Chair’s absence.

20 “(d) MEMBERSHIP.—

21 “(1) IN GENERAL.—The members of the Coun-
22 cil shall include—

23 “(A) the Chair of the Council; and

24 “(B) an appropriate senior officer from
25 each of the following:

1 “(i) The Office of the Director of Na-
2 tional Intelligence.

3 “(ii) The Department of Defense.

4 “(iii) The Office of Personnel Man-
5 agement.

6 “(2) OTHER MEMBERS.—The Chair of the
7 Council may designate appropriate employees of
8 other agencies or departments of the United States
9 as members of the Council.

10 “(e) DUTIES.—The Council shall—

11 “(1) ensure alignment of suitability, security,
12 and, as appropriate, contractor employee fitness, in-
13 vestigative, and adjudicative processes;

14 “(2) ensure alignment of investigative require-
15 ments for suitability determinations and security
16 clearances to reduce duplication in investigations;

17 “(3) oversee the establishment of requirements
18 for enterprise information technology;

19 “(4) oversee the development of techniques and
20 tools, including information technology, for enhanc-
21 ing background investigations and eligibility deter-
22 minations and ensure that such techniques and tools
23 are utilized;

24 “(5) ensure that each agency and department
25 of the United States establishes and utilizes policies

1 for ensuring reciprocal recognition of clearances that
2 allow access to classified information granted by all
3 other agencies and departments;

4 “(6) ensure sharing of best practices among
5 agencies and departments of the United States;

6 “(7) hold each agency and department of the
7 United States accountable for the implementation of
8 suitability, security, and, as appropriate, contractor
9 employee fitness processes and procedures; and

10 “(8) hold each agency and department of the
11 United States accountable for recognizing clearances
12 that allow access to classified information granted by
13 all other agencies and departments of the United
14 States.

15 “(f) ASSIGNMENT OF DUTIES.—The Chair may as-
16 sign, in whole or in part, to the head of any agency or
17 department of the United States, solely or jointly, any
18 duty of the Council relating to—

19 “(1) alignment and improvement of investiga-
20 tions and determinations of suitability;

21 “(2) determinations of contractor employee fit-
22 ness; and

23 “(3) determinations of eligibility—

24 “(A) for logical access to federally con-
25 trolled information systems;

1 dures, including measures for the quality of security
2 clearance investigations and adjudications;

3 “(3) a formal communications strategy related
4 to the issuance of security clearances;

5 “(4) the roles and responsibilities for agencies
6 participating in security clearance reform efforts;
7 and

8 “(5) the long-term funding requirements for se-
9 curity clearance reform efforts.

10 “(c) SUBMISSION TO CONGRESS.—The plan required
11 by subsection (a) shall be submitted to the appropriate
12 committees of Congress.

13 “(d) GOVERNMENT ACCOUNTABILITY OFFICE RE-
14 VIEW.—The plan required by subsection (a) shall be re-
15 viewed by the Comptroller General of the United States
16 following its submission to the appropriate committees of
17 Congress under subsection (c).”.

18 **SEC. 6. INFORMATION TECHNOLOGY STRATEGY.**

19 Title III of the Intelligence Reform and Terrorism
20 Prevention Act of 2004 (50 U.S.C. 435b et seq.), as
21 amended by sections 4 and 5, is further amended by add-
22 ing at the end the following new section:

23 **“SEC. 3005. INFORMATION TECHNOLOGY STRATEGY.**

24 “(a) REQUIREMENT FOR STRATEGY.—Not later than
25 120 days after the date of the enactment of the Security

1 Clearance Modernization and Reporting Act of 2009, the
2 Director of the Office of Management and Budget shall
3 submit to the appropriate committees of Congress an in-
4 formation technology strategy that describes the plans to
5 expedite investigative and adjudicative processes, verify
6 standard information submitted as part of an application
7 for a security clearance, and provide security clearance
8 and suitability determination reform consistent with the
9 strategy required by section 3004(a), by carrying out the
10 Enterprise Information Technology Strategy referred to in
11 the Report of the Joint Security and Suitability Reform
12 Team, dated December 30, 2008.

13 “(b) CONTENT.—The strategy required by subsection
14 (a) shall include—

15 “(1) a description of information technology re-
16 quired to request a security clearance or suitability
17 investigation;

18 “(2) a description of information technology re-
19 quired to apply for a security clearance or suitability
20 investigation;

21 “(3) a description of information technology
22 systems needed to support such investigations;

23 “(4) a description of information technology re-
24 quired to transmit common machine readable inves-
25 tigation files to agencies for adjudication;

1 “(5) a description of information technology re-
2 quired to support agency adjudications of security
3 clearance and suitability determinations;

4 “(6) a description of information technology re-
5 quired to support continuous evaluations;

6 “(7) a description of information technology re-
7 quired to implement a single repository containing
8 all security clearance and suitability determinations
9 of each agency and department of the United States
10 that is accessible by each such agency and depart-
11 ment in support of ensuring reciprocal recognition of
12 access to classified information among such agencies
13 and departments;

14 “(8) a description of the efforts of the Security
15 Clearance and Suitability Performance Council es-
16 tablished in section 3003, and each of the Depart-
17 ment of Defense, the Office of Personnel Manage-
18 ment, and the Office of the Director of National In-
19 telligence to carry out the strategy submitted under
20 subsection (a);

21 “(9) the plans of the agencies and departments
22 of the United States to develop, implement, fund,
23 and provide personnel to carry out the strategy sub-
24 mitted under subsection (a);

1 “(10) cost estimates to carry out the strategy
2 submitted under subsection (a); and

3 “(11) a description of the schedule for carrying
4 out the strategy submitted under subsection (a).”.

5 **SEC. 7. TECHNICAL AND CLERICAL AMENDMENTS.**

6 (1) **TECHNICAL CORRECTION.**—The table of
7 contents in section 1(b) of the Intelligence Reform
8 and Terrorism Prevention Act of 2004 (Public Law
9 108–458; 118 Stat. 3638) is amended by adding
10 after the item relating to section 3001 the following:

“Sec. 3002. Security clearances; limitations.”.

11 (2) **CLERICAL AMENDMENT.**—The table of con-
12 tents in section 1(b) of the Intelligence Reform and
13 Terrorism Prevention Act of 2004, as amended by
14 paragraph (1), is further amended by adding after
15 the item relating to section 3002, as added by such
16 paragraph, the following:

“Sec. 3003. Security Clearance and Suitability Performance Accountability
Council.

“Sec. 3004. Security clearance and suitability reform strategic plan.

“Sec. 3005. Information technology strategy.”.

○