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SENATE

{ REPORT
113-111

SECURITY CLEARANCE OVERSIGHT AND
REFORM ENHANCEMENT ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

WITH ADDITIONAL VIEWS

[TO ACCOMPANY S. 1276]

TO INCREASE OVERSIGHT OF THE REVOLVING FUND OF THE OFFICE OF PERSONNEL MANAGEMENT, STRENGTHEN THE AUTHORITY TO TERMINATE OR DEBAR EMPLOYEES AND CONTRACTORS INVOLVED IN MISCONDUCT AFFECTING THE INTEGRITY OF SECURITY CLEARANCE BACKGROUND INVESTIGATIONS, ENHANCE TRANSPARENCY REGARDING THE CRITERIA UTILIZED BY FEDERAL DEPARTMENTS AND AGENCIES TO DETERMINE WHEN A SECURITY CLEARANCE IS REQUIRED, AND FOR OTHER PURPOSES



SEPTEMBER 25 (legislative day, SEPTEMBER 24), 2013.—Ordered to be
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SEPTEMBER 25 (legislative day, SEPTEMBER 24), 2013.—Ordered to be printed

Mr. CARPER, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1276]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1276) to increase oversight of the Revolving Fund of the Office of Personnel Management, strengthen the authority to terminate or debar employees and contractors involved in misconduct affecting the integrity of security clearance background investigations, enhance transparency regarding the criteria utilized by Federal departments and agencies to determine when a security clearance is required, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

CONTENTS

	Page
I. Purpose and Summary	2
II. Background and Need for Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis of the Bill, as Reported	4
V. Congressional Budget Office Cost Estimate	4
VI. Evaluation of Regulatory Impact	5
VII. Changes in Existing Law	7

I. PURPOSE AND SUMMARY

The purpose of S. 1276 is to ensure that the Office of Personnel Management's (OPM's) Inspector General (IG) has the authority to obtain funding needed to audit and investigate critical OPM activities that are currently off limits to oversight by the IG due to an existing lack of authority. OPM oversees human resources-related matters for federal employees, such as hiring and benefits, as well as the pension and insurance plans for federal retirees. It also provides a range of commercial-like services to other federal agencies including human resource management, leadership training, and background investigations for security clearances. For these services, OPM collects customer-agency's funds and deposits them into a Revolving Fund, which in turn pays for the personnel and other resources OPM uses to do its work for other agencies.

Because OPM's IG may currently not access Revolving Fund money to cover the costs of oversight, the IG is left to operate without the resources or personnel required to carry out thorough oversight of this \$2 billion Revolving Fund and the services administered out of the Fund. S. 1276 will remedy this problem by authorizing the use of the Revolving Fund to pay for OPM's IG to audit and investigate OPM activities paid for out of that Fund.

II. BACKGROUND AND NEED FOR LEGISLATION

OPM is tasked with managing the federal workforce in a variety of ways, working with government agencies and employees on issues from recruitment to the resolution of labor disputes. Another major OPM function is the conducting of background investigations through its Federal Investigative Services (FIS) division. Currently, FIS conducts more than 90 percent of the background investigations for government employees and contractors, including most Defense Department investigations.¹

Following leaks of classified data by National Security Agency contractor Edward Snowden, the Senate Homeland Security and Governmental Affairs Subcommittees on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce and Financial and Contracting Oversight held a joint hearing on June 20, 2013, titled "Safeguarding our Nation's Secrets: Examining the Security Clearance Process." Witnesses from OPM and FIS testified that while FIS used OPM's Revolving Fund to collect payments from federal agencies to finance background investigations, the Fund has never been audited in its entirety because the costs of audits, investigations, and other oversight activities are prohibited from being charged against the Fund. At the hearing, due to the many concerns raised about the quality of the background investigations being carried out by OPM, the OPM Inspector General, Patrick E. McFarland, testified that the current insufficient level of oversight of the Fund and activities carried out with its resources was a "clear threat to national security."²

¹ U.S. Office of Personnel Management, "Background Investigations." Accessed Sept. 20, 2013. <http://www.opm.gov/investigations/background-investigations>.

² Testimony of Patrick E. McFarland, Inspector General, U.S. Office of Personnel Management, before the Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce: "Safeguarding our Nation's Secrets: Examining The Security Clearance Process," June 20, 2013.

Although FIS comprises the largest program within the Revolving Fund, there are numerous other programs and activities financed by the Fund. Currently, through the Fund, OPM interacts with over 200 Federal entities, including all major Federal departments and agencies, on activities such as Human Resources Solutions, USAJOBS, Human Resources Line of Business, HR Tools & Technology, Enterprise Human Resource Integration, and the Presidential Management Fellows Program.³

Indeed, OPM devotes more resources to administering the programs funded through the \$2 billion Revolving Fund than to any of its other operational programs.⁴ Because of the security and fiscal implications of properly administering and financing this Fund, thorough oversight is a critical necessity.

S. 1276 would ensure that such oversight occurs. It does so by authorizing Revolving Fund monies to be spent on the costs of audits, investigations, and oversight activities by the IG. This same legislative proposal was included in the President's Fiscal Year 2014 budget request.⁵

III. LEGISLATIVE HISTORY

On July 10, 2013, Senator Tester introduced S. 1276, with Senators McCaskill, Portman, Coburn and Ron Johnson as cosponsors, and the bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. In the House of Representatives, similar legislation, H.R. 2860, has been introduced by Reps. Blake Farenthold and Stephen Lynch.

As introduced, S. 1276 contained three provisions: (1) the provision related to the Revolving Fund described above; (2) a provision codifying the need for the Office of Personnel Management to have a quality assurance process in place to handle cases in which background investigations are compromised; and (3) a provision requiring the federal government to update its policies for determining which employees require a security clearance.

The Committee considered the bill at a business meeting on July 31, 2013. Senator Tester offered a substitute amendment striking the provisions other than the one authorizing the use of Revolving Fund resources for oversight activities. The Committee adopted the substitute amendment, as modified, and ordered the underlying bill reported favorably, both en bloc by voice vote. Members present for the vote on the amendment and on the bill were Senators Carper, Levin, McCaskill, Tester, Begich, Baldwin, Coburn, Johnson, Ayotte, and Chiesa.

<http://www.hsgac.senate.gov/subcommittees/fpw/hearings/examining-the-workforce-of-the-us-intelligence-community-and-the-role-of-private-contractors>.

³Testimony of Patrick E. McFarland, Inspector General, U.S. Office of Personnel Management, before the House Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, U.S. Postal Service and the Census: "OPM's Revolving Fund: A Cycle of Government Waste?", June 5, 2013. <http://oversight.house.gov/wp-content/uploads/2013/06/McFarland-Testimony-Final2.pdf>.

⁴*Id.*

⁵Office of Management and Budget, *Fiscal Year 2014 Budget of the U.S. Government, Appendix*, 2013, at page 1031, <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/appendix.pdf>.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1—Short Title. This section states that the Act may be cited as the “Security Clearance Oversight and Reform Enhancement Act.”

Section 2—Oversight of the Revolving Fund of the Office of Personnel Management. This section amends 5 U.S.C. § 1304(e), to authorize the costs of OPM Inspector General audits, investigations, and oversight activities relating to the Revolving Fund and the functions financed by the Fund, to be charged against the Fund.

Specifically, 5 U.S.C. § 1304(e)(1) currently states that the Revolving Fund is available to OPM for financing investigations and other services that other agencies request OPM to perform on a reimbursable basis. Section 2(a) of the bill amends § 1304(e)(1) to also make the Fund available to OPM for the cost of audits, investigations, and oversight that are conducted by OPM’s IG and that relate to the Fund and the functions financed by the Fund.

In addition, 5 U.S.C. § 1304(e)(5) currently requires that OPM must prepare a budget each year for the operations financed by the Revolving Fund, and that the budget must be submitted to Congress for consideration. Section 2(b) of the bill amends § 1304(e)(5) to require OPM’s IG to estimate the amount that will be needed for adequate oversight of the Fund and of the functions financed by the Fund, and to require that OPM must include that estimate in its annual budget for the Fund. The legislation also specifies that the estimate from OPM’s IG may not exceed 0.33 percent of the total amount of expected expenditures from the Revolving Fund that OPM includes in the budget for Congress.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

AUGUST 23, 2013.

Hon. TOM CARPER,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1276, the Security Clearance Oversight and Reform Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1276—Security Clearance Oversight and Reform Enhancement Act

S. 1276 would permit activities of the Office of Personnel Management’s (OPM) Office of the Inspector General (IG) to receive funding through the OPM Revolving Fund. The bill also would set a limit on the funds available. Under current law, the OPM Revolving Fund provides about \$2 billion a year for a variety of functions, including background investigations to determine an individual’s suitability for a security clearance, but the IG is not permitted to use those funds to audit and provide oversight of the fund’s finances.

Based on information from the OPM IG, CBO estimates that implementing this legislation would enable the IG to begin auditing the OPM Revolving Fund at a cost of \$13 million over the 2014–2018 period, assuming appropriation of the necessary funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1276 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The enactment of this legislation will not have a significant regulatory impact. There are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

ADDITIONAL VIEWS

At the June 20, 2013 hearing witnesses also testified about the lack of government-wide standards in background investigations and awarding security clearances, and the need for improved guidance. A third provision requiring the federal government to update its policies for determining which employees require a security clearance was included in the original draft of the bill. This third provision was removed in the amendment offered by Sen. Tester pending OPM-ODNI guidance of “sensitive” national security designations. The Committee continues to be concerned about the lack of government wide standards in national security designations and will monitor the OPM-ODNI guidance.

RON JOHNSON.

VII. CHANGES IN EXISTING STATUTE MADE BY THE BILL, AS
REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law, in which no change is proposed, is shown in roman):

UNITED STATES CODE

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**TITLE 5—GOVERNMENT ORGANIZATION
AND EMPLOYEES**

* * * * *

**PART II—CIVIL SERVICE FUNCTIONS AND
RESPONSIBILITIES**

* * * * *

CHAPTER 13—SPECIAL AUTHORITY

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§ 1304. Loyalty investigations; reports; revolving fund.

(a) * * *

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(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis, including personnel management services performed at the request of individual agencies (which would otherwise be the responsibility of such agencies), or at the request of nonappropriated fund instrumentalities, *and for the cost of audits, investigations, and oversight activities relating to the fund and the functions financed by the fund, conducted by the Inspector General of the Office.* However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

* * * * *

(5) The Office shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations. *Each budget submitted under this paragraph shall include an estimate*

from the Inspector General of the Office of the amount required to pay the reasonable expenses to adequately audit, investigate, and perform other oversight activities relating to the fund and the functions financed by the fund for the applicable fiscal year, which shall not exceed 0.33 percent of the total budgetary authority requested in the budget estimates submitted to Congress by the Office for that fiscal year.

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