

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

H. R. 3210

To require the Director of the National Background Investigations Bureau to submit a report on the backlog of personnel security clearance investigations, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mrs. MCCASKILL (for herself, Mr.
TESTER, and Mr. JOHNSON)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securely Expediting
5 Clearances Through Reporting Transparency Act of
6 2017” or the “SECRET Act of 2017”.

7 **SEC. 2. REPORT ON BACKLOG OF PERSONNEL SECURITY**
8 **CLEARANCE INVESTIGATIONS.**

9 Not later than 90 days after the date of enactment
10 of this Act, and quarterly thereafter for 5 years, the Direc-

1 tor of the National Background Investigations Bureau of
2 the Office of Personnel Management shall submit to Con-
3 gress a report on the backlog of security clearance inves-
4 tigations that includes—

5 (1) the size of the personnel security clearance
6 investigation process backlog, including, for each
7 sensitivity level—

8 (A) the number of interim clearances
9 granted;

10 (B) the number of initial investigations for
11 Federal employees;

12 (C) the number of periodic reinvestigations
13 for Federal employees;

14 (D) the number of initial investigations for
15 employees of Federal contractors;

16 (E) the number of periodic reinvestigations
17 for employees of Federal contractors;

18 (F) the number of initial investigations for
19 employees of and employees of contractors of
20 the Department of Defense;

21 (G) the number of periodic reinvestigations
22 for employees of and employees of contractors
23 of the Department of Defense;

24 (H) the number of Federal employees con-
25 ducting background investigations; and

1 (I) the number of employees of Federal
2 contractors conducting background investiga-
3 tions;

4 (2) the average length of time, for each sensi-
5 tivity level, to carry out an initial investigation and
6 a periodic reinvestigation;

7 (3) a discussion of the factors contributing to
8 the average length of time to carry out an initial in-
9 vestigation and a periodic reinvestigation;

10 (4) a backlog mitigation plan, which shall in-
11 clude—

12 (A) the identification of the cause of, and
13 recommendations to remedy, the backlog;

14 (B) the steps the Director shall take to re-
15 duce the backlog;

16 (C) process reforms to improve efficiencies
17 in and the quality of background investigations;
18 and

19 (D) a projection of when the backlog will
20 be sufficiently reduced to meet required timeli-
21 ness standards; and

22 (5) a description of improvements in informa-
23 tion and data security.

1 **SEC. 3. REPORT ON SECURITY CLEARANCE INVESTIGA-**
2 **TIONS OF PERSONNEL OF THE EXECUTIVE**
3 **OFFICE OF THE PRESIDENT.**

4 Not later than 90 days after the date of enactment
5 of this Act, the Director of the Office of Administration
6 of the Executive Office of the President shall submit to
7 Congress a report that explains the process for conducting
8 and adjudicating security clearance investigations for per-
9 sonnel of the Executive Office of the President, including
10 White House personnel.

11 **SEC. 4. REPORT ON DUPLICATIVE COSTS.**

12 Not later than 120 days after the date of enactment
13 of this Act, the Director of the Office of Management and
14 Budget, in consultation with the other members of the
15 Suitability and Security Clearance Performance Account-
16 ability Council established under Executive Order 13467
17 (73 Fed. Reg. 38103), shall submit to Congress a report
18 on the cost of duplicating resources under the control or
19 direction of the National Background Investigations Bu-
20 reau for implementation of the plan referenced in section
21 951(a)(1) of the National Defense Authorization Act for
22 Fiscal Year 2017 (10 U.S.C. 1564 note).

23 **SEC. 5. REPORT ON CONTINUOUS EVALUATION AND RECI-**
24 **PROCITY.**

25 Not later than 120 days after the date of enactment
26 of this Act, the Director of National Intelligence and the

1 Director of the Office of Personnel Management shall sub-
2 mit to Congress a report that provides—

3 (1) the status of implementing continuous eval-
4 uation Governmentwide, including—

5 (A) the number of agencies with contin-
6 uous evaluation programs and how many of
7 those programs are currently meeting the inves-
8 tigative standards;

9 (B) a risk assessment of replacing current
10 reinvestigation requirements with continuous
11 evaluation programs by 2020;

12 (C) a discussion of the barriers for agen-
13 cies to implement continuous evaluation pro-
14 grams, including any requirement under a stat-
15 ute, regulation, Executive Order, or other ad-
16 ministrative requirement; and

17 (D) plans, including timelines, for imple-
18 menting continuous evaluation Governmentwide
19 and phasing out periodic reinvestigations;

20 (2) a detailed explanation of efforts by agencies
21 to meet requirements for reciprocal recognition to
22 access classified information, including—

23 (A) the range of the length of time for
24 agencies to grant reciprocal recognition to ac-
25 cess classified information;

1 (B) additional requirements for reinves-
2 tigations or readjudications, by agency; and

3 (C) any other barriers to the timely grant-
4 ing of reciprocity, by agency, including any re-
5 quirement under a statute, regulation, Execu-
6 tive Order, or other administrative requirement;

7 (3) recommendations, including timelines, to
8 improve the background investigation process to—

9 (A) simplify the Questionnaire for National
10 Security Positions (Standard Form 86) and in-
11 crease customer support for applicants com-
12 pleting such questionnaire;

13 (B) use remote and virtual techniques and
14 centralized locations during field investigation
15 work;

16 (C) use secure and reliable digitization of
17 information obtained during the clearance proc-
18 ess; and

19 (D) build the capacity of the background
20 investigation labor sector; and

21 (4) a review of whether the schedule for proc-
22 essing security clearances under section 3001 of the
23 Intelligence Reform and Terrorism Prevention Act
24 of 2004 (50 U.S.C. 3341) should be modified.

1 **SEC. 6. REVIEW AND UPDATE OF POSITION DESIGNATION**

2 **GUIDANCE.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “agency” has the meaning given
5 the term in Executive Order 13467 (73 Fed. Reg.
6 38103), or any successor thereto;

7 (2) the term “appropriate congressional com-
8 mittees” means—

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

12 (B) the Committee on Oversight and Gov-
13 ernment Reform and the Permanent Select
14 Committee on Intelligence of the House of Rep-
15 resentatives;

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

19 (A) eligibility of a covered individual for
20 logical and physical access to Federally con-
21 trolled facilities or information systems;

22 (B) suitability or fitness of a covered indi-
23 vidual for Federal employment;

24 (C) eligibility of a covered individual for
25 access to classified information or to hold a na-
26 tional security sensitive position; or

1 (D) fitness of a covered individual to per-
2 form work for or on behalf of the United States
3 Government as a contractor employee; and

4 (4) the term “covered individual” means an in-
5 dividual who—

6 (A) performs work for or on behalf of an
7 agency; or

8 (B) seeks to perform work for or on behalf
9 of an agency.

10 (b) REVIEW AND UPDATING.—

11 (1) INITIAL REVIEW AND UPDATE OF GUID-
12 ANCE.—Not later than 180 days after the date of
13 enactment of this Act, the President shall review
14 and, if appropriate, update the guidance the Presi-
15 dent issues to assist agencies in determining—

16 (A) position sensitivity designation; and

17 (B) the appropriate background investiga-
18 tion to initiate for each position designation.

19 (2) REVIEWS AND REVISIONS OF POSITION DES-
20 IGNATIONS.—Not less frequently than every 4 years,
21 the President, acting through relevant agencies (as
22 determined by the President) and in accordance with
23 the guidance described in paragraph (1), shall review
24 and, if necessary, revise the position designation of
25 positions within agencies.

1 (c) REPORTS TO CONGRESS.—Not later than 30 days
2 after completing a review under subsection (b)(2), the
3 President shall submit to the appropriate congressional
4 committees a report on—

5 (1) any issues identified in the review; and

6 (2) the number of position designations revised
7 as a result of the review.

8 (d) NO CHANGE IN AUTHORITY.—Nothing in this
9 section limits or expands the authority of any agency to
10 designate a position as sensitive or as requiring its occu-
11 pant to have access to classified information.