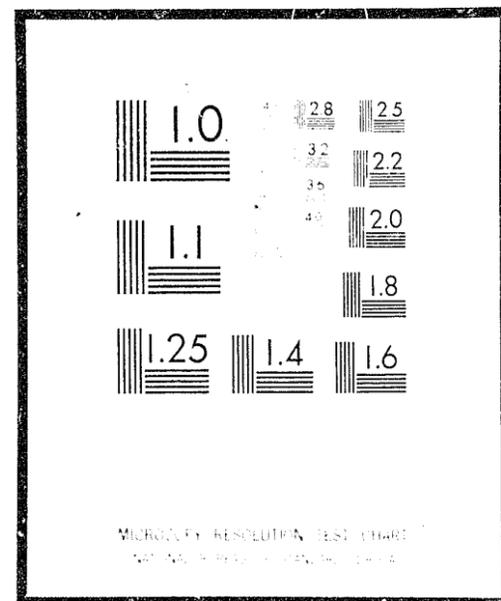


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U.S. DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE  
WASHINGTON, D.C. 20531

Date filmed 3/25/76



## Personnel Security Investigations:- Inconsistent Standards And Procedures B-732376

Civil Service Commission

UNITED STATES  
GENERAL ACCOUNTING OFFICE

DEC. 2, 1974

16779



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND  
COMPENSATION DIVISION

B-132376

The Honorable Robert E. Hampton  
Chairman, United States Civil  
Service Commission

Dear Mr. Hampton:

This is our report entitled "Personnel Security Investigations: Inconsistent Standards and Procedures."

This report contains recommendations to you which are sent forth on page 16. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report, and the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Chairman, Internal Security Committee; Director, Office of Management and Budget; and the Chairmen, House and Senate Committees on Appropriations, Post Office and Civil Service, and Government Operations.

Sincerely yours,

David P. Sorando  
Acting Director

C o n t e n t s

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| <u>ABBREVIATIONS</u>   |                                      |
| GAO  | General Accounting Office            |
| CSC  | Civil Service Commission             |
| DIS  | Defense Investigative Service        |
| FBI  | Federal Bureau of Investigation      |
| NACs   | national agency checks               |
| NACIs  | national agency checks and inquiries |
| DOD  | Department of Defense                |

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESS

PERSONNEL SECURITY INVESTIGATIONS:  
INCONSISTENT STANDARDS AND  
PROCEDURES B-132376

D I G E S T

WHY THE REVIEW WAS MADE

Because there are several agencies conducting personnel security investigations, GAO reviewed these agencies to determine whether they were conducting investigations in an efficient, economical manner within the intent of the stated purposes of the investigative laws and Executive orders. We also reviewed the classification and adjudication procedures and practices of employing agencies.

Additionally, our review is in response to a request received from the Chairman, House Committee on Internal Security. The Chairman expressed interest in this review in connection with a proposed bill to establish a Central Security Review Office (H.R. 8865).

Background

The authority to conduct civilian personnel security investigations is granted by a number of laws and Executive orders and is vested mainly in the Civil Service Commission (CSC) and agencies designated by CSC. These agencies include the Defense Investigative Service (DIS), the Federal Bureau of Investigation (FBI), the

Department of the Treasury, and the Department of State.

DIS came into being in 1972 when the Department of Defense consolidated its three personnel investigative agencies. The authority to conduct military personnel security investigations is covered under separate Department of Defense regulations.

The purposes of the personnel investigative program are to maintain the national security and to insure that persons seeking employment are adjudged by mutually consistent and no less than minimum standards and procedures by all employing agencies. Agency heads and CSC are charged with insuring that these purposes are met.

Full field investigations and national agency checks and inquiries (NACIs) are the two types of investigations used in the personnel security investigative program. A national agency check (NAC) is part of both types of investigations and consists of checking the files of the FBI, CSC, and the House Committee on Internal Security and checking Defense Central Index of Investigations or Coast Guard Intelligence records if the individual is a veteran. CSC conducts all civilian NACs.

NACI consists of a NAC plus

written inquiries to employers, educators, references, police agencies, and others. CSC conducts all civilian NACIs, and each Federal employee undergoes at least a NACI. A full field investigation includes a NAC plus personal interviewing of employers, educators, neighbors, references, and others. This report deals with the practices and costs of conducting full field investigations.

#### FINDINGS AND CONCLUSIONS

The investigative agencies are not applying standards and procedures consistently to all applicants for and employees in the Federal Government as required by the investigative laws and Executive orders. The employing agencies differ extensively in their determinations of who will be investigated (classification), how they will be investigated (scope), and the use made of investigation results (adjudication).

Broad guidelines have allowed agencies to interpret and conduct the investigative program as they see fit. In this regard CSC has not provided definitive direction and guidance regarding the classification procedure and adjudication process.

Definitive criteria was not established under Executive Order 10450. Because of

this, there is little consistency among agencies in classifying the positions to be investigated. This lack of consistency can result in both over and under classification of some positions.

Most agency officials felt that the criteria established under Executive Order 10450 were too ambiguous. Furthermore, CSC has been inconsistent in the timing of its reviews and appraisals of agency classification procedures. GAO found that the time between CSC appraisals ranged from 2 to 17 years. With such a large interval between appraisals, GAO does not believe that CSC can be certain that agencies are properly classifying positions for investigation.

GAO believes that better standards for determining investigative scope would achieve a more uniform approach and probably would be less costly. The cost of investigations on a per case basis is principally a product of the number of cases handled (volume) and the extent of the investigation, measured by the number of testimonies taken. GAO found that the number of testimonies taken varied significantly among investigative agencies.

Employing agencies are inconsistent in the use of investigation results (adjudication). Some agencies are not hiring applicants and are separating employees whose investigative reports reflect derogatory

information, while other agencies are ignoring derogatory information and are hiring applicants and retaining employees.

It also appears that agencies are much more likely to ignore derogatory data if the individual is already employed than if he is awaiting employment pending the results of the investigation.

To insure the uniformity of the scope of investigations and to provide for a more economical and efficient investigative program, GAO believes that there is a need to consider centralizing Federal agencies' civilian personnel investigative functions. GAO believes the program would be most efficiently served by two investigative agencies, one for Department of Defense and one for civilian agencies.

#### RECOMMENDATIONS OR SUGGESTIONS

GAO recommends that CSC assume a more active role in providing direction and guidance regarding the classification procedure and the adjudication process. More specifically, GAO suggests that CSC examine the present classification criteria to see if they are as ambiguous as agencies claim. Furthermore, GAO believes that CSC should consider the possibility of establishing a central adjudication body to review derogatory cases.

Since CSC already has the prime responsibility and authority to investigate persons entering into or employed in the competitive Federal service, GAO recommends that CSC assume complete responsibility for the investigative function of civil agencies.

#### AGENCY ACTIONS AND UNRESOLVED ISSUES

The FBI, CSC, DIS, and the State Department generally agreed with GAO's findings and conclusions. However, all but CSC expressed some disagreement with the recommendation to centralize the civilian personnel investigative function. CSC concurred in the principle of consolidating investigations but believes that it should conduct the full field investigations on civilian personnel for all agencies, including the Defense Department, with the exception of agencies that are excepted by law from Civil Service requirements. DIS would be reluctant to let CSC assume responsibility for full field investigations of Department of Defense civilians because of the additional cost it would be required to assume.

The FBI basically agrees with the recommendation that CSC assume responsibility for all civilian personnel security investigations but wants to continue performing investigations for the Justice Department. The other agencies also agree with this

report except they also do not want to relinquish their authority to conduct investigations for their own employees.

The Treasury Department expressed general disagreement with the report. However, we believe that some of the disagreement stems from a misunderstanding of our recommendations and suggestions.

GAO believes that, with some exceptions that involve a relatively small number of people, such as in the FBI, the Central Intelligence Agency, and the National Security Agency (because of the critical nature of their work) as well as Federal judges, U.S. attorneys, and

White House appointees, CSC could assume responsibility for all civilian full field investigations. GAO does not believe that the entire Justice Department or any other agency should be excluded. GAO sees nothing unique about these Departments that would warrant the need for special investigative effort.

CSC officials said that the problems disclosed in this report dealing with the classification procedures and adjudication process are being addressed by a task force of the Domestic Council Committee on the Right of Privacy. However, CSC agreed that there is probably a need for improvement in these areas.

## CHAPTER 1

### INTRODUCTION

The personnel investigation programs stem from congressional concern that Federal employees be loyal to the U.S. Government. This concern was first expressed formally by the McCormack-Dickstein Committee--a special committee of the House of Representatives established in 1934 to investigate Nazi and subversion propaganda activities. This Committee was succeeded by another special House committee, the Dies Committee, established in 1938 to investigate subversive and un-American propaganda. A recommendation of the Dies Committee resulted in enactment, on August 2, 1939, of section 9A of the Hatch Act which made it unlawful for any person employed by the Federal Government to be a member of any political party or organization which advocated the overthrow of the Government. This action is generally regarded as the initial authority for conducting personnel investigations. The authority to conduct personnel investigations is now embodied in many public laws and Executive orders. (See app. I for a list of public laws, Executive orders, and congressional hearings dealing with personnel investigations.)

In July 1946 a special subcommittee of the House Civil Service Committee appointed to investigate employee loyalty and Government employment practices reported its findings and recommendations. To protect both the Government and the applicant's rights, the subcommittee recommended designating a single investigative agency, designating a single agency to review investigative reports, and applying a single standard for judging suitability of applicants and employees. These recommendations led to the enactment, in 1947, of Executive Order 9835 which placed the overall responsibility for conducting personnel investigations for positions in the competitive Federal service with the Civil Service Commission (CSC). Also, Executive Order 9835 stated that employing agencies adjudicate investigation reports and that the applicant or employee would have appeal rights.

The personnel investigation program is presently based on Executive Order 10450, April 27, 1953, as amended. This Executive order stated that all civilian appointments to Federal agencies are subject to investigation. The agency head has the authority to classify positions according to their sensitivity. The agency head also has the power to adjudicate all full field investigations. Under Executive Order 10450, CSC has the primary responsibility for the personnel investigation function, including reviewing the

implementation of the Executive order, and the authority to delegate certain responsibilities to other agencies.

On June 20, 1973, Congressman Richard H. Ichord, Chairman of the Committee on Internal Security, introduced a bill (H.R. 8865) to amend the Internal Security Act of 1950. Its major provision is the establishment of a "Central Security Review Office for the coordination of the administration of Federal personnel loyalty and security programs."

#### PURPOSES OF AND METHODS USED IN THE PERSONNEL INVESTIGATION PROGRAM

The purposes of the personnel investigative program are to maintain the national security and to insure that persons seeking Federal employment are adjudged by mutually consistent and no less than minimum standards and procedures by all employing agencies. Agency heads and CSC are charged with insuring that these purposes are met.

Full field investigations and national agency checks and inquiries (NACIs) are the two types of investigations used in the program. A national agency check (NAC) is part of both types of investigations and consists of checking the files of the Federal Bureau of Investigation (FBI), CSC, and the House Committee on Internal Security and checking Defense Central Index of Investigations or Coast Guard Intelligence records if the individual is a veteran. CSC conducts all civilian NACs. A NACI consists of a NAC plus written inquiries to employers, educators, references, police agencies, and others. CSC conducts all civilian NACIs, and each Federal employee undergoes at least a NACI. A full field investigation includes a NAC plus the personal interviewing of employers, educators, neighbors, references, and others. This report deals with the practices and costs of conducting full field investigations.

Essentially, the investigator's job consists of gathering testimonies and preparing reports. Testimonies are obtained from interviews with witnesses or record searches. Police records are searched in the geographical area where an applicant is known to have lived, worked, or gone to school. Other records searched include school records, credit records, employment records, and apartment records. There are five basic kinds of witnesses interviewed by all investigative agencies: employers, neighbors, references, educators, and developed sources--developed from either record searches or interviewing the other four kinds of witnesses.

Procedures established under Executive Order 10450 provide for three categories of positions classified according to their relative degree of sensitivity. The highest category is critical-sensitive. Persons in critical-sensitive positions have access to "TOP SECRET" defense information, formulate policies and plans affecting the overall operation of an agency, perform duties involving investigative or security matters, or have duties which require a high degree of public trust. Personnel holding critical-sensitive positions are required to have preappointment full field investigations.

The second category is noncritical-sensitive, which designates positions of moderate sensitivity. Persons holding these positions have access to "SECRET" or "CONFIDENTIAL" defense information affecting the national security. These positions require a NACI as the minimum investigation and the NAC must ordinarily be completed before appointment or assumption of duties.

The last category is nonsensitive, which denotes positions not affecting the national security. These positions require a postappointment NACI.

CSC maintains the Security-Investigations Index File which reflects previous investigations of civilian personnel. The Department of Defense maintains the Defense Central Index which shows previous investigations of military personnel.

#### SCOPE OF REVIEW

We conducted this review during fiscal years 1973 and 1974 at (1) CSC, Defense Investigative Service (DIS), FBI, and Department of State and Department of Treasury headquarters in Washington, D.C., (2) CSC regional offices in Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; New York, New York; Philadelphia, Pennsylvania; Seattle, Washington; San Francisco, California; and St. Louis, Missouri, and (3) 24 employing Federal agencies in the Washington, D.C., area. (See app. II.)

We reviewed 224 full field investigative reports prepared by the 5 major investigative agencies. The investigative agencies selected these reports for us.

CHAPTER 2

COST OF FULL FIELD INVESTIGATIONS

The cost of full field investigations on a per case basis is principally a product of the number of cases handled (volume) and the extent of the investigation, measured by the number of testimonies taken. DIS, which has by far the largest volume and also takes the smallest average number of testimonies per case, conducts investigations for less money per investigation than any other agency. The FBI, which has one of the smaller workloads and the largest average testimony per case, has a considerably higher per case cost. The following table summarizes the average cost and average testimonies of each of the five principal agencies involved.

Average Case Cost Compared With Average of Testimonies

| <u>Agency</u> | <u>Average case cost</u> | <u>Average testimonies per case</u> |
|---------------|--------------------------|-------------------------------------|
| FBI           | \$934 (estimate)         | 57                                  |
| CSC           | 675 (actual)             | 33                                  |
| State         | 580 (estimate)           | 44                                  |
| Treasury      | 449 (estimate)           | 28                                  |
| DIS           | 268 (actual)             | 20                                  |

POTENTIAL SAVINGS THROUGH CONSOLIDATION

Because the investigative agencies find it difficult to estimate when and where the investigative workload will be, both the number and geographical placement of investigators is a serious problem. This problem results from individual agencies having surges in hiring and from different agencies hiring at different times during the year. However, the Government-wide investigative workload tends to be more stable because one agency's peak period can coincide with another agency's slack period. Thus, consolidating investigative agencies would help to alleviate the problems of how many investigators are needed and where to place them.

CSC and DIS have full-time investigators, while the other three agencies' investigators conduct full field investigations along with other assignments. These three agencies were able to estimate the number of man-hours spent on full field investigations. Using the figures provided, we estimated that there were 2,917 persons in the Government personnel investigative force. Of this number, by far the largest part (1,675) were in DIS. Most of the remainder (500) were in CSC.

The best evidence that consolidation can result in economies comes from the results of the consolidation of Army, Navy, and Air Force investigative forces into DIS. This consolidation reduced (1) investigative office locations from 417 to 246, (2) personnel by 378, or 12 percent, (3) automobiles by 14 percent, and (4) office space by 41 percent.

We believe there is further potential for savings by consolidating civilian investigative activities and letting CSC perform them. Furthermore, it would have the effect of reducing the number of agencies involved in setting investigative policy. Although in theory CSC sets the policy for all agencies there are in fact wide differences among investigative agency practices. We believe it would be substantially easier to work out a consistently fair approach if only two agencies were involved.

CSC officials agree with the principle of consolidating investigations but believe that CSC should conduct the full field investigations on civilian personnel for all agencies. Also, they believe that competitive service and excepted service positions should be treated alike but that agencies excepted by law from civil service requirements should be permitted to continue their present investigative arrangements. Those agencies which would be excluded are the FBI, Central Intelligence Agency, and the National Security Agency as well as Federal judges, U.S. attorneys, and White House appointees. To fully implement the proposal, they believe that the thinking behind the present practice of having the FBI conduct investigations of Atomic Energy Commission employees would need to be reviewed. Likewise, CSC arrangements with the Postal Service also would need to be reviewed.

The FBI agrees with the concept of consolidating the civilian personnel security investigative function with the exceptions noted above by CSC officials. The FBI pointed out that it has already substantially reduced its involvement in this area. However, the FBI said that the Justice Department wants the FBI to continue to perform these investigations for the Justice Department's professional staff. Likewise, the other personnel security investigative agencies were reluctant to give up their own investigative functions. We question the necessity of allowing these agencies to continue performing their own personnel security investigations.

### Variations in investigative scope

The investigative scope affects the cost of investigations and the time they take and is an important consideration with respect to the degree of the investigator's invasion of personal privacy. We found wide variations in the investigative scope of the five principal agencies conducting investigations.

The chart on page 4 shows the average number of testimonies per full field investigation by each investigative agency we reviewed. The average number of testimonies differed from a low of 20 by DIS to a high of 57 by the FBI. The State Department averaged 44, CSC averaged 33, and the Treasury averaged 28. There were also differences in the emphasis placed on the different kinds of testimony. For instance, all investigative agencies pursue neighbors routinely except DIS. This accounts in part for the smaller number of testimonies taken by DIS. For example, CSC averages about seven interviews with neighbors for each case, whereas DIS averages about two. Overall DIS averages about 9 interviews with witnesses per case, whereas CSC averages about 21, Treasury about 14, and the FBI about 25. The State Department puts heavy emphasis on record searches, averaging about 27 per case as compared to about 11 by DIS and 12 by CSC. This is accounted for in part by the fact that the State Department places heavy emphasis on overseas experience of its applicants and it is often difficult to find people who know the applicant and therefore greater reliance must be placed on record searches.

Other differences in investigative approach involve how much emphasis is placed on specific aspects of peoples' lives. For example, the State Department emphasizes overseas travel and the Treasury emphasizes financial stability for persons seeking employment in the Internal Revenue Service.

We also examined the relationship between testimonies and derogatory data. Of the 8,005 testimonies we reviewed, 562 produced derogatory data. As might be expected, developed sources, although the smallest in number of testimonies, produced the highest percentage (19.5%) of derogatory data. Others producing higher than average derogatory data were employers and record searches other than law enforcement. Educators, neighbors, references, and law enforcement record searches, in that order, produced the least amounts of derogatory data.

Assuming that the number of testimonies significantly influences the cost of an investigation, if CSC adopted the DIS

policy of only interviewing neighbors when necessary, we estimate the savings to the CSC investigative program would be about \$1.5 million. A reduction in the number of references interviewed (who, like neighbors, produce a low level of derogatory data) would result in a reduction in cost.

We believe that what is lacking is a standard that could be used as a guide for all investigators. We recognize that no two investigations are alike and that leeway must be given to the investigator to use judgment in each case. Nevertheless, it does not seem reasonable that the average number of testimonies should vary so widely between agencies when each has the same fundamental purpose--to determine the suitability of an applicant for Federal employment. DIS, for instance, has adopted a minimum standard which it believes achieves its goals, which are the same goals as those of other agencies. We believe that better standards for determining investigative scope would achieve a more uniform approach and probably would be less costly.

### CHAPTER 3

#### NEED FOR IMPROVEMENT OF CLASSIFICATION OF POSITIONS

##### AND ADJUDICATION OF INVESTIGATIONS

We believe that there is a need to reform the current practices and procedures used to determine who is investigated (classification), when they are investigated (preemployment or postemployment), and the use of investigation reports (adjudication). We noted variations in the way agencies were classifying positions and adjudicating the results of investigations. Furthermore, we found that it is common practice in many agencies to fill critical-sensitive positions before conducting full field investigations on the applicants.

##### CLASSIFICATION OF POSITIONS

Executive Order 10450 provides that, for investigative purposes, the agency head shall classify each position in his agency according to the degree of adverse effect the occupant of the position could bring about on the national security.

##### Variations in classifying positions

Of the 33 agencies we reviewed, 10 classified all positions as critical-sensitive. Eight agencies classified only top management positions as critical-sensitive, and the remaining 15 agencies classified from 4 to 44 percent of their positions critical-sensitive. These variations can result in both over and underclassification of some positions.

Agency officials indicated that there was little consistency between agencies in how they classified positions. Most officials felt that the criteria established under Executive Order 10450 were too ambiguous. As a result, the decision on whether a position should be classified critical-sensitive is judgmental. Also, while the Executive order covers some 47 agencies, other agencies are governed by public laws, and their security regulations specify that all occupants of positions within these agencies be the subject of a full field investigation.

According to CSC officials, the problem of classification is being addressed by a task force of the Domestic Council Committee on the Right of Privacy. One of the task force's objectives is to reassess the categories of positions in the Federal service in relationship to the national interest and security, to develop more detailed and refined criteria for classifying positions into these categories, and to establish uniform minimum standards of investigative coverage for each category.

##### Cost of overclassification

During fiscal years 1970-72, a total of 668,216 full field investigations were conducted by the major investigative agencies at a cost of \$242.6 million. In comparison, 4,242,534 NACIs were conducted at a cost of only \$24 million. At the time of our review the average cost per full field investigation was about \$552, while the average cost per NACI was only \$6.

Because of the difference in cost between a full field investigation and a NACI, the Government spends an extra \$546, on the average, every time an overclassified position is filled. Therefore, we believe that close control over the classification procedures of the agencies is required.

##### CSC review of classification procedures

CSC is required by Executive Order 10450 to review (appraise) agencies' personnel security programs, including classification procedures. Our review showed that for 58 agencies appraised by CSC, the time since CSC's last appraisal averaged 8.5 years and ranged from 2 to 17 years. With such a long time between appraisals we do not believe that CSC can be certain that agencies are properly classifying positions. We believe it is vital to the prevention of over and underclassification that regular reviews of classification procedures be conducted because of the general nature of classification criteria, especially the tenuous difference between critical-sensitive and noncritical-sensitive.

CSC officials agreed that CSC should conduct security appraisals on a more frequent and regular basis. Beginning in fiscal year 1974 they expanded the security appraisal functions with the eventual goal of conducting appraisals at all agencies on a 2-year cycle.

##### USE OF POSTEMPLOYMENT INVESTIGATIONS

Executive Order 10450 specifies that all critical-sensitive positions will be filled only after a full field investigation has been conducted--except in an emergency. In March 1972 the Chairman of CSC sent a letter to all agencies quoting the Assistant Attorney General, Internal Security Division, who questioned the wisdom of conducting postemployment full field investigations of applicants for critical-sensitive positions. The letter quoted him as stating that the "practice apparently is being utilized on a fairly widespread basis." Our review showed that the practice is widespread and apparently continues despite the Chairman's letter.

Our analysis of 90 full field cases for applicants to new positions (new hires) showed that 56 were postemployment investigations. This represents 62 percent of the cases reviewed and can hardly be considered as emergency use of postemployment investigations.

Substantial delays by employing agencies in requesting investigations has precluded some preemployment investigations. For 32 postemployment investigations time elapsed from the date the employee entered on duty until the investigation began averaged 68 days and ranged from 2 to 292 days. In four of these cases a preemployment investigation could have been performed if the employing agency had initiated the investigation at the same time the applicant submitted the personal security questionnaire. In addition, in nine other cases the questionnaire was submitted before the applicants entered on duty. If the employing agency had requested that any derogatory information be brought to its attention before receiving the complete investigation results, the information could have been disclosed before hiring the applicant and may have prevented the hiring.

A study by the Department of the Treasury in July 1972 had similar findings. In the Department's analysis of 68 cases, the average time from submission of the questionnaire until initiation of the investigation was 64 days.

Under Executive Order 10450 the agency head can waive the requirements for preemployment investigations, and the previously mentioned CSC Chairman's letter seems to have had little, if any, effect on the number of waivers granted by agency heads.

#### ADJUDICATION OF INVESTIGATIVE RESULTS

Employing agencies are not consistently adjudicating the results of investigative reports. Agencies are ruling differently on the basis of same types of information.

An analysis of 98 derogatory cases showed that in 56 cases either the applicants were hired or the employees were retained by the agencies in spite of the derogatory information revealed.

We noted that the rate of rejection of applicants (those not yet employed) was substantially higher than in cases involving employees (people that had actually been employed).

Agencies do not classify derogatory data as serious or nonserious. However, there was a higher rejection rate for

both applicants and employees in those cases where it appeared to us that the derogatory data, both in type and quantity, was fairly serious.

While the rejection rate of applicants because of derogatory information is fairly high (61 percent), the rejection rate for employees is much lower (28 percent). This again emphasizes the need for more extensive use of preemployment investigations, since agencies apparently are not as inclined to dismiss employees for reasons of derogatory information as they are to avoid hiring applicants for the same reasons.

Employing agencies gave the following reasons for ignoring derogatory information.

#### Labor market conditions

If the applicant is applying for a position that is difficult for the employing agency to fill, there is a tendency to overlook derogatory information.

#### Nonsensitive position

In many cases, when derogatory information has been developed, agencies retain employees in nonsensitive positions instead of the positions for which the investigations were conducted. While this practice is within the intentions of existing regulations and utilizes the investigative reports to some degree, we have noted that there are no controls to prevent the agencies from merely using this practice to downgrade positions to nonsensitive. If this happens, the investigative agency merely gets a form back stating how the investigation report was used, and no followup is conducted.

#### Inconclusive evidence

Agencies sometimes justify hiring or retaining an employee by stating that the investigation did not fully resolve questions raised or that the derogatory information was based upon inconclusive or incomplete evidence. This illustrates the need for either the employing agency or the investigative agency to confront applicants with derogatory information in a personal interview. This situation can also be indicative of an incomplete investigation.

As an example, in one case three witnesses had stated that they suspected the subject of being a homosexual because they had observed the subject living with a man also believed

to be a homosexual. The employing agency considered these testimonies to be inconclusive evidence since none of the witnesses had actually observed the subject committing a homosexual act. The employing agency later conducted a personal interview with the subject at which time he admitted that he was a homosexual, thus resolving the issue.

#### Nonserious information

In some cases the agencies considered the information developed to be of a nonserious nature. However, the types of information considered serious varies among agencies, and often within agencies, and points to the need for central adjudication of investigative results.

As an example, in one case several witnesses said that the subject was living out of wedlock after having divorced his wife, that the subject was having emotional problems that were having an adverse affect upon his work, and that possibly emotional problems stemmed from using drugs. The security officer of the employing agency decided that the subject did not meet the criteria for occupying a critical-sensitive position. A month later, upon reviewing the case, an assistant commissioner of the agency felt that the subject should be released from duty. Three months later the final decision was made to retain the employee in a nonsensitive position. Within the same agency there was disagreement about the adjudication of this case.

#### Satisfactory job performance

In the case of an employee, either long term or newly hired, who had been performing satisfactorily, agencies either ignored the derogatory information or justified retaining the employee by downgrading the seriousness or significance of the information developed.

As an example, in one case the subject had a child out of wedlock and fraudulently obtained medical assistance payments for the birth of the child. Two former employers also commented that the subject was disinterested and careless in her work and that she needed special instruction, direction, and supervision to perform satisfactorily. However, the employing agency retained the employee on the basis that she was performing satisfactorily, apparently choosing either to ignore the derogatory information or to downgrade its seriousness or significance.

Some of the above related reasons for disregarding derogatory information are personnel-related factors as opposed to security-suitability factors and therefore point

to a need to separate the two factions--personnel and security--in the adjudication process. Agencies do in fact submit cases to third party adjudication when the agency head is called upon to resolve a case when the personnel and security divisions cannot resolve a case between themselves. Furthermore, CSC has the authority to take final action in cases where the subject is in the competitive service. Security Hearing Boards established under Executive Order 10450 can also act as third party adjudicators, although only in an advisory capacity.

#### UNEQUAL TREATMENT OF APPLICANTS AND EMPLOYEES

While some agencies are ignoring derogatory information in hiring applicants and retaining employees, other agencies are not hiring applicants and are separating employees whose investigative reports reflect basically the same type of derogatory information. Because the employing agencies are permitted by Executive Order 10450 to adjudicate their own case and because the suitability standards are general, agencies are ruling differently on the basis of the same types of information.

The following examples illustrate similar derogatory information being treated differently by two agencies.

#### Example 1

Agency A appointed an applicant to a GS-3 guard position before a full field investigation was completed that revealed the subject had been a heroin addict. The investigative report included testimony from two witnesses who knew the subject and results of a records search of the drug treatment center where the subject had been released from treatment a year before his employment with Agency A. Agency A terminated the subject's temporary appointment a month after it appointed him and 3 weeks after receiving the investigative report.

Agency B appointed an applicant to a GS-4 clerk-steno position 3 months before receiving a full field investigation report that revealed the subject was taking the drug mescaline. One witness related personal knowledge of drug use and another stated that the subject had associated with a drug user. Agency B retained the subject because there was only one substantial allegation and because the position of clerk-steno was difficult to fill.

Example 2

Agency A conducted a preemployment investigation on an applicant for a GS-4 patrol officer position and two witnesses reported that the subject had been living with a woman out of wedlock. On the basis of this information the applicant was disqualified for employment with the agency.

Agency B conducted a preemployment investigation on an applicant for a GS-9 chemist position and three witnesses reported that the subject had impregnated a girl and paid for an abortion for the girl. Agency B hired the applicant on the basis that the remainder of the investigation was non-derogatory and that the subject had committed no illegal act.

Example 3

Agency A conducted a preemployment investigation on an applicant for an investigator position and two former employers testified that the applicant had not performed well on the job. As a result, the applicant was not hired.

Agency B conducted a preemployment investigation on an applicant for an investigator position and a former employer and a records search indicated poor job performance by the applicant, yet the agency hired the applicant because their training people felt the applicant was worth hiring.

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As the above examples show, agencies are not consistently applying the same criteria in adjudicating applicants for Federal employment. We believe this situation exists because there are no specific criteria for all agencies to use, especially in regard to derogatory information.

CSC officials stated that two developments affecting adjudications should be noted:

- "1. The Commission has approved revised suitability regulations following review of agency, organizational and public comment -- subject to its approval of guidelines for application of the regulations. These are now in preparation. The resulting standards and guidelines will be issued for internal Commission use in its suitability determinations and will be published for agency use in the determinations they make.

- "2. The Task Force of the Domestic Council Committee on the Right of Privacy, mentioned earlier, is reviewing the adjudication process throughout the Government with the objective of establishing 'equitable standards and procedures for the adjudication of cases to determine suitability for employment or access to classified or sensitive information.'"

## CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS

We believe that there is a need to centralize the personnel investigative function. Centralization would, in our opinion, help to insure the uniformity in the scope of investigations that is now lacking. Centralization would also provide for a more economical and efficient investigative program, as evidenced by the consolidation of the Department of Defense investigative function. We believe the program would be most efficiently served by two investigative agencies, one for the Department of Defense and one for civilian agencies. Since CSC already has the prime responsibility and authority to investigate persons entering into or employed in the competitive service, we recommend that CSC assume complete responsibility for the investigative function of all civil agencies.

We also believe there is a need for centralized direction of both the classification procedure and the adjudication process. The way the investigative reports are currently being adjudged by the employing agencies does not insure that either applicants or employees are being treated equitably since the agencies are allowed to freely interpret both the classification of positions and the adjudication standards. Since CSC is already required by Executive Order 10450 to review agencies' personnel security programs, including classification procedures, we recommend that CSC assume a more active role in the classification and adjudication process. More specifically, we suggest that CSC examine the present classification criteria to see if they are too ambiguous, as agencies claim. If they are too ambiguous, it may be necessary to initiate more rigid regulations and guidelines regarding classification procedures. Furthermore, we feel that CSC should consider the possibility of establishing a central adjudication body to review derogatory cases so all persons will be adjudicated alike. Whether the person has or has not yet been employed should not be a factor.

CHRONOLOGY OF LAWS, EXECUTIVE ORDERS, AND CONGRESSIONAL  
COMMITTEES AFFECTING THE PERSONNEL INVESTIGATIVE PROGRAM

- 1934 McCormack-Dickstein Committee
- 1938 Dies Committee
- 1938 Foreign Agents Registration Act
- 1939 Hatch Act, section 9A (5 U.S.C. 118)
- 1940 Smith Act
- 1941 Public Law 135 -- 77th Congress
- 1942 Interdepartmental Committee on Investigations
- 1943 Executive Order 9300
- 1946 House Subcommittee Report -- Congressional Record, July 2, 1946
- 1946 Temporary Committee on Employee Loyalty (Executive Order 9806)
- 1947 Executive Order 9835
- 1948 Public Law 402 -- 80th Congress
- 1950 Public Law 733 -- 81st Congress (5 U.S.C. 7531-7533)
- 1951 Executive Order 10237
- 1953 Executive Order 10450
- 1954 Atomic Energy Act of 1954 (42 U.S.C. sec. 2162-2165)
- 1955 Wright Commission
- 1966 Public Law 89-544, 80 Stat. 528
- 1971 Executive Order 11605
- 1972 House Committee on Internal Security -- Subcommittee on Loyalty-Security

APPENDIX II

EMPLOYING AGENCIES REVIEWED

Agency for International Development

General Services Administration

Office of Emergency Preparedness

National Mediation Board

Office of Economic Opportunity

General Accounting Office

Government Printing Office

Department of Housing and Urban Development

Federal Trade Commission

Department of Agriculture

Price Commission

U.S. Information Agency

ACTION

Export-Import Bank of the United States

National Labor Relations Board

Federal Power Commission

Department of Commerce

Atomic Energy Commission

Environmental Protection Agency

Department of Health, Education, and Welfare

National Gallery of Art

Small Business Administration

Bureau of Narcotics and Dangerous Drugs

Council of Economic Advisors

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**END**