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Authority to conduct investigations of Federal personnel is based on Executive Order 10450 which united previously separate suitability, security, and loyalty programs under the framework of a security program. The Civil Service Commission is primarily responsible for conducting such investigations. Findings/Conclusions: Since 1953, new laws and court decisions have imposed constraints in the investigation process which have had the effect of reducing the authority of employing agencies to remove employees under the provisions of the Executive Order and limiting the Commission's ability to obtain information bearing on their suitability for employment. Federal regulations provide criteria for agency classification of positions according to the sensitivity of their duties which indicates to the Commission what type of investigation to conduct. Criteria for these determinations are not clear, and many positions are classified as nonsensitive although they involve a high degree of public trust. The national agency check and inquiry as now conducted are inadequate for employees in positions with sensitive duties, while the extent of investigation is excessive for the majority of positions. Deficiencies noted in the Commission's information system were: the information gathering system has few limits or controls; the Commission has no overview on how the agencies use the information; it disseminates information developed during investigations even though much of the information may have little relationship to disloyalty; and security files maintained on supposedly subversive individuals are not specifically authorized. Recommendations: Congress should consolidate into one law the authority to investigate and judge the suitability of federal employees including their potential to impair national security. The Civil Service Commission should: improve agencies' consistency in classifying positions as to the scope of investigation needed, establish criteria to provide clear instructions on classifying positions based on sensitivity of duties, and assign more people to the review of agency

classifications; insure that occupants of sensitive positions are investigated properly by establishing necessary controls and clear criteria; insure that loyalty investigations protect the interests of the Government and the rights of individuals; and insure that investigative information is limited to that which is needed to make suitability, security, and loyalty determinations. (HTW)

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REPORT TO THE CONGRESS

04318



BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

Proposals To Resolve Longstanding Problems In Investigations Of Federal Employees

Civil Service Commission

Executive Order 10450 authorizes investigations of Federal personnel. It is out of date. Inherent weaknesses in the order, more recent laws, and court decisions have made it impossible for the Civil Service Commission to carry out its responsibilities.

In addition, the Commission has not established clear criteria governing the extent of investigations. Such investigations are at present inadequate for many employees with sensitive duties and too extensive for most employees.

Implementation of recommendations in this report would:

- Clarify authority.
- Provide clear criteria for determining the extent of investigations.
- Establish controls to protect the privacy of individuals.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548


B-132376

To the President of the Senate and the
Speaker of the House of Representatives

This report is an analysis of the Federal program for investigating the suitability of Federal employees. We discuss problems of the program and the actions needed. The implementation of our recommendations would establish a sound statutory base for investigations; provide a means to identify and adequately investigate occupants of positions that entail sensitive duties; and greatly reduce, for the vast majority of Government employees, the extent of investigation, invasion of privacy, and dissemination of information.

We made this review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

We are sending copies of this report to the Acting Director, Office of Management and Budget; the Attorney General; and the Chairman, Civil Service Commission.


Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

PROPOSALS TO RESOLVE LONG-
STANDING PROBLEMS IN INVESTI-
GATIONS OF FEDERAL EMPLOYEES
Civil Service Commission

D I G E S T

Authority to conduct investigations of Federal personnel is based on Executive Order 10450, dated April 27, 1953, and public laws and other Executive orders. (See app. II.) Executive Order 10450 united the previously separate suitability, security, and loyalty programs under the framework of a security program. It provides that suitability and loyalty are to be evaluated to determine if employment of a person is clearly consistent with national security. It does not provide that suitability be evaluated to promote the efficiency of the Federal service. It also makes the Civil Service Commission primarily responsible for conducting the investigations.

Since 1953, the Commission has had to modify its investigation process under Executive Order 10450 to comply with constraints in new laws and with court decisions. The cumulative effect of these constraints has been to

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

In short, the order is now out of date.

RECOMMENDATION TO THE CONGRESS

Accordingly, the Congress should 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. 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 the Civil Service Commission should investigate occupants of nonsensitive positions only to determine prior criminal conduct, leaving to employing agencies the responsibility for assessing efficiency.
- Need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment.
- 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 the Civil Service Commission 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.

RECOMMENDATIONS TO THE
CIVIL SERVICE COMMISSION

GAO recommends the following series of major changes by the 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. These classifications should

then be used as the communication tool for designating the scope of the investigation, the responsibility for adjudication, and the need to disseminate investigative results.

2. To insure that occupants of sensitive positions are investigated properly,
 - establish controls over written inquiries and see that classifiable fingerprints are obtained;
 - establish clear criteria for determining when cases should be further investigated; and
 - establish controls to prevent arbitrary reductions in the scope of investigations.
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.
4. To insure that the investigative information is limited to only that which is needed to make suitability, security, and loyalty determinations,
 - assume complete responsibility for adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and retain the investigative results;
 - assign adjudication responsibility for all sensitive positions to employing agencies;
 - establish criteria on the completeness, accuracy, and age of information which can be collected, used, or disseminated to an employing agency; and
 - when needed to determine the qualifications of potential appointees,

direct employing agencies to make appropriate inquiries of prior employment and educational sources.

Federal regulations provide criteria for agency classification of positions according to the sensitivity of their duties. (See ch. 3.) The classification indicates to the Commission what type of investigation to conduct. The regulations make agency heads responsible for classifying positions according to whether the positions are

- critical sensitive, requiring a pre-appointment full field investigation;
- noncritical sensitive, requiring a preappointment national agency check and postappointment inquiries; or
- nonsensitive, requiring a postappointment national agency check and inquiry.

These criteria are not entirely clear as to what duties should make a position critical sensitive. The criteria are silent as to what kinds of duties should be classified as noncritical sensitive, except that as a minimum, duties requiring access to secret or confidential defense information should be in that category.

Consequently, most agencies are using the noncritical sensitive category only for positions with access to secret or confidential defense information. They are including in the nonsensitive category positions with duties requiring great public trust. (See p. 19.) For example, the Federal Aviation Administration classified many air traffic controllers nonsensitive, even though occupants of these positions deal with the public and have a high degree of public trust in routing air traffic. (See p. 21.)

GAO believes that the national agency check and inquiry as now conducted is inadequate for occupants of any position

which has sensitive duties. Neither the Commission nor the employing agency should rely on the national agency check and inquiry investigation to judge the suitability of individuals in sensitive positions until proper controls are established. (See ch. 4.)

The extent of investigation seems excessive for the vast majority of positions which have no sensitive duties. Such investigations could be reduced to checks of FBI records. (See p. 36.)

The Commission's information gathering system has few limits or controls. It collects, retains, and disseminates to agencies data which is incomplete, irrelevant, outdated, and unverified. All derogatory information collected is disseminated to employing agencies even though much of it is not useful for suitability, security, or loyalty determinations.

The Commission has no overview on how the agencies use the information. (See ch. 5.) For example, 56 percent of the information the Commission collected on 86 randomly selected cases was minor and not useful for adjudication. Yet the Commission disseminated such information to the employing agencies in 55 of the 86 cases. (See p. 39.)

The Commission disseminates information used as leads and information developed during loyalty investigations by the FBI even though much of the information relates to disloyalty only vaguely or not at all. (See p. 44.)

The Commission has maintained security files that contain information on individuals and organizations believed to be subversive or radical. These files are not specifically authorized, duplicate a function authorized for the FBI, and draw together information collected and published by others. To comply with the

Privacy Act, the Commission stopped using an index to check individuals' names which appear in the files, but the source material was still maintained, and an index of organizations was used at the time of our review to obtain information on alleged organizational affiliations. (See p. 44.)

AGENCY COMMENTS

Responding to the recommendations in this report, the Civil Service Commission disagreed that legislation is needed that would consolidate the authority to investigate applicants and appointees and to adjudicate results. It did say, however, that either congressional or presidential action is needed to correct deficiencies and provide direction in areas of uncertainty. The Commission has decided to destroy its security files on alleged subversive and disloyal activities.

The Commission is extremely hopeful that this report will "provide the impetus for the emergence of guidance, direction and support for a viable and meaningful personnel security program which will protect the interests of the government and be cost effective."

Department of Justice considers this report to be an excellent analysis of the problems which have beset the Federal personnel loyalty/security program and agrees that there is great need for legislation setting forth and clarifying the goals and limitations of personnel investigations.

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ABBREVIATIONS

CSC	Civil Service Commission
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
HUD	Department of Housing and Urban Development
NACI	national agency check and inquiry

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CHAPTER 1

INTRODUCTION

Almost everyone entering Federal service is investigated to make sure he or she is reliable, trustworthy, loyal, and of good character. These investigations are based on Executive Order 10450 (as amended), dated April 27, 1953. The Executive order established a program to prevent Federal employment of persons who could adversely affect national security. The Executive order also made the Civil Service Commission (CSC) primarily responsible for conducting the personnel investigations. The authority to conduct personnel investigations is also embodied in other public laws and Executive orders. (See app. II.)

Before Executive Order 10450 was issued, the Government had separate suitability, security, and loyalty programs. Under section 2 of the Civil Service Act of 1883 (codified under title 5 of the U.S. Code), CSC has the authority to investigate the ability and fitness of applicants to the Federal service. Executive Order 9835 (1947), now revoked, provided that all employees in the executive branch should undergo investigation to establish their loyalty to the United States. The act of August 26, 1950 (Public Law 81-733), gave 11 agencies and departments authority to suspend or remove employees in the interest of national security and gave the President authority to extend the act's provisions to other agencies. Also, at least seven additional laws ^{1/} have given separate authority to specific agencies to remove employees for security reasons.

Executive Order 10450 united the previously separate suitability, security, and loyalty programs under the framework of a security program. The order provides that suitability and loyalty are to be evaluated to determine if employment of a person is clearly consistent with national security. It does not provide that suitability be evaluated to promote the efficiency of the Federal service.

^{1/}Atomic Energy Act of 1946, National Security Act of 1947, Economic Cooperation Act of 1948, Mutual Security Act of 1951, U.S. Information and Education Act of 1948, National Science Foundation Act of 1950, and Federal Civil Defense Act of 1950.

In his 1953 State of the Union Message, before signing the order, President Eisenhower said:

"The safety of America and the trust of the people alike demand that the personnel of the Federal Government be loyal in their motives and reliable in discharge of their duties. Only a combination of both loyalty and reliability promise genuine security."

BASIC PROVISIONS OF
EXECUTIVE ORDER 10450

Executive Order 10450 (see app. I) provides that:

- All persons seeking employment in the Government shall be judged by mutually consistent and no less than minimum standards and procedures.
- Each agency head is responsible for establishing and maintaining an effective program to insure that the employment of applicants and retention of employees within his or her agency is clearly consistent with the interests of the national security.
- The appointment of each civilian employee shall be made subject to investigation. The scope of the investigation shall be determined by the degree of adverse effect the occupant of the position can have on the national security, but in no event shall the investigation consist of less than a national agency check and written inquiries.
- The head of the agency is responsible for designating, by a sensitivity classification, the scope of the investigation needed for each employee.
- Whenever information is developed which indicates that the retention of an employee is not clearly consistent with national security, the information is to be forwarded to the head of the agency.
- If information indicates that employment of an individual may not be clearly consistent with national security, the head of the agency shall suspend the employee and, if necessary, terminate the person's employment in accordance with the

provisions of the act of August 26, 1950 (Public Law 81-733).

--Investigation information which indicates that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security shall be referred to the Federal Bureau of Investigation (FBI) for a full field investigation. This investigation is commonly referred to as a loyalty investigation.

INVESTIGATIONS AUTHORIZED
BY EXECUTIVE ORDER 10450

Executive Order 10450 authorizes two kinds of investigations--full field and national agency check and inquiry (NACI). Full field investigations are conducted for all positions having duties that are critical in terms of the national security or requiring a high degree of trust. Such investigations include a check by CSC of Federal agency arrest and investigative records and personal interviews and checks of local sources by CSC investigators. In a previous report ^{1/} we discussed full field investigations and disclosed that agencies were inconsistent in classifying positions because the criteria established under Executive Order 10450 were too ambiguous.

The NACI also includes a check of Federal agency arrest and investigative records but uses only written inquiries to check local sources. The NACI investigation is conducted for persons occupying less sensitive positions than those requiring full field investigations.

The national agency check of arrest and investigative records, in both full field and NACI investigations, includes a search of:

- FBI fingerprint and investigative files.
- CSC investigative files.
- Defense Central Index of Investigations records (including material in the Army Investigative

^{1/}"Personnel Security Investigations: Inconsistent Standards and Procedures" (B-132376, Dec. 2, 1974).

Records Repository, Naval Investigative Service Headquarters, and Air Force Office of Special Investigations) and Coast Guard Intelligence records.

In an NACI the written inquiries which supplement the national agency check ask for information concerning a person's loyalty, character, associations, experience, education, or arrest records. The information comes from

- former employers and supervisors;
- local law enforcement agencies at places of employment, education, and residence;
- references listed on the application;
- military personnel files if the employee was in the military service; and
- immigration files when appropriate.

When an NACI investigation develops adverse security or suitability information, other than that relating to loyalty, a limited suitability investigation is conducted by CSC. Ordinarily, this is not the equivalent of a full field investigation, because it is limited to obtaining needed details about the adverse or questionable information. Its purpose is to determine present suitability for Federal employment.

If CSC's investigation reveals derogatory information regarding such matters as sabotage, espionage, treason, sedition, membership in or affiliation with subversive organizations, unauthorized disclosure of security information, or refusal on grounds of self-incrimination to testify on loyalty matters before a congressional committee, CSC refers the case to the FBI for a full field loyalty investigation.

CSC OPERATIONS

The CSC Bureau of Personnel Investigations is responsible for all CSC investigative programs. The Operations Division performs the national agency checks and maintains investigative files. The Division of Reimbursable Investigations, Washington, D.C., schedules and controls full field investigations. Also, investigators from regional offices interview witnesses and check local records.

At the time of our review, CSC had three area centers, in Chicago, New York, and San Francisco, which were responsible for

- receiving NACI requests from agencies,
- preparing requests for the national agency check and the inquiries,
- identifying derogatory information as it is gathered, and
- screening the derogatory information to determine whether CSC or the agency should adjudicate the results.

Area center operations and much of the Operations Division's responsibilities have now been consolidated at one center in Boyers, Pennsylvania. CSC officials said the processing operation will remain essentially the same, but the consolidation will reduce duplication of effort between Washington headquarters and the area centers and thus reduce processing time and costs.

Until the end of fiscal year 1976, personnel in the CSC regional offices were adjudicating investigative results which area center personnel considered serious. Cases which needed further development were referred to the CSC regional investigators for a limited suitability personal investigation. However, the adjudication function is now consolidated at CSC headquarters.

Appendix V shows the processes for both NACI and full field investigations.

Processing workload and cost

During fiscal year 1976, CSC conducted 336,321 NACI investigations and 26,903 full field investigations. Identifiable costs amounted to \$23.5 million for an average cost of \$10.50 per NACI investigation and \$741 per full field investigation.

A CSC official said the \$741 is the total CSC cost for conducting a full field investigation. But CSC does not maintain records showing the total cost of conducting an NACI investigation. The identifiable costs include CSC direct and indirect labor, personnel benefits, travel, and supplies. They do not include administrative overhead,

space, utilities, telephone, and mailing costs. CSC also does not obtain cost information from other agencies, such as the FBI, which contributes to the NACI and full field investigations.

During fiscal year 1976, which covered July 1975 through September 1976, CSC reports showed the following processing results for the NACI investigations:

<u>CSC workload results for fiscal year 1976</u>	<u>Number</u>	<u>Percent</u>
NACIs processed	336,321	100
NACIs converted to limited suitability investigation	1,586	.47
Employees under investigation who quit or terminated during the investigation	385	.11
Employees removed from Federal service by CSC as a result of NACI and limited suitability investigations	102	.03

CHAPTER 2

CONSTRAINTS ON INVESTIGATIONS IMPOSED BY

COURT DECISIONS AND NEW LAWS

Since 1953, when Executive Order 10450 was promulgated, 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.

PREVIOUS STUDIES

Citing confusion due to grouping general suitability, loyalty, and security under one program, congressional committees and other groups have recommended that Executive Order 10450 be replaced. A draft of a proposed new order was under consideration when we completed our review. (See pp. 8 and 24.)

During 1953 to 1956 the administration used the removal authority of Executive Order 10450 as a basis for removing employees who were then labeled security risks. This resulted in complaints to the Congress that many people removed were not disloyal or subversive.

As a result, the Senate Committee on Post Office and Civil Service and the Commission on Government Security (Wright Commission) started investigating the administration of the Federal personnel investigation program in 1955. When the groups completed their reports, the conclusions were similar.

The Senate Committee on Post Office and Civil Service reported:

- The scrambling of the three categories of loyalty, security, and suitability under one general classification of security risks has brought about endless confusion.

--The Congress should enact legislation to govern the dismissal or suspension of Government employees on loyalty and security grounds.

The Commission on Government Security stated:

--While the current program has been labeled and justified as a security program, it has in practice been an unnatural blend of suitability, loyalty, and security programs.

--The hybrid product has resulted in inconclusive adjudications, bewildered security personnel, employee fear and unrest, and general public criticism.

--A loyalty program should supplement a suitability program which would authorize termination of employment for such cause as would promote the efficiency of the Federal service.

Both the 91st Congress and 92nd Congress conducted hearings on the administration of the Subversive Activities Control Act of 1950 and the Federal Civilian Employee Loyalty-Security Program. A committee report 1/ issued in 1973 recommended that Executive Order 10450 be replaced by an Executive order which pulls together the authority for personnel investigations and establishes minimum specified standards for loyalty and security.

The Domestic Council Committee on the Right of Privacy made a proposal for a redraft of the authority in 1976. This study group said that CSC seemed to have adequate authority to conduct investigations but that the authority was dispersed through various laws, regulations, and Executive orders. The committee report recommended that investigation and adjudication be covered under one authority reflecting the policy that personnel investigations are concerned primarily with suitability for Federal employment as prescribed by civil service regulations and that security considerations be invoked only in situations in which these suitability criteria are not applicable.

1/House Committee on Internal Security--Subcommittee on Loyalty-Security, H. Rept. 92-1637.

Adoption of the recommendations made by many of the study groups would not restructure the existing program but rather would give a single authority to existing CSC practices, including retention of the NACI as the minimum investigation. CSC is currently conducting investigations under security authorities and adjudicating the results under separate suitability regulations.

COURT DECISIONS AND LEGAL INTERPRETATIONS

Many court decisions and resulting legal interpretations have affected the personnel investigative process since Executive Order 10450 was issued. Some of those cited by CSC and study groups as having a significant impact follow.

Removal authority under Public Law 81-733 relates to national security

The Supreme Court held 1/ in 1956 that the removal authority of Public Law 81-733, which was extended to all agencies by Executive Order 10450, was applicable only to positions which could affect the national security. The order, which is basically a security directive, is still used as the basis for personnel investigations and favorable determinations. However, all adverse actions resulting from the investigations are now taken on the basis of other suitability criteria issued under civil service laws and regulations. The court decision invalidated the removal authority of the order for occupants of nonsensitive positions, but in practice agencies stopped using the removal authority of Public Law 81-733 for any adverse actions.

Disloyalty is not effective grounds for removal

Executive Order 10450 requires that all persons employed by the Federal Government be of complete and unswerving loyalty to the United States. Congressional testimony and several Supreme Court rulings also support the policy that disloyal persons should not be permitted to be employed in the Federal service.

However, CSC has no clear guidelines as to what disloyal acts should be disqualifying. CSC suitability

1/Cole v. Young, 351 U.S. 536 (1956).

standards state merely that engaging in activities with intent to destroy this constitutional Government by illegal means will be disqualifying. Although the standards provide examples of acts which are not disqualifying, they do not further define disloyal acts.

The Executive order includes similar standards which have not been useful because CSC does not have guidelines on how to identify the following disloyal actions cited in the order.

- Advocacy of use of force or violence to overthrow the Government of the United States or of the alteration of the form of government of the United States by unconstitutional means.
- Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any States or subdivision thereof by unlawful means.

The Executive order states that the Attorney General should furnish advice on the employee security program. But since 1974, when the Attorney General's list of subversive and disloyal organizations was abolished, agencies have not had guidelines on disloyalty. The order is clear, however, as to such criminal acts as sabotage, espionage, and treason being reasons to convert the case to the FBI.

Although CSC refers cases of questionable loyalty to the FBI for investigation, it does not remove employees on the grounds of disloyalty. CSC officials told us that the Commission had not removed anyone for disloyalty for over 20 years. During 1972 through 1976, for example, CSC screened 1,265 loyalty cases, referred most of them to the FBI, but removed none on loyalty grounds.

After the Supreme Court ruled that Executive Order 10450 could not be used as the authority to remove an employee from a nonsensitive position, CSC and employing agencies began citing suitability factors other than

loyalty and using their removal authority provided by civil service regulations to deny appointment or remove persons suspected of being disloyal. That is, they cited such factors as fraud for failing to admit membership in a subversive organization on the application form, criminal conduct, or notoriously disgraceful conduct. CSC and the agencies generally took no action if no other disqualifying grounds were found. However, more recent legal decisions have restricted CSC's ability to remove for fraud. Questions have also been raised about what is needed and what procedures should be followed in removing a person for disloyalty without violating the person's constitutional rights.

When issued in 1953, the Executive order made belonging to an organization which advocated the overthrow of the constitutional form of government of the United States a disqualifying factor for Federal employment. The Attorney General, to fulfill his responsibility under the order, maintained a list of such organizations that was originally established for the previous loyalty program. Membership or association with one of these organizations was the primary reason persons were barred from employment or removed for disloyalty in the first few years after the order was issued. Failing to admit such membership was later used as the basis for citing fraud as the disqualifying factor.

However, the Supreme Court held 1/ on January 23, 1967, that proof of membership without proof of specific intent to further unlawful aims of an organization was not a sufficient constitutional basis for exclusion from Government positions. Executive Order 11785 implemented this decision in 1974 and revised Executive Order 10450. Order 11785 also prohibited use of the Attorney General's list of organizations which had not been updated since 1955.

Loyalty questions are not
asked on application

One of the methods CSC used to determine whether an applicant belonged to an organization advocating the overthrow of the government and having the intent to further the aims of such organization was to ask the applicant on the application form and on the sensitive position data form. The CSC general counsel, however, in consultation with the

1/Keyishian v. Board of Regents, 385 U.S. 589 (1967).

Department of Justice, recommended that these questions be deleted from the application form after court decisions, in effect, prohibited routine inquiry into an individual's membership in organizations. Thus, in September 1976, after failing in four attempts to satisfy the courts, CSC stopped asking the loyalty questions on application forms used in the examining process.

In January 1968 the Supreme Court stated 1/ it interpreted such phrases as "to safeguard the country from sabotage or other subversive acts" to mean protection from actions, not ideas or beliefs. The Court also said:

" * * * the stream of authority admonishes courts to construe statutes narrowly so as to avoid constitutional questions.

"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."

The Supreme Court has held that the requirement for loyalty oaths cannot be overly broad so as to unreasonably infringe on constitutional rights of employees. On this basis the Supreme Court has overturned employee removal actions.

In 1960 the Supreme Court held 2/:

"* * * an Act touching on First Amendment rights must be narrowly drawn so that the precise evil is exposed; that an unlimited and indiscriminate search of the employee's past which interferes with his associational freedoms is unconstitutional. * * *"

1/Schneider v. Smith, 390 U.S. 17 (1968).

2/Shelton v. Tucker, 364 U.S. 479 (1960).

In December 1976 the Supreme Court 1/ referred to earlier decisions which held that rules preventing free expression are suspect and that denying employment on the basis of political associations has the potential to curtail free expression by inhibiting persons from establishing or retaining such associations. The Court held that the rights of liberty and property cannot be destroyed under the pretext of preserving the American form of government. The Court also cited a lack of proper precision in regulations and questioned indiscriminate searching of an employee's past during investigations. The Court stated:

" * * * In areas of protected freedoms, regulations based upon mere association and not upon proof of misconduct or even of intention to act unlawfully, must at least be accompanied by standards or procedural protections sufficient to safeguard against indiscriminate application. If * * * 'liberty' is to be regulated, it must be pursuant to the law-making function of Congress * * * [a]nd if that power is delegated, the standards must be adequate to pass scrutiny by the accepted tests."

EFFECTS OF NEW LEGISLATION

Access to some local law enforcement records is restricted

Due to legal constraints and nonresponses to inquiries, CSC cannot check some local law enforcement records even though the check is required by Executive Order 10450. By September 1976 the Chicago area center had stopped sending inquiries to law enforcement agencies in New York, California, Minnesota, New Mexico, Massachusetts, and Illinois and in 86 cities in other States because the agencies refused to release criminal information to CSC. Some of the larger cities are Detroit, Indianapolis, and Washington, D.C. Thus, an investigation cannot surface criminal information on individuals who reside in these areas unless the information is also on file with the FBI.

Restrictive State and local rules or laws are normally based on interpretations of the provisions of either the Privacy Act or the Criminal Justice Information Systems regulations implementing the Crime Control Act of 1973.

1/U.S. v. Robel, 389 U.S. 258 (1967).

CSC officials said in other cases the restrictions result only from anxieties on the part of police officials that they would violate one of the above regulations.

A CSC official said that some local law enforcement agencies do not believe CSC can legally distribute information from local agency records to an employing agency. The Criminal Justice Information Systems regulations authorize law enforcement agencies to provide criminal history information to Federal agencies that are authorized by statute or Executive order to conduct investigations for determining suitability or eligibility for security clearances. Yet, the regulations prohibit further dissemination to non-criminal-justice agencies. The CSC general counsel's position is that CSC conducts the investigations on behalf of the employing agency and, therefore, can disseminate the information to the agencies.

CSC has attempted to convince local law enforcement agencies that it should have access to records by sending CSC field investigators to discuss the matter with the agencies and also by publishing an article in a police trade journal. However, the problem still exists, and CSC is unable to obtain complete criminal arrest information.

Educational inquiries are not made

Executive Order 10450 requires CSC to send written inquiries to schools attended by the person under investigation. Schools, however, can no longer respond to general information requests or to requests not signed by a parent or by an eligible student. As a result, the Chicago area center has discontinued requesting information from schools.

A Federal regulation (45 CFR 99) establishes provisions to protect the privacy rights of parents and students. The regulation requires an educational agency or institution to obtain written consent from the parent or student before disclosing personally identifiable information other than directory information from the educational records of a student. The written consent must come from the parent or a student who is 18 years old or enrolled in post secondary education; the consent must be dated and include

--a description of the records to be disclosed,

--the purpose of the disclosure, and

--the party or class of parties to whom the disclosure may be made.

CSC's inquiry form did not meet these requirements and schools stopped replying. CSC used a general inquiry form which was prepared from data on the application and request for investigation form. The inquiry asked the school to verify attendance dates and whether the person had graduated and received a degree. The inquiry also asked for any information available regarding the person's conduct, loyalty, reliability, honesty, trustworthiness, character, and general fitness for the position. The applicant was neither advised of the questions being asked nor required to sign the request as required by the regulation.

Privacy Act of 1974

The Privacy Act of 1974 affected the availability of information and the willingness of sources to respond to inquiries. The actions CSC has taken to comply with the act have increased its workload and possibly reduced the effectiveness of the investigative program in an attempt to protect the privacy of individuals. Since still more changes may be needed to fully comply with the Privacy Act provisions, any restructuring of investigations should fully consider these provisions.

In passing the Privacy Act of 1974, the Congress found that the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies. The Congress also indicated that misuse of information could affect an individual's opportunities for employment and right to due process. The act regulates Federal agencies' use of information and includes provisions which direct agencies to collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

The act restricts the disclosure of personal information without the individual's consent, discourages keeping the source of information confidential from the individual, and requires the agency collecting information to inform each individual it asks for information of its authority and whether the disclosure is mandatory or voluntary. As a

result, CSC revised its forms to discourage the use of confidentiality, to stop disclosure of personal information to references, and to provide authority for investigation.

CONCLUSIONS

We believe that the many laws and court decisions bearing on CSC's authority have resulted in confusion as to which parts of Executive Order 10450 CSC can continue to implement. Although CSC has modified its procedures to comply with constraints, it has found its ability to obtain such data as local criminal and educational information weakened. Apparently, information on an applicant's education could be obtained if the inquiry is to the point and accompanied by the applicant's authorization.

Although loyalty to the United States is set forth as a requirement for Federal employment, the laws do not set forth the kinds of acts (other than crimes) which should be disqualifying on the grounds of disloyalty. Consequently, CSC has been forced to search for other grounds for disqualifying persons suspected of disloyalty.

We believe there is a need for legislation consolidating into one law authority for investigations and defining, in a manner acceptable to the courts, the kinds of acts which should disqualify an individual for Federal employment.

CHAPTER 3

REGULATIONS ON PERSONNEL

INVESTIGATIONS NEED REVISION

Federal regulations made agency heads responsible for analyzing positions according to whether the positions are

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

These classifications control whether employees appointed to the positions must be subjected to a full field investigation or to a less intense NACI.

The 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.

Executive Order 10450 requires CSC to furnish investigative results to employing agencies, and other regulations require the agencies to use the results in determining suitability. Title 5, U.S. Code 3301, makes CSC also responsible for such adjudication. This dual responsibility extends through the first year of employment. Thus both CSC and the agencies have derogatory information developed by the investigation. But the selected agencies we reviewed were not removing employees on the basis of this information unless they could relate prior misconduct to the employee's ability to perform sensitive duties of their positions.

REGULATIONS UNCLEAR

Executive Order 10450 requires that the occupants of positions which could have a materially adverse effect on the national security be classified sensitive and, with certain exceptions, only be filled by persons who have first received a preappointment full field investigation. All other positions are nonsensitive and receive no less than an NACI.

Unfortunately, the Executive order is not clear on what constitutes national security. The Supreme Court noted this problem in 1956, 1/3 years after the program was authorized, when it found that the removal authority of the order was applicable only to occupants of sensitive positions. The Supreme Court took the position that while the term "national security" was not defined, it was intended to entail

"only those activities of the Government that are directly concerned with the protection of the Nation from internal subversive or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on general welfare."

CSC directive

In 1965 the President endorsed a CSC directive to divide the sensitive positions into two categories--critical sensitive and noncritical sensitive. Occupants of critical sensitive positions were to continue to receive a preappointment full field investigation, but positions classified noncritical sensitive could be filled after a preappointment national agency check and later receive post appointment inquiries. The guidelines, which are still in effect, provide:

"Each department and agency as a minimum shall classify as 'sensitive' all positions whose incumbents have access to classified defense information described in Executive Order 10501, i.e., 'Confidential,' 'Secret,' and 'Top Secret.'

* * * * The criteria to be applied by the head of the department or agency in designating a position as critical-sensitive shall be as follows:

Any position the duties of which include:

- (1) Access to Top Secret defense information;
- (2) Development or approval of war plans, plans or particulars of future or major or special operations of war, or critical and extremely important items of war;

1/Cole v. Young, 351 U.S. 536 (1956).

- (3) Development or approval of plans, policies or programs which affect the overall operations of a department or agency, i.e., policy-making or policy-determining positions;
- (4) Investigative duties, the issuance of personnel security clearances, or duty on personnel security boards; or
- (5) Fiduciary, public contact, or other duties demanding the highest degree of public trust.

"Other sensitive positions which do not fall within the above criteria shall be designated as noncritical-sensitive."

This revision further confused the classification problem because sensitive positions now include duties which do not relate to national security as defined by the Supreme Court. The revision also added new dimensions to national security which were not provided for in the Executive order or previously authorized security programs. These new dimensions are further described in the latest edition of the Federal Personnel Manual, which provides agencies with guidelines on classifications. It states:

"Security is concerned with the employment and retention in employment of persons in positions the duties of which relate to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all other acts or situations likely to weaken or destroy the United States."

PROBLEMS CREATED BY CLASSIFICATION CRITERIA

The first four criteria for the critical sensitive category describe duties which can have a nationwide effect on security or agency operations. The fifth criterion, although less clear, by its inclusion with the other criteria and its wording, implies an intent to cover duties which could have a nationwide effect on agency operations. The criteria are silent on what kinds of duties should be

classified as noncritical sensitive, except that as a minimum, duties requiring access to secret or confidential defense information should be in that category.

Consequently, most agencies are using the noncritical sensitive category only for positions with access to secret or confidential defense information. In the nonsensitive category, they are including positions not clearly meeting the criteria for the critical sensitive category but with duties requiring great public trust.

Positions with sensitive duties
classified nonsensitive

We visited selected field offices of the following agencies to learn how they were classifying their positions.

- Federal Aviation Agency (FAA).
- General Services Administration (GSA).
- Department of Health, Education, and Welfare (HEW).
- Department of Housing and Urban Development (HUD).

The selected field offices of these four agencies had 10,473 positions which they had classified as follows.

<u>Agency</u>	<u>Total positions</u>	<u>Sensitive positions</u>		<u>Nonsensitive positions</u>
		<u>Critical</u>	<u>Noncritical</u>	
FAA	2,863	60	964	1,839
GSA	1,833	50	155	1,628
HEW	5,102	34	10	5,058
HUD	<u>675</u>	<u>11</u>	<u>12</u>	<u>652</u>
Total	<u>10,473</u>	<u>155</u>	<u>1,141</u>	<u>9,177</u>

As shown above, critical sensitive positions accounted for about 1.5 percent of the total. Most of these positions were occupied by key officials in grade GS-15 or higher or by staff requiring access to top secret or secret defense information. The agencies issued security clearances to occupants of these positions even though many did not need access to defense information.

Three agencies' regulations contained vague language which could have permitted use of the noncritical sensitive category for positions not requiring access to defense information. In practice, however, the agencies used that category only when occupants needed clearance for access to secret or confidential defense information. Thus, in implementing the Executive order and CSC directive, the agencies have used the nonsensitive category for positions of great public trust if the occupants could not have a materially adverse effect which is national in scope. For example:

- FAA classified many air traffic controllers nonsensitive. Yet, occupants of these positions deal with the public and have a high degree of public trust in routing air traffic.
- Some HEW, HUD, and GSA auditors are classified nonsensitive. However, auditors have sensitive duties for investigating, evaluating, and recommending changes for large Government programs. They also deal extensively with the public and require a high degree of trust because they have access to much information in an agency.
- HUD classified realty contracting specialists nonsensitive even though they work with the public and negotiate the terms for large Government contracts.
- GSA classified some Federal Protection Service officers nonsensitive who guard the Federal buildings where sensitive information is stored.

Misuse of nonsensitive category conceals agency needs

If an applicant is to perform sensitive duties, the employing agency needs the investigative results to appraise his suitability. The only ready means CSC has for determining the sensitivity of the duties is the category specified by the agency in requesting the investigation. An exception is that CSC can occasionally infer from a job title that an employee has sensitive duties even though the agency has classified the position nonsensitive.

During a review of 126 cases, we found in one instance that CSC had inferred from the job title that an employee had sensitive duties and removed him from a Federal bank

examiner position because of previous dishonest conduct. But most requests for investigation did not include a job title from which the duties can be inferred. Thus, to determine the nature of the duties, CSC would have had to obtain job descriptions, interview agency officials, or both.

Derogatory information not useful
to agencies if positions have no
sensitive duties

CSC has adjudicated the suitability of employees and then forwarded to the employing agencies any derogatory information developed by the NACI as required by Executive Order 10450. Agency officials we talked to said that, once CSC has determined an employee suitable, they could not remove the employee from a position which has no sensitive duties. For example, one agency learned from the NACI results that a nonsensitive employee was an alcoholic, but since CSC did not disqualify him and he was performing his duties satisfactorily the agency saw no basis for removing him.

Relating to this, we noted that CSC had rewritten Federal regulations in 1975 to comply with a court decision 1/ that adverse actions must be based on a relationship between conduct and an individual's ability to perform the duties of the position, or between that conduct and the agency's ability to fulfill its mission.

In May 1977 CSC approved a proposal to transfer all adjudication responsibility to the agencies. The proposal stated that the agencies are in a better position to evaluate investigative results in terms of job demands, specific duties, performance, effect of conduct on fellow employees, efforts toward rehabilitation, attitude, and staffing requirements. If the proposal is implemented, CSC will continue to forward derogatory information to the agencies whether or not the employees have sensitive duties.

In contrast to the proposed procedure, CSC has been adjudicating investigative results for nonsensitive positions on the basis of whether prior misconduct should disqualify an individual for any Federal employment.

1/Norton v. Macy, 417 F. 2d 1161 (D.C. Cir., 1969).

CSC MONITORING OF AGENCY
CLASSIFICATIONS IS INADEQUATE

In December 1974 we reported 1/ that CSC could not be sure that agencies were properly classifying positions because the time between appraisals of individual agency practices ranged from 2 to 17 years and averaged 8.5 years. CSC officials agreed to conduct the appraisals on a more frequent and regular basis. However, because only three staff members are assigned to conduct the security appraisals of all Federal agencies, security appraisals are still completed only about every 4 years. In addition, the appraisals are limited to reviews at the agency headquarters.

We believe that reviews cannot be effectively accomplished at headquarters locations because job descriptions do not fully define the sensitivity of duties. Some agencies prepare documents to justify full field investigations, but none of the agencies we reviewed justified that non-sensitive positions are properly classified. Therefore, an adequate review to determine the sensitivity of many employee duties can only be conducted at the place of employment.

PROPOSED EXECUTIVE ORDER
TO REPLACE IO450

We reported in December 1974 that employing agencies were inconsistent in classifying the sensitivity of job positions because of ambiguous criteria. In response to our 1974 report, CSC said the problem of classification was being addressed by a task force of the Domestic Council Committee on the Right of Privacy. The Domestic Council task force issued its report in February 1975. Some of the problems reported were:

- CSC criteria for sensitive positions allow for different interpretations, especially regarding the relationship to national security versus national welfare.
- The present criteria do not recognize that there are sensitive positions which affect the national welfare but which are not policy making or policy

1/"Personnel Security Investigations: Inconsistent Standards and Procedures," B-132376, Dec. 2, 1974.

determining, or have fiduciary, public contact, or high public trust responsibilities.

--The cost of full field investigations, the time required to complete them, and the use of "blanket" designations for an entire staff or operational unit without examining the duties of each position improperly influence classification decisions.

In a draft Executive order proposed as a replacement for Executive Order 10450, the task force included revised instructions for classifying positions.

The Department of Justice, in its September 1976 comments, was highly critical of the Domestic Council task force draft. Most of the comments related to lack of clarity. We agree that the draft was vague. For example, it left much to the judgment of agency heads as to how to classify positions. CSC, at the direction of the Office of Management and Budget, was preparing another draft of the order.

CONCLUSIONS

We believe Federal regulations do not clearly provide a category for positions requiring great public trust unless their activities require access to classified defense information or affect nationwide agency operations. Also, CSC has not assigned enough people to review agencies' classifications. Although the regulations could be interpreted as permitting use of the noncritical sensitive category for these high public trust positions, the agencies have generally classified them as nonsensitive. Since the category specified by the agency indicates to CSC investigators the sensitivity of the duties, it is important that the classification be more precise.

We believe that if CSC could be sure those in the nonsensitive category had no sensitive duties, they could reduce the scope of their investigations of such employees to a check of FBI records for the kinds of activity which should bar any Federal employment. This could obviate the need to disseminate derogatory information to the agencies when CSC has determined that the information is not disqualifying. (See p. 36.) We believe that unnecessary dissemination of derogatory information on employees in nonsensitive positions is undesirable. (See ch. 5.) But if CSC implements its May 1977 proposal to make the agencies

responsible for all adjudication, dissemination of derogatory information to the agencies will continue.

In the case of sensitive positions, we believe that the agencies need the derogatory information developed to determine whether past misconduct could impair an applicant's ability to perform the duties of the position or the ability of the agency to fulfill its mission.

CHAPTER 4

NEED TO IMPROVE THE NACI FOR

SENSITIVE POSITIONS

CSC regulations require agencies to identify positions as noncritical sensitive if they require access to secret or confidential defense information. CSC, however, makes no basic distinction between the type of investigation conducted for occupants of these positions and the type conducted for occupants of nonsensitive positions. 1/ Since agencies rely on the investigation for the information they need 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.

To determine how CSC was performing the NACI investigations, we reviewed the processes followed at CSC headquarters and at the area center in Chicago. The review included an examination of 86 investigations which we selected at random from all those which developed derogatory information during fiscal year 1976. We also examined 40 investigations which developed information resulting in CSC removal of employees. The 40 removals comprised all CSC removals resulting from NACI investigations by the Chicago area center during the 12 months ended June 30, 1976. (See app. IV for criteria used to judge whether derogatory information was serious or minor and data on the cases.)

1/The only distinction is that CSC limits the number of written inquiries for nonsensitive positions occupied by low grade personnel.

During the 12 months, the Chicago area center completed 96,962 NACI investigations. Of these, 89,175, or about 92 percent, did not develop derogatory information. CSC handled the other 8 percent as shown below.

	<u>Number</u> <u>(note a)</u>	<u>Percent</u>
Provided the information to the Postal Service	b/1,396	1.5
Screening clerks forwarded information to employing agency without referring to CSC adjudicator	4,379	4.5
Referred to CSC adjudicator who:		
Forwarded information to employing agency without further investigation	1,462	1.5
Forwarded information to employing agency after limited suitability investigation	510	.5
Removed employees because of derogatory information	<u>40</u>	<u>negligible</u>
Total	<u>7,787</u>	<u>8.0</u>

a/These numbers were derived from the area center records and do not agree in some minor respects with the region's workload reports.

b/CSC does not adjudicate suitability for the Postal Service.

NEED TO OBTAIN RESPONSES
TO REQUESTS FOR INFORMATION

CSC has no control by which it can determine whether it receives responses to its requests for information. CSC's clerical employees reviewed responses as they were received and threw away any which did not contain derogatory information. CSC normally closes an NACI investigation within about 10 weeks, making sure only of a response from the FBI. CSC thus considers the investigations complete without

knowing whether it has received responses to all or any of its other inquiries. Since some fingerprints are not classifiable, CSC cannot rely on some of its responses from the FBI.

The present written inquiry process assumes that sources with derogatory information will respond. But nothing should be inferred from a nonresponse. The fallacy of so inferring is demonstrated by the 40 investigations processed by the Chicago area center which resulted in CSC removing employees. Limited suitability investigations of these employees developed derogatory information from 18 local police departments, 6 employee references, and 8 former employers. None of this information was furnished in response to CSC written inquiries.

Our random sample of 86 investigations included 11 which covered noncritical sensitive positions and may have included others which should have been considered sensitive based on our belief that the noncritical sensitive category should include positions which could have a materially adverse effect on agency operations. Since CSC adjudicators did not require further investigation of the 11 employees in noncritical sensitive positions, they closed the investigations with no assurance that all of their inquiries had been answered.

Local law enforcement agencies

Responses from local law enforcement agencies are particularly important for sensitive positions. CSC sends written inquiries to local law enforcement agencies at a person's places of employment, residence, and education during the previous 5 years. CSC cited criminal misconduct or drug abuse in all 40 removals it made in the Chicago area during fiscal year 1976. Local law enforcement agencies were the only source of serious derogatory information in 5 of these removals. For our random sample, law enforcement agencies provided 20 percent of the serious derogatory information.

Unfortunately, local law enforcement agencies do not always respond to CSC requests for information. For example, the FBI provided CSC local arrest records on 15 of the 40 removal cases where CSC did not obtain the information from local law enforcement agencies. But FBI records cannot be relied on for all local arrest records. In our review of 86 randomly selected derogatory cases, CSC received arrest records on only 16 individuals from local law enforcement

agencies, and the FBI provided the same information on only 4 of the cases. CSC officials said that, in addition to local legal restrictions and interpretations of Federal laws, some local law enforcement agencies place a low priority on responding to CSC inquiries because of their own heavy workload and budget limitations.

Fingerprints should be classified
for occupants of sensitive positions

Executive Order 10450 requires that each NACI include a check of FBI fingerprint files. However, during fiscal year 1976, about 15.4 percent of the fingerprints submitted to the FBI for occupants of sensitive positions were never classified. The FBI requires 10 readable prints to check arrest records as part of a personnel investigation. Although the FBI locates 93 percent of the arrest records in their files by name check, arrest records filed under a different name cannot be found without classified prints.

The FBI's Identification Division maintains a centralized system of files on criminal arrest records and fingerprints from local, State, and Federal arrests and convictions. The FBI first searches these files by name and then attempts to make a technical analysis of the fingerprints for individuals which are not matched by name. This later classification of fingerprints is designed to find those persons who have an arrest record under a different name than the one used on the application for Federal employment and to find any arrest records missed in the name card search due to clerical error.

The FBI arrest records were the most productive source of derogatory information on the cases we reviewed. This source provided 23 of the 51 instances of serious derogatory information in our sample of 86 cases and 24 of the 79 instances of serious derogatory information in the 40 removal cases. Twenty-two of the 24 times serious derogatory information was provided from this source on the removal cases, it was cited as a basis for converting the case to a limited suitability investigation.

Since the check of FBI records is an important source of information, the searches for applicants for sensitive positions should be complete. This would require that fingerprints be resubmitted until classified. However, unless all 10 fingerprints are classifiable, CSC returns the fingerprints to the employing agency with a statement explaining that a search of the alphabetical name index to

the fingerprint files was made with negative results, but it does not direct the agency to submit additional fingerprints even for sensitive positions.

During fiscal year 1976, the FBI searched 275,591 cases for CSC's security program. The searches identified 13,597 arrest records, or 4.93 percent of the total searches. The FBI could not make a complete search for 75,355, or 27 percent, of the requests because the prints were not classifiable or the requests had missing information.

The FBI conducted a study at our request which showed it found 7 percent of the total arrest records by classifying fingerprints and 93 percent by checking names. We also randomly sampled the fiscal year 1976 case control cards at CSC and found that 18.6 percent of the fingerprints for occupants of sensitive positions were unclassifiable on the first submission, and only 3.2 percent of the total fingerprints were classified on subsequent attempts, for 15.4 percent net unclassifiable fingerprints. Projecting these ratios resulted in the following estimates for occupants of sensitive positions investigated during fiscal year 1976.

	<u>Processed</u>	<u>Percent</u>
Sensitive cases processed	83,138	100.0
Unclassifiable on first submission	15,494	18.6
Resubmitted	5,218	6.3
Classified after resubmission	2,701	3.2
Unclassifiable	12,793	15.4

Agency officials we contacted had varying opinions on the need for resubmitting fingerprints on sensitive positions, but they agreed it was up to agency discretion.

NEED FOR CONTROLS TO INSURE
ADDITIONAL INVESTIGATIONS ARE
MADE WHEN APPROPRIATE

Executive Order 10450 requires further investigation if an NACI develops derogatory information serious enough to warrant it and requires an investigation by the FBI if an NACI (or full field) investigation develops information which indicates an individual may have been subjected to coercion, influence, or pressure to act contrary to the

interest of national security. However, CSC had neither criteria from which its personnel could judge consistently whether derogatory information was serious enough to warrant further investigation nor clear guidelines on conditions which would warrant an FBI investigation of an individual's loyalty.

Limited suitability investigations

CSC area center clerks receive the NACI results and must decide whether CSC or the employing agency will adjudicate cases with derogatory suitability information. For the cases retained for CSC adjudication, examiners or adjudicators must decide whether the information needs further development. The decisions must be based on how serious the derogatory information is and whether the information is potentially disqualifying. However, CSC has not provided its staff adequate criteria to make consistent decisions.

The CSC operating manual instructs clerical reviewers to use their own judgment in determining what action is necessary based on the seriousness of the derogatory information. The clerks are to send minor information to the agency without further investigation and serious information to the CSC examiners for adjudication or further investigation. However, the manual does not define what information is serious and what is minor.

The manual says only that derogatory suitability information is serious enough to warrant further investigation when it may be disqualifying if verified. (See app. III for suitability factors.) CSC officials said they always convert a case to a limited suitability investigation if they think the information surfaced by the NACI may be disqualifying. However, CSC has not described what serious information would be disqualifying if verified. CSC officials said each case must be judged on its own merit.

How can clerks using this rationale make consistent determinations? Without consistent determinations by the clerks, adjudicators do not get an opportunity to review all of the similar cases. Thus, without better criteria for what is disqualifying, adjudicators cannot consistently convert cases to limited suitability investigations.

CSC employees responsible for reviewing and screening investigative results at the Chicago area center said they were not using written or specific guidelines in judging

the seriousness of derogatory cases. They said that the guidance provided them consisted of oral instruction during the initial training. Based primarily on their judgment, these clerical reviewers sent about 70 percent of the cases with derogatory information to the employing agency during a 12-month period.

Using our definition of serious and minor shown in appendix IV, we reviewed the 86 derogatory cases to determine if the decisions to further investigate were consistent. The following table shows the seriousness of the derogatory information contained in the cases further investigated as well as the number sent to the agency without further development.

<u>Type of derogatory information</u>	<u>Cases not investigated</u>	<u>Cases further investigated</u>	<u>Total cases</u>
Serious	24	10	34
Minor	<u>50</u>	<u>2</u>	<u>52</u>
Total	<u>74</u>	<u>12</u>	<u>86</u>

CSC converted 11 of the 12 cases to further investigation to obtain more information because the NACI surfaced derogatory information relating to criminal misconduct or drug abuse. The other conversion was made to develop information on a person alleged to be homosexual.

The 74 derogatory cases not further investigated included 18 which appeared to meet CSC criteria for further investigations. Cases with criminal and drug abuse information similar to some which were investigated were also sent to the agency without development. For example:

- One individual was further investigated because military records showed the individual was discharged from the Army for drug abuse. Yet, another individual's military records revealed that he was discharged from the Navy for drug addiction and unauthorized use or possession of habit-forming narcotic drugs or marijuana, but this derogatory information was forwarded to the agency without further investigation.
- CSC further investigated one individual whose police record revealed one arrest and conviction for theft, one arrest for loitering (no disposition shown), and two arrests for lascivious

conduct (no disposition shown). However, another individual was not investigated who had a record of three arrests and convictions for personal theft and possession of drugs; two arrests and dismissals for grand theft and possession of stolen property; and one arrest for strong-armed robbery, grand theft of auto, and possession of marijuana.

Several of the cases not further investigated contained derogatory information which was recent and related to disqualifying suitability factors other than criminal offenses. CSC did not convert these cases to obtain the full facts. For example, six of the cases contained information on misconduct in prior employment, and two cases contained information indicating the individual may have been an alcoholic. The seriousness of this type of information is difficult to determine. Our review indicated that CSC does not disqualify an individual unless an investigation discloses serious criminal or drug abuse conduct.

CSC believes the consolidation of the area centers at Boyers and the consolidation of the adjudication function at Washington should improve the consistency of the decisions.

FBI investigations for loyalty

CSC initiated many of the investigations on the basis of information which had no or only vague relation to disloyalty. The information generally came from FBI or CSC security files. Also, CSC initiated the investigations without having criteria on what would be disqualifying if verified.

In a 1976 GAO report ^{1/} we questioned the FBI's authority, oversight, and control of Domestic Intelligence Operations which, as part of its mission, conducts surveillance investigations to gather information on evidence of membership in such organizations as may provide the basis for denial of Government employment. As recently as May 1977, Clarence Kelley, Director of the FBI, told the Los Angeles World Affairs Council that the Bureau lacked guidelines for handling domestic security and intelligence cases and knowing

^{1/}"FBI Domestic Intelligence Operations--Their Purpose and Scope: Issues That Need to be Resolved," GGD-76-50, Feb. 24, 1976.

whom to investigate. Nonetheless, CSC uses information from FBI investigations as leads indicating a need to investigate Government applicants and employees for disloyalty.

Most referrals to the FBI still result from a subject's membership in or acquaintance with members of various organizations. The FBI, however, has not limited its investigations to verifying that information.

CSC had summaries of all loyalty investigations made during the last 5 years. We reviewed the summaries for 171 cases closed in fiscal year 1976 and selected 10 of the cases for detailed review. We found examples of investigations that appeared to have little justification and some investigative reports that contained information, often unsupported, that did not relate to loyalty or other suitability factors. For example:

- One employee had a record of membership in various women's organizations. One organization, of which seven of its leaders were known Communists, had been cited by the House Committee on Un-American Activities as being established to lead a Communist Party activity. When CSC interviewed the employee, she denied having ever been disloyal. The investigative report also contained an allegation that the woman had an affair which led to divorce proceedings. The employee denied having the affair.
- CSC referred another case to the FBI for investigation when the NACI disclosed the employee had been interviewed by the FBI 2 years earlier because the employee knew a man whose wife had been a college friend and coworker with a woman who later became active in a radical group. Before the FBI discontinued the investigation, its agents interviewed the employee's family about the employee's purported radical beliefs. The case also contained information on the employee's nonjudicial punishments while in the service and about the employee's need to dress neater.
- CSC referred a case to the FBI because the employee's wife had been a member of an organization of medical students between 1943 and 1946 which the House Committee on Un-American Activities cited as disloyal. In 1952 the wife became a member of Citizens Against McCarthy. One reference which the wife listed on a Government application form

had signed a petition advocating the civilian control of atomic energy. During a full field loyalty investigation one associate stated the employee and his wife were extreme liberals and were strong advocates of individual freedoms and opposed to restraints on personal conduct.

--The FBI investigative files showed that between 1947 and 1955 the subject belonged to a number of organizations which the FBI believed were subversive and that the subject received a non-judicial punishment fine of \$30 in 1944 while in the military. The FBI investigations showed there had been no recent affiliations with subversive organizations.

--A 1968 FBI investigation showed that the subject belonged to a subversive type organization only for humanitarian reasons. Other interviews by the FBI showed the subject did not dress neatly while in college.

CSC never made an adverse decision concerning the loyalty or other suitability issues in the 10 cases. Its final actions on the 10 cases were:

Favorable determinations	3
Discontinued investigations	3
Lost jurisdiction at the expiration of 1 year of employment	4

INVESTIGATION SHOULD NOT
BE ARBITRARILY REDUCED

Executive Order 10450 requires that the scope of investigation be determined by the degree of adverse effect the occupant of a position can have on the national security. Although the effect may not be nationwide in scope, some occupants of nonsensitive and noncritical sensitive positions which are investigated by NACIS can cause a materially adverse effect on the Nation's security or agency operations. CSC, however, has, during heavy work periods, arbitrarily reduced the scope of NACI investigations required by Executive Order 10450 and varied the number of cases converted to further investigation.

CSC officials said that written inquiries have been discontinued during periods when their workload has exceeded their capability. For example, CSC was unable to keep pace with the large influx of Federal employees during periods of the Vietnam War. To keep up, CSC discontinued sending written inquiries to some sources. No information was available at the time of our review to evaluate the effect, if any, of not completing these inquiries.

The number of cases converted to a limited suitability personal investigation is sometimes also reduced because of budget constraints and heavy workloads of field investigators. As a result, the percent of cases converted to personal investigations varied significantly between CSC regions in the Chicago area center's jurisdiction. During fiscal year 1976 the regions converted from 8 to 52 percent of the cases referred to them by the area center. CSC personnel told us that at least part of the variance was caused by requirements for full field investigations in the regions. Field investigators who conduct the full field investigations also conduct the limited suitability investigations.

CSC officials believe the recent consolidation of adjudicative responsibilities into the Bureau of Personnel Investigations will improve the consistency of conversions. However, the rate of field investigations is affected by the workloads of other programs. For example, limited suitability investigations for NACI cases were curtailed in the Washington area when Equal Employment Opportunity appeal investigations increased and overloaded the staff. Discrimination complaint investigations increased from 255 in fiscal year 1975 to 922 in fiscal year 1976 for all regions.

NACI INVESTIGATIONS EXCESSIVE FOR MOST POSITIONS

The vast majority of Federal employees have no duties which would enable them to materially affect agency operations. CSC could reduce its workload substantially if it confined investigations for such employees to a check of FBI records. If this check developed serious derogatory information, the investigation could then be expanded.

We believe such an approach is justified on the basis of results achieved by the Chicago area center during the 12 months ended June 30, 1976. Only .04 percent or 37 of the investigations completed resulted in CSC removal of

employees in nonsensitive positions. Moreover, for 22 of these investigations a check of FBI records developed serious derogatory information. Thus, all but 15, or less than 2 in every 10,000, could have been removed even if CSC had not checked with other national agencies or made written inquiries.

CONCLUSIONS

We believe the NACI as CSC is performing it is inadequate for sensitive positions. The lack of controls to insure that responses to written inquiries are received and used for adjudication, the failure to insist on classifiable fingerprints for the FBI check, the inconsistencies in decisions for further investigations, and the arbitrary reductions in the scope of the investigations were, at the time of review, loopholes in the investigative process which increase the risk of employing persons who should be disqualified for sensitive positions.

On the other hand, CSC is ordering FBI investigations for loyalty on the basis of information which has only a vague relation to disloyalty. We believe CSC should establish guidelines on what kind of information should trigger loyalty investigations.

We believe that the NACI itself is somewhat excessive for nonsensitive positions. Experience at the Chicago area center shows that a check of FBI records alone led to the development of information which resulted in most of the removals; that is, this check would have missed about two removals per 10,000 people investigated. Since nonsensitive positions have no sensitive duties and since no amount of checking could reduce the risk to zero, we believe checking FBI records for nonsensitive positions would be adequate.

CHAPTER 5

NEED FOR CONTROLS OVER

DISSEMINATION OF INVESTIGATIVE RESULTS

CSC and the employing agency only need information which can be used to make suitability, security, and loyalty determinations in accordance with CSC standards. However, CSC collects, retains, and disseminates data to the agencies which is incomplete, irrelevant, and unverified.

CSC's information gathering system has few limits. For example:

- The NACI can gather virtually all derogatory information from Federal and local agencies which have investigative, criminal, and personnel files.
- Investigations by CSC for suitability, and by the FBI for loyalty, gather information on an individual's beliefs, activities, and personal life and on groups and persons associated with the individual.
- A CSC security file contains information on individuals and organizations believed to be subversive or radical for use in screening applicants and employees for Federal employment.

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. In addition, CSC retains the information for at least 20 years and many agencies retain it throughout the employee's career. CSC has no overview on how the agencies use the information.

In defense of CSC's actions, CSC officials said all investigative results must be disseminated to the employing agency because:

- Executive Order 10450 requires that any information developed be forwarded to the head of the employing agency or his representative.

--The employing agency also has jurisdiction for adjudicating suitability and has responsibility for the agency's security program.

CSC DISSEMINATES MINOR
INFORMATION GATHERED FROM THE NACI

All of the NACI sources, except references, provided minor derogatory information (see app. IV) which was irrelevant, incomplete, or outdated. Since most of the information was not verified before dissemination, its accuracy is questionable. In total, the NACI sources produced minor derogatory information 56 percent of the time--66 times out of the 117 total instances in our sample of 86 cases. CSC sent minor information to the agency in 55 of the cases.

Some information is outdated

For every appointee, CSC checks FBI records and, if applicable, Department of Defense and Coast Guard investigative records. CSC limits inquiry sources to those which correspond to the subject's places of occupation and residence within the last 5 years. But there is no limit placed on the age of information surfaced by the investigations.

In a sample of 86 investigations, about 53 percent of the derogatory information surfaced by national agency check sources was more than 5 years old and 34 percent of the written inquiry information was older than 5 years for an overall rate of 45 percent. If no misconduct is found in the last 5 years, there is no proof of a continued pattern of misconduct. In addition, CSC and Department of Defense studies showed that derogatory information becomes less serious with the passage of time, and virtually all derogatory information used in adverse actions was developed in the most recent 5-year period. (See app. IV.)

The age of derogatory information surfaced by the 86 investigations we examined is shown in the following schedule.

<u>Age of information</u>	<u>Items of derogatory information</u>	<u>Percent of total</u>
5 years or less	64	55
Over 5 to 11 years	18	15
Over 11 to 21 years	11	9
Over 21 to 41 years	10	9
Date not shown	<u>14</u>	<u>12</u>
Total	<u>117</u>	<u>100</u>

Arrest records are incomplete and outdated

Both the FBI and local law enforcement agencies provided CSC with arrest records which were outdated or showed no disposition. Federal regulations allow the FBI to provide all arrest records, with or without dispositions, to other Federal agencies. For non-Federal agencies, the FBI must not show arrests over 1 year old unless the disposition is shown.

The Criminal Justice Information Systems regulations also authorize local law enforcement agencies that receive Federal funds to provide all criminal history information to Federal agencies, such as CSC, that are authorized to conduct investigations related to determining suitability or eligibility for security clearances.

CSC gathers arrest information on the premise that the primary concern is with the nature of the criminal conduct rather than the fact of conviction. CSC believes the circumstances leading to arrests have a bearing on a person's fitness for Federal employment even though no criminal conviction might have resulted.

CSC further believes that all arrest information is needed to evaluate patterns of misconduct and to use as investigative leads. But, CSC disseminates most of the information to the employing agency without further development.

The FBI provided minor derogatory arrest information 25 times in the 86 randomly selected cases we reviewed.

Twenty-one times the information was more than 5 years old and did not indicate a pattern of misconduct, and in 10 of the 21 cases there was no disposition shown for arrests. The information in the other four cases was irrelevant or incomplete. For example, the FBI had fingerprints of two employees on file from a previous personnel check which were given to CSC. CSC then created files for the two employees which contained no derogatory information and which should not have been created according to CSC operating instructions.

Local law enforcement agencies provided minor information six times. In one case, the local law enforcement agency sent the response, "No adult record, only juvenile record." In another case, information on five minor traffic violations was provided. Some of the derogatory information CSC collects, such as in the cases mentioned above, is not even requested on the Federal application form. The question asked the applicant is:

"Have you ever been convicted of an offense against the law or forfeited collateral, or are you now under charges for any offense against the law? (You may omit: (1) traffic violations for which you paid a fine of \$30 or less, and (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or under a Youth Offender law.)"

Nevertheless, CSC retains this type information when provided and disseminates it to agencies. For example, CSC sent arrest records to the employing agency without further development in 24 of 25 times that the FBI provided minor information and all 6 times that local law enforcement agencies provided minor information. This outdated or incomplete information could be used to adversely affect a person's career.

Investigative files surface minor information

The FBI provides CSC with summaries of its investigative files, and the military services provide the investigators report when a file exists on an appointee. Some of these reports contain unsupported or unproven allegations or associations, but are still disseminated to the employing agency by CSC without proving or completing the information. FBI officials said they send CSC any derogatory information contained in their investigative files. These officials

said they do not adjudicate cases and, further, do not know what information is needed by CSC or the employing agency to judge suitability or security.

Six of the seven times the FBI furnished investigative information in the sample of 86 cases, it appeared to be minor. For example:

- The summary showed that an appointee's spouse was arrested for a civil disturbance in 1971. An FBI informant said the disturbance was sponsored by the Black Panther Party.
- The FBI provided CSC with a report on an individual who "may be the brother of this employee." The FBI file stated the possible brother had answered "no" to a security clearance questionnaire pertaining to his association with any Communist or other subversive groups or individuals, even though informants had advised the FBI that the stepfather of the possible brother was a member of a Communist political association and subscribed to the Daily Worker newspaper during 1944-45. The Department of Justice had dismissed any action against the possible brother.
- The FBI sent CSC five reports on an appointee's brother. The reports dealt with the brother's arrest records from 1959 to 1965. CSC, however, when sending the records to the agency, did not explain the reports, why they were in the file, or clearly show they were not about the appointee.

The Justice Department, through its FBI Guidelines Committee, has been working on proposed controls over the collection and dissemination of information by the FBI. In January 1977, a Deputy Assistant Attorney General said no controls had yet been established. One problem has been interpreting the provisions of the Privacy Act of 1974. Another has been dealing with the requirements of Executive Order 10450 and determining what CSC needs. The official said the Justice Department believes that controls cannot be effective until the order is revised to require only relevant and timely information for personnel investigations. The Justice Department does not believe it can arbitrarily screen out information requested for personnel investigations. However, an FBI official said the FBI's investigative files could be

purged of some outdated information if CSC would agree that only current information is useful for personnel investigations.

The military investigative files identified through the Defense Central Investigative Index also contain minor information which is extracted, retained in CSC files, and disseminated to the employing agency. In our 86 randomly sampled cases, some of the disseminated data was minor because it was old. None of it resulted in removal. Eleven cases included minor derogatory information from these files, such as

- association with persons suspected to be homosexuals;
- alleged usury activities;
- burglary and larceny in 1939;
- alleged homosexual act in 1958;
- arrested for drug overdose, but hospital analysis showed subject was intoxicated on alcohol;
- reckless driving and drunk driving in 1947 and 1953.

Prior employment information

CSC obtains information from prior employers and from military personnel files which is minor and of little use after the person has been employed and has worked for several weeks or months. Some of the information, according to CSC guidelines, is not to be collected, but when it is CSC sends it on to the agency.

The CSC operating manual states that a derogatory file should not be established for minor military disciplinary actions or court-martials for violations involving such offenses as intoxication, insubordination, or limited unauthorized leave. However, much of the information from military personnel files extracted by CSC is of precisely this type.

The following examples are typical of the 11 instances of minor derogatory information obtained from military personnel files.

- Nonjudicial punishment of 5 days restriction and 7 days extra duty for unauthorized absences, one absence for 5 hours and one for 44 minutes.
- Nonjudicial punishment for 6.5 hours of unauthorized leave in 1955.
- Summary court-martial and four nonjudicial punishments for sleeping in after reveille, using disrespectful language, and two unauthorized absences.

IRRELEVANT LOYALTY INVESTIGATION
DATA DISSEMINATED

Loyalty investigations conducted by the FBI are generally initiated by CSC from leads which indicate the individual has been or is associated with an organization believed to be subversive or radical. The leads are gathered primarily from the FBI investigative files and CSC security files.

CSC disseminates information used as leads and information developed during such investigations even though much of the information relates to disloyalty only vaguely or does not relate at all. Personal information, unsupported allegations, and information on other individuals and organizations are included in investigative results sent to employing agencies.

CSC security file
information is disseminated

Since 1940 the Civil Service Commission, in its Security Research and Analysis Section, has maintained security files on alleged subversive and disloyal activities. The files include two indexes, one on individuals and one on organizations. These files are not specifically authorized, duplicate a function authorized for the FBI, and draw together and disseminate information collected and published by others which may not have been evaluated or verified for accuracy or completeness. Although in September 1975, to comply with the provisions of the Privacy Act, CSC stopped using the index of individual names to check the subject of each investigation, source material continued to be maintained and used to obtain information on alleged organizational affiliations.

The security files were established to screen war service appointments. In 1948 CSC centralized the file in

washington to screen employees for loyalty under the Federal Employees Loyalty Program authorized by Executive Order 9835. The order specified which agency records should be checked as part of personnel investigations but did not require CSC to establish files on subversive or disloyal activities. At the time of our review, CSC was still using the files to screen employees and applicants for Federal service as part of the loyalty investigation authorized by Executive Order 10450. The security files contain information from published hearings of congressional committees, investigative reports, publications of subversive and radical organizations, various other newspapers and periodicals, petitions, voting registers, and Communist Party lists and election petitions.

CSC believed that its files were necessary to furnish leads and possible sources of information regarding loyalty and security matters. But at the time of our review CSC was evaluating the benefits of the security files.

CONCLUSIONS

CSC does not have controls that limit the information collected and disseminated to employing agencies to only that which is needed to make suitability, security, and loyalty determinations. Some of the information gathered during investigations is outdated, incomplete, and irrelevant to making these determinations, and most of it is not verified. Yet CSC disseminates all of the information gathered to employing agencies. Since the derogatory information is retained by CSC for at least 20 years and in many cases is retained by agencies throughout employees' careers without CSC knowing how it is used, CSC should

--limit its gathering and retention of information to that which is relevant and timely and

--establish specific controls which limit the dissemination of information to agencies to only that which is complete, accurate, and timely and that is relevant to making suitability, security, and loyalty determinations.

Since the CSC security files duplicate a function of the FBI, CSC should obtain proper authorization to retain them, merge them with the FBI investigative files, or destroy them.

CHAPTER 6

CONCLUSIONS, RECOMMENDATIONS,

AND AGENCY COMMENTS

CONCLUSIONS

Basic changes are needed in the authority for personnel investigations, the manner in which they are conducted, and the use made of investigative results. Executive Order 10450, which authorizes the current personnel investigation program, is outdated. Inherent weaknesses in the authority, legal constraints, court decisions, and changes in attitudes dictate that new authority for investigation and adjudication is needed. Although this need has been recognized for many years, neither the Congress nor the executive branch has taken action and the problems still exist.

The Civil Service Commission has made many program changes since 1953, but the investigative program has several weaknesses which make it inadequate for occupants of sensitive positions. Some of these weaknesses result from a lack of effective administration. Others are inherent in the program due to conflicting goals between the original authority, which emphasized the protection of the national security, and more recent legislation and court decisions, which protect the constitutional rights of individuals.

We believe that problems with authority, program criteria, and procedures diminish program effectiveness and need action by the Congress and CSC. Such problems include:

- Dispersion of authority to investigate and determine the suitability of applicants and appointees throughout a number of laws, executive orders, and Federal regulations, some of which have invalid provisions or have been affected by more recent legislation. Also, most investigations are based on Executive Order 10450 but are adjudicated under civil service regulations.

- Lack of both a definition of disloyal acts (other than criminal acts) and clear guidelines as to what disloyal acts should be disqualifying.

- Inability to obtain local criminal and educational information.
- Lack of clear criteria for agencies on how to classify positions which could have a materially adverse, but not nationwide, effect on agency operations.
- Insufficient number of people assigned to review agencies' position classifications.
- Lack of controls to insure that responses to written inquiries are received and used for adjudication, classifiable fingerprints for the FBI check are obtained, consistent decisions for further investigation are made, and arbitrary reductions in scope of investigations are not made.
- Excessive investigation of nonsensitive positions.
- Ordering of loyalty investigations on the basis of information which has only a vague relation to disloyalty.
- Lack of controls for limiting the investigative information collected and disseminated to the employing agency to that which is complete, accurate, relevant, and timely and that is needed to make suitability, security, and loyalty determinations.

AGENCY COMMENTS

In responding to our draft report, the Civil Service Commission said:

"We are extremely hopeful that this report will provide the impetus for the emergence of guidance, direction and support for a viable and meaningful personnel security program which will protect the interests of the government and be cost effective."

CSC provided us with comments on the positive actions taken to correct or partially correct deficiencies we noted in our review. We commend the Commission for taking fast, positive action, but these actions will not obviate the problems.

Implementation of the recommendations which follow would result in a more effective and less costly personnel investigative program. This program would have a sound statutory base; provide the means to identify and adequately investigate occupants of positions with sensitive or critical duties; and, for a majority of Federal employees, greatly reduce the extent of investigation, invasion of privacy, and dissemination of information.

The Department of Justice believes that this report presents an excellent analysis of the problems that beset the loyalty/security program. The Department generally agrees with our conclusions and recommendations and said it intends to convey to us, by means of its comments, a sense of the importance it attaches to the subject of this report.

Specific comments by CSC and the Department of Justice are discussed following each recommendation. Their formal comments are in appendixes VI and VII, respectively.

RECOMMENDATION TO THE CONGRESS

We recommend 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. 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.
- Need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment.
- 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; 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.

Agency comments

CSC does not think the Congress should restrict the President's authority by limiting the scope of investigations for employees in nonsensitive positions to their prior criminal conduct. Since any other information developed on a person's conduct prior to employment is not being used as the basis for removal, the collection of this data is unnecessary. Regarding loyalty, CSC seriously doubts that a legislative definition of disloyalty would withstand constitutional scrutiny.

CSC does not believe that legislation which would consolidate the authority to investigate applicants and appointees and to adjudicate the investigative results is necessary. CSC says there must be a presumption that the President already has this authority. CSC does, however, point out specific advantages to such legislation. (See app. VI, p. 71.)

The Justice Department agrees there is a need for the legislation. (See app. VII, p. 78.) Two Supreme Court decisions supporting this need are referred to on page 12 of this report.

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.

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

Agency comments

CSC agrees that one of the prime weaknesses of Executive Order 10450 is the absence of criteria for position sensitivity classifications. A proposed draft to replace the order --not available to us at the time of our review--gives recognition to the various duties and factors we have cited as affecting the sensitivity of positions. CSC implies, however, that under this proposed order, more employees would be subjected to a full field investigation and that there would be only two classifications, sensitive and nonsensitive. The order would require a full field investigation as the basis for awarding a secret clearance.

Our position is that there should be three categories of positions, as described above. There are many positions with sensitive duties for which a less costly controlled check of agency records and written inquiries would be adequate. Additional study is needed to consider the level of investigation required to permit access to defense information classified as secret or confidential. The basis for our position is discussed in chapter 4, page 26.

Notwithstanding CSC's agreement that there is a need for determining sensitivity of positions based on duties, it proposes that the scope of its investigations, with some exceptions, be determined by grade of position. We do not agree that the grade of an employee should govern scope because there are many positions in Government where sensitivity of duties and grade do not relate.

CSC agrees that its security appraisal program should be strengthened. All four agencies included in this review told us that there is a need for more definitive criteria for classifying positions.

Justice agrees that there is a need to clarify the classification of positions as to their sensitivity and to establish more precise categories of sensitivity for consistent application by agencies.

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.

- Establish controls which insure that classifiable fingerprints for the FBI check are obtained.
- 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.
- Establish controls to prevent arbitrary reductions in the scope of investigations.

Agency comments

CSC has responded positively to many issues raised relating to its conduct of NACIs. CSC

- has taken action to retain all vouchers, positive and negative, and has told us these are now being used in adjudication;
- has informed agencies that the quality of fingerprints must be improved;
- is developing additional criteria to augment the criteria in their suitability guidelines used to determine need for further investigations; and
- will establish controls to insure that there will not be deviations in the scope of investigations.

As indicated above, CSC is now retaining all responses received in response to written inquiries. However, CSC did not acknowledge the need for controls to insure responses to all the inquiries from occupants of sensitive positions. Regarding the action taken to insure that classifiable fingerprints are available, we do not believe that an interim name check is adequate for personnel in sensitive positions. CSC should require quality fingerprints for all personnel in sensitive positions. The Department of Justice is in full agreement with this recommendation.

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

Agency comments

CSC says it is in complete agreement with our assessment of the "futility of most so-called loyalty investigations." It states that guidance is sorely needed and congressional guidance would be welcomed. CSC has, as a result of recent and continuing consultation with Justice (including the FBI), dramatically reduced the number of requests made for loyalty investigations.

The FBI takes the position that the investigations for loyalty cited in our report were justified under Executive Order 10450. However, they share our view that the order needs to be replaced with statutory authority which clearly sets forth the type of information which would authorize referrals to them for such investigations. The FBI wants clear guidelines as to the types of conduct which would warrant investigation of an individual's loyalty. The actions taken by CSC to reduce loyalty investigations and the implementation of the other recommendations contained in this report should satisfy the objectives of this recommendation.

CSC has, following a recent consultation with officials of the FBI's Domestic Intelligence Division, decided to destroy its security files on alleged subversive and disloyal activities.

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.

- Assign adjudication responsibility for all sensitive positions to employing agencies.
- 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.
- When needed to determine the qualifications of potential appointees, direct employing agencies to make appropriate inquiries of prior employment and educational sources.

Agency comments

CSC does not agree that it should assume responsibility for entry suitability determinations in appointments to non-sensitive positions. Its position does not recognize that for nonsensitive positions, CSC and the employing agency can only require that a person be suitable for Government employment rather than compare the person's prior misconduct to position duties. Therefore, those factors that cause a person to be unsuitable for a nonsensitive position are determinable on a uniform basis by CSC. All other investigative data would not be relevant to either CSC's or the agency's determination and should not be disseminated.

Justice agrees with us that CSC should assume complete responsibility for adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and should retain results.

Subsequent to the completion of our review, CSC approved delegating to employing agencies the responsibility for evaluating suitability information in all appointee cases. This action they now believe to be in accordance with the intent of the existing executive order. As indicated above, the referral to agencies of the investigative results for a determination of suitability for nonsensitive positions is unnecessary.

CSC agrees that much information that is neither complete nor timely has been included in the investigative files. Incomplete information often relates to FBI arrest records. Therefore, when it is determined either because of age of the records or the nature of the offense that no further investigation is needed, CSC says it will discontinue

maintaining these records. In our review, however, we found that FBI arrest records were only one of several sources of incomplete and untimely data.

CSC opposes agency involvement in obtaining information from employment and educational sources. We agree that CSC's intent in sending written inquiries is to get suitability information. However, much of the information obtained relates to a person's past qualifications as well as to the person's suitability and is needed by the employing agency at the time a decision is made to hire. If the agency obtained this information at the time of hiring, it could use the information in making its hiring decision and furnish the information to CSC when the NACI is conducted, thus eliminating in many cases what is now duplication of effort. Also, the agency is in a better position to have a potential employee furnish the release necessary for obtaining the desired information.

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The recommendations contained in this report and commented on by agencies continue to be valid for consideration by the Congress and the executive branch.

CHAPTER 7

SCOPE OF REVIEW

This report discusses problems with the authority for the Government's personnel investigation program and the adequacy of the investigation for occupants of noncritical sensitive and nonsensitive positions. We primarily reviewed the national agency check and inquiry investigation conducted by the Civil Service Commission and the use of the results of this investigation.

Our examination of the investigative program included a review of laws, Executive orders, Federal regulations which authorize investigations and adjudications, and court decisions and legal restrictions on carrying out the requirements for investigation. We reviewed the investigation and adjudication processes at CSC headquarters in Washington, D.C., and at the CSC area center in Chicago. We reviewed employing agencies' use of investigative results at the Kansas City, Missouri, regional offices of the Federal Aviation Administration; the General Services Administration; the Department of Health, Education, and Welfare; and the Department of Housing and Urban Development.

Our examination did not include a review of how investigators perform the full field investigation or the investigation of people wanting to be put on the CSC register. We also did not review the personnel investigation programs of agencies to which CSC has delegated part of its investigative authority or agencies which have specific authority to conduct personnel investigations.

Executive Order 10450

Security Requirements For Government Employment

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U. S. C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118 j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: *Provided*, that upon request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investi-

gation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: *Provided*, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: *And provided further*, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field preappointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall readjudicate, or cause to be readjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may

be appropriate, shall review, or cause to be reviewed, and, where necessary, readjudicate, or cause to be readjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: *Provided*, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly

consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications, or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.¹

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States.

¹ As amended by Executive Order 10548 of August 2, 1954.

or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership →with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising← their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the government of the United States or any State or subdivision thereof by unlawful means.²

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.³

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the

² As amended by Executive Order →11785 of June 4, 1974.

³ As amended by Executive Order 10491 of October 13, 1953.←

investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8)⁴ of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

Sec. 9. (a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order

⁴ As amended by Executive Order 10531 of May 27, 1954.

shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

Sec. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Sec. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned; *Provided*, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pend-

ing in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended,⁵ is hereby revoked.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semiannually, on the results of

⁵ As amended by Executive Order →11785 of June 4, 1974, which revoked Executive Order 11605 of July 2, 1971.←

such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.⁶

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Civil Service Commission in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Commission as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Civil Service Commission is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.⁶

SEC. 15. This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 27, 1953.

⁶ As amended by Executive Order 10550 of August 3, 1954.

AUTHORITIES TO CONDUCT INVESTIGATIONS

1. Civil Service Act of 1883 (now codified in title 5, U.S.C.)--Authorizes the Civil Service Commission to test relative capacity and fitness of persons seeking employment in the executive branch.

--Section 1303, title 5, U.S.C., authorizes the Commission to investigate and report on the enforcement and effect of the rules and regulations.

--Section 1304, title 5, U.S.C., provides for the conduct of investigations by the Commission and for their financing.
2. Section 5.2 of the Civil Service Rules--Provides that the Commission may make appropriate investigations of the qualifications and suitability of applicants for positions in the competitive service; and part 731, title 5, Code of Federal Regulations, makes appointments subject to investigation by the Commission and provides a 1-year period of Commission jurisdiction.
3. Executive Order 10450 of April 27, 1953, as amended--Prescribes investigative and security requirements for Federal employment.
4. Executive Order 10422 of January 9, 1953--Authorizes investigation of U.S. citizens employed in international organizations.
5. Section 2165, title 42, U.S.C. (formerly the Atomic Energy Act of 1954, as amended)--Authorizes investigation of contractors and contractor employees.
6. Veterans Preference Act of 1944, as amended (codified in title 5, U.S.C.), and Executive Order 10988--Investigation of appeals received from veterans and non-veterans.
7. Section 2455, title 42, U.S.C. (formerly the National Aeronautics and Space Act, Public Law 85-568)--Authorizes investigation of employees of the National Aeronautics and Space Administration.

8. Section 2585, title 22, U.S.C. (formerly Public Law 87-297)--Authorizes investigation of employees of the Arms Control and Disarmament Agency.
9. Section 1434, title 22, U.S.C. (formerly Public Law 80-402)--Authorizes investigation of employees of the United States Information Agency.
10. Public Law 82-298--Transferred the investigative responsibility for a large number of agencies from the Federal Bureau of Investigation to the Civil Service Commission.
11. Public Law 87-293--Investigation of Peace Corps volunteers.

SUITABILITY CRITERIA

To carry out its responsibility to determine the fitness of persons entering the Federal service, CSC reviews the NACI results before forwarding them to the agency. CSC judges whether the conduct of an individual may reasonably be expected to interfere with performance in a position or interfere with performance by the agency of its duties based on the disqualifying factors listed in part 731, title 5, Code of Federal Regulations. These guidelines for determining suitability for Federal employment, which were revised and published in November 1975, are:

1. Delinquency or misconduct in prior employment.
2. Criminal, dishonest, infamous, or notoriously disgraceful conduct.
3. Intentional false statement or deception or fraud in examination or appointment.
4. Refusal to furnish testimony as required by Federal regulation.
5. Habitual use of intoxicating beverages to excess.
6. Abuse of narcotics, drugs, or other controlled substances.
7. Reasonable doubt as to the loyalty of the person involved to the Government of the United States.
8. Any statutory disqualification which makes the individual unfit for the service.

The primary changes incorporated in the revised factors were:

- The word "immoral" was deleted from factor 2. This word applied almost exclusively to sexual immorality in suitability evaluations. Under current guidelines, sexual conduct must be found to be notoriously disgraceful to be disqualifying.
- The drug abuse factor was added.

Additional factors to be taken into consideration when making a suitability determination are as follows:

1. The kind of position for which the person is applying or in which the person is employed, including its sensitivity.
2. The nature and seriousness of the conduct.
3. The circumstances surrounding the conduct.
4. The recency of the conduct.
5. The age of the applicant or appointee at the time of the conduct.
6. Contributing social or environmental conditions.
7. The absence or presence of rehabilitation or efforts toward rehabilitation.

In applying the additional factors, the guidelines emphasize the decision ^{1/} held by a Federal district court in 1969, which requires that all adverse actions be based on a connection between the conduct in question and the individual's ability to perform the duties of the position or between that conduct and the agency's ability to fulfill its mission. The guidelines for applying standards have undergone radical change in the last few years, reflecting the court opinions in the area of individual behavior as well as societal attitudes.

Although the disqualifying factors cited in the regulation apply only to CSC determinations, agencies also use the factors when making adverse determinations. Agencies are authorized by part 752, title 5, Code of Federal Regulations, to make adverse decisions regarding a person's initial or continued fitness for employment in the Federal service for such cause as will promote the efficiency of the service.

1/Norton v. Macy, 417 F. 2d 1161 (D.C. Cir., 1969).

REVIEW OF NACI CASES

To evaluate the productivity of NACI sources and to determine which sources provide useful information, we reviewed a random sample of 86 derogatory cases completed by CSC during fiscal year 1976 and the 40 cases in which CSC directed removal action in the Chicago area during the year ending June 30, 1976. Our analysis of derogatory cases and removal cases shows that most serious information is obtained from criminal history, military sources, and prior employment sources and relates to criminal or dishonest conduct, including abuse of narcotics and misconduct in prior employment. Other sources provide little or no information.

DEFINITIONS OF SERIOUS AND MINOR

For the purpose of our analysis, we defined serious derogatory data to be offenses or actions less than 5 years old which were complete and related to at least one of the suitability factors. Older information was considered serious if it showed a pattern of misconduct which carried into the most recent 5-year period. We considered the derogatory data minor if it was over 5 years old, if none of the suitability factors applied, if no disposition was shown for criminal offenses over 1 year old, if an allegation was unsupported, or if CSC criteria defined the information as nonderogatory.

We limited the age of serious derogatory data to 5 years because a CSC study of full field investigative results and a 1974 report by the Department of Defense Personnel Security Working Group showed that derogatory information becomes less serious with the passage of time, and virtually all serious derogatory data was developed in the most recent 5-year period. The Defense Personnel Security Working Group reported in 1974 that adverse personnel security determinations, other than those for access to certain intelligence information, generally are not based on derogatory information older than 5 years. The group concluded that investigations should not seek information older than 5 years because no adverse actions were being taken solely on such information. An example from the private sector agreeing with this procedure is the International Business Machine Corporation, which had decided not to use information older than 3 years in making its personnel decisions.

All 40 removal cases we reviewed contained at least one act of misconduct which was less than 5 years old and was sufficient to warrant removal.

SOURCES OF DEROGATORY INFORMATION

Derogatory cases

In our sample of 86 derogatory cases, the NACI produced derogatory information 117 times. Fifty-one of these instances, involving 37 cases (individuals), were determined to be serious, and 66 instances of derogatory information were determined to be minor.

In 37 of the 51 instances of serious derogatory information, it was provided by criminal information sources: FBI, Department of Defense, or local law enforcement agencies. In 12 of the instances it was provided by former employers and military personnel records.

Removal cases

The 40 removals included 3 occupants of noncritical sensitive positions and 37 occupants of nonsensitive positions. Criminal information sources checked by the NACI provided most of the serious derogatory information. There were 85 instances of derogatory information surfaced in the 40 removal cases, and in 79 of these the information was serious. Information in 59 of the serious instances came from criminal information sources, and in 20 it came from prior employers and military records.

Limited suitability investigations

The investigations conducted on the 40 removed individuals surfaced additional information not found by the NACI and found dispositions on derogatory information surfaced by the NACI. The personal investigations surfaced additional derogatory information 55 times on 30 of the 40 removal cases from local law enforcement agencies, references, credit checks, prior employers, and present Government supervisors.

The following schedules show the number of times the NACI sources surfaced serious and minor derogatory information and the number of times the limited suitability investigation sources surfaced additional information.

Sources of Derogatory Information

	86 randomly selected cases			40 removal cases		
	<u>Serious</u>	<u>Minor</u>	<u>Total</u>	<u>Serious</u>	<u>Minor</u>	<u>Total</u>
<u>National agency check</u>						
FBI identification records	23	25	48	24	1	25
FBI investigative files	1	6	7	5	0	5
Defense Central Investigative Index	3	11	14	16	0	16
Coast Guard files	0	1	1	0	0	0
<u>Written inquiries</u>						
References	1	0	1	0	0	0
Local law enforcement agencies	10	6	16	14	0	14
Prior employers and supervisors	9	6	15	5	0	5
Military personnel records	<u>4</u>	<u>11</u>	<u>15</u>	<u>15</u>	<u>5</u>	<u>20</u>
Total	<u>51</u>	<u>66</u>	<u>117</u>	<u>79</u>	<u>6</u>	<u>85</u>

Note: If the CSC search of its investigative index surfaced a prior investigative report, the information is included under the original source of information.

Limited Suitability Investigations
for 40 Removal Cases

<u>Source</u>	<u>Times from each source</u>
Local police department and court records	18
References	6
Credit check	10
Prior employers	8
Present Government supervisors	<u>13</u>
Total	<u>55</u>

SUITABILITY FACTORS

According to CSC regulations, any of the suitability factors shown in appendix III may be considered a basis for disqualification in making a determination on whether the conduct may reasonably be expected to interfere with the effective performance of the duties of the position or with the duties and responsibilities of the employing agency.

Derogatory cases

For the 86 randomly sampled cases, serious derogatory information related to suitability factors 55 times. This information related to criminal misconduct, including abuse of narcotics 43 times and delinquency or misconduct in prior employment 10 times. Sixty-nine of the NACIs were for occupants of nonsensitive positions and 11 NACIs were for occupants of noncritical sensitive positions. We could not determine classification in the other six cases. Twelve of the NACIs for occupants of nonsensitive positions were converted to a limited suitability investigation, but none of the investigations resulted in an adverse action by CSC. None of the occupants of noncritical sensitive positions was further investigated.

Removal cases

Disqualifying factors cited for 165, or 87 percent, of the times that derogatory information applied to the suitability factors on the removal cases were criminal misconduct, not admitting convictions on the application form, and drug abuse (which is generally a criminal offense). The information was surfaced from both NACIs and limited suitability investigations.

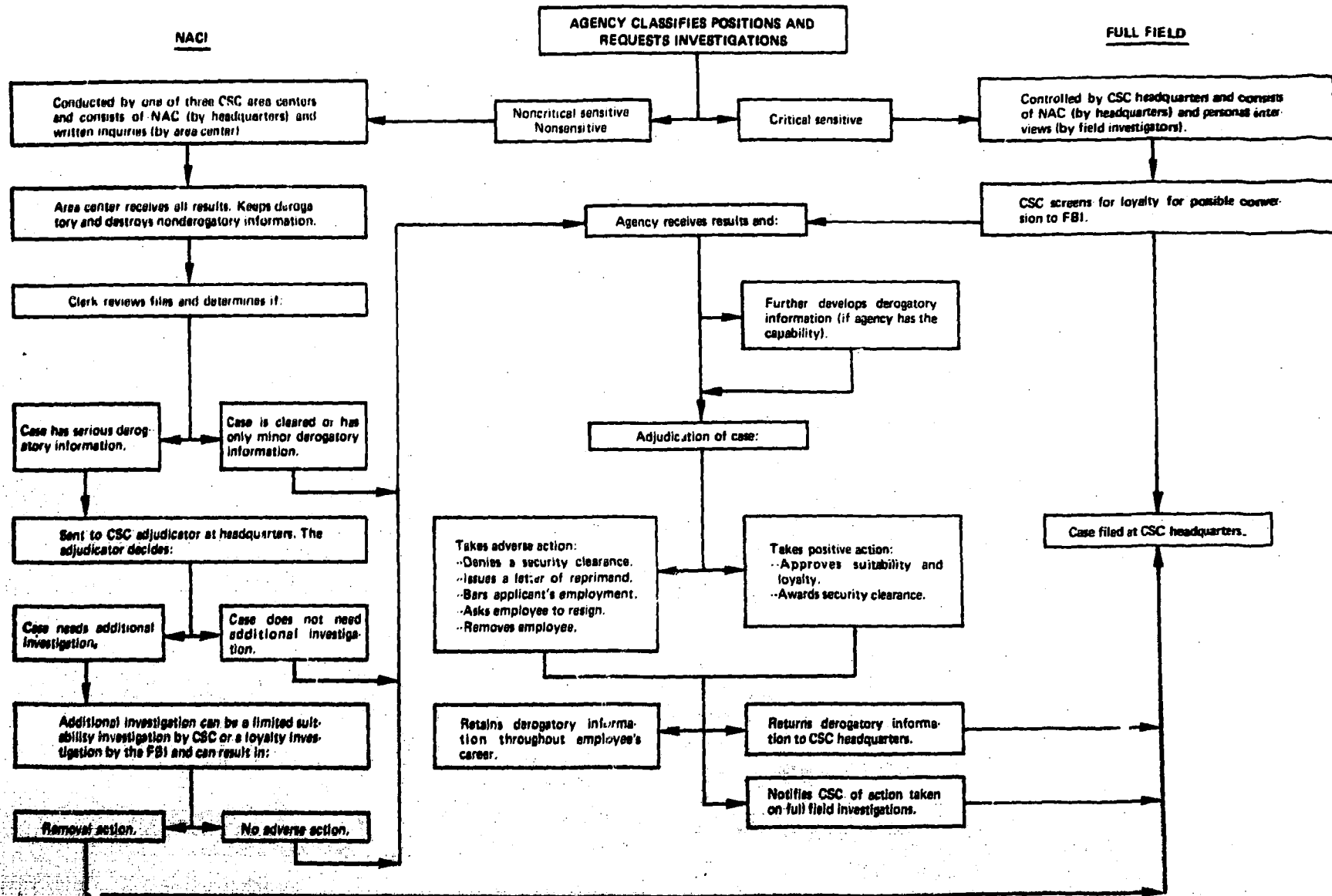
The following schedule shows the number of times that serious derogatory information related to each suitability factor for our sample of 86 cases and the 40 removal cases.

Derogatory Information Applied
to Suitability Factors

<u>Suitability factors (note a)</u>	<u>Times serious derogatory information applied to suitability factors</u>			
	<u>86 cases</u>	<u>40 removal cases</u>		<u>Total</u>
	<u>NACI</u>	<u>NACI</u>	<u>Limited suitability investigation</u>	
Delinquency or misconduct in prior employment	10	14	7	21
Criminal, dishonest, infamous, or notoriously disgraceful conduct	33	60	19	79
Intentional false statement or deception or fraud in examination or appointment	0	41	17	58
Refusal to furnish testimony required by civil service rules	0	0	0	0
Habitual use of intoxicating beverages to excess	0	2	2	4
Abuse of narcotics, drugs, or other controlled substances	10	23	5	28
Reasonable doubt of loyalty to the United States	2	0	0	0
Statutory disqualification	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	<u>55</u>	<u>140</u>	<u>50</u>	<u>190</u>

a/Some information applies to more than one factor.

PROCESSES FOR NACI AND FULL FIELD INVESTIGATIONS





UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

OCT 6 1977

IN REPLY PLEASE REFER TO

YOUR REFERENCE

Mr. H. L. Krieger
Director, Federal Personnel and
Compensation Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Krieger:

This is in response to the General Accounting Office draft of a proposed Report entitled Unclear Criteria and Inadequate Processes for Investigating the Suitability of Federal Employees (FPCO-77-64), transmitted to the Chairman on August 24, 1977, by letter which invited Commission comments. We appreciate the opportunity to comment prior to issuance of the Report.

We agree with the thrust of the Report concerning the Government's loyalty/security/suitability program that action -- either Congressional or Presidential -- is needed to correct deficiencies and provide direction in areas of uncertainty. While we are responding to this in terms of the position of the present Commission and its staff, it must be recognized that this whole matter is being studied by two groups, the Federal Personnel Management Project, and the Task Force on Federal Law Enforcement. We may want to alter our position on certain issues discussed in your report after considering the results of these two studies. Our comments on specific findings and recommendations follow our general observations.

GENERAL OBSERVATIONS

The report recommends legislation which would consolidate the authority to investigate applicants and appointees and to adjudicate the investigative results. We do not believe that such legislation is necessary since there must be a presumption that the President already has this authority. Executive Order 10450 placed prime personnel investigative authority in the Civil Service Commission with the provision that other agencies with investigative facilities could, by agreement with the Commission, conduct their own investigations. With few exceptions, which are contained in our response to the 1974 GAO Report (B-132376), we believe that the Commission should have investigative responsibility for all civilians seeking appointment, or appointed, to positions in the competitive and excepted service, and that the Department of Defense should have the responsibility for military and defense contractor personnel. This authority could be established by Presidential directive.

With respect to evaluation of investigative information and making hiring/retention decisions based thereon, we take the following position:

- (1) That the Commission judge the initial suitability of applicants prior to certification for appointment to any position in the Federal Service; and
- (2) That the employing agency make suitability determinations in the case of all appointees, and of all applicants investigated for appointment to sensitive positions.

Close scrutiny of the Civil Service Act reveals that the Commission has authority to judge the suitability of applicants only. Executive Order 10450 clearly implies that the employing agency has responsibility for evaluating the suitability of appointees. In accord with this interpretation, the Commission has recently approved the assignment of suitability evaluation of appointees to the employing agency. This action was taken not only to accommodate implied responsibility, but also in acknowledgement of the belief that the employer (agency) is in the best position to assess the impact of specific conduct to the duties of a particular position.

Our comments on specific findings and recommendations contained in the report are set forth below.

RECOMMENDATIONS TO CONGRESS

- Consider restrictions imposed by statutes and court decisions: While we are in agreement with the spirit and intent of the Privacy Act of 1974, we do feel that guidance is needed from either the Congress or the Attorney General with respect to collecting, maintaining and disseminating information as to how people exercise rights guaranteed by the First Amendment. As matters now stand each agency conducting personnel investigations makes its own interpretation of what this broad proscription means.
- Limit the Commission's authority to investigate occupants of nonsensitive positions to information about criminal conduct: We do not think Congress should restrict the President's authority by limiting the scope of personnel investigations to prior criminal conduct. We feel strongly that the Government, as an employer, is entitled to obtain and consider information with respect to an employee's honesty, integrity, sobriety, etc., irrespective of position sensitivity.

- Define disloyalty: A statutory description of activities which would bar employment on grounds of disloyalty would be of tremendous aid to suitability evaluators, but we seriously doubt that a legislative definition of disloyalty, unless limited to proven acts of treason or sabotage, would withstand constitutional scrutiny. At any rate, the Commission would welcome, and vigorously support, such a legislative effort.
- Aid to gathering local law enforcement information: We agree that any legislation pertaining to the personnel investigative program should contain a provision authorizing the Commission to collect and disseminate (within the Federal Government) criminal justice information from local law enforcement agencies. We would object to reimbursing such agencies directly for the information but would support reimbursement in the form of grants, possibly through the Law Enforcement Assistance Administration.

RECOMMENDATIONS TO THE CHAIRMAN, USCSC

- Establish criteria for classifying positions as to sensitivity: We agree that one of the prime weaknesses of E.O. 10450 is the absence of criteria for position sensitivity classification. Our proposed draft to replace E.O. 10450 would require classification as sensitive (requiring a full field investigation) those positions which could have an adverse effect on --
 - (1) National security because of access to information or areas which are restricted under E.O. 11652, or similar authority limiting access; and
 - (2) Agency operations by reason of the nature of the responsibilities of the positions (specifically, positions with duties involved in foreign affairs; policy making; personnel investigations; suitability and security evaluations; fiducial matters; law enforcement; designing, operating or accessing computerized data banks; and all other positions having critical impact on the nation's economic well-being or the health and safety of individual citizens). All other positions would be classified nonsensitive (requiring minimum investigation). We believe that this order, if issued, will correct the classification deficiencies noted in the Report.

- Increase Security Appraisal staff: We agree that this program needs to be strengthened, but equally important to adding personnel is the grant of authority to overrule sensitivity classifications made by agencies. We find wide variations among agency classification criteria, as well as in the application of the criteria. We feel that the proposed executive order will drastically curtail these variations.
- Retain written inquiries: The centralization of the NACI processing at Boyers, Pennsylvania, is just about completed. We now are retaining all vouchers that are returned and they are used in the adjudication of the case.

The proposed executive order limits position classification to (1) sensitive and (2) nonsensitive. All appointments to sensitive positions would be made subject to an employment decision based on the results of a full field investigation which would be conducted personally, without the use of written inquiries. Appointment to positions at grade GS-9 and above, and all positions requiring access to information classified as Confidential under E.O. 11652, would require a National Agency Check with written inquiries. Responses to the written inquiries would be retained for adjudication purposes. At the time the NACI case is closed to the agency, a decision will be made as to whether all, part, or none of the information obtained through the NACI will be forwarded to the agency. That decision will be based upon the completeness, relevancy and timeliness of the information. Appointments to nonsensitive positions at GS-8 and below not requiring access will be made subject to the results of a National Agency Check with retention and dissemination of information also being decided based upon completeness, relevancy and timeliness.

- Establish controls to insure obtaining classifiable fingerprints: Agencies have already been informed that the quality of fingerprints must be improved. To assist the agencies in achieving an expected 95 percent rate of proficiency, the Commission will offer training opportunities in fingerprinting. Until this rate of proficiency is reached, we will continue to request the FBI to make an interim name check in those cases where the fingerprints initially submitted are not classifiable.
- Establish clear criteria for conducting additional investigation in NAC or NACI cases: While the decision to conduct additional investigation in NAC or NACI cases is essentially one of judgment on the part of examiners, we are developing additional criteria to augment the criteria in our Suitability

Guidelines (FPM Supplement 731-1). These additional criteria will enable clerical employees to determine which cases should be referred to an examiner for a decision as to the need for additional investigation, and should provide for uniform decisions among examiners in determining the need for additional investigation.

- Establish controls to insure scope compliance: Past deviations from scope requirements have resulted from restrictions on resource allocations and uneven usage of resources from region to region. With consolidation of the NAC/NACI operations we expect to better utilize available resources and be able to maintain control on uniform application of criteria for initiating additional investigation. We will be better able to plan resource needs and plan to temporarily backlog cases if necessary rather than reduce scope because of resource limitations.
- Request loyalty investigations only if the information being pursued will be disqualifying: We are in complete agreement with GAO's assessment of the futility of most so-called loyalty investigations. Guidance in this area is sorely needed. We would welcome Congressional guidance. In the meantime, if the proposed order is issued, the Department of Justice will be mandated to issue guidelines establishing criteria upon which requests for loyalty investigations will be accepted, as well as criteria for evaluating the results of the investigative information. Recent and continuing consultation between the Commission and the Department of Justice (including the FBI) has resulted in a drastic reduction in the number of requests made for these investigations, but no established guidelines have existed since the Attorney General's list of subversive organizations was abolished several years ago.
- Either (1) obtain congressional authority to retain organizational files, or (2) destroy them: In compliance with Section (e)(7) of the Privacy Act of 1974, the name index dealing with organizational affiliation was abolished. Although the information on organizations has been retained, we can no longer search names of individuals against those files. Following a recent consultation with officials of the FBI's Domestic Intelligence Division, we have decided to dispose of all our organization files and eliminate the Security Research function completely.

- Assume complete responsibility for entry suitability determinations in appointments to nonsensitive positions:
As stated above, the Commission has approved the delegation to employing agencies the responsibility for evaluating suitability information in all appointee cases. The proposed executive order requires the Commission to issue criteria to be used in applying the standard for employability in cases involving suitability issues. We feel very strongly that the agency is in a much better position to make these determinations than the Commission. We would insist, however, that this adjudication function be centralized at the headquarters level of each agency or statutory component thereof.

- Assign responsibility for adjudication of investigative information for sensitive positions to the employing agency:
We agree with this recommendation and will so provide in the program directive to be issued in compliance with provisions of the proposed order. Agencies now have adjudicative authority, by delegation from the Commission, in critical sensitive positions.

- Establish criteria for determining the accuracy, completeness and timeliness of investigative information collected and maintained: We agree with the findings that much information has been included in investigative files which would not meet the tests of completeness and timeliness, but the Commission has always demanded, and for the most part maintained, a rigid standard for accuracy in its investigative reports.


For the most part, incomplete information usually relates to arrest records developed by a search of the FBI indices which do not have any disposition shown, and no additional investigation is conducted to obtain the disposition. In the future, when it is determined that either because of the age of the arrest record, or the nature of the offense, no additional investigation is needed, the record itself will not be maintained in our files, nor will it be disseminated to an agency.

Since the enactment of the Privacy Act of 1974, the Commission has taken a number of steps to insure that the information collected and maintained is relevant, timely and complete, and that no information is maintained in our files which describes how an individual exercises rights guaranteed by the First Amendment. Instructions on reporting information have been issued to our investigators to this effect. At the same time files established prior to the effective date of the Privacy Act are reviewed prior to their release to an agency to insure that any First Amendment information is deleted.

- Require agencies to obtain qualifications information from employment and educational sources: This recommendation is based on the assumption that written inquiries are sent to employers and schools for the purpose of determining qualifications. Such is not the case. When the Commission certifies an eligible to an agency, his/her qualification for the position has already been determined. If responses to the written inquiries disclose a falsification of experience or education which has affected certification, the issue becomes suitability, not qualifications. Also to be considered in this recommendation is the cost factor. The Commission has recently centralized the entire NACI operation at Boyers, Pennsylvania. The cost difference in processing written inquiries from thousands of agency installations and from one central location would be enormous. For cost reasons alone, we strongly oppose agency involvement in the personnel investigative process. Another great concern would be lack of expertise in most agencies for evaluating responses and in initiating investigative action when warranted by the responses.

In summary, we are very much impressed with the professionalism, objectivity, and incisiveness which are apparent in this Report. We are extremely hopeful that this Report will provide the impetus for the emergence of guidance, direction and support for a viable and meaningful personnel security program which will protect the interests of the government and be cost effective.

Sincerely yours,


Raymond Jacobson
Executive Director



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

NOV 21 1977

Address Reply to the
Division Indicated
and Refer to Initials and Number

Mr. Victor L. Lowe
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Lowe:

This letter is in response to your request for comments on the draft report entitled "Unclear Criteria and Inadequate Processes for Investigating the Suitability of Federal Employees."

We have reviewed the report and believe that it presents an excellent analysis and portrayal of the problems which beset the Federal Civilian Employee Loyalty-Security Program.

The Department generally agrees with the conclusions and recommendations contained in the report. The following comments are not only intended to express our views on matters contained in the report, but to convey to you a sense of the importance which we attach to the subject of the report.

We agree that there is a distinct need for legislation which consolidates into one law the authority to investigate and judge the suitability, security, and loyalty of Federal employees. It is particularly important that it not be in conflict with the Privacy Act and that it define, in a manner acceptable to the courts, the kinds of acts which disqualify an individual from Federal employment. The report indicates that this problem is being addressed through a proposed revision of Executive Order (EO) 10450, which is the current authority covering security requirements for Government employment. We deliberately emphasize the importance of the Privacy Act because of the conflicts arising between the protection of our national security and recent legislation and court decisions protecting the constitutional rights of individuals. There is an apparent need for legislation establishing the goals and limitations of personnel investigations and the criteria



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for judging the suitability, security, and loyalty of Federal employees. Such legislation should contain guidelines for the collection and dissemination of information by investigative agencies, as well as a definition of the acts of disloyalty and types of suitability which would be disqualifying for Federal employment.

Legislation of the nature described above would enable security staffs and operating personnel offices to make suitability, security, and loyalty determinations based on definitive criteria and standards rather than struggling with the existing criteria which are nebulous and open to widely differing interpretations by those who use them.

We also agree that there is a distinct need to clarify the security classification of positions as to their sensitivity (i.e., whether or not a position could adversely affect national security, other national interests, or agency operations, etc.) and to establish additional, more precise categories of sensitivity which will ensure that these position security classifications will be applied consistently by agencies. Each of these categories could then be coupled with a degree or scope of investigation which would preclude the insufficient investigation of sensitive positions as well as the excessive investigation of nonsensitive positions.

The report points out that the vast majority of Federal employees have no duties which would enable them to materially affect agency operations. It therefore seems reasonable to confine investigations for such employees to a check of the FBI records for criminal conduct. If derogatory information is developed, the investigation could then be expanded. Of particular interest are the statistics on investigations conducted by the Chicago area center of the Civil Service Commission (CSC) during the 12 months ended June 30, 1976. Of 96,962 investigations, only .04 percent resulted in CSC removal of employees in nonsensitive positions, and 59 percent of those removals were based on derogatory information developed by Federal Bureau of Investigation (FBI) record checks. GAO found that the FBI check would have missed about two removals per 10,000 people investigated, thus supporting the argument that checking FBI records for nonsensitive positions would be adequate.

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We believe that the report convincingly outlines the need for a realistic appraisal and designation of those positions in the Federal service which are really sensitive--positions requiring great public trust or affecting agency operations, in addition to those positions which require access to classified information. For such positions, there should be established an effective program of investigation and adjudication under appropriate criteria.

The Department also agrees with the recommendations directed to the CSC which are designed to (1) improve consistency in classifying positions; (2) ensure that occupants of sensitive positions are properly investigated; (3) ensure that loyalty investigations protect the interests of the Government without violating the rights of individuals; and (4) ensure that information collected and disseminated is limited to that which is necessary to make suitability, security, and loyalty determinations.

In our opinion, implementation of the recommendations contained in the report would significantly enhance the effectiveness of employing agencies to make suitability, security, and loyalty determinations. Effectiveness would improve primarily because categories of position sensitivity will be more precise; the classification of positions with respect to sensitivity will be more consistent; unnecessary investigations will be avoided; accurate and pertinent information will be obtained in investigations; only information which is needed to make suitability, security, or loyalty determinations will be collected and disseminated; precise criteria which can be consistently applied will be established for making suitability, security, and loyalty determinations; and the responsibility for making such determinations will be properly delegated.

One aspect of the investigation process which the report does not discuss concerns the length of time required to conduct background investigations and to make the results available to the agencies. Delays in obtaining the results of background investigations create problems in personnel administration, result in personnel being allowed to enter on duty prior to completion of the background investigation, or appointees lose interest and find employment elsewhere. We believe that the report should contain an additional recommendation to establish a reasonable time limit for completing background investigations and the allocation of sufficient resources to complete them within such limits.

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On pages 45-47 of the report, GAO cites examples taken from a review of summaries of FBI loyalty investigations and concludes that some of the investigations appeared to have little justification. GAO also cites examples taken from a review of FBI loyalty investigative reports and concluded that some information, often unsupported, did not relate to loyalty or other suitability factors. Under EO 10450, as amended, the FBI conducts full-field investigations of civilians in the Executive Branch of the Government where there are disloyalty allegations. Their responsibility is to determine the complete facts both as to loyalty and suitability. The scope of the FBI full-field investigation encompasses the entire adult life of the individual. Through these investigations the FBI strives to protect the national security as well as individual rights. To prove the innocence of an individual under investigation is just as important to the FBI as it is to prove the validity of disloyal allegations.

All of the examples cited in the report refer to conduct described in Section 8(a)(5) of EO 10450. In addition, the examples contain information concerning a close association with a relative, reference, or an individual who has engaged in conduct described in Section 8(a)(2) or (5) of EO 10450, or has been investigated for actively supporting the use of force and violence to overthrow the Government of the United States. Therefore, we take exception to GAO's conclusion that the cited examples illustrate investigations which appear to have little justification.

We consider any information developed during a loyalty investigation which indicates the individual had an extramarital affair leading to divorce to warrant investigation to determine the significance of the suitability factor as possible notoriously disgraceful conduct. When derogatory information of this nature is received, every effort is made to verify or disprove the information. The FBI is required to resolve any discrepancies in identification, to interview the original source of the information, and to conduct sufficient additional investigation to corroborate or refute the allegations. They are charged with the responsibility of conducting full-field investigations to collect information concerning loyalty and security factors. Once the information is collected, it is the adjudicator's role to evaluate the individual's conduct.

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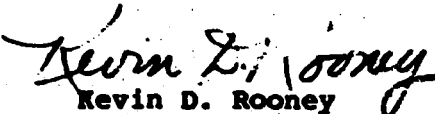
In many instances, the adjudicator, after reviewing the results of the full-field investigations, will interview the individual to obtain his or her comments concerning the alleged derogatory information.

In two of the examples concerning FBI loyalty investigations, GAO cited information which was obtained from third-party interviewees. These comments were furnished voluntarily by the third-party interviewees during the full-field investigations. For the FBI to distort or make the decision to omit the personal comments or views of interviewees concerning the employee would place the FBI in an untenable position of biased reporting and adjudicating information at the investigative level. It is the responsibility of the adjudicator to review the comments and views expressed by third-party interviewees, evaluate the results of full-field investigations, and determine if any of the loyalty or suitability factors may be considered as the basis for disqualification.

Page 50 of the report states that "Since nonsensitive positions have no sensitive duties, and since no amount of checking could reduce the risk to zero, we believe checking FBI records for nonsensitive positions would be adequate." It is not clear as to what FBI records would provide an adequate check. Currently, the FBI Central Records System and the Identification Division Records System are checked in fulfilling the FBI's name check and fingerprint responsibilities. To clarify this point for the Congress, you may wish to specify which records systems you have in mind as representing an adequate check.

We appreciate the opportunity given us to comment on the draft report. Should you have any further questions, please feel free to contact us.

Sincerely,


Kevin D. Rooney
Assistant Attorney General
for Administration

PRINCIPAL CIVIL SERVICE COMMISSION OFFICIALS

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
COMMISSIONER:		
Alan K. Campbell, Chairman	May 1977	Present
Jule M. Sugarman, Vice Chairman	June 1977	Present
Ersa H. Poston, Commissioner	June 1977	Present
Robert E. Hampton, Chairman	Jan. 1969	Dec. 1976
Georgiana H. Sheldon, acting Chairman	Dec. 1976	May 1977
L. J. Andolsek, Commissioner	Apr. 1963	May 1977
EXECUTIVE DIRECTOR:		
Raymond Jacobson	July 1975	Present
Bernard Rosen	June 1971	June 1975
GENERAL COUNSEL:		
Patrick Swygert	Oct. 1977	Present
Carl Goodman	Aug. 1975	Oct. 1977
Anthony Mondello	Apr. 1968	July 1975