



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

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SEPTEMBER 25, 1979

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- The Honorable Warren G. Magnuson, Chairman
Senate Committee on Appropriations *SEND0300*
- The Honorable Jamie L. Whitten, Chairman
House Committee on Appropriations *HSE 00300*
- The Honorable Abraham A. Ribicoff, Chairman
Senate Committee on Governmental Affairs *SEND0600*
- The Honorable Jack Brooks, Chairman
House Committee on Government Operations *HSE00550*
- The Honorable James M. Hanley, Chairman
House Committee on Post Office and Civil Service *HSE02900*

This letter expresses our concern about the lack of action taken to resolve some problems identified in our ~~on December 1977 report~~, "Proposals to Resolve Longstanding Problems in Investigations of Federal Employees" (FPCD-77-64). We made recommendations to the Congress and the Office of Personnel Management (OPM) which show

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- the authority for investigations is out of date and has been eroded by more recent laws and court decisions,
- OPM does not have adequate classification criteria for agencies to determine the proper investigation,
- the national agency check with inquiry (NACI) investigation is inadequate for employees with sensitive duties and too extensive for most employees, and
- OPM has inadequate controls for disseminating information to protect individual rights.

STATUS OF THE INVESTIGATIVE PROGRAM

On June 9, 1978, we advised several congressional committees that OPM agreed with the findings in the report, but it proposed alternative corrective actions which were inadequate. We visited OPM officials on March 26, 1979, and on July 30, 1979, and found that, in spite of their agreement with our report, they have made few improvements. The officials told us they have received no direction from

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the Congress or the executive branch to improve the program. The inaction seems to result from a conflict of whether it is more important to protect the Government or to protect individuals' rights. We want to emphasize that the current program fails in both regards.

Authority is out of date

The authority for investigations is out of date and has been eroded by more recent laws and court decisions. We recommended 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. Although OPM has drafted an Executive order to provide new authority, it now agrees that legislation instead of an order is needed.

Classification criteria are inadequate

We recommended that OPM establish criteria to clearly instruct agencies on how to classify positions according to whether 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 interest. These three classifications should then be used for designating the scope of the investigation, the responsibility for adjudication, and the need to disseminate investigative results. OPM had proposed two classifications, sensitive and nonsensitive, to replace these three but now agrees that three classifications are more appropriate than two. OPM has not taken action to establish criteria because the program has not been given the same priority as the civil service and pay reform legislation.

NACI should be improved

We recommended OPM use a controlled written inquiry investigation with necessary followup for occupants of many sensitive positions and conduct only a check of criminal records for occupants of nonsensitive positions. OPM made some of the improvements we recommended, but it still requires occupants of nonsensitive positions to undergo the same investigation as those of certain sensitive positions.

OPM does not follow up investigators' work to obtain criminal history information not submitted by local law enforcement agencies. OPM officials said many State and local law enforcement agencies still do not believe Law Enforcement Assistance Administration regulations allow them to release the information, and others will not provide information because of financial constraints.

OPM officials said they cannot expand controls and follow up on the NACI investigation with current resources.

We recommended that OPM require fingerprints from agencies to verify the completeness of criminal record searches. OPM has conducted some training courses for agencies but still does not require them to resubmit fingerprints if the first submission is inadequate. OPM agrees that adequate fingerprints should be required but has not given the program priority emphasis.

Need for approval to retain security resource file on organizations

We also recommended that OPM obtain congressional approval before retaining its security resource file on organizations. This file contains information on subversive or radical activities of individuals and organizations. But this information cannot be verified. OPM stopped using its name index to the file to comply with provisions of the Privacy Act of 1974 but has continued to use its index of organizations to search the files for leads. Some use of the files has continued after OPM told us and congressional committees that the organizational files were inactive. On March 1, 1978, Senators Eastland and Thurmond asked OPM to postpone any action to destroy the index or files until the Congress had an opportunity to consider the matter. OPM has received no further instructions regarding the files.

Controls needed on disseminating information

To protect the privacy of individuals being investigated, we recommended that OPM not distribute outdated, irrelevant, or incomplete derogatory information to employing agencies. However, OPM continues to distribute such information (for example, arrest records with no final dispositions). As a result agencies are using their personnel to develop and complete the information. Moreover, OPM has not established controls to make sure agencies properly use the investigative information. We suggested that OPM consider adjudicating applicants' suitability for nonsensitive

positions and retain the investigative information. But OPM officials said this conflicts with their decentralization policy of civil service reform. Furthermore, they believe they should continue to disseminate all derogatory information to the employing agencies and allow them to complete it if necessary and adjudicate the results.

OTHER REPORTS INDICATE NEED FOR IMPROVEMENTS

We have issued other reports showing that improvements in the personnel investigative program are contingent upon OPM making improvements in its own program. In our report "IRS Inspection Service Functions: Management Can Further Enhance Their Usefulness" (GGD-78-91, Jan. 30, 1979), we recommended that the Internal Revenue Service use OPM investigators. However, we agree with IRS that it cannot do this until OPM improves its program.

Our report "Costs of Federal Personnel Security Investigations Could and Should Be Cut" (FPCD-79-79, Aug. 31, 1979) was prepared for the Chairman, Subcommittee on Legislation and National Security, House Committee on Government Operations. We will send you copies of this report 30 days from the issue date.

CONCLUSIONS

Even though we, congressional committees, and OPM agree that the current investigative program has serious problems for applicants and employees of the Federal Government, few improvements have been made. OPM does not plan to make significant changes to the existing program unless it is directed to do so and is provided the needed resources. On the basis of this followup, we want to reemphasize that the current program fails to adequately protect either the Government or individual rights.

We continue to believe that the Congress and OPM should implement our recommendations to solve longstanding problems in the investigations of Federal employees. We recommended specific actions to protect the Government's interests as well as individuals' rights. The most significant of these recommendations requires the Congress ^{to} ~~to~~ 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 ^{file} ~~file~~ To correct the problems in the program, OPM should

--provide clear criteria for determining the extent of investigations,

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- make sure investigative coverage is proper,
- establish controls to protect individuals' privacy,
and
- obtain approval to retain the security resource file
on organizations.



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