

Statement for the Record

before the

SUBCOMMITTEE ON THE EFFICIENCY AND EFFECTIVENESS OF FEDERAL PROGRAMS AND THE FEDERAL WORKFORCE

UNITED STATES SENATE

on

“SAFEGUARDING OUR NATION’S SECRETS: EXAMINING THE NATIONAL SECURITY WORKFORCE”



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Mr. Chairman, Ranking Member Portman, and distinguished members of the Subcommittee, thank you for the invitation to testify today on behalf of the Office of the Director of National Security (ODNI) regarding the designation of national security sensitive positions across the Federal government.

In May, the ODNI and Office of Personnel Management (OPM) jointly proposed regulations to improve the position designation process within the Federal government and our ability to ensure that individuals are appropriately investigated to protect our national security interests. The Proposed Rule for the Designation of National Security Positions in the Competitive Service and Related Matters (“the Proposed Rule”) was published in the Federal Register (78 FR 31847 on May 28, 2013) for 30-day public comment. ODNI and OPM are reviewing the comments to finalize, with Executive Branch coordination, the proposed rule language.

The events of September 11, 2001 drove a dramatic increase in the number of positions requiring a security clearance – a trend which has continued in recent years. The ODNI reported that as of October 1, 2012, over 4.9 million Federal government civilian workforce, military personnel, and contractor employees held or were determined eligible for access to classified information or to hold a sensitive position within the Federal government. The potential risks to national security and significant monetary costs associated with this volume of personnel holding clearances underscore the need for executive branch agencies to have a uniform and consistent process to determine which positions are sensitive or require eligibility for access to classified information.

The concern with position designation is not a recent phenomenon. Civilian positions within the Federal government have been designated as sensitive based on their duties and

responsibilities for over 60 years. In 1953, Executive Order (EO) 10450 established the basis for our current investigative process and identified the heads of departments or agencies as responsible for establishing and maintaining effective programs to ensure that civilian employment and retention in employment is clearly consistent with the interests of national security. This order assigns responsibility to agency heads for designating positions within their respective agencies as sensitive if the occupant of that position could, by virtue of the nature of position, bring about a material adverse effect on national security. Executive Order 12968, issued in 1995, makes agency heads responsible for establishing and maintaining an effective program to ensure that eligibility for access to classified information is clearly consistent with the interests of national security and states that eligibility for access to classified information shall only be requested and granted on the basis of a demonstrated, foreseeable need for access.

I. Justification for the Rule

Although agency heads retain the flexibility to make position designation determinations, the existing processes used to make those determinations must be updated and standardized, as have other aspects of the clearance process under the Joint Suitability and Clearance Reform Effort. Pursuant to EO 13467, the DNI, as Security Executive Agent, and the Director of OPM, as Suitability Executive Agent, both have related roles to ensure a uniform system for position designation related to each of their respective areas of authority. In the February 2010 *Security and Suitability Process Reform Strategic Framework*, a key reform deliverable identified for enhancing reciprocity was the consistent implementation of overarching policy guidance such as “position designation guidance that assists agencies in selecting the appropriate investigative level for their position.” A step in achieving this goal is the joint ODNI and OPM revision of 5 Code of Federal Regulations Part 732, redesignated as Part 1400, through the Proposed Rule.

The Proposed Rule is not intended to increase the number of national security sensitive positions within the Federal government. The goals of the Proposed Rule are to issue national level policy guidance to promote consistency in designating positions as national security sensitive that reflect current national security needs, which in turn will lead to consistency in the level of investigation performed for similar positions in other agencies. Ideally this will promote efficiency and facilitate reciprocity. Additionally, this rule aligns with the recommendations of the Government Accountability Office's (GAO) report entitled, *Security Clearances: Agencies Need Clearly Defined Policy for Determining Civilian Position Requirements* (GAO-12-800), dated July 2012, to issue standardized and clearly defined policy and procedures for agencies to follow in determining whether Federal civilian positions require a security clearance; revise the existing position designation tool; and issue guidance to require executive branch agencies to periodically review and revise or validate the designation of their existing Federal civilian positions.

II. Implications For the Federal Workforce and National Security

Determining the requirements of a Federal civilian position includes assessing both the risk and sensitivity level associated with a position, which includes consideration of whether that position requires eligibility to access classified information or could potentially cause damage to national security. The process addresses the position duties and responsibilities, unique mission requirements, whether the position requires eligibility for access to classified information and, if so, the level of access. The designated sensitivity level of the position then drives the type of background investigation required, with positions of greater sensitivity level requiring a more extensive background investigation. The process requires careful analysis to avoid

“overdesignation,” which has cost implications; or “underdesignation” which leads to security risks.

The Proposed Rule and revised position designation tool will provide Executive Branch agencies with consistent guidance and a process to accurately re-assess the sensitivity level assigned to current positions and ensure future positions are designated consistently. This guidance is expected to have positive results for both the Federal workforce and national security. The Proposed Rule will help agencies understand the scope of their discretion in designating a position as sensitive with respect to national security even if the position does not require access to classified information. The enhanced guidance will facilitate more uniform and consistent designations which are more closely aligned with the actual national security implications and sensitivities attending the position. This process is expected, in some agencies, to result in the re-designation of positions to lesser sensitivity levels or public trust designations. This will reduce instances of “overdesignation,” and produce savings in costs associated with investigations and adjudications required for higher clearance levels. Conversely, there may be instances in which an evaluation results in the change of a sensitivity designation of a position to a level which requires a higher level of investigation. The new regulations are intended to clarify the position designation requirements and provide additional detail over the previous regulations in order to ensure that positions are accurately designated in a manner that appropriately mitigates the risk to national security.

III. Conclusion

It is imperative to develop a sound position sensitivity designation process because the sensitivity level determines the complexity, and cost, of the investigation conducted on the individual selected to occupy the position. ODNI will work with OPM and other executive

branch agencies to ensure that position designation policy and procedures include requirements for agencies to conduct periodic reviews of position designations to ensure sufficient investigative coverage to meet the higher or lower risks associated with each position and validate the accuracy of those designations of all Federal civilian positions. Greater uniformity in agency position sensitivity designations will advance security clearance reform by establishing consistent standards, promoting greater reciprocity, more closely aligning investigative costs with associated risk, and reducing insider threats.

This concludes my statement for the record. Thank you for the opportunity to testify on this important step in clearance reform.