

111TH CONGRESS  
1ST SESSION

# S. 2834

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to establish a Security Clearance and Suitability Performance Accountability Council and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 3, 2009

Mr. AKAKA (for himself and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

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## A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 to establish a Security Clearance and Suitability Performance Accountability Council and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Security Clearance  
5       Modernization and Reporting Act of 2009”.

1 **SEC. 2. DEFINITIONS.**

2 Subsection (a) of section 3001 of the Intelligence Re-  
3 form and Terrorism Prevention Act of 2004 (50 U.S.C.  
4 435b) is amended—

5 (1) in the matter preceding paragraph (1) by  
6 striking “In this section:” and inserting “Except as  
7 otherwise specifically provided, in this title:”;

8 (2) by redesignating paragraph (1) as para-  
9 graph (2);

10 (3) by redesignating paragraph (2) as para-  
11 graph (5);

12 (4) by redesignating paragraph (3) as para-  
13 graph (4);

14 (5) by redesignating paragraph (4) as para-  
15 graph (12);

16 (6) by redesignating paragraph (5) as para-  
17 graph (10);

18 (7) by redesignating paragraph (6) as para-  
19 graph (15);

20 (8) by redesignating paragraph (7) as para-  
21 graph (14);

22 (9) by redesignating paragraph (8) as para-  
23 graph (3);

24 (10) by inserting before paragraph (2), as re-  
25 designated by paragraph (2), the following:

1           “(1) ADJUDICATION.—The term ‘adjudication’  
2 means the evaluation of pertinent data in a back-  
3 ground investigation and any other available infor-  
4 mation that is relevant and reliable to determine  
5 whether an individual is—

6           “(A) suitable for Federal Government em-  
7 ployment;

8           “(B) eligible for logical and physical access  
9 to federally controlled information systems;

10           “(C) eligible for physical access to federally  
11 controlled facilities;

12           “(D) eligible for access to classified infor-  
13 mation;

14           “(E) eligible to hold a sensitive position; or

15           “(F) fit to perform work for or on behalf  
16 of the Federal Government as a contractor em-  
17 ployee.”;

18           (11) by inserting after paragraph (5), as reded-  
19 icated by paragraph (3), the following:

20           “(6) CLASSIFIED INFORMATION.—The term  
21 ‘classified information’ means information that has  
22 been determined, pursuant to Executive Order  
23 12958 (60 Fed. Reg. 19825) or a successor or pred-  
24 ecessor order, or the Atomic Energy Act of 1954 (42

1 U.S.C. 2011 et seq.), to require protection against  
2 unauthorized disclosure.

3 “(7) CONTINUOUS EVALUATION.—The term  
4 ‘continuous evaluation’ means a review of the back-  
5 ground of an individual who has been determined to  
6 be eligible for access to classified information (in-  
7 cluding additional or new checks of commercial data-  
8 bases, Government databases, and other information  
9 lawfully available to security officials) at any time  
10 during the period of eligibility to determine whether  
11 that individual continues to meet the requirements  
12 for eligibility for access to classified information.

13 “(8) CONTRACTOR.—The term ‘contractor’  
14 means an expert or consultant, who is not subject to  
15 section 3109 of title 5, United States Code, to an  
16 agency, an industrial or commercial contractor, li-  
17 censee, certificate holder, or grantee of any agency,  
18 including all subcontractors, a personal services con-  
19 tractor, or any other category of person who per-  
20 forms work for or on behalf of an agency and who  
21 is not an employee of an agency.

22 “(9) CONTRACTOR EMPLOYEE FITNESS.—The  
23 term ‘contractor employee fitness’ means fitness  
24 based on character and conduct for work for or on  
25 behalf of an agency as a contractor employee.”;

1           (12) by inserting after paragraph (10), as re-  
2 designated by paragraph (6), the following:

3           “(11) **FEDERALLY CONTROLLED FACILITIES;**  
4 **FEDERALLY CONTROLLED INFORMATION SYS-**  
5 **TEMS.**—The term ‘federally controlled facilities’ and  
6 ‘federally controlled information systems’ have the  
7 meanings prescribed in guidance pursuant to the  
8 Federal Information Security Management Act of  
9 2002 (title III of Public Law 107–347; 116 Stat.  
10 2946), the amendments made by that Act, and  
11 Homeland Security Presidential Directive 12, or any  
12 successor Directive.”;

13           (13) by inserting after paragraph (12), as re-  
14 designated by paragraph (5), the following:

15           “(13) **LOGICAL ACCESS.**—The term ‘logical ac-  
16 cess’ means, with respect to federally controlled in-  
17 formation systems, access other than occasional or  
18 intermittent access to federally controlled informa-  
19 tion systems.”; and

20           (14) by inserting after paragraph (15), as re-  
21 designated by paragraph (7), the following:

22           “(16) **PHYSICAL ACCESS.**—The term ‘physical  
23 access’ means, with respect to federally controlled  
24 facilities, access other than occasional or intermit-  
25 tent access to federally controlled facilities.

1           “(17) SENSITIVE POSITION.—The term ‘sen-  
2           sitive position’ means any position designated as a  
3           sensitive position under Executive Order 10450 or  
4           any successor Executive Order.

5           “(18) SUITABILITY.—The term ‘suitability’ has  
6           the meaning of that term in part 731, of title 5,  
7           Code of Federal Regulations or any successor simi-  
8           lar regulation.”.

9   **SEC. 3. SECURITY CLEARANCE AND SUITABILITY DETER-**  
10                                   **MINATION REPORTING.**

11           (a) EXTENSION OF REPORTING REQUIREMENTS.—  
12           Paragraph (1) of section 3001(h) of the Intelligence Re-  
13           form and Terrorism Prevention Act of 2004 (50 U.S.C.  
14           435b(h)) is amended by striking “through 2011,” and in-  
15           serting “until the earlier of the date that is 2 years after  
16           the date that the Comptroller General of the United States  
17           has removed all items related to security clearances from  
18           the list maintained by the Comptroller General known as  
19           the High-Risk List or 2017,”.

20           (b) REPORTS ON SECURITY CLEARANCE REVIEW  
21           PROCESSES.—Paragraph (2) of such section 3001(h) is  
22           amended—

23                           (1) by redesignating subparagraphs (B) and  
24                           (C) as subparagraphs (E) and (F), respectively; and

1           (2) by striking subparagraph (A) and inserting  
2 the following:

3           “(A) a description of the full range of time re-  
4 quired to complete initial clearance applications, in-  
5 cluding time required by each authorized investiga-  
6 tive agency and each authorized adjudicative agen-  
7 cy—

8           “(i) to respond to requests for security  
9 clearances for individuals, including the periods  
10 required to initiate security clearance investiga-  
11 tions, conduct security clearance investigations,  
12 deliver completed investigations to the request-  
13 ing agency, adjudicate such requests, make  
14 final determinations on such requests, and no-  
15 tify individuals and individuals’ employers of  
16 such determinations, from date of submission of  
17 the requests to the date of the ultimate disposi-  
18 tion of the requests and notifications,  
19 disaggregated by the type of security clearance,  
20 including Secret, Top Secret, and Top Secret  
21 with Special Program Access, including sen-  
22 sitive compartmented information clearances—

23           “(I) for civilian employees of the  
24 United States;

1                   “(II) for members of the Armed  
2                   Forces of the United States; and

3                   “(III) for contractor employees; and  
4                   “(ii) to conduct investigations for suit-  
5                   ability determinations for individuals from suc-  
6                   cessful submission of applications to ultimate  
7                   disposition of applications and notifications to  
8                   the individuals—

9                   “(I) for civilian employees of the  
10                  United States;

11                  “(II) for members of the Armed  
12                  Forces of the United States; and

13                  “(III) for contractor employees;

14                  “(B) a listing of the agencies and departments  
15                  of the United States that have established and uti-  
16                  lize policies to accept all security clearance back-  
17                  ground investigations and determinations completed  
18                  by an authorized investigative agency or authorized  
19                  adjudicative agency;

20                  “(C) a description of the progress in imple-  
21                  menting the strategic plan referred to in section  
22                  3004; and

23                  “(D) a description of the progress made in im-  
24                  plementing the information technology strategy re-  
25                  ferred to in section 3005;”.



1 **SEC. 4. SECURITY CLEARANCE AND SUITABILITY PER-**  
2 **FORMANCE ACCOUNTABILITY COUNCIL.**

3 Title III of the Intelligence Reform and Terrorism  
4 Prevention Act of 2004 (50 U.S.C. 435b et seq.) is amend-  
5 ed by adding at the end the following new section:

6 **“SEC. 3003. SECURITY CLEARANCE AND SUITABILITY PER-**  
7 **FORMANCE ACCOUNTABILITY COUNCIL.**

8 “(a) ESTABLISHMENT.—There is established a Secu-  
9 rity Clearance and Suitability Performance Accountability  
10 Council (hereinafter referred to as the ‘Council’).

11 “(b) CHAIR.—

12 “(1) DESIGNATION.—The Deputy Director for  
13 Management, Office of Management and Budget,  
14 shall serve as Chair of the Council.

15 “(2) AUTHORITY.—The Chair of the Council  
16 shall have authority, direction, and control over the  
17 functions of the Council.

18 “(c) VICE CHAIR.—The Chair of the Council shall se-  
19 lect a Vice Chair to act in the Chair’s absence.

20 “(d) MEMBERSHIP.—

21 “(1) IN GENERAL.—The members of the Coun-  
22 cil shall include—

23 “(A) the Chair of the Council; and

24 “(B) an appropriate senior officer from  
25 each of the following:

1                   “(i) The Office of the Director of Na-  
2                   tional Intelligence.

3                   “(ii) The Department of Defense.

4                   “(iii) The Office of Personnel Man-  
5                   agement.

6                   “(2) OTHER MEMBERS.—The Chair of the  
7                   Council may designate appropriate employees of  
8                   other agencies or departments of the United States  
9                   as members of the Council.

10                  “(e) DUTIES.—The Council shall—

11                   “(1) ensure alignment of suitability, security,  
12                   and, as appropriate, contractor employee fitness, in-  
13                   vestigative, and adjudicative processes;

14                   “(2) ensure alignment of investigative require-  
15                   ments for suitability determinations and security  
16                   clearances to reduce duplication in investigations;

17                   “(3) oversee the establishment of requirements  
18                   for enterprise information technology;

19                   “(4) oversee the development of techniques and  
20                   tools, including information technology, for enhanc-  
21                   ing background investigations and eligibility deter-  
22                   minations and ensure that such techniques and tools  
23                   are utilized;

24                   “(5) ensure that each agency and department  
25                   of the United States establishes and utilizes policies

1 for ensuring reciprocal recognition of clearances that  
2 allow access to classified information granted by all  
3 other agencies and departments;

4 “(6) ensure sharing of best practices among  
5 agencies and departments of the United States;

6 “(7) hold each agency and department of the  
7 United States accountable for the implementation of  
8 suitability, security, and, as appropriate, contractor  
9 employee fitness processes and procedures; and

10 “(8) hold each agency and department of the  
11 United States accountable for recognizing clearances  
12 that allow access to classified information granted by  
13 all other agencies and departments of the United  
14 States.

15 “(f) ASSIGNMENT OF DUTIES.—The Chair may as-  
16 sign, in whole or in part, to the head of any agency or  
17 department of the United States, solely or jointly, any  
18 duty of the Council relating to—

19 “(1) alignment and improvement of investiga-  
20 tions and determinations of suitability;

21 “(2) determinations of contractor employee fit-  
22 ness; and

23 “(3) determinations of eligibility—

24 “(A) for logical access to federally con-  
25 trolled information systems;

1           “(B) for physical access to federally con-  
2           trolled facilities;

3           “(C) for access to classified information; or

4           “(D) to hold a sensitive position.”.

5 **SEC. 5. STRATEGIC PLAN FOR REFORM.**

6           Title III of the Intelligence Reform and Terrorism  
7           Prevention Act of 2004 (50 U.S.C. 435b et seq.), as  
8           amended by section 4, is further amended by adding at  
9           the end the following new section:

10 **“SEC. 3004. SECURITY CLEARANCE AND SUITABILITY RE-  
11                                    FORM STRATEGIC PLAN.**

12           “(a) REQUIREMENT FOR PLAN.—Not later than 90  
13           days after the date of the enactment of the Security Clear-  
14           ance Modernization and Reporting Act of 2009, the Secu-  
15           rity Clearance and Suitability Performance Accountability  
16           Council established in section 3003 shall develop a stra-  
17           tegic plan that identifies the causes of problems with the  
18           issuance of security clearances and a description of actions  
19           to be taken to correct such problems.

20           “(b) CONTENTS.—The plan required by subsection  
21           (a) shall include a description of—

22                           “(1) the clear mission and strategic goals of the  
23                           plan;

24                           “(2) performance measures to be used to deter-  
25                           mine the effectiveness of security clearance proce-

1       dures, including measures for the quality of security  
2       clearance investigations and adjudications;

3               “(3) a formal communications strategy related  
4       to the issuance of security clearances;

5               “(4) the roles and responsibilities for agencies  
6       participating in security clearance reform efforts;  
7       and

8               “(5) the long-term funding requirements for se-  
9       curity clearance reform efforts.

10       “(c) SUBMISSION TO CONGRESS.—The plan required  
11       by subsection (a) shall be submitted to the appropriate  
12       committees of Congress.

13       “(d) GOVERNMENT ACCOUNTABILITY OFFICE RE-  
14       VIEW.—The plan required by subsection (a) shall be re-  
15       viewed by the Comptroller General of the United States  
16       following its submission to the appropriate committees of  
17       Congress under subsection (c).”.

18       **SEC. 6. INFORMATION TECHNOLOGY STRATEGY.**

19       Title III of the Intelligence Reform and Terrorism  
20       Prevention Act of 2004 (50 U.S.C. 435b et seq.), as  
21       amended by sections 4 and 5, is further amended by add-  
22       ing at the end the following new section:

23       **“SEC. 3005. INFORMATION TECHNOLOGY STRATEGY.**

24               “(a) REQUIREMENT FOR STRATEGY.—Not later than  
25       120 days after the date of the enactment of the Security

1 Clearance Modernization and Reporting Act of 2009, the  
2 Director of the Office of Management and Budget shall  
3 submit to the appropriate committees of Congress an in-  
4 formation technology strategy that describes the plans to  
5 expedite investigative and adjudicative processes, verify  
6 standard information submitted as part of an application  
7 for a security clearance, and provide security clearance  
8 and suitability determination reform consistent with the  
9 strategy required by section 3004(a), by carrying out the  
10 Enterprise Information Technology Strategy referred to in  
11 the Report of the Joint Security and Suitability Reform  
12 Team, dated December 30, 2008.

13       “(b) CONTENT.—The strategy required by subsection  
14 (a) shall include—

15               “(1) a description of information technology re-  
16               quired to request a security clearance or suitability  
17               investigation;

18               “(2) a description of information technology re-  
19               quired to apply for a security clearance or suitability  
20               investigation;

21               “(3) a description of information technology  
22               systems needed to support such investigations;

23               “(4) a description of information technology re-  
24               quired to transmit common machine readable inves-  
25               tigation files to agencies for adjudication;

1           “(5) a description of information technology re-  
2           quired to support agency adjudications of security  
3           clearance and suitability determinations;

4           “(6) a description of information technology re-  
5           quired to support continuous evaluations;

6           “(7) a description of information technology re-  
7           quired to implement a single repository containing  
8           all security clearance and suitability determinations  
9           of each agency and department of the United States  
10          that is accessible by each such agency and depart-  
11          ment in support of ensuring reciprocal recognition of  
12          access to classified information among such agencies  
13          and departments;

14          “(8) a description of the efforts of the Security  
15          Clearance and Suitability Performance Council es-  
16          tablished in section 3003, and each of the Depart-  
17          ment of Defense, the Office of Personnel Manage-  
18          ment, and the Office of the Director of National In-  
19          telligence to carry out the strategy submitted under  
20          subsection (a);

21          “(9) the plans of the agencies and departments  
22          of the United States to develop, implement, fund,  
23          and provide personnel to carry out the strategy sub-  
24          mitted under subsection (a);

1           “(10) cost estimates to carry out the strategy  
2 submitted under subsection (a); and

3           “(11) a description of the schedule for carrying  
4 out the strategy submitted under subsection (a).”.

5 **SEC. 7. TECHNICAL AND CLERICAL AMENDMENTS.**

6           (1) **TECHNICAL CORRECTION.**—The table of  
7 contents in section 1(b) of the Intelligence Reform  
8 and Terrorism Prevention Act of 2004 (Public Law  
9 108–458; 118 Stat. 3638) is amended by adding  
10 after the item relating to section 3001 the following:

“Sec. 3002. Security clearances; limitations.”.

11           (2) **CLERICAL AMENDMENT.**—The table of con-  
12 tents in section 1(b) of the Intelligence Reform and  
13 Terrorism Prevention Act of 2004, as amended by  
14 paragraph (1), is further amended by adding after  
15 the item relating to section 3002, as added by such  
16 paragraph, the following:

“Sec. 3003. Security Clearance and Suitability Performance Accountability  
Council.

“Sec. 3004. Security clearance and suitability reform strategic plan.

“Sec. 3005. Information technology strategy.”.

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