

OVERSIGHT OF FEDERAL INVESTIGATIONS POLICY

HEARING
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE
OF THE
COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
FIRST SESSION

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JUNE 14, 1995
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CONTENTS

	Page
Hearing held on June 14, 1995	1
Statement of:	
Bowling, Timothy P., Associate Director, Federal Human Resource Management Issues, General Accounting Office, accompanied by: Alan Belkin, Assistant General Counsel, Office of General Counsel; and Deborah Taylor, Senior Audit Manager, Accounting and Information Management Division	17
Lattimore, Patricia W., Associate Director, Investigations Service, Office of Personnel Management, accompanied by John Lafferty, Deputy Associate Director	5
McFee, Thomas, Assistant Secretary for Personnel Administration, Department of Health and Human Services; and John T. Elliff, Director, Counterintelligence and Security Programs for Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Department of Defense	38
Letters, statements, etc., submitted for the record by:	
Bowling, Timothy P., Associate Director, Federal Human Resource Management Issues, General Accounting Office, prepared statement of	20
Elliff, John T., Director, Counterintelligence and Security Programs for Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Department of Defense, prepared statement of	48
Lattimore, Patricia, Assistant Director, Office of Personnel Management: Information concerning agencies with separate or delegated investigative authority	15
Prepared statement of	7
McFee, Thomas, Assistant Secretary for Personnel Administration, Department of Health and Human Services: Information concerning background checks	59
Prepared statement of	42
Moran, Hon. James P., a Representative in Congress from the State of Virginia, prepared statement of	64
Morella, Hon. Constance A., a Representative in Congress from the State of Maryland, prepared statement of	66
White, William H., Deputy Secretary, U.S. Department of Energy, prepared statement of	80

OVERSIGHT OF FEDERAL INVESTIGATIONS POLICY

WEDNESDAY, JUNE 14, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Gilman, Moran, and Mascara.

Staff present: George Nesterczuk, staff director; Ned Lynch, professional staff member; Caroline Fiel, clerk; Cedric Hendricks, minority professional staff; and Jean Gosa, minority staff.

Mr. MICA. Good morning. I would like to call to order this meeting of the House Government Reform and Oversight Subcommittee on Civil Service. We have a full schedule today and will try to move forward.

I have an opening statement, and then will defer to other members of the panel, as we get this hearing under way.

Today we will review the scope and purpose of background investigations that are required for employment with Federal agencies. As part of this year's program to reinvent government, the administration proposed to create what is known as an Employee Stock Ownership Plan [ESOP] from the Office of Personnel Management's Office of Federal Investigations. The proposal reflects efforts to address current deficits in the revolving fund that OPM uses to support investigations of employees of approximately 80 Federal agencies.

I am a strong supporter of the concept that Government should rely upon the private sector whenever companies can provide services needed by agencies. In the case of investigations however, it is obvious that the proposal coincides with many new conditions in Government operations. So it is a fitting time to ask, why do we conduct background investigations of Federal employees?

These investigations, incidentally, are authorized by the Atomic Energy Act of 1954 and Executive Order 10450 which was issued by President Eisenhower, as well as by several less extensive laws and regulations. In recent years the threat presented by a hostile foreign power appears to have diminished considerably and there is a legitimate question about the Federal Government's continuing need to conduct and adjudicate meaningful background investigations related to Federal employment.

Some people believe that current laws weaken the usefulness of background investigations for gaining information about employees. The Privacy Act, the Freedom of Information Act, and the Americans with Disabilities Act are alleged to have limited Government's ability to conduct effective background investigations. Under the Freedom of Information Act, for example, subjects of background investigations can gain access to and respond to information that might have an adverse impact on them. Under the Americans with Disabilities Act, some agencies have concluded that the questions about mental health and stability might reflect handicapping conditions and therefore would be out of bounds with some investigations. Many sources report that as a result they only provide limited information because the confidentiality of sources cannot be protected.

OPM also has a responsibility to protect the integrity of the merit system, for example, by verifying the credentials claimed by Federal employees. However, as part of the first phase of Reinventing Government, the Office of Personnel Management eliminated the Federal Personnel Manual. Three chapters of this document provided guidelines to all agencies for determinations of security, suitability, and public trust factors related to Federal employment. In the absence of new guidelines, it is not clear what common factors guide the adjudication of these issues when evaluating credentials for Federal employment.

I believe that there are solid reasons to continue an effective program of background investigations to guarantee that Federal employees demonstrate the integrity, loyalty, and trustworthiness needed to sustain the confidence of the American people. I am not certain, however, that our laws currently provide the foundation to support a strong investigations program. I'm also far from certain that the administration has made adequate plans for the continued oversight of these operations as it has sped forward toward the privatization of this organization.

Our hearing today will begin as a systematic review of the investigations function and give us an opportunity to consider the seriousness of the administration's commitment to this program. These proceedings will help us decide whether the determinations of security, suitability, and public trust require a stronger statutory foundation than they currently have.

Our witnesses today include Patricia Lattimore, Office of Personnel Management, Associate Director of the Office of Federal Investigations. We will also hear from Timothy Bowling, Associate Director of the General Accounting Office Federal Human Resource Management Issues Division, and our third panel reflects the security and suitability requirements of different Federal agencies. Present today are the Department of Defense and Department of Health and Human Services. We also invited the Department of State and Department of Energy, who are providing written testimony to the panel. Written responses to the subcommittee's questions will also be entered in the official record.

We selected a panel of diverse Federal agencies because the United States has a unified civil service. In this environment, responsibility for oversight of common employment standards is especially important. These hearings will provide an opportunity for

OPM to explain its oversight of this function and to reaffirm its understanding of the importance of consistent standards for all Federal agencies. I look forward to the testimony and welcome our participants today. We have a rather serious subject, and I look forward to the details provided by our witnesses.

I see we already have Patricia Lattimore. Without my glasses I can just about make out her companion, John Lafferty, and welcome you to the panel.

At this time I'll defer to our member from Pennsylvania, Mr. Mascara, for an opening statement.

Mr. MASCARA. Thank you, Mr. Chairman. Good morning.

Frankly, I wish I was somewhere else this morning. I'm afraid what we are facing here is a very sorry situation in which no one wins.

Since the early 1950's when concerns were high about Communists possibly infiltrating our Government, background and security checks have been conducted on a regular basis for both new and current Federal employees. While defense agencies, the CIA, and the Department of State have legislative authority to conduct their own background investigations, a preponderance of the remaining investigations have been conducted for years by OPM's Office of Federal Investigations, or OFI. By every indication, they have by and large been quality investigations carried out in a professional manner by an experienced and competent staff of approximately 800.

Admittedly, I have a parochial interest in this issue. More than 300 of the employees involved, some of them my constituents, work at OPM's Boyers, PA, facility, a central repository of Federal background checks and other very sensitive personnel information.

The quality of the investigations conducted by OFI has never been an issue. The problem is that in recent times, as the cold war faded and courts broadened privacy protections, the number of investigations conducted annually by OFI dropped pretty substantially. Because the division relies upon financing from a revolving fund, as the number of investigations dropped so did new revenues for the operating account. Given the shifts that have occurred in Government over the past decade, experts predict a high volume of Government background checks is frankly a thing of the past.

Unfortunately, the administration, for some unknown reason, has decided to fixate on privatization as the only solution to every problem ever confronted by OFI. Perhaps in response to the anguish suffered by the more than 500 OFI workers laid off last year in an effort to reduce costs, OPM officials are now promoting turning OFI over to an employee-owned business, an ESOP.

The bright side of this option, OPM officials say, is that all OFI workers would be offered a job. The down side is that tomorrow GAO officials will testify that the feasibility study used to demonstrate an ESOP would be viable is full of a number of holes and leaves an endless amount of important questions unanswered. Perhaps more disturbing will be GAO's testimony indicating that the \$30 million Office of Management and Budget savings figure often quoted by OPM is based on more conjecture than on hard facts. Setting up the ESOP is probably going to cost an additional \$54 million.

Unfortunately, the administration and some of my friends on the other side of the aisle are doing little to help constructively resolve the situation. As a result of their fervor for privatization, they have decided that it is inappropriate for OPM to grant the proposed OFI ESOP a sole source contract. The private investigation firms here today will apparently testify they will take the Government to court if OPM proceeds down an ESOP road.

The reality is that unless the ESOP is granted a sole source contract for long enough to get its feet on the ground, it will never succeed. I am afraid my friends on the other side of the aisle and the administration are planning to cut the ESOP off at the knees before it ever gets a chance to try and succeed. Unfortunately, the losers in this situation are the OFI workers, including many of the Boyers employees.

If the ESOP does not take off they will be RIF'ed and lose their jobs. If OFI does become an ESOP and they stay on board, they must pray that the ESOP miraculously succeeds in spite of all the conditions and expectations and pressures placed on it.

The fact is, the Government is still going to require about 40,000 background checks a year. All of us will demand that such checks continue to be carried out in a thorough and professional manner that protects employees' privacy and preserves the security of sensitive information.

The FBI and other Government law enforcement agencies will continue to insist that the sensitive information stored at Boyers remain in the Government's hands.

My question is, what is the matter with maintaining the status quo for the time being? Why does the administration not seem to be willing to even consider this option? Cannot the budget savings required for OPM be found by further modifying OFI operations? Unfortunately, this whole situation seems to be stuck in some incomprehensible neverland. I think the only answer is to put on the brakes and take a more thorough and comprehensive look at what we are doing, to paraphrase the old saying, "Don't fix it if it ain't broke."

Thank you very much, Mr. Chairman.

Mr. MICA. Thank you, Mr. Mascara. That is one of the purposes of this hearing, to find out if it is broke, and to help us in that determination; we also have Patricia Lattimore, who is the Associate Director of the Investigations Service of OPM, and Mr. Lafferty.

Is John your Deputy?

Ms. LATTIMORE. Deputy Associate.

Mr. MICA. Deputy.

I welcome you to the panel. As is customary, we are going to swear you in, if you will stand and raise your right hands.

[Witnesses sworn.]

Mr. MICA. Thank you. Again, welcome, and we defer immediately to you, Ms. Lattimore, for your opening remarks, and if you would like to summarize, we will make your full comments a part of the record.

STATEMENT OF PATRICIA W. LATTIMORE, ASSOCIATE DIRECTOR, INVESTIGATIONS SERVICE, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY JOHN LAFFERTY, DEPUTY ASSOCIATE DIRECTOR

Ms. LATTIMORE. OK.

Mr. Chairman, members of the committee, we thank you for the opportunity to appear before the committee this morning.

I guess I would basically start off by saying that our mandate as the Investigations Service is to provide agency officials with adequate information on which to make objective determinations with respect to the employability of an individual or the granting or denial of the security clearance. Statutory responsibilities that we take seriously entail policy oversight, program evaluation, and the provision of investigative products and services.

The basic thrust of what we do is under the Federal Government's laws and regulations that direct that applicants, employees, contractors, and contractor employees be trustworthy. Guidelines have been developed to assess this trustworthiness in two categories; namely, national security positions and public trust positions.

Background investigations are conducted either before or after placing individuals in positions to determine whether they meet these guidelines. The scope of the investigation includes the number of years investigated and the method of investigation, and varies to meet specific investigative guidelines.

Background investigations for some positions rely on checking records and mailing inquiries. Others require more comprehensive background investigations which include field work coverage by investigators, and require personal interviews with the subject and others as well as records review.

The information we gather is provided to agencies through a variety of investigative products and services based on the agency's need and the level of scrutiny the agency deems is warranted. Agency requests normally cover the range from background checks with a 5-year coverage period up to a full review with a 10-year coverage period with much more extensive background verification.

Currently we serve more than 100 customer agencies on a reimbursable basis. During the fiscal year 1994 we provided our customers a total of 206,390 investigative products, of which over 37,000 were background investigations. This fiscal year we expect to provide approximately 309,000 products, which includes 39,000 background investigations.

As an organization, we are extremely proud of the highly time responsive manner in which we provide these quality products to our customers, and of the manner in which we work with other agencies that have delegated authority to ensure that their personnel security functions operate consistent with the governmentwide standards we have established.

Our responsibilities in the investigative arena are not scheduled to nor do we anticipate that they will diminish due to the impending privatization of the function. We are committed to maintaining the integrity of the process and of our products.

Privatization will change the source of the staff we use to perform field investigations and to operate our processing center in

Boyers, PA. Our staff source would shift from the Federal to the private sector. As you know, our Director, Jim King, is scheduled to be here tomorrow and comes prepared to discuss these privatization methods in more detail when he appears before your committee tomorrow.

[The prepared statement of Ms. Lattimore follows:]

STATEMENT OF

PATRICIA WATKINS LATTIMORE
ASSOCIATE DIRECTOR FOR INVESTIGATIONS
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U. S. HOUSE OF REPRESENTATIVES

at an oversight hearing on

POLICIES GOVERNING BACKGROUND INVESTIGATIONS
FOR FEDERAL EMPLOYEES

Mr. Chairman, thank you for the opportunity to appear before this Committee to address the Office of Personnel Management's long history in the federal personnel security arena since the early 1950's.

Our mandate in a nutshell is to provide agency officials with adequate information on which to make objective determinations with respect to the employability of an individual; or the granting or denial of a security clearance. Additionally, we conduct applicant suitability investigations upon agency referrals, merit system investigations, and trust fund investigations.

Our statutory responsibilities entail policy, oversight, program evaluation and the provision of investigative products and services.

The federal government's laws and regulations direct that applicants, employees, contractors and contractor employees be trustworthy. Guidelines have been developed to assess this trustworthiness in two categories of positions. These guidelines apply to positions that require access to classified information or include sensitive national security duties (national security positions), and positions that require the public's trust (public trust positions).

The basic authorities for the investigations for which OPM is responsible emanate from Executive Orders 10450 and 10577 and National Security Directive 63, issued in October 1991, and sections of Title 5 of the U.S.C which specify OPM's role in oversight and investigations and provide for OPM's access to criminal history record information.

Background investigations are conducted either before or after placing individuals in positions to determine whether they meet these guidelines. The scope of the investigation includes the number of years investigated and the method of investigation, and varies to meet specific investigative guidelines. Background investigations for some positions rely on checking records and mailing inquiries; others require more comprehensive background investigations, which include fieldwork coverage by investigators and require personal interviews with the subject and others as well as records review.

This information is provided to agencies through a variety of investigative products and services based on the agencies' need and the level of scrutiny deemed warranted. Agency requests cover the spectrum from basic background checks with a five year coverage period up to a full field review with a ten-year coverage period that includes personal subject interviews, national agency checks, fingerprints, nationwide credit search, personal interviews of sources for employment or unemployment periods, education, residence, military service, birth and citizenship verification, and law enforcement checks.

We serve more than 100 customer agencies on a reimbursable basis. During FY 94, OPM provided its customers a total of 206,390 investigative products of which 37,732 were background investigations. In FY 95 we expect to provide 309,000 products which includes 39,000 background investigations.

We are extremely proud of the highly time responsive manner in which we provide top quality products to our customers; and of the manner in which we work with other agencies to ensure that their personnel security functions operate consistent with the governmentwide standards and criteria we have established.

OPM's responsibilities in the investigative arena will not diminish due to the impending privatization of the function. OPM is committed to maintaining the integrity of the investigatory process and our products. Privatization will change the source of the staff we use to perform field investigations and to operate our processing center in Boyers, Pennsylvania. Our staff source will shift from the federal sector to the private sector. Our Director, Jim King, will discuss the manner in which we are privatizing in more detail when he appears before the Committee tomorrow.

Mr. MICA. Did Mr. Lafferty have any comments?

Mr. LAFFERTY. No, sir.

Mr. MICA. Just available for questions. OK.

Well, thank you for your comments.

I want to cover a couple of areas this morning. First of all, one of the major questions I think we in Congress must face is determining the justification for personnel background investigations given the fact that the primary basis for background investigations to adjudicate security clearances and assess the suitability and trustworthiness of Federal employees was provided for under the Atomic Energy Act of 1954. It has been supplemented by Executive orders, and when this was first instituted the reason was, I assume, the Communist threat and a little bit different world order.

Is it your belief that the same threat or same needs remain in place or exist, and that we should have personnel investigations of the same nature as required under this 1954 Act and subsequent Executive orders?

Ms. LATTIMORE. OPM as well as other members of the personnel security arena that we work with, the Security Policy Board Forum and others, currently, I believe, have no doubt that we need to continue to engage in verification of information to ensure that the people that we hire, that we retain, or that we grant security clearances to don't present a risk to the operation, whether it is national security and/or bringing the kinds of characteristics to the position that would be warranted of a public trust position.

Mr. MICA. Do you think there is any need for revision of the statutory basis on which you conduct these investigations?

Ms. LATTIMORE. We have not currently encountered any operational problems that would lead us to believe that the statutory basis needed changing.

Mr. MICA. It is my understanding the investigations personnel have been downsized some 500 positions within OPM.

Ms. LATTIMORE. Last year, yes, sir.

Mr. MICA. You are now operating with about 700 positions?

Ms. LATTIMORE. That is correct, sir.

Mr. MICA. Do you have adequate personnel to conduct the number of investigations with the 700 that you currently have?

Ms. LATTIMORE. Yes, we do, sir. The downsizing as of last year was a result of the fact that OPM had staffed up for a work load that was almost double the amount that we currently are working with. When that work load dropped off precipitously in 1993 leading into 1994, it left the organization with 400 to 500 more people more than we had work for them to do.

With the downsizing in March through May last year, and some changes in our approaches to work with the 700 and some people we currently have on board, not only are we accomplishing all the work that we have projected, we have had some significant increases in work from Postal Service and other arenas, and we have been able to maintain a timeliness factor where we are well within our 35, 75, and 120-day time standards with no appreciable decrease in the quality, and no increase in the deficiency rate of the cases we produce.

Mr. MICA. If we might look at the statistics for a second, several years ago we were hiring more folks, and you gave some figures—

37,000, I believe, and 39,000 investigations completed. Can you give us some idea of the number of investigations you have done, say, since 1990? Do you have those figures?

Ms. LATTIMORE. Since 1990—we can certainly provide it for the committee if I don't have it right here.

Mr. MICA. For guestimates, 1990, 1991, 1993.

Ms. LATTIMORE. In 1990 we did 61,264 background investigations and about 263,000 other investigative products.

Mr. MICA. And how about your most recent year, 1993? Did you quote 1993?

Ms. LATTIMORE. 1993, and we did about 52,000 background investigations; 1994 we dropped down to 37,000 background investigations, and we project that we won't exceed 39,000 for 1995.

Mr. MICA. So 1995 you are projecting about?

Ms. LATTIMORE. 39,000 background investigations.

Mr. MICA. 39,000 again, and you have dropped from 1,200 employees in what year again?

Ms. LATTIMORE. Ninety-four.

Mr. MICA. Ninety-four to 1995?

Ms. LATTIMORE. Ninety-four. In between March and May 1994 we had a major reduction in force.

Mr. MICA. And no appreciable difference in performance standards. You said that you are keeping up and meeting your deadlines.

Ms. LATTIMORE. Yes, sir.

Mr. MICA. I want to touch briefly on some of the constraints on investigations. In my opening remarks I referred to some of the different laws that have been enacted since the 1954 decision—for example, Freedom of Information Act, the Privacy Act, the Americans with Disabilities Act. Would you recommend any statutory changes to strengthen the capability of investigators to gather information or obtain information? Do you see any constraints or problems that have been created by enactment of these laws subsequent to the original law authorizing this?

Ms. LATTIMORE. Adjustments were made in how we handle information that reflects changes that came into being, the Privacy Act and FOIA, I believe, in about 1974 and more recently the Americans with Disabilities Act. We have to provide confidentiality to sources if they request it. It does not mean that the subject of the interview is not given access to the information received and has an opportunity to rebut it, but is not given access to the source if the source requests it.

We have had to adjust our operational aspects to comport with those laws, but we have not found any major glitches with the law that precluded us from doing our job.

Mr. MICA. So you have adopted some guidelines within your agency to deal with the constraints imposed by law, and you provide training to your investigators to see that compliance takes place?

Ms. LATTIMORE. Training and a very detailed investigator handbook that is updated as we get various changes that would impact on how you either gather information or report it.

Mr. MICA. And you feel then that even given these other laws that have been enacted, you have adequate statutory authority to

conduct investigations, retain the information, and utilize the information in an appropriate fashion?

Ms. LATTIMORE. Yes, sir.

Mr. MICA. OK. Thank you.

I'll defer now to Mr. Mascara for questions.

Mr. MASCARA. Thank you, Mr. Chairman.

Ms. Lattimore, is there any truth to the rumor that a provision is to be added to the fiscal 1996 appropriation stating that the ESOP cannot be a sole source, and if this happens certainly wouldn't this mean the demise of an ESOP as we know it without sole source?

Ms. LATTIMORE. I'm not aware of any such activity in the appropriations process, sir.

Mr. MASCARA. OK. Thank you.

I had several people contact my office in Washington, PA, concerning treatment as it relates to them being pressured. Do you know of any pressure being brought to bear on employees to cheerfully accept an ESOP and if they didn't they would possibly be laid off in July or August? Have you heard of any—

Ms. LATTIMORE. No, sir. What we have consistently told all of our employees is that the privatization initiative for OPM, as we understand it, means that we are going to reduce the work force by the end of this year. The ESOP was just one of the methods that OPM is pursuing to reduce the work force, but the streamlining initiative to be implemented means that we will lose the majority of our work force upon implementation, whether it is to an ESOP or not. It has never been contingent nor have we attempted to make it contingent upon the success of ESOP.

Mr. MASCARA. Are layoffs imminent?

Ms. LATTIMORE. Yes, sir.

Mr. MASCARA. By the end of the year?

Ms. LATTIMORE. That is the schedule that we are on, that we are to privatize and move the work of our field investigations and the operation of our Boyers facility to the private sector by the end of this calendar year.

Mr. MASCARA. So how will an ESOP work if we lay these people off and these contracts go out to private agencies to do the investigations? How do you recover—how does an ESOP recover these contracts?

Ms. LATTIMORE. The proposal that our Director plans to speak to tomorrow basically works to implement the administration's streamlining initiative, works to address customer concerns that there be no undue disruption to their investigative services through the privatization of this initiative, and works to preserve the additional mandate that we are under that we don't adversely impact the process or the products.

The ESOP evolved as a mechanism that met all of these simultaneous parameters that were attached to the privatization and streamlining initiative, and which was a way to present as nearly seamless a transition as possible from our Federal sector mode to the private sector mode.

Mr. MASCARA. If we agree that an ESOP is a possible way for us to go, shouldn't there be some smooth transitions between the two operations, the current operations and the ESOP? If there is

an interruption of work by the current employees of OPM—I mean how do they get—

Ms. LATTIMORE. The proposal that our director, Jim King, plans to speak to in detail tomorrow envisions almost a seamless transition of work from the current Federal staff to the employee-owned entity. The purpose of trying to use this approach would be to preclude having an undue interruption on the customer or on the employees.

Mr. MASCARA. Why are privatization and ESOP the only answers being considered? Are there other options being considered about how this investigative work should be done?

Ms. LATTIMORE. From the time we were given the December 19 decision about the reinvention phase two and the privatization of our organization, employee work groups in the organization and our partnership councils were made aware of our current decision, and were asked to work with us to devise approaches that we could recommend to the Director to move this unit to the private sector.

A lot of research and data went into looking at about five major options. The ESOP, per se, was not one of them, but the one option that seemed to meet all of the director's needs in delivering on the administration's initiative was OPM remaining in the business of investigations as the contract manager in ensuring policy and oversight of the program.

As we looked at ways to further develop that particular initiative, the ESOP grew out of that, in terms of what type of a contract do you manage and how do you manage it.

Mr. MASCARA. I guess my final question is, why is privatization the only option? Has anybody sat down to try to or at least make an attempt to see if there were other options available to OPM as it relates to investigations?

Ms. LATTIMORE. I'll have to defer to my Director on that tomorrow. From where I sit, it was the only option I had to work with, sir.

Mr. MASCARA. Thanks, Ms. Lattimore.

Thank you.

Mr. MICA. I thank the gentleman from Pennsylvania and would like to yield now to the distinguished gentleman from New York, fresh back from 2 weeks activity defending a new approach to foreign assistance and foreign affairs, Mr. Gilman.

Welcome.

Mr. GILMAN. Thank you, Mr. Chairman. Thank you for the opportunity to be back in the battlefield over here, and I want to thank you for calling the first meeting in this series of your hearings to discuss the current questions relating to the OPM proposal to restructure the Office of Federal Investigations. I welcome the testimony of our experts who are here today to discuss how this reform plan will affect the Office of Investigations in performing their important responsibilities with regard to ensuring the integrity of the merit system in Federal employment and national security concerns.

We must be certain that the necessary functions of that office will be carried on at a level of performance that will satisfy the needs of our Federal agencies, and I particularly want to welcome Deputy Director Patricia Lattimore of the Office of Personnel Man-

agement and Tim Bowling, the Associate Director for Federal Human Resource Management of the General Accounting Office, who are here today, as well as representatives from the Departments of Energy, State, and Department of Health and Human Services and the Department of Defense. Your testimony will be helpful to us as we try to evaluate the effect that this restructuring proposal will have on the functions of Federal investigations.

And if I might just address a few questions to our panelists, Mr. Chairman.

Would you please state what you believe are the main threats to the Nation's security which are addressed by personnel investigations today? What are those main threats?

Ms. LATTIMORE. Hopefully the background data gathering that we do for investigations would ferret out any information on people being considered for employment, or retention in Federal employment, on which agency officials could make decisions about the granting or denial of security clearances.

Regardless of the source of the threat, the work that we are engaged in should ferret out, locate, and provide to agency officials the kind of data they need to not have people who would present a threat to national security or public trust occupying positions of that nature.

Mr. GILMAN. Would that apply to almost all the agencies then as your perception of what a threat could be to those agencies?

Ms. LATTIMORE. Yes, sir, in terms of suitability for Federal employment; yes.

Mr. GILMAN. Do you see any need for additional statutory authority to provide a foundation for the adjudication of background investigations related to security?

Ms. LATTIMORE. No. Currently the Executive orders and act that we operate under give agency heads full authority to adjudicate suitability determinations, and we have not found the need for additional statutes to allow us to provide the information that agency officials would need to make those decisions.

Mr. GILMAN. Does OPM provide training to help the agencies obtain information that would be useful and accurate about applicants from witnesses who might be reluctant in light of legal conditions?

Ms. LATTIMORE. We provide training to help agencies who have delegated authority proceed in the investigative arena, the same guidance and investigative operating tools that we provide to our own staffs, and we do provide training to agency security officials to assist them in the operation of their programs within their respective agencies.

Mr. GILMAN. Do you see any need for any additional statutory authority to provide you with a sound foundation for pursuing your investigations?

Ms. LATTIMORE. None at this time, sir.

Mr. GILMAN. I address that also to our other witness, Mr. Lafferty.

Mr. LAFFERTY. Sir, I believe that we have sufficient authority to accomplish the investigations satisfactorily.

Mr. GILMAN. Did the elimination of the standard employment application form, the SF-171, complicate the task of validating employment applications?

Ms. LATTIMORE. Essentially it made it not as easy because things are not in the same place on the pieces of paper you receive now, but all of the information that you would need is provided. When agencies put out a vacancy announcement for the public to apply for a position, it asks for the same data. It just allows the applicant to provide it either on a 171 or r sum  or some other form. The same data is made available. It is not necessarily positioned in the same manner it was when we used a standard form.

Mr. GILMAN. So that hasn't hampered you at all?

Ms. LATTIMORE. No, it has not.

Mr. GILMAN. What level of funding and personnel do you expect your future duties to require?

Ms. LATTIMORE. The duties that remain at OPM after privatization?

Mr. GILMAN. Yes.

Ms. LATTIMORE. We would clearly be working to formulate a structure that would manage our operation in Boyers as well as provide the policy and oversight of the Federal Personnel Security Program with the remaining S&E dollars, which are about \$3½ million, and 66 FTE.

Mr. GILMAN. Do you see some savings then that would be generated by this privatization proposal?

Ms. LATTIMORE. OMB has projected that they see some governmentwide savings over 5 years of about \$30 million. We have not done internal cost savings beyond that projection.

Mr. GILMAN. Mr. Lafferty, do you have any comments?

Mr. LAFFERTY. I believe, sir, that you will be hearing from OMB tomorrow, and I believe that they are in a better position to explain how they arrived at the estimate of savings governmentwide.

Mr. GILMAN. Thank you.

Thank you, Mr. Chairman.

Mr. MICA. Thank you.

Ms. Lattimore, in light of the announced privatization of the Office of Federal Investigations, could you describe for the subcommittee the plans your agency has for continued oversight of its delegation of investigations to other agencies?

Ms. LATTIMORE. Currently, we have about nine appraisal officers who work as agency liaisons to not only provide guidance to agencies that have delegations but to all agencies in the operation of their security functions. We envision that we would continue that type of oversight and assessment and appraisal of agency operation of cases. Additionally, if we were serving as a contract manager we would be looking to ensure the quality of whatever products we received, the same way we do quality checks on the products we get now from the current Federal workforce.

Mr. MICA. We heard some figures of diminished work load. I'm wondering if you could describe also for the subcommittee the levels of activities in some of the other agencies which are conducting their own investigations or that you anticipate will be conducting investigations. Will that work load increase or decrease? Do you have any information you can provide to us in that regard?

Ms. LATTIMORE. I don't have any projections at hand, but just based on hiring trends in some areas of Justice, and other areas of INS with Border Patrol agents, those are the only hiring trends that we are aware of that would increase activity right now for investigations.

Mr. MICA. So there may be some agencies or departments where we will see some increase in activities because of increased employment. It pretty much tracks and follows that trend?

Ms. LATTIMORE. Not universally. If the hiring is in areas that are high security or public trust areas, yes. Sometimes hiring can be in areas that don't necessarily accelerate the background investigations. It is not a direct correlation, but significant spikes in the hiring would, I think, impact on the investigative work load.

Mr. MICA. Do you expect additional delegation of previous OPM activities in the investigation area to again be farmed out to other agencies? Is that part of your plan right now or for the future?

Ms. LATTIMORE. No, we are not anticipating any additional delegations.

Mr. MICA. It pretty much remains on the same basis as you are now conducting it?

Ms. LATTIMORE. Yes, sir.

Mr. MICA. Mr. Mascara, did you have any additional questions?

Mr. MASCARA. Thank you, Mr. Chairman.

First, I would like to clarify my opening remarks as it relates to sole sourcing. If I indicated that the administration somehow was opposed to sole sourcing, that was not the case. It is my understanding that they do not oppose sole sourcing.

I have a question as it relates to the agencies that you use to do your own background checks. You say you have agencies, or there are several agencies that are identified, which are delegated the authority to conduct their own background—

Ms. LATTIMORE. To conduct their own, yes.

Mr. MASCARA. Do you have the names of those agencies?

Ms. LATTIMORE. Five agencies now have delegations to conduct background investigations, the Drug Enforcement Administration, U.S. Marshals Service, the Inspector General for the Department of Education, the Commerce Department, and Customs Service. There are nine additional agencies that were already conducting their own background investigations when the Executive order was put into place in 1953, so they were grandfathered in, and they have always had the ability to conduct theirs, including CIA and National Security Agency, the more independent agencies of that nature, and we will be glad to give you a detailed listing of that and the dates on which we did the delegations for the five agencies.

[The information referred to follows:]

AGENCIES WITH SEPARATE OR DELEGATED INVESTIGATIVE AUTHORITY

1. The investigative agencies—

Agencies which were already conducting background investigations when E.O. 10450 was signed in 1953 were "grandfathered" as having a *de facto* delegation—

- Central Intelligence Agency
- National Security Agency
- Federal Bureau of Investigation
- Defense Investigative Service (DOD)
- Department of State
- Agency for International Development

Department of the Treasury
 Internal Revenue Service
 Secret Service
 Bureau of Alcohol, Tobacco, and Firearms
 Bureau of Engraving and Printing
 U.S. Customs Service *
 U.S. Information Agency
 U.S. Soldiers and Airmens Home

2. *Delegations by OPM—agencies which may contract for or conduct own investigations (date of original OPM delegation)*

Department of Commerce (1989)
 Drug Enforcement Administration (1984)
 U.S. Marshals Service (1988)
 Department of Education Inspector General (1987)
 U.S. Customs Service (1986) *

Mr. MASCARA. Are these delegations for a limited time period?

Ms. LATTIMORE. The five agency delegations are renewed annually.

Mr. MASCARA. Thank you, Ms. Lattimore.

Thank you, Mr. Chairman.

Mr. MICA. Ms. Lattimore, we may have some additional questions that we will submit to you or Mr. King, but we appreciate your testimony this morning, and also your participation, Mr. Lafferty, and we will excuse you at this time.

Ms. LATTIMORE. Thank you.

Mr. MICA. I would like to call the next panel: Mr. Timothy P. Bowling. Mr. Bowling is the Associate Director of the Federal Human Resources Management Issues for the General Accounting Office.

Mr. Bowling, will you be testifying by yourself, or do you have others?

Mr. BOWLING. I have two of my associates with me.

Mr. MICA. If you could identify them for the record please.

Mr. BOWLING. Yes. Deborah Taylor from our Accounting Division on my right and Alan Belkin from our attorney's shop on my left.

Mr. MICA. If you will remain standing I'll swear you in.

[Witnesses sworn.]

Mr. MICA. Thank you.

Let the record reflect the witnesses answered in the affirmative.

Welcome again to our panel, Mr. Bowling and your two associates, and we will proceed with your comments. You are welcome to summarize and we will include your complete statement as part of the record. Thank you and welcome.

* Customs Service was an original "investigative agency" until 1986 when it decided no longer to use its own Agents to conduct backaround investigations. At that time, Customs asked OPM to do the cases—OPM could not promise timely service, and delegated to Customs the authority to contract.

STATEMENT OF TIMOTHY P. BOWLING, ASSOCIATE DIRECTOR, FEDERAL HUMAN RESOURCE MANAGEMENT ISSUES, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ALAN BELKIN, ASSISTANT GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL; AND DEBORAH TAYLOR, SENIOR AUDIT MANAGER, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION

Mr. BOWLING. Thank you very much, Mr. Chairman, and I will, with your permission, summarize the statement.

I'm pleased to be here today to discuss the issues related to the Office of Personnel Management's proposal to privatize its Investigations Service. At your request, we are reviewing this proposal in order to assist the subcommittee in its deliberations on OPM's plans. We intend to address the issues regarding the planning and implementation of the ESOP proposal in our testimony tomorrow. Today, I will discuss OPM's role in Federal investigations and describe how the number and scope of these investigations has altered with the changing personnel security landscape in recent years.

OPM's policymaking and oversight role in Federal investigations dates to its days as the Civil Service Commission. Under Executive Order 10455 and 10577 and Title V, U.S. Code, OPM is authorized to provide investigative services to Federal agencies. Under this authority it conducts background investigations of Federal employees, contractors, and applicants for two basic purposes, to provide a basis for determining an individual's suitability for Federal employment and to provide agencies a basis for determining whether or not an individual should be granted a security clearance.

In cases involving an individual's suitability for employment, OPM makes the determination itself unless responsibility for investigations has been delegated by OPM or provided by separate authority to another agency. In cases involving security clearances, the agency makes the determination itself whether to grant the clearance.

OPM finances its investigations activities through a revolving fund under which customer agencies reimburse OPM for the investigations it performs. In fiscal year 1994 OPM completed approximately 149,000 investigations. About 40,000 of these required field work by investigators while the remaining 109,000 investigations required only data base searches.

In addition to OPM, eight Federal agencies either conduct their own investigations in house or contract them out under authorizations that predate the 1953 Executive order. In recent years these agencies have conducted or contracted for roughly 70 percent of the investigations completed by the Government, with OPM conducting the remaining 30 percent. Also as of fiscal year 1994, OPM had delegated to five agencies the authority to either contract out for this service or perform it in house. OPM retains oversight authority and the right to rescind these delegations.

OPM itself does not use contractors to do background investigations. However, in February 1985 the OPM director approved a proposal to contract out a number of OPM's background investigations. In October 1985, four firms were awarded 1-year contracts. As a result of that experience, OPM concluded that contracting out

for these investigations was not advantageous. A principal problem cited was that the firms had significantly overestimated their ability to conduct investigations meeting OPM standards. The firms estimated that they would be able to do roughly 43,000 satisfactory investigations within the prescribed time period whereas, in fact, they were able to produce only 3,300. OPM also found that the firms' performance of background cases was unsatisfactory in terms of quality, timeliness, and integrity. These problems resulted in an overall loss to OPM of about 1.3 million.

OPM is responsible for evaluating the effectiveness of its own and other agencies' compliance with the investigations standards and requirements it has established. OPM's policy is to exercise its oversight authority by performing quality control reviews of investigations that it conducts itself and reviewing investigation programs operated by agencies that hold delegated investigations authority. OPM does not review investigations conducted by the eight agencies that are authorized under separate legislation to conduct their own investigations.

OPM has never withdrawn a delegation based on an assessment that an agency failed to meet OPM standards in conducting investigations. Instead, OPM prefers to play a consultative role with its customer agencies. According to OPM officials, if deficiencies in investigations are found OPM works with agency officials to improve the areas of weakness that it identifies. Problems that have been found include an insufficient number of contacts and inadequate follow-up on certain issues.

Several changes over the last 40 years have affected the number and scope of Federal investigations. The first change occurred in 1956, when the Supreme Court found in *Cole v. Young* that membership in a subversive organization was not a proper cause for dismissal from Federal employment unless the employee occupied a sensitive position.

Another change occurred in 1965. Until then a full field investigation requiring interviews of past employers, neighbors, landlords, and so forth had been required for all sensitive positions under Executive Order 10450. However, in a November 18, 1965, letter to the heads of Federal departments and agencies, the chairman of the Civil Service Commission redefined sensitive positions by dividing them into critical sensitive and noncritical sensitive. Under this letter, full field investigations are required only for persons considered for critical sensitive positions. Subsequently the number of applicants requiring full field investigations sharply decreased due to the relatively small number of critical sensitive positions in the Federal civilian work force.

The period covered during a standard background investigation has also changed over time. Before 1961, background investigations of applicants and appointees went back to 1937 or the subject's 18th birthday. Recognizing that a fixed 1937 starting point was no longer reasonable, in 1960 the Civil Service Commission reduced the period to 15 years or the time since the individual's 18th birthday. In 1968, the Civil Service Commission further reduced the requirement for a standard background investigation to 5 years.

According to OPM officials, the Privacy Act and Freedom of Information Act have also had an impact on the investigations func-

tion by affecting the degree to which private individuals, companies, and State and local jurisdictions have been willing to share information with Federal investigators. OPM officials told us that many sources are more reluctant to share information about an individual who is the subject of an investigation because now it is more likely that the individual or some other party may be able to access the information that is provided to a Federal investigator.

The number of investigations requested has fluctuated significantly over the years. In fiscal year 1982, for example, OPM received requests for 20,596 cases. In 1990 the number requested peaked at 59,000, and since 1990 the number has declined steadily. For fiscal year 1994, the latest year for which we have complete data, the number received was 37,942.

In summary, Mr. Chairman, while OPM has retained central responsibility for overseeing the performance of Federal civilian investigations, a variety of laws, legal decisions, and policy changes have resulted in fewer investigations being performed. We look forward to appearing before you again tomorrow to discuss OPM's proposal for privatizing this function through an ESOP.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you or the members of the subcommittee may have at this time.

[The prepared statement of Mr. Bowling follows:]

United States General Accounting Office

GAO

Testimony
Before the Subcommittee on Civil Service,
Committee on Government Reform and
Oversight
House of Representatives

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PRIVATIZING OPM INVESTIGATIONS

Perspectives on OPM's Role
in Background Investigations

Statement of
Timothy P. Bowling, Associate Director
Federal Human Resource Management Issues
General Government Division



Perspectives on OPM's Role in Background Investigations

Summary Statement by
Timothy P. Bowling, Associate Director
Federal Human Resource Management Issues

As requested by the House Committee on Government Reform and Oversight's Subcommittee on Civil Service, GAO is reviewing OPM's proposal to privatize its Investigations Service. OPM is considering privatizing this function through the establishment of a private corporation owned by former Investigations Service employees through an Employee Stock Ownership Plan (ESOP). In this testimony, GAO focuses on OPM's role in federal investigations and describes how the number and scope of investigations have altered with the changing personnel security landscape in recent years. Testimony scheduled for tomorrow will focus on issues regarding the planning and implementation of the ESOP proposal.

OPM's policymaking and oversight role in federal investigations dates to its days as the Civil Service Commission. OPM conducts about 30 percent of the background investigations completed by the government. The remainder are completed by federal agencies that are authorized to conduct or contract for their own investigations by separate authority or that have been delegated that responsibility by OPM.

OPM has not withdrawn a delegation of investigation authority from any agency to date for lack of compliance with OPM standards. According to OPM officials, OPM prefers to work with the agency to correct any deficiencies that have been noted.

Several legal and policy changes over the last 40 years have affected the number and scope of federal investigations. Since Fiscal Year 1982, the number of cases received has ranged from a low of 20,596 to a high of 59,203. Over the last 5 years, the number of investigations performed by OPM has steadily declined.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss issues related to the Office of Personnel Management's (OPM) proposal to privatize its Investigations Service. As you know, OPM is considering privatizing this function through the establishment of a private corporation owned by former Investigations Service employees through an Employee Stock Ownership Plan (ESOP).

At your request, we are reviewing this proposal in order to assist the Subcommittee in its deliberations on OPM's plans. In performing our review, we have obtained information on the history, laws, and policies governing OPM's role in federal investigations; reviewed the privatization proposal and discussed the proposed changes with OPM's customer agencies and other stakeholders; and gathered information on recent trends in the nature and extent of OPM's investigations. We intend to address the issues regarding the planning and implementation of the ESOP proposal in our testimony tomorrow. Today, I will describe OPM's role in federal investigations and describe how the number and scope of these investigations have altered with the changing personnel security landscape in recent years.

OPM'S ROLE IN FEDERAL INVESTIGATIONS

OPM's policymaking and oversight role in federal investigations dates to its days as the Civil Service Commission (CSC). Under

Executive Order 10450 (issued in 1953), Executive Order 10577 (issued in 1954), and Title 5, U.S.C., OPM is authorized to provide investigative services to federal agencies. Under this authority, it conducts background investigations of federal employees, contractors, and applicants for two basic purposes: (1) to provide a basis for determining an individual's suitability for federal employment, and (2) to provide agencies a basis for determining whether or not an individual should be granted a security clearance.

In cases involving an individual's suitability for federal employment, OPM makes the determination itself unless responsibility for investigations has been delegated by OPM or provided by separate authority to another agency. In cases involving security clearances, the agency makes the determination whether to grant the clearance.

OPM's Investigations Service is responsible for carrying out OPM's investigative function. The Service is currently staffed by approximately 771 employees assigned to headquarters and over 135 duty stations throughout the United States, including the Federal Investigations Processing Center in Boyers, Pennsylvania. The processing center maintains a governmentwide computer database on federal personnel that is used in performing background investigations.

OPM finances its investigations activities through a revolving fund, under which customer agencies reimburse OPM for the investigations it performs. In fiscal year (FY) 1994, OPM spent about \$87 million on the approximately 149,000 investigations it completed that year. About 40,000 of these required field work by investigators, while the remaining 109,000 investigations required only database searches.

In addition to OPM, eight federal agencies either conduct their own investigations in-house or contract them out under authorizations that predate the 1953 executive order. In recent years, these agencies have conducted or contracted for roughly 70 percent of the investigations completed by the government. These agencies are the Central Intelligence Agency, the National Security Agency, the Defense Investigative Service (for the Department of Defense), the Department of State, the Agency for International Development, the Federal Bureau of Investigation, the United States Information Agency, and the Department of the Treasury. OPM conducted the remaining 30 percent of investigations.

Also, as of FY 1994, OPM had delegated to five agencies the authority to either contract out for this service or perform it in-house. These agencies are the Departments of Commerce and Education, the Drug Enforcement Administration, the Customs Service, and the National Aeronautics and Space Administration.

OPM retains oversight authority and the right to rescind these delegations.

OPM itself does not now use contractors to do background investigations. In February 1985, the OPM Director approved a proposal to contract out a number of OPM's background investigations. In October 1985, four firms were awarded 1-year contracts. As a result of that experience, OPM concluded that contracting out for these investigations was not advantageous. A principal problem cited was that the firms had significantly overestimated their ability to conduct investigations meeting OPM standards. The firms estimated they would be able to do 42,780 satisfactory investigations within the prescribed time period; however, they actually produced only 3,300. OPM also found that the firms' performance of background cases was unsatisfactory in terms of quality, timeliness, and integrity. These problems resulted in an overall loss to OPM of about \$1.3 million.

OPM'S OVERSIGHT ROLE

OPM is responsible for evaluating the effectiveness of its own and other agencies' compliance with the investigations standards and requirements it has established. OPM's policy is to exercise its oversight authority by (1) performing quality control reviews of investigations that OPM itself conducts and (2) reviewing investigation programs operated by agencies that hold delegated

investigations authority. OPM does not review investigations conducted by the eight agencies that are authorized under separate legislation to conduct their own investigations.

In the course of fulfilling these responsibilities, OPM (1) performs a field review of 10 to 15 percent of all investigations it does every year; (2) conducts a file review of a random sample of approximately 25 to 30 percent of its investigations; and (3) runs a computer check of all of the cases that come in during the year, including those from agencies with delegated authority, to determine, among other things, if the appropriate information has been included in the files. In addition, every year OPM performs a small number of detailed reviews of the records of investigations conducted by delegated agencies. These reviews cover issues such as proper documentation of interviews, appropriate use of investigative information, and other areas of compliance with standards.

OPM has never withdrawn a delegation based on an assessment that an agency failed to meet OPM standards in conducting investigations. Instead, OPM prefers to play a consultative role with its customer agencies. According to OPM officials, if deficiencies in investigations are found, OPM works with agency officials to improve the areas of weakness that it identifies.

Problems that have been found include an insufficient number of

contacts and inadequate followup on issues. An OPM official told us that OPM has no plans either to award any new delegations of authority or to rescind others. This year, however, OPM declined to renew its delegation to the Department of Commerce pending OPM's decision on whether to privatize the Investigations Service. This action raises a question as to what will occur when the other delegations expire.

CHANGES IN THE NUMBER AND SCOPE OF INVESTIGATIONS

Several changes over the last 40 years have affected the number and scope of federal investigations. The first change occurred in 1956, when the Supreme Court found in Cole v. Young (351 US 536) that membership in a subversive organization was not a proper cause for dismissal from Federal employment unless the employee occupied a "sensitive" position. This eliminated one of the criteria used by federal investigators prior to that time in determining suitability.

Another change occurred in 1965. Until then, a full field investigation--requiring interviews of past employers, neighbors, landlords, etc.--had been required for all sensitive positions under Executive Order 10450. However, in a November 18, 1965, letter to the heads of federal departments and agencies, the Chairman of the Civil Service Commission redefined sensitive positions by dividing them into critical-sensitive and

noncritical-sensitive. Under this letter, full field investigations were required only for persons considered for critical-sensitive positions. Subsequently, the number of applicants requiring full field investigations sharply decreased due to the relatively small number of critical-sensitive positions in the federal civilian work force.

The period covered during a standard background investigation has also changed over time. Before 1961, background investigations of applicants and appointees went back to 1937 or to the subject's eighteenth birthday. Recognizing that a fixed 1937 starting point was no longer reasonable, in 1960, the Civil Service Commission reduced the period to 15 years or the time since the individual's eighteenth birthday. In 1968, the Civil Service Commission further reduced the requirement for a standard background investigation to 5 years.

According to OPM officials, the Privacy Act and the Freedom of Information Act have also had an impact on the investigations function by affecting the degree to which private individuals, companies, and state and local jurisdictions have been willing to share information with federal investigators. OPM officials told us that many sources are more reluctant to share information about an individual who is the subject of an investigation because now it is more likely that the individual, or some other party, may be able to access the information that is provided to

a federal investigator.

The number of investigations requested has fluctuated significantly over the years. In FY 1982, for example, OPM received requests for 20,596 cases. In FY 1990, the number requested peaked at 59,203. Since 1990, the number has declined steadily, and for FY 1994, the latest year for which we have data, the number received was 37,942.

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In summary, Mr. Chairman, while OPM has retained central responsibility for overseeing the performance of federal civilian investigations, a variety of laws, legal decisions, and policy changes have resulted in fewer investigations being performed. We look forward to appearing before you again tomorrow to discuss OPM's proposal for privatizing this function through an ESOP.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.

(966647)

Mr. MICA. Thank you, and I take it your two colleagues did not have any opening remarks.

Mr. BOWLING. That is correct.

Mr. MICA. OK.

Mr. Bowling, again, welcome.

First of all, I want to look at a couple of areas, the purpose of investigations and the changing purpose of investigation. Your statement describes very well the limitations that have been imposed over time on background investigations. If I can summarize, it seems that investigations now cover less of a person's life than they once did, and as a result of the Privacy Act and accessibility of information, sources are willing to disclose less than they once did. I'm wondering, do we really need background investigations for Federal employees?

Mr. BOWLING. That is an interesting question. I think it largely resides in the policy arena. It would depend on how comfortable various agencies were with the confidence level that their employees were in fact cleared or appropriate for access to sensitive information.

As time goes on, I think the balance between how much security one is willing to pay for in the Government will shift and change, but at the moment the change has been largely toward reducing the numbers rather than increasing them.

Mr. MICA. Would it be your recommendation that there are certain levels in which we could eliminate the investigations?

Also, given the confines and the narrowness now of the scope, should we be moving toward fewer levels of employment to require an investigations background check?

Mr. BOWLING. That is something that we are, frankly, not prepared to address. It is an issue that I think more appropriately resides with the Congress.

I will say, however, that in our experience a number of agencies have been willing, in fact have felt considerable pressure for budgetary reasons to reduce the number of or at least scrub the number of their clearances that they maintain. Obviously, the higher the clearance, the more expensive it is for an agency to obtain that for an individual and to maintain it over time, and our agency, for example, has reduced in some areas the number of top secret clearances that it maintains for employees simply as a cost-cutting measure.

Mr. MICA. Another question is that, even where we have investigations conducted, their effectiveness doesn't always prove its worth. If we need background investigations, do we need the oversight mechanisms that we have in place, and do they provide sufficient guarantee of quality?

Mr. BOWLING. The answer to that is, I think, yes, in general we do need background investigations oversight authority, which currently resides largely with OPM, and from our review of this area we would have to say that, by and large, that oversight responsibility seems to be performed in a fairly competent fashion. The agencies that are their customers certainly do not complain very much and seem to feel satisfied with the level of service they are receiving.

Mr. MICA. I'm not sure whether you yourself have researched the effectiveness of these investigations, but sometimes one wonders how effective they are when people like Aldrich Ames passed an investigations background check while spying for the Soviet Union. Have you all analyzed the effectiveness of these investigations in any of your studies or reports?

Mr. BOWLING. Well, no, we haven't. But you raise an interesting point with the Aldrich Ames case. Our understanding is that raises a separate issue of what is done with the background investigations information. From what little we have done, it is our understanding that there was in that case a background investigation done. It simply had not been repeated or updated in the last 10 years or so and that, in fact, had that information been updated and then reviewed properly, perhaps that would have come out.

Mr. MICA. So sometimes we get the information, but we don't use the information.

Mr. BOWLING. Yes, or sometimes we are getting good information when we do an investigation but we might need to do one more often, for example. Those are all issues that I think would surround the level of confidence you have in the security you are obtaining.

Mr. MICA. One of the other points I posed to Ms. Lattimore and OPM is the question of the various laws that have been imposed since the original 1954 Act: the Privacy Act, the Freedom of Information Act, the Americans with Disabilities Act, and also some of the court decisions that have continued to narrow the areas in which we can seek information or disclose information or utilize information as a condition of employment. Do you see a need for legislative changes to allow us to have better tools to use the potential effectiveness of an investigation?

Mr. BOWLING. We don't have an official agency position on that, but I would say that from the work we have done since OPM and the customer agencies seem to be satisfied with the level of authority granted to achieve their ends, we see no particularly compelling reason to revisit those laws at this time.

Mr. MICA. I have some additional questions, but our ranking member has joined us, the distinguished gentleman from Virginia, Mr. Moran. Maybe he has an opening statement and also questions for our panelists.

Thank you.

Mr. MORAN. I thank my distinguished chairman for yielding to me.

You know, this whole issue of investigations seems to be largely a relic of the cold war. It is funny to consider the fact that if you said you were supportive of the Soviet Union today it would probably be reason for a promotion or move over to a more sensitive position in the State or Defense Department. Times have changed since we bulked up the investigations force, and I think probably one of the principal things it did was to protect employees actually against scurrilous charges, the kind that were made at the McCarthy hearings, but I don't see why we have anywhere near as extensive an investigations function as we do today, and I don't see how it can be sustained.

It is clear that when an agency staffs up, you would have to hire a whole lot of people, and then once they are hired then you are stuck with this overlay of personnel that may be very effective but with little work to do, and I would think, conversely, as you downsize the Federal Government there is significantly less work for investigations staff, so you assume, well, the best thing to do is to contract out. But our experience, as the chairman has mentioned, has been anything but give us reason to have any confidence that that is the solution either.

The performance was very unsatisfactory in the 1986 when we had over 42,000 investigations that were going to be conducted by private contractors and they only did 3,300. So I don't know that we are even going to be able to contract out the investigations function unless we substantially scrub the types of qualifications that are required, the scope of the investigation, what we are looking for. We ought to reconsider which positions need classified security clearances and so on.

The FBI seems to do a pretty good job. I know I have been interviewed any number of times, and they ask good questions about people that need top security clearance, but I'm not really sure how OPM goes about its job of investigations.

We are going to talk tomorrow about the possibility of privatizing investigations, letting OPM employees sort of go out on their own as a contract agency. I have a lot of questions about that, but for today this is a good background that you have given us of the issue. It is going to have to be dealt with now, and we are going to need all this information to make a reasoned judgment as to what we should do.

Mr. Mica raises the issue of Aldrich Ames. I was reading in the "Washington Post Book World" there are four books out now, and all of them give cause for pause when you consider how he was able to rise through the ranks. He was an alcoholic; he did a lousy job even at his initial assignments. I don't have to describe some of the activities that he engaged in, in office parties and so on. And yet the guy just kept rising up.

Does the CIA use the OPM investigations staff? They don't?

Mr. BOWLING. No, they don't.

Mr. MORAN. Not at all. So this has no relevance whatsoever, the Aldrich Ames situation. All right. That is comforting. I wonder why he mentioned that. I guess as an example what can happen. Maybe we ought to bring the CIA up.

Let me just ask you about a couple of things that I mentioned. For example, the case in 1986 where we tried the contracting out and the contractors told us they would do 42,000 investigations and they did 3,300. How could that have happened? I assume that GAO has looked into that. What did you learn from that, and what lessons should we learn from that?

Mr. BOWLING. The information we have obtained suggests that the contractors, when they entered into the contract, did not necessarily have a clear idea of everything they would have to be doing and the extent of the commitment that they were making in terms of being able to handle those investigations at the standard that OPM requires. Apparently they ran into a number of problems even with the investigations that they completed, as you suggest,

where certain steps were supposedly taken but in fact had not been taken and these problems included phantom investigations, if you will, where someone said, "well, I talked to this person or that person" in an interview and in fact they hadn't. So there were some problems with their personnel at the time as well.

Mr. MORAN. Do you have any sense that that experience could be avoided if we were to do it again, if we were to dump this many investigations on to the private sector? How could we be sure you could contract out to the private sector as large a work load as is currently being conducted by the OPM investigations staff?

Mr. BOWLING. The feasibility study that was prepared by a contractor for OPM suggested that, if it were to succeed, the ESOP would have to have Federal employees who had worked in the investigations area manning a large—I believe their words were "a substantial proportion of those positions." So, in fact, the current investigations employees who are doing, by all accounts, a creditable job would need to be maintained in that organization to continue it.

Mr. MORAN. That is my impression, that they do do a creditable job. So we really only have two options in front of us. We either radically reduce the number of investigations that need to be conducted, or, second, we reduce them moderately but use the current staff to conduct them.

The option of completely turning it over to the private sector without keeping the people who have the expertise and experience currently, without their doing that, performing that function, that really is not an option. You are telling me we would wind up with the same experience that we had in 1985, 1986, that the private sector is not equipped to do this, that the only people who really could perform anywhere near that magnitude of investigations would have to be the people who have the current experience in doing it.

Mr. BOWLING. That seems to be the position the feasibility study has taken. I think before contracting out to a completely private sector contract, you would want to study that issue fairly thoroughly and make sure you knew who was out there, what kind of capabilities they had, and what kind of experiences they had. It is not inconceivable that a contractor could hire retired FBI agents and background investigation OPM and staff up to create a contractor that would work. But we have seen no analysis of that issue, so for us this is a big unanswered question.

Mr. MORAN. I don't want to hold this up too much longer, but I mentioned the irony of the support for the Soviet Union, the fifties being a clear kiss of death for any Federal employee applicant, but the questions that are asked now have been substantially changed, haven't they? They go much more to the work qualifications, the education, the work experience, the ability to perform that particular function, rather than ideological characterizations, don't they? Hasn't there been a substantial change?

Mr. BOWLING. Yes, ideological considerations are not supposed to be playing a major role in these things. They are more suitability for employment as in, "does this person have personal problems that would get in the way of their employment or make them subject to blackmail, for example, if they are in a secure position?" Is-

sues that have more to do with their suitability, and their performance, and their character are where the current focus is.

Mr. MORAN. Thank you.

It is nice to see Mr. Belkin up here too.

Mr. BELKIN. Thank you.

Mr. MORAN. Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Moran, and we will defer now to Mr. Mascara for questions.

Mr. MASCARA. Thank you.

Speaking of the irrelevance of the Ames case, is there anything in place where, after an investigation has been done, where after a period of years someone checks in or does a recheck, another investigation?

Mr. BOWLING. Yes, depending on the type of investigation you are talking about. If you are talking about a top secret clearance, for example, they are supposed to go back and revisit those and do an update which would supposedly cover the period of intervening years.

Mr. MASCARA. In your testimony you indicate that things have changed over the last 40 years as it relates to the necessity or the scope of investigations and that since 1982 you have gone from a low of 20,000 to somewhere around 59,000. Do you have any projections of what the needs will be for the next 5 years or 10 years?

Mr. BOWLING. We haven't made any official projections. In making such a projection, you would want to consider the number of hires likely to be entering the Federal Government, the issue of downsizing, and, as Ms. Lattimore pointed out, the issue of where those hires, such as they are, would be coming from. For example, if a law enforcement organization, Justice Department, or Commerce Border—excuse me—Customs Border Patrol would be hiring large numbers of enforcement officials, they would have to receive a certain level of clearance, and then you might have something of an increase for a particular agency.

However, across the board it seems likely, given the hiring trends and the downsizing, that the number of investigations will not be going up substantially.

Mr. MASCARA. Would an investigator from the private sector have the same kind of access to Government information as Government employees currently have?

Mr. BOWLING. We have talked to several agencies and have found in fact that—that maintain law enforcement information, and have found in fact that there is some reluctance on their part to share sensitive information in their data bases with a private contractor. The State and local governments we spoke with expressed concern over the same issue as well.

Mr. MASCARA. So what is being done? Does someone have an answer to that? I'm working for the Federal Government. Here comes someone from the private sector seeking information that I don't want to give to that private sector investigator. How are we going to deal with that?

Mr. BOWLING. We have that same question. We have not received an answer from OPM on that issue. I believe they are considering it and exploring alternatives, but we are not aware that that question has been satisfactorily answered.

Mr. MASCARA. Well, I would need some answers. I would be concerned about the inability of the private sector to gather information that is essential to their clearance or to them procuring the job with the Federal Government. I think that needs to be answered.

Thank you, Mr. Bowling.

Mr. MICA. Thank you, Mr. Mascara.

Mr. Bowling, many of the functions of the Federal Government are now being contracted out. It is my understanding that OPM also does some investigations of contractors. Is that correct?

Mr. BOWLING. That is correct.

Mr. MICA. It appears that with more and more being contracted out, when you get down to the actual people level, there is a lot less investigation of those individuals actually involved in the same types of activities, say, that a Federal employee may be involved in. Do you see what I'm getting at? Again, the employees under a private contractor may not undergo the same scrutiny but are now in positions where they are performing functions similar to a public employee.

Mr. BOWLING. Well, for sensitive positions, say, in the Department of Energy, for example, a contractor could perform some fairly significant tasks. But those employees would have to be cleared as well.

Mr. MICA. In certain types of activities.

Mr. BOWLING. Yes. In the important activities they would indeed have to be cleared if they were to receive, for example, national security clearances.

Mr. MICA. It doesn't appear that there is any standard for evaluating individuals for Federal employment. Is there?

Mr. BOWLING. There are differences between agencies. Individual agencies have their own standards to some extent for the type of security checks that they do. For example, the Secret Service in some of its positions will require a lie detector test as part of its standard background investigations, and other agencies would not.

Mr. MICA. But there is not any basic standard credit check or criminal check for employment, or is there?

Mr. BOWLING. Yes, there is. There is a national agency check for suitability that all Federal employees are supposed to undergo.

Mr. MICA. And they all undergo that, with the possible exception of people who are contracted out and work under a contractor.

Mr. BOWLING. If they are not performing a job that would require some sort of security clearance or careful check, then they wouldn't necessarily have to go through that as I understand it.

Mr. MICA. It is my understanding too that OPM has the ability to conduct all levels of background checks, including top secret. Is that correct?

Mr. BOWLING. That is correct.

Mr. MICA. So maybe we should have had them investigate Ames.

One of the other things we have noticed is a great disparity in the costs for a background check. Some of the figures we have indicate that 149,000 checks were done. About 109,000 were fairly routine and 39,000 were more in depth. Of the 39,000 that were in depth, the cost is about \$3,500 per investigation, and the others range from about \$25 to \$300. Have you looked at any of these figures?

Mr. BOWLING. Yes, those differences sound about right. I would have to check them to be sure they were completely accurate, but it certainly sounds like they are in the ball park.

The difference is largely between doing a National Agency Check, which is essentially a query of a data base, and doing a field investigation which would include the National Agency Check plus gathering more information by going out and interviewing people.

Mr. MICA. Does this sound like it could be comparable to costs if done entirely by the private sector, or do you think it is more cost competitive? Again, regarding the figures that you see here, have you looked at them at all?

Mr. BOWLING. I think that is an excellent question. Unfortunately, we don't have an answer. I think, as the feasibility study pointed out, there is a need for a business plan to be developed for the ESOP which would get into issues such as that and sketch out what the pricing structure would have to be to be competitive and to return a profit and so forth.

At the moment the agencies are using OPM and they are not particularly complaining about it, but what would be required to be competitive with the private sector organizations is something that would have to be fleshed out a great deal and would depend on how the organization operated and so forth.

Mr. MICA. Regardless of how we end up doing Federal investigations, there will probably always be some responsibility for OPM to conduct oversight over agencies and set some basic standards. Do you have any idea of what kind of resources will be required to maintain that oversight capability, or how would you envision structuring such an oversight capability?

Mr. BOWLING. That is something that I think would have to be worked out in detail by OPM as part of this business plan. I agree very much that oversight would need to be maintained; I think that is a very important function, and you would have to ensure that sufficient numbers of employees remained behind, Federal employees, to perform that function.

However, how many you would need would depend very much on the operations of the ESOP, and once you figured out your business plan and your operations, then you could sort through what level of oversight would be needed, but certainly some would be needed.

Mr. MICA. One other thing you mentioned it in your testimony was terminating delegations. You reported that OPM has refused to renew the Department of Commerce delegation of the investigation function. How long is the normal term of such delegations, and how many delegations are scheduled to expire in the next year?

Mr. BOWLING. We understand that it is a 1-year term and they are reviewed annually for renewal.

Mr. MICA. And can OPM's current work force, now that it has been reduced, handle the work load of these expired delegations?

Mr. BOWLING. As the work force and the work load both have reduced, OPM feels that it is sufficiently staffed to be able to manage the increase from Commerce.

Mr. MICA. Those are the questions that I have at this time. I will defer again to the ranking member and Mr. Mascara.

Mr. MORAN. What information could not be gathered by private investigators? Things like whether a person registered for selective

service, the things like that, you could only get access if you were a Government agency, I assume. What other kinds of information could you not obtain as a nongovernmental investigative agency?

Mr. BOWLING. The largest issue surrounding that seems to be the Federal and State and local law enforcement agencies information, information that they are now willing to share with OPM as cleared investigators, but information that a private individual might not have access to.

For example, if in its data base FBI had information about undercover circumstances surrounding individuals, they would be, of course, reluctant to have that compromised and therefore are somewhat more reluctant to allow a private organization to access that.

Mr. MORAN. But OPM can access all of that information?

Mr. BOWLING. OPM shares information with FBI.

Mr. MORAN. So the confidentiality of internal Federal agency information is a problem.

Mr. BOWLING. Yes, it could be. We have heard agencies express their reluctance to share it.

Mr. MORAN. Sure. Well, understandably, because I can understand why they certainly would be.

Why was the Commerce Department delegation rescinded?

Mr. BOWLING. I don't know for sure. I understand that Commerce was up for renewal and that there was some issue concerning whether or not a customer base for the new ESOP was going to be maintained and that by having Commerce go back to OPM that would increase that customer base. That is probably a question that Mr. King should answer tomorrow, but that is my understanding.

Mr. MORAN. Thank you.

Mr. MICA. Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

It seems like we have the cart before the horse here. I'm gathering from questions by my colleague and the chairman himself that there aren't really a lot of answers; one, we really don't know what the private sector costs would be because we need to wait on the study of how the ESOP is going to work. So we really don't know how much we are going to save if we have to wait on answers from how an ESOP will or will not work. The other is, if we are not sure of the quality of the work that is going to be done by the private sector, if we are not sure how the private sector will interface with the Government itself in the collection of the information they need, then how are we going to decide that we should privatize?

I mean it seems to me there are a lot of unanswered questions about where we are going and we are just going there because we think that is the thing to do. It is in vogue today to privatize or contract or whatever, and it would seem to me—I mean if I had that decision to make, it would be a very easy decision. Let's collect the information that we need to make an intelligent decision. It just doesn't seem to me that we have the answers to the questions that we need to make a decision.

Thank you, Mr. Chairman.

Mr. MICA. Thank you, Mr. Mascara, and if you will stay tuned, tomorrow we will be asking some very pointed questions of the ad-

ministration, the OPM Director, and others involved in privatization and contracting of the investigations process.

I thank you all for your testimony today, and we may submit some additional questions in writing. We appreciate your participation, and we will excuse this panel. We have an opportunity at this time to hear from several of our departments.

We have Mr. Thomas McFee with the Department of Health and Human Services, and we also have Mr. John T. Elliff, Director of Counterintelligence and Security Programs for the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence.

Gentlemen, it is the custom of this panel to swear in our witnesses. If you will please stand and raise your right hands.

[Witnesses sworn.]

Mr. MICA. Thank you.

Let the record reflect that the panelists answered in the affirmative.

This morning I will begin with Mr. Thomas McFee from the Department of Health and Human Services. If you want to, you could summarize your statement. We will submit the entire statement and any other comments for the record, but welcome, and we will defer to you to open this panel.

Thank you.

STATEMENTS OF THOMAS McFEE, ASSISTANT SECRETARY FOR PERSONNEL ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND JOHN T. ELLIFF, DIRECTOR, COUNTERINTELLIGENCE AND SECURITY PROGRAMS FOR ASSISTANT SECRETARY OF DEFENSE, COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE, DEPARTMENT OF DEFENSE

Mr. McFEE. Thank you, Mr. Chairman. I'm very pleased to be here today and have this opportunity to testify on background investigations and personnel security and suitability determinations relating to Federal employment.

The Department of Health and Human Services has approximately 65,000 employees and, like all Federal agencies, conducts some type of background investigation on all new employees as required by Executive order and various regulations. The type of investigation conducted depends upon the level of risk assigned for the employee's position. My formal testimony has an explanation of how we determine that risk and how we categorize our positions.

At HHS the majority of our positions, about 86 percent, are considered low risk or nonsensitive positions. The remaining 14 percent, a little over 9,000 positions, require certain sensitive responsibilities, and those positions are further subdivided into two categories, positions that require public trust and positions that are involved in national security.

Only positions which require a security clearance for access to classified information, which in our department is less than 800, are considered in the national security area. Those positions, out of the 800 involved, are mostly Public Health Service employees that are stationed overseas and employees that are involved on interagency teams or research efforts which are on classified

projects and working with organizations like DOD and the Energy Department and others that required security clearances, and, last, a small number of employees that are involved in emergency operations which require security clearances because of the programs that are involved or the facilities that they must use.

Some of the public trust positions, the remaining of those that we consider sensitive, are law enforcement employees, employees with fiscal and audit responsibilities, and those with access to personnel and payroll systems or other automated systems containing privacy or proprietary data, senior executives, and others with major policymaking responsibilities.

In the statutes, there are at least two statutes which require some additional investigative requirements for those having contact with children. Both the Crime Control Act of 1990 and the Indian Child Protection and Family Violence Act of 1990 require background checks or character investigations on employees or those who are being considered for employment in positions with responsibility for regular contact with or control over children. We have a large number of health care provider positions in the National Institutes of Health and the Indian Health Service which are covered by those two special laws.

Since the majority of HHS positions are nonsensitive, we request that the Office of Personnel Management conduct the minimum investigation on these new employees. That required investigation is called the National Agency Check and Inquiries, or the NACI, and it includes an FBI name and fingerprint check. For those employees in national security positions we request OPM to conduct extensive background investigations covering from three to 10 years of their activities depending upon the level of the security clearance that is required.

Most HHS employees in the public health positions and public trust positions also have a credit check conducted by OPM in addition to the National Agency Check. A credit report has proven to be one of the best indicators of potential problem areas to those assigned to public trust positions.

In addition, for those going into the highest public trust positions, the higher level positions, and those law enforcement officers with access to firearms, and our top SES'ers, we request background investigations from OPM which are similar to the national security investigations.

Although 3,000 or one-third of our public trust positions are subject to higher level types of background investigations, most of these are restricted to the limited background investigation and very few require the complete background investigation, and our total request for these top level type investigations or extensive investigations is less than 400 a year to OPM.

In answer to some of your questions about the concerns which lead us to conduct background investigations, I can say that even if there were no requirement to conduct any type of background investigation on employees, we feel that at a minimum the law enforcement checks and the FBI checks at local jurisdictions should be conducted to assure us that we are employing honest and trustworthy individuals to conduct the Government's business. Many employees have regular contact with the public, and our citizens

need to be able to have confidence in their public servants. These law enforcement checks also indicate potential problem employees who could be prone to work force or workplace violence or other work force activity.

We also have a responsibility to all of our citizens who are provided health care services by HHS and the Public Health Service employees. For example, we need to verify through investigations that doctors and nurses in our Indian Health Service hospitals have reputable backgrounds. All of those that are being treated, not just children, need to be able to have confidence in their Government health care providers, and inquiries with past employees are a key part of the personnel security investigation for these categories of employees.

My testimony also contains an explanation of the process and the standards that we use for adjudication. If you have any questions about that, I will be glad to answer that at the conclusion of my formal testimony.

I would like to close with a focus on the prime purpose of the hearing, and that is the role of the Federal Government in background investigations. We support OPM's initiative to eventually privatize the conduct of investigative interviews and the operation of their records and processing center. We are especially pleased that OPM has decided to move to an employee-owned entity that will handle the initial phase of this transition to the private sector. In addition to allowing a smooth and almost seamless transition and largely preserving jobs for the experienced investigative staff now providing these services, we feel it strikes the right balance between responsibilities that are inherently governmental and those that have been and can be successfully provided by the private sector for a number of years.

We feel that the personnel security and suitability adjudication process for security clearance determination—and, of course, the decision as to whether to hire someone—are essential to a Government's operation and mission and the Government should not relinquish any control over these sensitive activities and possibly put the public at risk. The investigative files should also remain the property of the Government because of the highly sensitive and personal information that they contain. Employees in the national security and law enforcement could be at risk without highly restrictive controls over these files by the Government.

However, we feel that the operation of the OPM records and processing center could be contracted to the private sector as Government-owned, contractor-operated type of facility, but we do not believe that the actual conduct of the investigations is inherently governmental. Past practice has shown that OPM and our agency also, by the way, have successfully contracted with private firms and individuals to obtain background investigations. As with a contractor-operated records center only, these investigators must work under clear guidance with training and oversight by OPM and the agencies. It has been our experience that private sector employees can be held to the same legal privacy and security standards as Government employees.

HHS welcomes efforts to improve the personnel security and Federal background investigation program. Because so many of our

employees are in positions of public trust, we continue to support a strong policy of personnel security and suitability which focuses on limited investigations of employees in positions with the highest risk potential.

Thank you for inviting me to appear here today, and I would be to happy to answer any questions you may have.

[The prepared statement of Mr. McFee follows:]

Testimony of
Thomas S. McFee
Assistant Secretary for Personnel Administration
Department of Health and Human Services

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today and to have the opportunity to testify on background investigations and personnel security and suitability determinations relating to federal employment.

BACKGROUND

The Department of Health and Human Services (HHS) has approximately 65,000 employees and, like all federal agencies, conducts some type of background investigation on all new employees as required by Executive Order 10450 and 5 CFR 731 and 732. The type of investigation conducted depends upon the level of risk designated for the employee's position. The position risk level determination is made by assessing the potential for adverse impact by the incumbent to the efficiency of government service or potential for damage to the national security. Some of the criteria used to designate the risk level are: fiduciary responsibilities, safety-sensitive duties, access to proprietary or other sensitive data or national security information, and level of authority and responsibility.

At HHS, the majority of our positions (about 86 percent) are considered "low risk" or "non-sensitive." The remaining 14 percent, a little over 9,000 positions, require certain sensitive responsibilities and those positions are divided into "public trust" or "national security" positions. Only positions which require a security clearance for access to classified information, less than 800, are considered national security positions.

Some of those who are in "public trust" positions are: law enforcement personnel, employees with fiscal and audit duties, those with access to the personnel and payroll system or other automated systems containing privacy or proprietary data, senior executives and others with policy-making responsibilities.

ADDITIONAL INVESTIGATIVE REQUIREMENTS

In 1990, Congress passed two laws requiring background investigations of those having contact with children. Section 231 of the Crime Control Act of 1990, Public Law 101-647, requires "background checks" of child care worker applicants and employees. Section 408

of the Indian Child Protection and Family Violence Act, Public Law 101-630, requires "character investigations" on employees, or those being considered for employment, in positions with responsibility for regular contact with, or control over, Indian children.

We have a large number of health care provider positions in the National Institutes of Health and the Indian Health Service which are covered by these two laws.

TYPES OF INVESTIGATIONS

Since the majority of the HHS positions are non-sensitive, we request the Office of Personnel Management (OPM) to conduct the minimum investigation on those new employees. That required investigation is called a National Agency Check and Inquiries (NACI) and it includes an FBI name and fingerprint check.

For those employees in national security positions, we request OPM to conduct extensive background investigations covering from three to ten years of their activities, depending upon the level of security clearance they need. (Note that the 21 HHS Presidential Appointees already have been subject to a FBI full field investigation prior to Senate confirmation.)

Most HHS employees in Public Trust positions have a credit check conducted on them by OPM in addition to the NACI. A credit report has proven to be one of the best indicators of potential problem areas to those assigned to public trust positions. For those going into the highest risk public trust positions, such as law enforcement officers with access for firearms, we request background investigations from OPM which are similar to the national security investigations.

CONCERNS WHICH LEAD US TO CONDUCT BACKGROUND INVESTIGATIONS

Even if there were no requirements to conduct background investigations on employees, we feel that at a minimum the law enforcement checks at the FBI and local jurisdictions should be conducted to help assure us that we are employing honest and trustworthy individuals to conduct the government's business. Many employees have regular contact with the public and our citizens need to be able to have confidence in their public servants. These law enforcement checks also indicate potential problem employees who could be prone to workplace violence.

We also have a responsibility to all the citizens who are provided health care services by HHS and Public Health Services employees. For example, we need to verify through investigation that doctors and nurses in the Indian Health Service hospitals have reputable backgrounds. All of those being treated, not just children, need to be able to have confidence in their government health care providers. Inquiries with past employees are a key part of the personnel security investigation for these categories of employees.

ADJUDICATION STANDARDS

At HHS, we use the personnel suitability and security adjudication standards published in 5 CFR 731 which include consideration of such factors as misconduct and negligence in prior employment, criminal or dishonest conduct, and intentional false statement or fraud in the appointment process. Employees are afforded due process and have the opportunity to respond to the information developed during the background investigation.

In addition to suitability adjudication, those employees who require security clearances must meet national security standards and be adjudicated as trustworthy for access to classified information. Adjudication guidance for national security positions is published in 5 CFR 732.

ROLE OF THE FEDERAL GOVERNMENT IN BACKGROUND INVESTIGATIONS

We support OPM's initiative to privatize the conduct of investigative interviews and the operation of their records and processing center. We are especially pleased that OPM has decided to move to an employee-owned entity (ESOP) that will handle the initial phase of this transition to the private sector. In addition to allowing a smooth or almost seamless transition and largely preserving jobs for the experienced investigative staff now providing these services, it strikes the right balance between responsibilities that are inherently governmental and those that can be and have been successfully provided by the private sector for a number of years.

We feel that the personnel suitability and security adjudication process and security clearance determination, as is the decision whether to hire, are essential to an agency's operations and mission. The government should not relinquish control over of these sensitive activities and possibly put the public at risk.

The investigative files should also remain the property of the government because of the highly sensitive and personal information that some contain. Employees in national security and law enforcement could be put at risk without highly restrictive control over these files by the government. However, the operation of the OPM records and processing center could be contracted to the private sector as a government-owed/contractor-operated (GOCO) facility.

We do not believe that the actual conduct of the investigations is inherently governmental. Past practice has shown that OPM and other agencies have successfully contracted with private firms and individuals to obtain background investigations. As with a contractor-operated records center, these investigators must work under clear guidelines with training and oversight by OPM and the agencies. The private sector employees can be held to the same legal, privacy, and security standards as government employees.

CONCLUSION

HHS welcomes efforts to improve the personnel security and federal background investigations programs. Because so many of our employees are in positions of public trust, we continue to support a strong policy of personnel suitability and security which focuses on limited investigations of employees in positions with the highest risk potential.

Thank you for inviting me to appear before you today. I would be happy to answer any questions that the Subcommittee Members may have.

Mr. MICA. Thank you for your testimony, and now we will call on Mr. John T. Elliff, Director of Counterintelligence and Security Programs for the Assistant Secretary of Defense.

Welcome.

Mr. ELLIFF. Mr. Chairman, thank you for inviting us here to discuss these matters with you today.

I have a prepared statement which, with your permission, I'll submit for the record.

Mr. MICA. Without objection, it is part of the record.

Mr. ELLIFF. I would like to make two points and then move to your questions so that we can structure what you would like to hear.

Mr. MICA. Thank you. Go right ahead.

Mr. ELLIFF. The first point is that the Secretary of Defense believes that personnel security remains a very high priority matter for the Defense Department. Last year a joint security commission that was appointed by the Secretary and the Director of Central Intelligence reviewed all of our security practices to see, with the end of the cold war, what can we change and what do we need to keep, and there were extensive recommendations for change in physical security practices, barriers, unnecessary duplication of rules, and so on. But there was an emphasis on two areas that remain top priority. One was personnel security, and the other, information systems security, and there is a connection between the two.

Last fall the President proceeded, based on that report, to create a Security Policy Board that is co-chaired by the deputy secretary of defense and the DCI which is responsible for developing policy for the executive branch on security matters such as this. That is—so personnel security remains important.

We had two recent espionage arrests within the past month affecting DOD. This is not ancient history. We had a court marshal of a military Navy lieutenant commander for providing information to the Saudi Arabians. We had an FBI arrest of a former defense contractor who was offering to sell Stealth secrets to the Germans. Maybe we don't have a Soviet Union presenting us with an overwhelming strategic effort, but our military commanders want to keep secret their military operational plans, their advanced weapons systems that gave us the ability to prevail in Desert Storm overwhelmingly, and increasingly our information systems which are vulnerable to hackers and particularly to insiders who know how to get in. So personnel security remains very important to defense.

Second is, we have a very close partnership with OPM. Over the years OPM has delegated to Defense the ability to do its own investigations through the Defense Investigative Service primarily. We work very closely with my office and Pat Lattimore's office to ensure that the product that we produce meets their standards and that the information that they provide that is of benefit to us from their central investigations index and from their own investigations meets our requirements. We believe that that cooperation will continue and will also continue through the personnel—the Inter-agency Personnel Security Committee that has been created under the new Security Policy Board, which I expect will be monitoring any changes in the way the personnel security business is done to

ensure for the deputy secretary of defense and the DCI that the security interests of the country are kept in mind.

So those two points I think give you a perspective from the defense point of view on the specifics of how we do our business that is set forth in my prepared statement. I would be happy to respond to your questions.

[The prepared statement of Mr. Elliff follows:]

STATEMENT FOR THE RECORD BY DR. JOHN T. ELLIFF
DIRECTOR, COUNTERINTELLIGENCE & SECURITY PROGRAMS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE,
THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE OF THE HOUSE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT. YOU
HAVE ASKED FOR THE VIEWS OF THE DEPARTMENT OF
DEFENSE REGARDING SECURITY AND SUITABILITY
INVESTIGATIONS AND DETERMINATIONS RELATED TO
FEDERAL EMPLOYMENT, ESPECIALLY WITH REGARD TO THE
OFFICE OF PERSONNEL MANAGEMENT'S (OPM) PLANNED
PRIVATIZATION OF THE OFFICE OF FEDERAL
INVESTIGATIONS (OFI).

I WOULD LIKE TO PROVIDE THE SUBCOMMITTEE WITH A
BRIEF OVERVIEW OF THE DOD INVESTIGATIVE PROGRAM
PERTAINING TO ITS MILITARY, CIVILIAN AND CONTRACTOR
EMPLOYEES. SINCE 1972, ALL BUT A SMALL PORTION OF
DOD PERSONNEL SECURITY INVESTIGATIONS (PSI) HAVE
BEEN CENTRALIZED IN THE DEFENSE INVESTIGATIVE
SERVICE (DIS). SINCE THE MID 1950'S DOD HAS HAD AN
AGREEMENT WITH OPM AND ITS PREDECESSOR
ORGANIZATION, PURSUANT TO E.O. 10450, TO CONDUCT
SECURITY AND SUITABILITY INVESTIGATIONS ON CIVILIAN
PERSONNEL USING ITS OWN INVESTIGATIVE ASSETS. THIS
AGREEMENT WAS MOST RECENTLY RENEWED IN NOVEMBER

1994. IN FY94, DIS OPENED 620,000 NATIONAL AGENCY CHECKS (NAC) AND 208,000 FIELD INVESTIGATIONS FOR MILITARY, CIVILIAN AND CONTRACTOR PERSONNEL AT A COST OF \$150 MILLION AND INVOLVING 2500 WORKYEARS. THE AVERAGE COST OF A DIS SINGLE SCOPE BACKGROUND INVESTIGATION (SSBI) FOR A TOP SECRET CLEARANCE IS APPROXIMATELY \$1750. DOD HAS 2.7 MILLION CLEARED MILITARY, CIVILIAN AND CONTRACTOR PERSONNEL OF WHICH ABOUT 600,000 ARE CIVILIAN EMPLOYEES. THE MAJORITY OF THESE PERSONNEL RECEIVE THEIR PERSONNEL SECURITY AND SUITABILITY INVESTIGATIONS FROM DIS.

DIS CONDUCTS PERSONNEL SECURITY INVESTIGATIONS FOR ALL DOD COMPONENTS IN ORDER TO PROVIDE THE INFORMATION NECESSARY FOR ADJUDICATORS TO EVALUATE A PERSON'S TRUSTWORTHINESS, RELIABILITY AND INTEGRITY REQUIRED FOR ACCESS TO CLASSIFIED INFORMATION AND EMPLOYMENT IN SENSITIVE POSITIONS. IN ORDER TO ACCOMPLISH THIS MISSION DIS CONDUCTS THE FOLLOWING TYPES OF INVESTIGATIONS: 1) SINGLE SCOPE BACKGROUND INVESTIGATIONS (SSBI) FOR TOP SECRET AND SENSITIVE COMPARTMENTED INFORMATION (SCI) ACCESS BASED ON NATIONAL SECURITY DIRECTIVE 63; 2) TOP SECRET/SCI PERIODIC REINVESTIGATION (PR) CONDUCTED AT FIVE YEAR INTERVALS; 3) A NATIONAL AGENCY CHECK FOR ACCESS TO SECRET/CONFIDENTIAL; AND

4) A SECRET PR AT TEN YEAR INTERVALS. THE ABOVE FOUR INVESTIGATIONS COMPRISE THE MAJORITY OF THE 208,000 CASES OPENED BY DIS IN FY94. DIS ALSO CONDUCTS MORE THAN 250,000 ENTRANCE NACS EACH YEAR TO DETERMINE THE SUITABILITY OF RECRUITS FOR MILITARY SERVICE.

COMPLETED INVESTIGATIONS CONDUCTED BY DIS ARE FORWARDED TO EIGHT DOD CENTRAL ADJUDICATION FACILITIES (CAF). TRAINED, PROFESSIONAL ADJUDICATORS AT THE CAFs APPLY ESTABLISHED DOD ADJUDICATION GUIDELINES IN REACHING A DECISION ON WHETHER TO GRANT, DENY OR REVOKE A SECURITY CLEARANCE. THE DOD ADJUDICATION GUIDELINES ARE CONTAINED IN DOD 5200.2-R, "DEFENSE PERSONNEL SECURITY PROGRAM REGULATION" (32 C.F.R. PART 154) AND INCLUDE SUCH CATEGORIES AS: LOYALTY, FOREIGN PREFERENCE, FINANCIAL MATTERS, ALCOHOL AND DRUG ABUSE, MENTAL OR EMOTIONAL DISORDERS, CRIMINAL CONDUCT, ETC. THE SAME STANDARDS ARE APPLIED TO ALL DOD ADJUDICATIVE DECISIONS FOR ACCESS TO CLASSIFIED INFORMATION.

EVEN THOUGH DOD DOES NOT RELY ON OPM FOR A SIGNIFICANT PORTION OF ITS INVESTIGATIVE WORK, IT DOES RELY HEAVILY ON THE AUTOMATED SECURITY

INVESTIGATIONS INDEX (SII) OPERATED BY THE FEDERAL INVESTIGATIONS PROCESSING CENTER (FIPC). THE OPM SII CONTAINS A RECORD OF ALL CIVILIANS INVESTIGATED BY OPM OR OTHER FEDERAL AGENCIES AND ENABLES DIS TO AVOID INITIATING A COSTLY INVESTIGATION IF ONE ALREADY EXISTS. DOD IS IN THE PROCESS OF ESTABLISHING A FULLY AUTOMATED LINKAGE BETWEEN THE SII AND THE DOD DEFENSE CLEARANCE AND INVESTIGATIONS INDEX (DCII) COMPUTERS TO ENSURE A RAPID AND COST EFFECTIVE CAPABILITY OF IDENTIFYING AND RETRIEVING PREVIOUSLY CONDUCTED INVESTIGATIONS.

THE DOD IS NOT A MAJOR REQUESTER OF INVESTIGATIONS FROM OPM BECAUSE OF ITS DELEGATED AUTHORITY TO CONDUCT INVESTIGATIONS ON DOD CIVILIAN EMPLOYEES. IN FY94 OFI CONDUCTED ABOUT 31,000 NATIONAL AGENCY CHECKS WITH INQUIRIES AND CREDIT (NACIC) FOR DOD AT A COST OF \$77 EACH. NACIC'S ARE THE INITIAL ENTRY LEVEL INVESTIGATION REQUIRED TO MEET MINIMUM SUITABILITY STANDARDS FOR NEW CIVILIAN EMPLOYEES. NO FIELD INVESTIGATION IS CONDUCTED. DOD CAN GRANT UP TO A SECRET SECURITY CLEARANCE BASED ON A FAVORABLE NACIC. OPM'S PROPOSED MOVE TO AN EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FOR OFI WOULD NOT HAVE A SIGNIFICANT IMPACT ON DOD WITH RESPECT TO ITS NACIC WORKLOAD DUE TO THE RELATIVELY

SMALL NUMBER OF CASES INVOLVED, AND THE FACT THAT THEY DO NOT INVOLVE ANY FIELD INVESTIGATION.

DIS OBTAINS SUFFICIENT BACKGROUND INFORMATION NECESSARY TO DETERMINE A PERSON'S RELIABILITY, INTEGRITY AND TRUSTWORTHINESS FOR ACCESS TO CLASSIFIED INFORMATION IN THE MAJORITY OF INVESTIGATIONS. HOWEVER, THERE ARE SOME IMPEDIMENTS TO OBTAINING CRIMINAL HISTORY RECORD INFORMATION (CHRI) IN SOME STATE AND LOCAL JURISDICTIONS DUE TO THE REQUIREMENT FOR SUBMISSION OF FINGERPRINT CARDS AND PAYMENT OF FEES UNDER THE STATUTE PROVIDING ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES, P.L. 99-169. WHILE MANY STATES AFFORD DIS RAPID AND EFFICIENT AUTOMATED ACCESS TO THEIR CENTRAL CHRI DATA BASES, WHERE THEY EXIST, OTHERS REQUIRE SIGNIFICANT FEES AND FINGERPRINT CARDS BEFORE A SEARCH CAN BE MADE. IT MIGHT BE MORE APPROPRIATE AND COST EFFECTIVE TO ONLY REQUIRE THAT A FEE AND A FINGERPRINT CARD BE SUBMITTED ON THOSE PERSONS WHO HAVE BEEN IDENTIFIED AS A POSSIBLE MATCH FOLLOWING AN AUTOMATED NAME SEARCH, THE MAJORITY OF WHICH WILL BE A "NO RECORD."

DOD AND OTHER FEDERAL AGENCIES CAN NORMALLY OBTAIN ROUTINE CREDIT REPORTS FROM THE LARGE COMMERCIAL CREDIT VENDORS. ALTHOUGH CREDIT INFORMATION AND OTHER FINANCIAL INFORMATION IS GENERALLY AVAILABLE IN BACKGROUND INVESTIGATIONS, THERE HAVE BEEN IMPEDIMENTS IN OBTAINING DETAILED INFORMATION ABOUT FINANCIAL ACCOUNTS AND TRANSACTIONS FROM FINANCIAL INSTITUTIONS CONCERNING INDIVIDUALS SUSPECTED OF SERIOUS OFFENSES WITHOUT THEIR SIGNED PERMISSION. THIS IS CLEARLY NOT POSSIBLE WHEN THE INDIVIDUAL IS UNDER INVESTIGATION FOR AN OFFENSE LIKE ESPIONAGE. HOWEVER, CONGRESS ENACTED LEGISLATION LAST YEAR IN SECTION 802 OF P.L. 103-359 AUTHORIZING NEW PROCEDURES IN COUNTERINTELLIGENCE INVESTIGATIONS WHICH SHOULD HELP RESOLVE THIS ISSUE.

DOD IS ALSO PROHIBITED FROM OBTAINING INFORMATION PERTAINING TO "REPORTS OF CASH PAYMENTS OVER \$10,000 RECEIVED IN A TRADE OR BUSINESS" (IRS FORM 8300). THIS COULD BE REMEDIED BY BRINGING THE FORM 8300 INFORMATION UNDER THE EXISTING BANK SECRECY ACT PROVISIONS (31 U.S.C. 5311-5326) WHICH ARE APPLICABLE TO ALL LARGE CURRENCY TRANSACTION FORMS EXCEPT FORM 8300. ALTHOUGH DOD HAS HISTORICALLY BEEN UNABLE TO ACCESS BANK SECRECY ACT

DATA UNDER 31 U.S.C. 5311 PERTAINING TO LARGE CURRENCY TRANSACTIONS, THIS WILL SOON BE REMEDIED BY AN AGREEMENT WITH THE DEPARTMENT OF THE TREASURY THAT WILL PROVIDE DOD, AND EVENTUALLY OTHER FEDERAL AGENCIES, AUTOMATED ACCESS TO SUCH INFORMATION IN THE COURSE OF INVESTIGATIONS FOR TOP SECRET OR SCI ACCESS.

THAT CONCLUDES MY STATEMENT AND I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS THAT THE SUBCOMMITTEE MAY HAVE.

Mr. MICA. Thank you, and I think we have a good contrast of two different agencies with two different missions, and, if I may Mr. Elliff, let me address you first: You described a good working relationship between your department and OPM. What standards exactly does OPM now provide you, and what constraints do you work under that are established by OPM?

Mr. ELLIFF. As was mentioned earlier, we previously had the OPM manual. Obviously the defense components, the defense agencies, in both their adjudication and their investigation continue to have as part of their standard operating procedures the procedures that they have developed over the years in collaboration with OPM. OPM continues to audit our components and provide us guidance, and that auditing—those audit reports are provided to my office, and I'm able then to get a better eye on the performance of our components through the audits that are done by OPM.

Mr. MICA. It is my understanding that last year the Office of Personnel Management eliminated the Federal Personnel Manual, including the chapters providing guidance relating to employment security, suitability, and public trust standards. In the absence of the Federal Personnel Manual, has OPM provided any new or amended guidance related to these topics? What standards are you working under?

Mr. ELLIFF. We are operating under the previous standards which have been incorporated into Defense Department policy, and we have not been advised that there is any need to change those.

Mr. MICA. So you have adopted your own, but my question is, what standards have now replaced those of OPM?

Mr. ELLIFF. To my knowledge, their expectation is reasonably that we will continue to do things as we have, and that they will audit us and—based on their audit reports, but we have had no new guidance.

Mr. MICA. So you are working under expectation but not specific guidelines, written guidelines?

Mr. ELLIFF. That is right, sir.

Mr. MICA. OK.

It is my understanding that OPM has now basically deferred just about all personnel investigative responsibility to your agency. Do you conduct all investigations, or are there any left with OPM?

Mr. ELLIFF. We have a small proportion of name checks that are done—continue to be done for us by OPM. It is not a major—there's about 31,000 National Agency Checks with inquiries and credit for DOD that were provided.

Mr. MICA. They charge you for that service?

Mr. ELLIFF. About \$77 each.

Mr. MICA. \$77 each.

Mr. ELLIFF. Right.

Mr. MICA. How many background investigations do you conduct annually? Do you have any historic record you can provide us with?

Mr. ELLIFF. Yes, we do. I have a full set of data in all the categories over the past 5 years that I'll provide you for the record.

Mr. MICA. Could you give us as far back as 1990 for what you were doing?

Mr. ELLIFF. We have that, and I could go through it now.

Mr. MICA. Yes, what kind of figures in 1990? How many.

Mr. ELLIFF. In 1989, which is as far as we go back, we had a total number of cases in the field investigative categories of about 260,000. We are down to about 210,000 now.

Mr. MICA. You said 260,000, and you are down now to 210,000. 1995? 1994?

Mr. ELLIFF. That is 1994, but our estimate for 1995 is running—we have pretty much stabilized. It was 213 in 1993, 208 last year, and 210 this year.

Mr. MICA. Those you described as field. Is there a routine category, or are they thrown in?

Mr. ELLIFF. In addition, we have the standard NAC's and the Entrance-NAC's, the file checks, and that would add another 600,000 to the total—I mean add to a total of 600,000 altogether.

Mr. MICA. So 600,000 is for what year, 1989?

Mr. ELLIFF. That is the 1994. We were at 800,000—840,000 back in 1989.

Mr. MICA. 800,040, and then we take the 260 out after that, right?

Mr. ELLIFF. But that is both—that is not just security clearances, that reflects the overall downsizing of our civilian work force.

Mr. MICA. What about cost per investigation, the field versus the file?

Mr. ELLIFF. Our cost for a field investigation—for the full field top secret background investigation from Defense Investigative Service is about \$1,750.

Mr. MICA. OK. How about if I cut you a deal and you do them for OPM and we save half—

Mr. ELLIFF. We are not sure that the Congress or the President or the American people wants to militarize this for the entire Federal Government. We have the defense mission.

Mr. MICA. Obviously, but it looks like you are doing a larger number. Maybe you could attribute some of this to economy of scale.

Mr. ELLIFF. I believe so, yes.

Mr. MICA. So we should hire more Federal employees so we can—no, I won't get into that line.

And your cost on your file investigations, did you have a figure on that, an average cost?

Mr. ELLIFF. It is the same cost. The file cost is about the same as OPM. The \$77 that we get charged by OPM, it is about the same for us too.

Mr. MICA. OK. We said somewhere around 30 to 300 or something. There is an average in there.

Your cost, the \$1,700, is that 1994? 1995? Was it less in 1989? Has there been any historic record on it increasing or decreasing?

Mr. ELLIFF. It was about 1,100 back then. We have got cost of living increases that would attribute some of that, plus we are investing in automation.

Mr. MICA. Now do you contract with any private sources, or is everything done in house?

Mr. ELLIFF. We have had to contract because there have been such tremendous changes in the distribution of the defense work force with base closures.

Mr. MICA. What percentages are contracted out versus conducted in house?

Mr. ELLIFF. About 5 percent of our work, and that is distributed unevenly depending on where there has been a surge in relocation of people.

Mr. MICA. Five percent contracted out.

One thing I'm surprised at is, the numbers really haven't dropped that dramatically and actually DOD has been taking most of the hits for downsizing. I think one of our previous hearings testified in 1 year—98 percent of the downsizing was in the Department of Defense. Is this because there is some turnover as far as military personnel that is continual and replacements?

Mr. ELLIFF. That is one of the reasons, because we have military turnover that we have to keep up with, and we don't have the stability of a long-term work force as much on the military side, but there are a couple of other reasons.

The elements of the defense force that have been retained in the downsizing have generally been the more high-tech elements, and so the proportion of the defense work force that has required security clearances has increased significantly. The downsizing has affected the troops and the positions that have not required top secret clearances. The high-tech end, there have been some significant reductions in industry, but those were positions which were—there was a big ramp-up in the nineties.

Second though, we have some policy requirements from the President. For top secret clearances we have to do reinvestigations after 5 years. Now we try to keep up with that goal. Not all departments and agencies keep up with that goal because of resource constraints, and we are going to have to make some very tough decisions as to whether we can meet the Presidential requirements for reinvestigations, but that means that our work load includes reinvestigations so that we can catch folks who become spies. Virtually all our spies have become spies after their initial clearance, and so it has been the reinvestigation that we have emphasized in order to pick up the bad apples, which we do.

Mr. MICA. Part of your testimony and your comments made it clear that you see a long-term and continual need for investigations authority, and also responsibility to be left within your agency and the need to continually conduct them. There may be a change in the world order, but you see a very serious need?

Mr. ELLIFF. Yes, we believe that to confront the requirement, to fight two major regional conflicts, we have to maintain secrecy for the military plans and the weapons systems to deal with a Middle East contingency and a Korean contingency, and that drives continued secrecy if we are going to prevail.

Mr. MICA. I want to question both of you about any changes relating to the law or as a result of court cases, but in fairness I want to defer for a few minutes to my colleague from Pennsylvania, Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

Mr. Elliff, I note in your testimony that the major amount of requests for investigations is done in house and that you do not use the OPM that frequently. You said about 5 percent of the investigations are contracted out.

Mr. ELLIFF. Yes.

Mr. MASCARA. Do you feel comfortable with privatizing and contracting out of investigative services for your agency?

Mr. ELLIFF. I believe that with the interagency oversight mechanism that we have under the Security Policy Board to work with OPM that we will find a way to ensure for the Secretary of Defense and the Director of Central Intelligence that this works to ensure the protection of our most vital information that is subject to access by those folks who get OPM investigations, so I believe that through that mechanism we will be able to make this work.

Mr. MASCARA. I don't know whether you answered my question.

Mr. ELLIFF. I'm sufficiently uncomfortable to believe that we have to have a mechanism in place to be able to ensure through interagency review and cooperation that some of the possible downsides don't occur.

Mr. MASCARA. Well, there is a dichotomy here between Mr. McFee and yourself. In his testimony he indicates that the investigations that he does are not of the sensitive nature. In fact, I note as a county commissioner in Washington County, PA, and the person who was responsible for administering the LMA, or the day care program, that we were required to investigate those people, not only those people who worked for Washington County but those people who had applied for a license to implement a child care program in their home. Often times, they cared for maybe one or two children in their home. But we are talking about something else here, and I have another question for Mr. McFee, but given the sensitivity of what you do and what the Federal Government does, the Department of Defense, would you feel comfortable having a private agency do the work that is required to investigate those people who would be working, whether they are civilian or whether they are part of the DOD?

Mr. ELLIFF. I believe it can be done properly and that I will be comfortable.

Mr. MASCARA. OK. That is interesting. That is interesting.

I have no further questions.

Mr. MICA. Thank you Mr. Mascara.

Mr. McFee, if I were a pedophile, what would my chances of being employed by an agency or contractor of HHS?

Mr. MCFEE. Hopefully very, very low.

Mr. MICA. Realistically?

But what would be the procedures for checking someone out and restrictions on employment? What kind of investigation would be conducted?

Mr. MCFEE. Right now the conduct of these checks and these investigations would be done with a combination of local law enforcement officials and would coordinate that effort, and to the degree that local law enforcement officials had this information, et cetera, I think there would be a high chance that that would come to light and something would happen about it.

The real problem is that much of this activity is not known and there are not complete background checks run on these people.

Mr. MICA. Someone said that we now do, is it a 5-year check? So if I were a pedophile that committed a crime 10 years ago that got recorded (got caught 10 years ago) what are my chances?

Mr. MCFEE. We do not run those kinds of background investigations on the people that are covered. Because of the child protection type activities, the law requires us to do a much more limited type of check. In fact, in the Indian Child Protection Act, it only requires character investigation but not full background investigations.

Mr. MICA. So you are basically saying the investigations that you conduct under HHS would not detect someone who had been convicted of a pedophile act 10 years ago?

Mr. MCFEE. Again, if they had been caught, convicted, and there is a record available, that would be taken care of, but if—

Mr. MICA. But what about this 5-year figure that we heard?

Mr. MCFEE. But that has to do with our complete background investigations. I was not speaking to the people that are involved in this. In fact, this is all done through State agencies and et cetera.

Mr. MICA. So it is still pretty chancy as far as the investigation, say, for someone of that type of background, whether or not they would be employed?

Also, I guess many of the functions of your agencies are contracted out?

Mr. MCFEE. Definitely.

Mr. MICA. And you may do a check of the contractor, but the employees of the contractor may never undergo that scrutiny. Is that correct?

Mr. MCFEE. No, there are contracts that require that the contractor do those types of investigations, and it is built into the grants and the contracts. We do not directly operate the background checks under the child protection area, but they are done by State welfare agencies and State organizations.

Mr. MICA. Are some of those checks contracted out, or are they all done by the State and local agencies? Do they have the authority to contract them out to private groups?

Mr. MCFEE. I'm pretty sure they do, but I will get some information for you for the record.

Mr. MICA. I would appreciate that. I would just like to follow that a little bit further and see what protections we afford by the money we are spending on Federal investigations of personnel or contractors or their employees, particularly where you deal with children or elderly or infirm, someone who could be at risk and not be able to protect themselves. If you could provide us with that information.

Mr. MCFEE. I'll get you some more information on that.

[The information referred to follows:]

Federal and most State laws require that some type of background check be conducted on individuals who occupy child care worker positions. HHS employees or contractors in these positions are required to be fingerprinted so that checks can be made with the FBI and state criminal record repositories. We use OPM to conduct these criminal records checks.

In addition, grantee recipients, such as Head Start programs, are required by HHS regulations and various state laws to conduct some type of criminal record checks on individuals working in child care positions. Grantees have to conduct these checks and the cost comes out of the grant funds. If the grantee is a state or local government organization, they usually conduct their criminal background checks through State or local repositories and have no need to contract this out to a private investigative firm.

If the grantee is a private non-profit organization, the grantee has the authority to use a contractor to process the background check, but usually the criminal check is processed through the State repository without using a "middleman" or contractor.

The key point is that background checks are required and conducted on child care workers whether they are directly employed by the Federal government or are paid with government funds.

Mr. MICA. Gentlemen, one thing that we talked about earlier with other witnesses was the various changes in laws and court decisions that have been made over the years relating to limitations on what information can be obtained and how it can be used.

Do either of you see any need for additional changes, possibly Mr. Elliff in the defense area, and because of additional security requirements are there statutory areas that need to be addressed by the Congress to provide you with better tools to do the job you need to do in personnel investigations?

Mr. ELLIFF. I think overall we get sufficient information to do our job, but you can't ask an agency like Defense a question like that without—

Mr. MICA. That is why we had you.

Mr. ELLIFF [continuing]. Having researched carefully, and last year Congress was able to meet, through the Intelligence Authorization Act, some of our needs, and with the administration's support we were able to get some provisions.

We have identified a couple of other areas. They are fairly technical. One deals with Public Law 99-169 which concerns a requirement to submit fingerprint cards and pay fees in order to be able to get State and local criminal history data.

What we find is that in many cases there is no record, and we have had to go through the cost and expense of submitting the fee and the fingerprints, and there is no record. If we could do a preliminary request to see if there is a record that matches by less costly means, we think that would lift some of the cost burden for us and would not be contrary to the intent of Congress in that.

Mr. MICA. Very good.

Mr. ELLIFF. Second, we have been focusing heavily last year on financial aspects of investigations. The Ames case focused particularly on how are we going to get better access to financial data.

There is one area where people are required to report cash payments of over \$10,000 received in a trade or business on IRS Form 8300. We already are working with Treasury Department on a number of other similar reports that we believe we can develop a procedure to get access to in our background investigations, but right now under the existing statutes we could not include those kinds of reports within the scope of our inquiries under the Right to Financial Privacy Act, the Bank Secrecy Act, so that would be another area that would help complete. It is not asking for tax returns, it is asking for situations where people are required to report large financial transactions and where we found, looking at cases in the acts, that some of the spies we caught in the eighties had, in fact, reported large financial transactions, they were never screened. We would like to be able to do that. So those are two examples that would follow on the continuing dialog the administration has had.

My statement has been cleared by OMB. I believe the administration would be willing to engage in dialog on these issues.

Mr. MICA. Well, we will look at both of those areas, and I think you have my assurance that we will also pass on these recommendations to the appropriate committees and subcommittees of Congress for their consideration and possible action. I appreciate that.

Mr. McFee, did you have any areas that your agency has identified that may need some congressional or legislative action?

Mr. MCFEE. No. Generally some of the restrictions have made things more difficult, but we find ways to work around it, and some of the recent legislation on access to credit information without necessarily the permission of the person being investigated has helped tremendously in the credit area, so I would have no further recommendations.

Mr. MICA. It is my understanding that your agency may also, Mr. McFee, do some contracting to other sources for these types of services. Is that correct?

Mr. MCFEE. We do contracting but not for background investigations, but we have extensive contractor arrangements for merit system investigations and for EEO investigations and have about 15 years history with working with contractor investigations in that area.

Mr. MICA. But none with personnel employment.

Mr. MCFEE. We do not do that directly, we use OPM.

Mr. MICA. All right.

Do you find any problems with the elimination of the Federal Personnel Manual last year, particularly some of the chapters related to employment security suitability and public trust standards, Mr. McFee?

Mr. MCFEE. My formal testimony on the top of page 3, talks about how we do suitability and adjudication standards. We use the basic regulations which were not eliminated, they are still in place, 5 CFR 731 for public trust and 5 CFR 732 for national security positions. These are still in place. We did not think that the personnel instructions and et cetera were that necessary. We supported their elimination, and we operate basically with the regulations themselves.

Mr. MICA. Are either of your agencies currently involved in litigation related to background investigations? Mr. Elliff.

Mr. ELLIFF. I do not know specifically. I can check for the record. I believe we always have cases in court at one degree or another, but I would be happy to provide a list of the pending cases.

Mr. MICA. What about your agency?

Mr. MCFEE. Not that I know of.

Mr. MICA. If you have had any problems with any of the laws that we have mentioned—Americans with Disabilities Act, Freedom of Information Act, Privacy Act—we would appreciate your advising the subcommittee as we look at changes in policy and also laws that allow you to seek, obtain, and utilize the information that you need.

Yes, Mr. Elliff?

Mr. ELLIFF. On the question of confidentiality of persons we talk to, if someone provides some derogatory information to us, they

have the ability to request that that be kept confidential, and we will keep that confidence through the adjudication process to the extent that we possibly can to protect our sources. Yes. If the source does not request confidence, then that information is available, but confidential sources are protected in our background investigation process.

Mr. MCFEE. The same is true in our area. We do use protected sources. They are so indicated. The information is available for adjudication, but the source is protected.

Mr. MICA. Thank you.

Mr. Mascara, did you have any final questions?

Mr. MASCARA. Yes. Very briefly.

It would be unfair for me to ask Mr. Elliff what his opinion was about privatizing and contracting out and not ask you, Mr. McFee. There were some agencies—I guess the GAO said that they were uneasy or uncomfortable with contracting out of OFI services. How do you feel about that?

Mr. MCFEE. Well, as my testimony says, I am supportive of the general concept of privatization. In the early stages of the discussion with OPM with the idea of an immediate privatization, the alternative would have been that each agency would have had to do their own investigations or contract directly. We did have some trepidations about the abrupt change to a privatization approach to it. But with the advent of the employee-supported type system we see that as the best of both worlds. It will give them some time for a transition to a privatized organization, it will allow us to continue to use the same people that we are comfortable with using, and so we fully support the concept of going to the employee option.

Mr. MASCARA. So you support the ESOP concept and a smooth transition from being employed by the Federal Government to an employee ownership stock program.

Mr. MCFEE. Yes.

Mr. MASCARA. Mr. Elliff, I have a question about a response that you had to the chairman regarding the Internal Revenue Service Code 8300. I'm familiar with that because I am an accountant, but what I want you to explain to me is, if someone is accepting hundreds of thousands or millions of dollars, I'm sure they don't run to the bank and deposit it. If they did, then they are more stupid and they shouldn't be a spy. Could you explain that to me, how legislatively—and I think the question from the chairman was, how can we as Members of Congress somehow facilitate the process through legislation?

Mr. ELLIFF. First of all, it is extraordinary how stupid some of these spies have been, and they wouldn't have been spies if they weren't stupid; and, second, these are very minor. These are the results of a technical analysis to complete the inventory of all the financial reporting statutes.

We did find that some of our spies who were in fact making large deposits and they were being reported back in the eighties but—and we wouldn't want to publicize this widely, but, again, our spies are motivated to do this, the ones that betray their country, by a very unique combination of psychological circumstances they put themselves in. Ames was extraordinarily sloppy in his trade craft, and he ought to have been caught a long time before he was.

Mr. MASCARA. My question is, the banking community is required by law to report any cash transactions \$10,000 or more. How can we legislatively help you somehow to enhance that? I thought that was the question.

Mr. ELLIFF. No, no. We already have access to most of that under the existing law, and we are working with Treasury in a matter within the executive branch to facilitate that access. It is just this one area where, by statute, we would be barred access.

Mr. MASCARA. OK.

Mr. ELLIFF. All the other ones—all the other reporting required to Treasury is accessible to us legally.

Mr. MASCARA. I understand. Thank you, Mr. Elliff.

Mr. Chairman.

Mr. MICA. I thank you. Perfect timing.

I do have additional questions, but also under the new rules I'm required to vote across the hall in the next minute or two, so I want to thank both of you gentlemen, and I'm going to also seek from you written responses on what you view as the role of oversight in a revised OPM investigations structure.

We may have additional questions that will be submitted to you from the ranking member, the Chair, or other panelists. Without objection, those will be entered into the record, with your response.

I also have an opening statement from Mr. Moran and other members that we will enter into the record. Without objection, so ordered.

[The prepared statements of Hon. James P. Moran and Hon. Constance A. Morella follow:]

COMMITTEE
ON
GOVERNMENT REFORM
AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
RANKING MINORITY MEMBER
COMMITTEE
ON
INTERNATIONAL RELATIONS
SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS

Congress of the United States
House of Representatives
Washington, DC 20515-4608

JAMES P. MORAN
8TH DISTRICT OF VIRGINIA

WASHINGTON OFFICE:
405 CANNON HOUSE
OFFICE BUILDING
WASHINGTON, DC 20515-4608
(202) 225-4376

Statement of Representative James P. Moran
on "Federal Background Investigations: Purposes and Procedures"
Subcommittee on Civil Service
June 14, 1995

Mr. Chairman:

I appreciate your holding these oversight hearings into the federal investigative policies.

As you state in your opening statement, federal background investigations were developed in response to the fears and concerns of a different time. In 1954, when the Atomic Energy Act was enacted, the nation was caught up in the paranoia generated by Senator McCarthy and the legitimate concerns of the Cold War and the rivalry between the United States and the Soviet Union. Federal employees, particularly State Department employees, were particularly targeted for suspicion and abuse.

The Atomic Energy Act of 1954 and Executive Order 10450 did serve an important role in protecting federal employees from subsequent slander campaigns, such as that raised by McCarthy, and also helped ensure that all Americans could trust and rely on their public servants. As the policy became further defined by Court decisions, the Privacy Act, and the Freedom of Information Act, its application became more equitable and better suited to the individual needs of the workplace. Background investigations should not be used solely to "weed out" potential members of the Communist Party, but rather to ensure that the potential employee is fit for the job and will act in the public trust. In the present day, investigations are needed to ensure that the potential employee is suitable for federal employment and meets the goals of the merit system. These investigations are also necessary to ensure that the employee did not lie on his application. The question is how far should the investigations go? Do we need a full field investigation or a perfunctory check of the employees criminal records?

The biggest problem with the federal investigative office is that it is not flexible enough to meet the unforeseen, but frequent, increases and decreases in federal employment. When different agencies are staffed up, it is in response to a specific policy initiative that was, by its nature unforeseen in

a long term plan. OPM cannot adequately conduct all the investigations without hiring new people itself. Then after the influx is complete, and the pendulum swings back to a reduced federal workforce, there are too many investigators with too few cases. The workload can also be impacted by changes in the policies affecting security clearances. We saw this in 1992 when the Congress and Bush Administration re-examined the number of documents being classified and the people receiving higher security clearances.

This is a situation that can be remedied through the use of contractors. The private sector can better adapt to sudden rises and falls in workload because it can more efficiently beef up or pare down its workforce. As we saw in 1986, however, a private contractor may not always be the answer. At that time, OPM contracted with four firms who estimated that they could perform 42,780 satisfactory investigation. They did only 3,300 and there were problems with those. This begs the question: why was OPM unable to properly contract out their investigations while 13 other agencies can successfully contract out their workload every day. Part of this is obviously the difference in the sheer numbers of investigations -- agencies contract out approximately 6,700 investigations annually while OPM tried to contract out more than 40,000. Another part was mismanagement and improper oversight by OPM.

There are problems and deficiencies found in contracted out investigations. The majority of these are caused by the agencies not following through and investigating those areas the contractor cannot. Contractors cannot obtain National Agency Check information such as FBI fingerprints and name checks, Defense Clearance and Investigations Index, Bureau of Vital Statistics verification, and confirmation that the applicant has registered with the Selective Service. This is the responsibility of the contracting agency. The problem, however, is that many agencies do not follow through with their responsibilities. But the contractors are not without fault. There are many cases where contractors failed to adequately cover periods of employment, periods of education, and residence. As part of this review, we must examine ways to ensure that any deficiencies, whether caused by the agencies or the contractors, are eliminated.

I understand that today's hearing is only a review of the investigations policy and that tomorrow's hearing is on the privatization proposals. I have some concerns about the privatization proposal but I will wait until tomorrow to discuss them.

Thank you again Mr. Chairman.

**STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON
INVESTIGATIONS: POLICIES AND OVERSIGHT
SUBCOMMITTEE ON CIVIL SERVICE
JUNE 14, 1995**

I would like to commend Chairman Mica for calling this hearing to examine the policies and oversight responsibilities of OPM's Office of Federal Investigations (OFI). The information derived from this hearing, particularly as it applies to issues of national security, investigative oversight and core government functions, will serve as a foundation for tomorrow's hearing on the privatization of OFI.

In 1953, President Eisenhower issued Executive Order No. 10405 which established a Government-wide security program. This Executive Order was designed to assure that the employment of present and future Federal employees was consistent with national security. The Order also gave OPM (then the Civil Service Commission) oversight authority for the civilian Federal government's workforce security program and responsibility for conducting background investigations of individuals in sensitive positions. There are two main

purposes for conducting background investigations: (1) to provide a basis for agencies to determine whether a person should be granted a security clearance and (2) to provide a basis for determining a person's suitability for Federal employment.

OFI provides a full-service investigations program to 4,800 US Government offices in 80 agencies throughout the continental US and overseas. In FY 1994, about 150,000 case were completed. And for the most part, Federal agencies agree that OPM does a good job performing background investigations and reviewing their (the agencies') background investigations programs and making recommendations for improved operations.

The investigative function also enjoys a cooperative arrangement for the exchange of information with the FBI, Secret Service, Drug Enforcement Administration, Marshals Service, Immigration and Naturalization Service, INTERPOL, as well as other related organizations at the State and local level.

When I think of the issues before us today, there are three questions that must be answered. *First, is the conduct of a background investigation an inherently governmental function?* There is no consensus answer to this. Many agencies use private contractors to perform background investigations. Although questions of quality, or the lack of quality, have arisen, this practice continues. In fact, OPM contracted out a portion of its investigative work in the 1980's, possibly indicating, at least then, it did not consider this function as inherently governmental.

However, in a letter to you, Ms. Lattimore, Mr. Edward J. McCallum, Director, Office of Safeguards and Security, Department of Energy, wrote, "...no other country that considers the investigation of individuals for access to government information to be a non-governmental function." The Department is required by the Atomic Energy Act of 1954, as amended, to obtain its personnel investigative services through the OPM or, in limited circumstances, through another Government agency that conducts personnel

security investigations. We are fortunate to have someone here from Energy today. It will be interesting to hear what the Department's view on this is now. It is also my understanding that Defense Investigative Services performs background investigations, and it uses no private contractors to assist in these efforts. Today, I would like clarification on this matter.

Second, do background investigations have national security consequences? Clearly, the conditions of the 1950's have changed, and with the end of the cold war, some question why there is a need for background investigations. The employees of the investigations organization remind us of the national security connection in a letter to Representatives of Congress. "Although the Cold War is over, espionage has not ended. In 1993, the Federal Investigative Program investigators received a classified briefing from a counter-intelligence specialist for the DOE. He presented information which showed that foreign governments have increased their espionage efforts in areas

such as technology, economics, and energy sources. FIP's primary customers are executive agencies which deal directly in these areas."

An OPM brochure describing the investigations program makes strong connections to national security as well. "Since OFI's primary responsibility is to oversee the Federal Government's personnel security program and conduct national security investigations, OFI's work is vital to the national security," concludes OPM.

Based on the available information, it seems the general consensus around the question of national security seems to be that background investigations do have national security impacts.

Third, what should OPM's oversight role be in the area of investigations? Currently, OFI issues government-wide guidance on personnel security policy and has oversight authority in this area. Few would disagree that this function should continue being performed by civil servants. I hope

our witnesses will address the level of oversight necessary to assure the integrity of the program is not compromised.

With privatization looming, these three questions are very important and must be resolved.

And Mr. Chairman, if you would, please allow me to digress a bit. There are a number of people who are hoping we will do the right thing over the next two days. It is not limited to OPM employees and their families, but all Federal workers and their families. It extends to taxpayers who want to be assured that the federal workers are suitable for employment and that sensitive programs and classified information are not compromised.

This concludes my remarks. Again, thank you, Mr. Chairman, for calling this hearing.

Mr. MICA. If there is no further business to come before the subcommittee today, we will reconvene tomorrow. Today we have heard some of the policies and oversight questions addressed, and tomorrow we will hear more about investigations and privatization as proposed by the administration and OPM. Our hearing starts at 9 a.m. tomorrow and should be an exciting time.

If there is no further business, again, to come before this subcommittee, this meeting is adjourned.

Thank you.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows:]



JUL 17 1995

The Honorable John L. Mica
House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Mica:

This is in response to your recent letter to me which contains a few questions from Representative Moran, the ranking minority member of the Subcommittee on Civil Service, relating to the privatization of OPM investigations.

Question 1. "Would you prefer to see OPM privatize its Investigative Services Program through creation of an ESOP, or would you prefer that OPM retain this program in-house with its current operating structure?"

Answer: As stated in my June 14, 1995, written and oral testimony for the Subcommittee, we do not believe the actual conduct of the investigations is inherently governmental and we therefore support OPM's initiative to privatize the investigations process by moving to an ESOP. The ESOP provides for a smooth transition to the private sector and an opportunity for the government to reduce investigations costs.

Question 2. "Does your agency have delegated authority to utilize private contractors for background investigations?"

Answer: No, we have never requested authority from OPM to contract out or do our own background investigations on HHS employees.

However, last Fall HHS' Food and Drug Administration (FDA) contracted with a private investigative company to conduct limited background investigations on FDA contractor personnel. My office concurred with FDA's contracting plan because the investigative cost will be less than OPM's and timeliness should also be better. OPM does not have investigative authority over contractor employees so a delegation was not required. Although no investigations have yet been requested from the private company, the results will be monitored so we can compare their quality, cost, and timeliness to the OPM investigative product.

Page 2 - The Honorable John L. Mica

Thank you for the opportunity to provide this additional information to the Subcommittee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Tom McFee", written in a cursive style.

Thomas S. McFee
Assistant Secretary for
Personnel Administration



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-261751.2

November 15, 1995

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

On August 22, 1995, we provided you with information responding to questions raised after our June 1995 testimonies regarding the Office of Personnel Management's (OPM) plan to privatize its Investigations Service functions. We noted in August that we were still pursuing the information needed to respond to your questions about (1) how frequently agencies have used the public interest exception to full and open competition and (2) under what conditions these exceptions have been used. This letter responds to those questions.

If you have any additional questions concerning OPM's planned privatization effort, please call me on (202) 512-7680.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Timothy P. Bowling'.

Timothy P. Bowling
Associate Director, Federal Management
and Workforce Issues

Enclosure

ENCLOSURE

ENCLOSURE

As a major element of its strategy to privatize, the Office of Personnel Management proposed to notify the Congress of a public interest exception from the full and open competition requirements of the Competition in Contracting Act. How frequently has this notification procedure been used? Under what conditions have such exceptions been permitted?

We used the Federal Procurement Data System's (FPDS) Federal Procurement Report for fiscal years 1993 and 1994 to determine how frequently the public interest exception has been used. These reports contain statistical information reported by agencies on contract actions and their corresponding dollar amounts. Contract actions can involve a number of activities, including the initial contract award as well as contract modifications and extensions. In some instances, more than one action might be taken and reported on an individual contract in any single fiscal year.

On the basis of the statistical information contained in the FPDS reports, it appears that the public interest exception is used relatively infrequently. For example, for fiscal year 1993, the FPDS reported that agencies took about 113,000 actions on contracts that had been awarded under authorities other than full and open competition. These actions had a value of almost \$74 billion. Of the 113,000 actions, 44 were coded to contracts for which the public interest exception had been used. The 44 actions accounted for about \$15 million. Fiscal year 1994 statistics also show the apparent infrequent use of this exception to full and open competition. For that year, the FPDS reported that agencies took about 111,000 actions, valued at about \$69 billion, on contracts that had been awarded on other than full and open competition authorities. Of these, 100 were to contracts for which the public interest exception was used. The 100 actions accounted for approximately \$909 million.

We identified 43 contracts from 19 agencies that were associated with the 144 actions included in the FPDS reports for fiscal years 1993 and 1994 that cited the public interest exception. As explained above, the number of contract actions greatly exceeds the number of contracts. We asked the agencies to provide their written determination and findings for using the public interest exception, if applicable, as well as the required letters notifying the Congress 30 days in advance of their intent to use this exception. In response to our inquiry, agencies identified a number of revisions to the FPDS statistical reports. They identified one additional contract awarded under the public interest exception but not included in the FPDS reports. Further, agencies notified us that 28 of the 43 contracts apparently had been miscoded

in the FPDS and were not awarded under the public interest exception.¹ Thus, we were able to identify a total of 17 contracts awarded by 6 agencies under the public interest exception for this time period. The agencies responsible for these 17 contracts provided the requested information.² We analyzed these documents to determine the conditions under which the public interest exceptions have been permitted. We have summarized these below:

- The Forest Service reported actions valued at \$2.9 million on 8 contracts. Each of the contracts was part of the "Jobs in the Woods" program. Agriculture officials cited the public interest exception as the only method of effectively providing increased economic activity in areas affected by decreased timber harvesting.
- The Bureau of Land Management reported actions valued at \$2.9 million on one contract. This contract also dealt with the "Jobs in the Woods" program. The agency cited the public interest exception as necessary to effectively provide increased economic opportunities to designated areas.
- The National Aeronautics and Space Administration (NASA) reported actions valued at about \$903 million on four contracts. Reported actions on one of these contracts totaled about \$900 million. NASA cited the public interest exception as the basis for having selected one of several existing contractors as the single, prime contractor for the redesigned and restructured Space Station Program, with added responsibilities to manage and integrate all aspects of the program. NASA determined that it would have been possible to terminate all existing Space Station contracts and perform a full and open competition for a single prime contractor. However, it anticipated that such an effort would disrupt and delay the program at the taxpayers' expense. For the remaining three contracts, NASA cited the exception in awarding contracts to small and disadvantaged businesses. NASA's justification for the public interest exception said that its appropriations acts in recent years contained a mandated goal of awarding 8 percent of its total contract awards to such organizations.
- The Army reported actions valued at \$5.2 million on two contracts. One contract dealt with the procurement of chemical biological protective masks. The Army cited the urgency of its requirements and the need to validate the

¹We should note that such miscodings raise the possibility that other contracts might have been entered into under the public interest exception, but were miscoded in the FPDS under another exception to full and open competition.

²In one case, the Army reported that the notification letter to the Congress was not found in the contract file.

technical data package on large quantity production. The second contract was to provide services, materials, and facilities for the annual U.S. Army ROTC-sponsored George C. Marshall Awards Seminar. The Army cited that it was in the public interest to continue to procure the services of the George C. Marshall Foundation for this purpose and said that the Foundation had unique qualifications. According to the Army, previous solicitations in earlier years had not resulted in bids from other sources.

The General Services Administration (GSA) cited actions valued at about \$383,000 on one contract. It justified the use of the exception on the basis that the contractor was the only black college that had the necessary technical skills to direct and implement a research design for an African Burial Ground discovered in New York City. The university had been recommended by a federal advisory committee that was established to advise GSA and the Congress on actions affecting the discovered area.

The Navy reported an action valued at \$25 million on one contract. The Navy cited the public interest exception as allowing it to gain access to innovative technologies that might enable it to expedite the cleanup of an installation planned for closure and make the installation available for reuse by the community and other parties.

The Federal Acquisition Regulation states that the public interest exception may be used when none of the other exceptions to full and open competition apply. Although we did not review the contract files for the procurements in question, we would point out that some of the justifications provided by the above agencies for the use of the public interest exception raise the possibility that exceptions to full and open competition other than the public interest exception might have been available. We note however, that as a result of using the public interest exception, the Congress must be notified of the agency's intent to award a contract on a basis other than full and open competition 30 days prior to award.



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
6000 DEFENSE PENTAGON
WASHINGTON D C 20301-6000

13 JUN 1995



DEPARTMENT OF DEFENSE
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
OFFICE OF LEGISLATIVE AND INTELLIGENCE

Honorable John L. Mica
Chairman
Subcommittee on Civil Service
Committee on Government Reform and Oversight
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

The purpose of this letter is to clarify the record concerning my written statement and oral testimony presented to your Subcommittee on June 14, 1995.

My statement referenced a lack of access to "Reports of Cash Payments over \$10,000 Received in a Trade or Business" (IRS Form 8300). Although the statement suggested that the information on the Form 8300 should be brought under the provisions of the Bank Secrecy Act (BSA), neither the Administration nor the Department of the Treasury supports the linkage of the Form 8300 with the Bank Secrecy Act.

The Bank Secrecy Act, administered by the Department of the Treasury, requires the reporting of information regarding cash transactions. The Departments of Defense and the Treasury are negotiating an agreement to provide DoD with the necessary Bank Secrecy Act information for use in conducting top secret or SCI access investigations. Because access to this information will greatly aid our investigations, access to the IRS Form 8300 information is not necessary.

I appreciate the opportunity to testify before your Subcommittee, and I will continue to review our requirements in light of the Subcommittee's interests.

Sincerely,

John T. Elliff
Director
Counterintelligence and
Security Programs

cc:
Director, Legislative
Reference Service



PREPARED STATEMENT OF WILLIAM H. WHITE, DEPUTY SECRETARY, U.S.
DEPARTMENT OF ENERGY

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to present the perspective of the Department of Energy on the topics enumerated in Chairman Mica's letter of June 6, 1995, to Secretary Hazel O'Leary, relating to the proposal of the Office of Personnel Management (OPM) to create an employee stock ownership program for its Office of Federal Investigations. The Department supports proposals to privatize investigative procedures, as long as the quality, timeliness and reasonable cost for these investigations is ensured.

Background

As a preface to addressing the specific questions in Chairman Mica's letter, I would like to give a brief overview of the DOE's customer relationship with OPM and the degree to which the Department relies upon the products of the Office of Federal Investigations.

In terms of numbers and cost, the most extensive use of OPM investigative products by the Department of Energy is related to security determinations. The DOE currently has approximately 138,000 active clearances (access authorizations). The granting of an access authorization is based on the information provided in a background investigation. For the access authorization to remain valid, a reinvestigation is conducted at 5-year intervals. It should be noted that a DOE access authorization allows access to special nuclear materials (the fissionable materials which are the heart of nuclear weapons), as well as classified matter. We consider the effective protection of such materials and information a critical element of the nuclear nonproliferation policies of the United States. The DOE spent \$27,527,516 in FY 1994 on investigative products from the OPM. Based on expenditures from the first 2 quarters of FY 1995, the Department will spend \$31,295,014 this fiscal year.

The DOE personnel security program applies equally to both federal and contractor employees. The same OPM background investigation product is used, applied against the same criteria, and through the same administrative process for all DOE access authorization applicants and holders. While your letter indicates an interest only in the effect on federal employees, the DOE cannot, for purposes of budget and planning, address the effects of OPM's actions only on a federal population. Of the 138,000 DOE access authorizations, 124,283 are held by employees of contractors to the DOE.

Another matter of importance for the Department, and for all Executive Branch agencies, is the reciprocity of security clearances. A common basis for security clearances is being established that will allow true reciprocity of clearances. Part of this basis is the adoption of a single-scope background investigation by all agencies. Equally important to having the same parameters of investigation,

however, is the need to assure that the investigations are meeting not only the parameters of scope, but also common standards of quality. The OPM must continue to assure the quality of the investigative product, whatever the source of the field work.

The DOE is currently developing a state-of-the-art automated integration of personnel security and other databases, which will result in dramatic increases in efficiency and timeliness in security related functions. This systems integration relies on a linkage to the OPM Federal Investigations Processing Center (FIPC) to create the database that forms the underpinning of the entire system. If the FIPC should be disrupted, either through direct dismantlement or through an inability to receive a suitable investigative product from the Office of Federal Investigations, this innovative automation effort will fail. This will be at a cost not only of millions of dollars, but also at an incalculable cost in lost productivity.

I will turn now to some of the more specific issues raised in the Chairman's June 6, 1995, invitation to participate in this hearing.

Types of investigations

The Department of Energy requires background investigations for two basic purposes: (1) determinations of suitability for federal employment; and (2) determinations of eligibility for access to classified matter and special nuclear materials.

Determinations of suitability for federal employment are rendered by departmental Personnel officials and result in a decision to either employ or withdraw an offer of employment to an individual, based on an individual's character or conduct that may impact the efficiency of the service by jeopardizing the DOE's accomplishment of its duties or responsibilities, or by interfering with or preventing effective service in the position applied for or employed in, and determinations that there is a statutory or regulatory bar to employment.

Determinations of eligibility for access to classified matter and special nuclear material are rendered by departmental Personnel Security officials and result in a decision to either grant or continue access authorization (security clearance) for an individual or recommend that access authorization for an individual be denied or revoked. The criteria for determining an individual's access eligibility are contained in Section 710.8 of Title 10, Code of Federal Regulations, Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material." The requirement for the conduct of background investigations to determine access eligibility is contained in Section 145 of the Atomic Energy Act of 1954, as amended.

Concerns which lead us to conduct background investigations

A related inquiry was asking what concerns the Department of Energy have which require background investigations to be conducted. The concerns for which background investigations are conducted differ according to the purpose for which the investigation is being conducted (suitability or security).

The Department of Energy initiates suitability background investigations, as required by Title 5, Code of Federal Regulations, Part 731, to identify and prevent any adverse impact on the efficiency of the service brought on by the placement of an unsuitable individual in a position. When a new employee is hired without Office of Personnel Management involvement and the position is non-sensitive, or when the suitability risk level of the position exceeds the security sensitivity level, suitability becomes the prevailing reason for the need for an investigation. In those cases, the Department determines the appropriate investigation to request by appraising: the impact and scope of the organization where the position being filled; the fiduciary responsibility, importance, and level of authority of the position; and the incumbent's degree of working independence and extent of computer systems involvement. The information obtained by the investigation is then adjudicated according to concerns of misconduct, deception or fraud, alcohol abuse, illegal use of controlled substances, and acts designed to overthrow the U.S. government.

The specific concerns of the Department of Energy relating to eligibility for access to classified matter and special nuclear material are found in Section 710.8 of Title 10, Code of Federal Regulations, Part 710. This listing of criteria used in making eligibility decisions is not exhaustive, but identifies some of the bases for these decisions. The criteria are consistent with those used for clearance determinations across the government. The overall decision is described in Section 710.7 as a "comprehensive, common-sense judgment, made after consideration of all the relevant information (emphasis added), favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest."

The information collected in the background investigation must ultimately relate to the reliability, sound judgment and trustworthiness of the individual. The categories under which information is grouped are those of loyalty (such as a history of sabotage, espionage or terrorist activities or associations) and character (such as illegal drug use, criminal activity, mental illness, or alcohol abuse). The nexus between the information collected and the government's concern on those matters which are associated with loyalty is clear and uncontestable. As an example, the granting of access to special nuclear materials to a member of a

terrorist organization would be absolutely unacceptable. The nexus between character information and the governments concerns is also undisputable. Where the most sensitive information and material is at stake, granting access to an individual with a history of unreliable, untrustworthy or illegal actions would be inimicable to the interests of the United States.

Inherently governmental responsibilities

The invitation also asked for an identification of the elements of the investigative process that would be considered inherently governmental. The Department of Energy does not itself conduct investigations, and is therefore, not in a position to offer a definitive statement on this matter. We were also asked to describe the roles in which the DOE relies upon contractors to support its background investigations. As the DOE is not an investigative agency, the Department does not rely on contractors in that context.

Legal or other similar impediments

Finally, we were asked to address whether any laws, federal policies and/or judicial precedents impede the ability of the Department of Energy to collect the background information that is essential to evaluate employees. The Atomic Energy Act of 1954, as amended, requires that the Department utilize either the Federal Bureau of Investigations or the Civil Service Commission (now OPM) to conduct background investigations.

Conclusion

Although the Department of Energy supports the privatization of the Office of Personnel Management's Office of Federal Investigations, the Department insists that the quality, timeliness, and reasonableness of cost is ensured.

Thank you for the opportunity to present the Department of Energy's views.

QUESTION FROM THE SUBCOMMITTEE ON CIVIL SERVICE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Subject: Privatization of the Office of Federal Investigations, Office of Personnel Management

- Q1. Would you prefer to see OPM privatize its Investigative Services Program through creation of an ESOP, or would you prefer that OPM retain this program in-house with its current operating structure?
- A1. As noted in the written statement of William H. White, Deputy Secretary of Energy, to the Subcommittee, the Department supports the concept of privatization. It is not clear from the preliminary information available that the ESOP is the best or only way to achieve this goal. The main concerns of the Department may be met through a continuing Federal presence to oversee and administer the investigative mission and the related databases, regardless of the employment status of the investigators. If the ESOP cannot provide this assurance, it would be in the best interests of the Department of Energy for the investigative program to be kept intact in its current form, until such time as a successful privatization meeting the requirements described above can be accomplished.

QUESTION FROM THE SUBCOMMITTEE ON CIVIL SERVICE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Subject: Privatization of the Office of Federal Investigations, Office of Personnel Management

- Q2. Does your agency have delegated authority to utilize private contractors for background investigations?
- A2. The Department of Energy and its predecessor agencies have relied solely on the OPM and FBI for background investigations, as the Department does not have independent investigative authority.

QUESTION FROM THE SUBCOMMITTEE ON CIVIL SERVICE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Subject: Privatization of the Office of Federal Investigations, Office of Personnel Management

- Q3. Explain how the Department of Energy's new automated personnel security database will be used. What specific need(s) or problem(s) was it developed to address?
- A3. The DOE Integrated Safeguards and Security (DISS) database will accomplish several functions, with its integration of a number of safeguards and security procedures proceeding in phased increments. Initially, the system will provide electronic transmission of the Questionnaire for Sensitive Positions (QSP) from Department of Energy operations offices to the OPM Federal Investigations Processing Center in Boyers, PA. The next phase will incorporate the return electronic transmission of OPM reports of investigation (ROI). The QSP and ROI information will constitute records of the Personnel Security Database. This database will in turn be linked to others in the Department which contain data on special program accesses, visit requests, and physical access control devices. When totally integrated, the DISS will achieve savings in processing time, reliably validate data electronically, result in greater standardization of procedures and economies of scale, and reduce the number of Federal FTEs required to accomplish personnel security and access control functions.

QUESTION FROM THE SUBCOMMITTEE ON CIVIL SERVICE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Subject: Privatization of the Office of Federal Investigations, Office of Personnel Management

Your testimony indicated that the Atomic Energy Act gives the Department of Energy the option of using either the FBI or OPM for background investigations.

Q4a. Have you ever used the FBI for this purpose?

A4a. Yes - As prescribed in the Act, the FBI is used for investigations on individuals in positions of a high degree of importance or sensitivity, usually positions requiring Presidential appointment or Senate confirmation. There are currently 147 Department of Energy positions identified as being of a high degree of importance or sensitivity at present. The FBI is also utilized in cases where possible espionage has been identified, as the Bureau is the responsible U.S. Government investigative agency in matters of counterintelligence and counterespionage.

Q4b. When and why are they used rather than OPM?

A4b. As noted above, in cases involving espionage the Act mandates the use of the FBI. For those cases involving positions of a high degree of importance or sensitivity, at the time the Act was created the background investigation conducted by the FBI was considerably more in-depth than that conducted by the Civil Service Commission. With the advent of the single-scope background investigation as the uniform standard for use throughout Government, however, this rationale is no longer valid. The FBI will continue to be used for the very highest level positions because of their experience in the sensitivities inherent in such cases, however, given the comparatively higher cost of the FBI product, the Department is planning in future to use OPM for all but 27 positions.