

agency-specific policies for addressing the effects of domestic violence on its workforce, consistent with OPM guidance. Each agency shall submit for review and comment to the Director of OPM, a draft new or modified agency-specific policy. In reviewing the draft agency-specific policies, the Director of OPM shall consult with the Attorney General, the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Homeland Security, and other interested agency heads. Each agency shall issue a final agency-specific policy within 180 days after submission of its draft policy to the Director of OPM.

SEC. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistently with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 7302. Post-employment notification

(a) Not later than the effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004,¹ or 180 days after the date of the enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.

(Added Pub. L. 108-136, div. A, title XI, §1125(b)(2), Nov. 24, 2003, 117 Stat. 1639.)

REFERENCES IN TEXT

The effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (a), probably means the effective date of the amendments made by section 1125 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, which enacted this section. Pub. L. 108-136 does not contain a section 1106, and the provisions appearing in section 1106 of H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, as passed by the House of Representatives on May 22, 2003, were contained in section 1125 of Pub. L. 108-136. For effective date of amendments made by section 1125 of Pub. L. 108-136, see section 1125(c) of Pub. L. 108-136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

¹ See References in Text note below.

The date of the enactment of that Act, referred to in subsec. (a), is the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, which was approved Nov. 24, 2003.

EFFECTIVE DATE

Section effective on first day of first pay period beginning on or after Jan. 1, 2004, see section 1125(c)(1) of Pub. L. 108-136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

AMENDMENTS

1968—Pub. L. 90-351, title V, §1001(c), June 19, 1968, 82 Stat. 235, substituted ‘EMPLOYMENT LIMITATIONS’ for ‘LOYALTY, SECURITY, AND STRIKING’ in subchapter heading.

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 118p.	Aug. 9, 1955, ch. 690, §1, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3, (as applicable to the Act of Aug. 9, 1955, ch. 690, §1, 69 Stat. 624), 70 Stat. 453.

The word ‘‘position’’ is coextensive with and is substituted for ‘‘office or employment’’.

In paragraphs (1) and (2), the words ‘‘in the United States’’ in former section 118p(1), (2) are omitted as unnecessary in view of the reference to ‘‘our constitutional form of government’’.

In paragraphs (3) and (4), the reference to the ‘‘government of the District of Columbia’’ is added on authority of the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words ‘‘From and after July 1, 1956’’, appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EX. ORD. No. 10450. SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, as amended by Ex. Ord. No. 10491, Oct. 15, 1953, 18 F.R. 6583;

Ex. Ord. No. 10531, May 27, 1954, 19 F.R. 3069; Ex. Ord. No. 10548, Aug. 3, 1954, 19 F.R. 4871; Ex. Ord. No. 10550, Aug. 6, 1954, 19 F.R. 4981; Ex. Ord. No. 11605, July 2, 1971, 36 F.R. 12831; Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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

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

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title]; the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.) [section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et seq.) [section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

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

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

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

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could

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

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

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

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

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

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

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

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

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

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

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

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

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

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

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

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

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

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

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

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

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

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being con-

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

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

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

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

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

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

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

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice

as may be requisite to enable them to establish and maintain an appropriate employee-security program.

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

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

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

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

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

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

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

EXECUTIVE ORDER NO. 11605

Ex. Ord. No. 11605. July 2, 1971, 36 F.R. 12831, which amended Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, which related to security requirements for government employees, was revoked by Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, set out below.

EX. ORD. NO. 11785. SECURITY REQUIREMENTS FOR GOVERNMENTAL EMPLOYEES

Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, provided: By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 et seq., 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

SECTION 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note under this section], is revised to read in its entirety as follows:

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

SEC. 2. Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so des-

ignated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

SEC. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

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

SEC. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

RICHARD NIXON.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 22-1 (4th and 5th provisos). Aug. 26, 1950, ch. 803, §1 (4th and 5th provisos), 64 Stat. 477.

The words “Removal under section 7532 of this title” and “so removed” are coextensive with and substituted for “termination of employment herein provided” and “whose employment has been terminated under the provisions of said sections”, respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

- (1) inciting a riot or civil disorder;
(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;
(3) aiding or abetting any person in committing any offense specified in clause (1) or (2);
or