

Presidential Documents

Title 3—

Executive Order 13869 of April 24, 2019

The President

Transferring Responsibility for Background Investigations to the Department of Defense

By the power vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Findings and Purpose. Section 925 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note) provides that the Secretary of Defense has the authority to conduct security, suitability, and credentialing background investigations for Department of Defense personnel and requires the Secretary, in consultation with the Director of the Office of Personnel Management, to provide for a phased transition to the Department of Defense of the conduct of such investigations conducted by the National Background Investigations Bureau (NBIB). Implementing that legislative mandate while retaining the benefit of economies of scale in addressing the Federal Government's background investigations workload, avoiding unnecessary risk, promoting the ongoing alignment of efforts with respect to vetting Federal employees and contractors, and facilitating needed reforms in this critical area requires that the primary responsibility for conducting background investigations Government-wide be transferred from the Office of Personnel Management to the Department of Defense.

Sec. 2. Transfer or Delegation of Background Investigation Functions; Further Amendments to Executive Order 13467 of June 30, 2008, as amended. (a) The heading of section 2.6 of Executive Order 13467 of June 30, 2008, as amended, (Executive Order 13467) is revised to read as follows: “*Roles and Responsibilities of the Department of Defense, the Office of Personnel Management, and the Office of Management and Budget.*”

(b) Section 2.6(a) of Executive Order 13467 is further amended by inserting “, until such functions are transferred or delegated, as applicable, to the Defense Counterintelligence and Security Agency” before the colon, by redesignating paragraphs (1) through (9) as paragraphs (i) through (ix), by striking the period at the end of newly designated paragraph (ix) and inserting in lieu thereof a semicolon, and by inserting, after newly designated paragraph (ix), an undesignated paragraph to read as follows: “except that throughout the transition period ending on or before September 30, 2019, as described in sections 2.6(d)(vi) and 2.6(e)(viii) of this order, the National Background Investigations Bureau and its personnel may continue to perform background investigations for the Defense Counterintelligence and Security Agency.”

(c) Section 2.6(b) of Executive Order 13467 is revised by adding paragraphs (i) through (xi) to read as follows:

“(i) Pursuant to sections 113 and 191 of title 10, United States Code, the Secretary of Defense shall rename the Defense Security Service (DSS) as the Defense Counterintelligence and Security Agency (DCSA). Subject to the authority, direction, and control of the Secretary of Defense and as further described in subsections (b)(ii) through (b)(iv) of this section, the DCSA shall serve as the primary Federal entity for conducting background investigations for the Federal Government. The DCSA shall, as a continuation of the former DSS, serve as the primary Department of Defense component for the National Industrial Security Program and shall execute responsibilities relating to continuous vetting, insider threat programs, and any other responsibilities assigned to it by the Secretary of

Defense consistent with law. The Secretary of Defense may rename the DCSA and reassign any of its responsibilities to another Department of Defense component or components, provided, however, that the Secretary of Defense shall consult with the Directors of National Intelligence, the Office of Personnel Management, and the Office of Management and Budget before renaming the DCSA or reassigning the responsibilities specified in section 2.6(b)(ii) and (iv) of this order to another Department of Defense component.”

“(ii) Pursuant to and consistent with section 3001(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 (50 U.S.C. 3341(c)), sections 925(a)(1) and (d)(2) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note), and in accordance with subsection (d) of this section, no later than June 24, 2019, the DCSA shall serve as the primary entity for conducting effective, efficient, and secure background investigations for the Federal Government for determining whether covered individuals are or continue to be eligible for access to classified information or eligible to hold a sensitive position.”

“(iii) Pursuant to and consistent with sections 925(a)(1) and (d)(2) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note) and in accordance with subsection (d) of this section, no later than June 24, 2019, the DCSA shall serve as the primary entity for conducting effective, efficient, and secure background investigations for determining the suitability or, for employees in positions not subject to suitability, fitness for Department of Defense employment; fitness to perform work for or on behalf of the Department of Defense as a contractor; fitness to work as a nonappropriated fund employee, as defined in Executive Order 13488 of January 16, 2009, as amended; and authorization to be issued a Federal credential for logical and physical access to facilities or information systems controlled by the Department of Defense.”

“(iv) Consistent with and following an explicit delegation from the Director of the Office of Personnel Management pursuant to section 1104 of title 5, United States Code, and consistent with subsection (e) of this section, no later than June 24, 2019, the DCSA shall serve as the primary entity for conducting effective, efficient, and secure background investigations for the Federal Government not described in subsections (b)(ii) and (b)(iii) of this section, for determining suitability or, for employees in positions not subject to suitability, fitness for Government employment; fitness to perform work for or on behalf of the Government as a contractor; fitness to work as a nonappropriated fund employee, as defined in Executive Order 13488 of January 16, 2009, as amended; and authorization to be issued a Federal credential for logical and physical access to federally controlled facilities or information systems.”

“(v) The DCSA shall conduct other background investigations as authorized by law, designation, rule, regulation, or Executive Order.”

“(vi) The DCSA shall provide information to the Council established by section 2.4 of this order regarding matters of performance, including timeliness and continuous improvement, capacity, information technology modernization, and other relevant aspects of its operations. The DCSA shall be subject to the oversight of the Security Executive Agent, including implementation of Security Executive Agent policies, procedures, guidance, and instructions, in conducting investigations for eligibility to access classified information or to hold a sensitive position. The DCSA, through the Secretary of Defense, also shall be subject to the oversight of the Suitability and Credentialing Executive Agent, including implementation of Suitability and Credentialing Executive Agent policies, procedures, guidance, and instructions, and applicable Office of Personnel Management regulations, in conducting investigations of suitability or fitness and eligibility for logical and physical access.”

“(vii) The Secretary of Defense shall design, develop, deploy, operate, secure, defend, and continuously update and modernize, as necessary,

information technology systems that support all personnel vetting processes conducted by the Department of Defense. Design and operation of these information technology systems shall comply with applicable information technology standards and, to the extent practicable, ensure security and interoperability with other personnel vetting or related information technology systems. The Secretary of Defense shall maintain and safeguard the information relevant to the granting, denial, or revocation of eligibility for access to classified information, or eligibility for a sensitive position, or relevant to suitability, fitness, or credentialing determinations pertaining to military, civilian, or Government contractor personnel. The Secretary of Defense shall operate the database in the information technology systems containing appropriate data relevant to the granting, denial, or revocation of eligibility for access to classified information or eligibility for a sensitive position pertaining to military, civilian, or Government contractor personnel, see section 3341(e) of title 50, United States Code, consistent with, as applicable, an explicit delegation from the Director of the Office of Personnel Management pursuant to section 1104 of title 5, United States Code.”

“(viii) The Secretary of Defense shall, by June 24, 2019, execute a written agreement with the Director of the Office of Personnel Management designating the appropriate support functions to be transferred as part of the investigative mission, consistent with section 925(d)(2)(B) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note), and setting forth expectations for the transition period, including for detailing personnel, funding background investigations, using and safeguarding information technology, managing facilities and property, contracting, administrative support, records access, and addressing any claims.”

“(ix) The Secretary of Defense shall, upon finalization of the agreement described in paragraph (viii) of this subsection and in accordance with its terms:

(A) establish the Personnel Vetting Transformation Office within the Department of Defense, which will include personnel from the Department of Defense and other stakeholder agencies, as appropriate; and

(B) commence efforts to receive transferred or delegated functions and, as appropriate, associated Office of Personnel Management operations, resources, and personnel, to the DCSA.”

“(x) The Secretary of Defense shall:

(A) no later than June 24, 2019, and every 180 days thereafter until the transfer is complete, provide a report to the President, in coordination with the Director of the Office of Personnel Management and through the Director of the Office of Management and Budget, regarding the status of the transfer, including any resource or funding shortfall and gaps in authority;

(B) take necessary actions to enable the Department of Defense to receive any resources, including personnel, made available as a result of subsection (d) of this section; and

(C) notify the President upon completion of the transition period.”

“(xi) In the event the agreement described in paragraph (viii) of this subsection and section 2.6(e)(v) of this order is not executed by June 24, 2019, beginning on such date, the Secretary of Defense shall begin to take necessary actions to begin execution of paragraph (ix) until the agreement described in paragraph (viii) of this subsection is executed, at which time the Secretary of Defense shall ensure actions subject to such agreement under paragraph (ix) of this subsection are executed in accordance with its terms.”

(d) Section 2.6(c) of Executive Order 13467 is revised to read as follows:

“(c) Existing delegations of authority to conduct background investigations made by the Director of the Office of Personnel Management, as the

Suitability and Credentialing Executive Agent or as otherwise authorized by statute or Executive Order, to any agency relating to suitability, fitness, or credentialing determinations, existing designations made by the Director of National Intelligence, as the Security Executive Agent or as otherwise authorized by statute or Executive Order, relating to investigating persons who are proposed for access to classified information or for eligibility to hold a sensitive position, or existing delegations of authority to conduct background investigations made by the President to any other agency through any Executive Order shall remain in effect. Nothing in this order shall be construed to limit the authority of any agency to conduct its own background investigations when specifically authorized or directed to do so by statute or any preexisting delegation from the President.”

(e) New sections 2.6(d), 2.6(e), and 2.6(f) are added to Executive Order 13467 to read as follows:

“(d) Consistent with section 3503 of title 5, United States Code, subchapter I of chapter 83 of title 10, United States Code, and section 925(d)(1) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note), the Secretary of Defense and the Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget and the Security Executive Agent, shall, consistent with applicable law, provide for the transfer of the functions described in sections 2.6(b)(ii) and (iii) of this order from the Office of Personnel Management’s NBIB to DCSA, and any appropriate Office of Personnel Management-associated personnel and resources, including infrastructure and the investigation-related support functions. The transfer shall commence no later than June 24, 2019, and shall:

(i) be executed with the assistance of the Personnel Vetting Transformation Office established pursuant to paragraph (b)(ix) of this section, which shall, in providing such assistance, consider input from other stakeholder agencies, as appropriate;

(ii) be conducted in accordance with a risk management approach that is consistent with Office of Management and Budget Circular A–123;

(iii) include any appropriate funds that the Secretary of Defense and the Director of the Office of Personnel Management, with the concurrence of the Director of the Office of Management and Budget, determine to be available and necessary to finance and discharge the functions transferred;

(iv) be consistent with the transition from legacy information technology as required by subsection (b)(vii) of this section;

(v) build upon the implementation plan developed pursuant to section 951(a)(1) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328), which is being implemented pursuant to section 925 of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note); and

(vi) permit NBIB to conduct background investigations for DCSA, as necessary, until September 30, 2019.”

“(e) The Director of the Office of Personnel Management shall:

(i) no later than June 24, 2019, take any steps necessary to make effective the delegation, pursuant to section 1104(a)(2) of title 5, United States Code, of the functions described in subsection (b)(iv) of this section;

(ii) promptly establish appropriate performance standards and oversight as required by section 1104(b) of title 5, United States Code;

(iii) work in coordination with the Secretary of Defense to reassign appropriate resources, including personnel, to the DCSA and provide all necessary and appropriate support to the DCSA in a timely manner to enable it to fulfill its responsibilities under this order;

(iv) no later than June 24, 2019, provide the Secretary of Defense with a complete inventory of NBIB personnel, resources, and assets, and other Office of Personnel Management personnel and resources that primarily support NBIB;

(v) no later than June 24, 2019, execute a written agreement with the Secretary of Defense designating the appropriate support functions to be transferred as part of the investigative mission, consistent with section 925(d)(2)(B) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note), as described in section 2.6(b)(viii) of this order;

(vi) immediately upon the finalization of the agreement described in paragraph (v) of this subsection and section 2.6(b)(viii) of this order, commence efforts to transition transferred or delegated functions and, as appropriate, associated Office of Personnel Management authorities, operations, resources, and personnel, to the DCSA;

(vii) during the transition period, coordinate with the Department of Defense regarding any decisions concerning NBIB's personnel structure, finances, contracts, or organization to the extent provided in the written agreement described by paragraph (b)(viii) of this section;

(viii) no later than September 30, 2019, complete the transfer of all designated administrative and operational functions to the Department of Defense and revoke any applicable delegation or designation to NBIB of investigative or other authority; and

(ix) in the event the agreement described in paragraph (v) of this subsection and section 2.6(b)(viii) of this order is not executed by June 24, 2019, beginning on such date, the Director of the Office of Personnel Management shall begin to take necessary actions to begin execution of paragraphs (iii) through (viii) of this subsection until the agreement described in paragraph (v) of this subsection and section 2.6(b)(viii) of this order is executed, at which time the Director of the Office of Personnel Management shall ensure actions subject to such agreement under paragraphs (iii) through (viii) of this subsection are executed in accordance with its terms."

"(f) The Director of the Office of Management and Budget shall:

(i) facilitate an effective transfer of functions, including personnel and resources;

(ii) support the Department of Defense's efforts to establish a single, centralized funding capability for its background investigations, as required by section 925(e)(1) of the National Defense Authorization Act for Fiscal Year 2018 (10 U.S.C. 1564 note);

(iii) mediate any disagreements between the Secretary of Defense and the Director of the Office of Personnel Management that may arise during or outside of the transition period and facilitate resolution of the conflicting positions; and

(iv) develop, in consultation with the Secretary of Defense and the Director of the Office of Personnel Management, an appropriate funding plan for the activities undertaken pursuant to this order."

(f) Sections 2.4(b) and 2.5(e)(vi) of Executive Order 13467 are further amended by striking "National Background Investigations Bureau" each place it appears and inserting in lieu thereof "Defense Counterintelligence and Security Agency."

Sec. 3. Amendment to Executive Order 12171 of November 18, 1979, as amended.

(a) *Determinations.* Pursuant to section 7103(b)(1) of title 5, United States Code, the DCSA, previously known as the DSS, is hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title

5, United States Code, cannot be applied to the DCSA in a manner consistent with national security requirements and considerations.

(b) *Exclusion.* Executive Order 12171 of November 18, 1979, as amended, is further amended by revising section 1–208 to read as follows: “1–208. The Defense Counterintelligence and Security Agency, Department of Defense.”

Sec. 4. *Conforming References to the Defense Security Service and the Defense Counterintelligence and Security Agency.* Any reference to the Defense Security Service or NBIB in any Executive Order or other Presidential document that is in effect on the day before the date of this order shall be deemed or construed to be a reference to the Defense Counterintelligence and Security Agency or any other entity that the Secretary of Defense names, consistent with section 2(b)(i) of Executive Order 13467, and agencies whose regulations, rules, or other documents reference the Defense Security Service or NBIB shall revise any such respective regulations, rules, or other documents as soon as practicable to update them for consistency with this order.

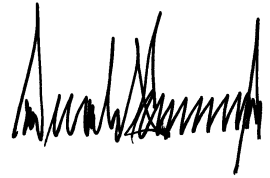
Sec. 5. *Review of Vetting Policies.* No later than July 24, 2019, the Council Principals identified in section 2.4(b) of Executive Order 13467 shall review the laws, regulations, Executive Orders, and guidance relating to the Federal Government’s vetting of Federal employees and contractors and shall submit to the President, through the Chair of the Council, a report recommending any appropriate legislative, regulatory, or policy changes, including any such changes to civil service regulations or policies, Executive Order 13467 or Executive Order 13488.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or 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 order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order 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 WHITE HOUSE,
April 24, 2019.