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1469, 1470

1472 THRU 1474

1475

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OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

FEB 10 1976

TO: John A. Mintz, Assistant Director
Legal Counsel Division
Federal Bureau of Investigation

FROM: Steven K. Blackhurst
Assistant Special Counsel for
Intelligence Coordination

SB

SUBJECT: Senate Select Committee Request
dated February 9, 1976

Attached is a letter from the Senate Select Committee dated February 9, 1976. Please arrange for an appropriate response.

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EX-115

24/ENCLOSURE

ENCL BEHIND FILE

REC-38

62-116395-1475

cc: Paul Daly

7 MAR 1976

let to A.G. cc D.A.G.
2/26/76
TJM:AKS

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TJM
5-M 9/11/76

(T)

Executive Order 10450

Security Requirements For Government Employment

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); the Civil Service Act of 1883 (22 Stat. 403; 5 U. S. C. 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U. S. C. 118 j); and the act of August 26, 1950, 64 Stat. 476 (5 U. S. C. 22-1, et seq.), 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 Civil Service Commission 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 investi-

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gation, 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 preappointment 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 readjudicate, or cause to be readjudicated, 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, readjudicate, or cause to be readjudicated, 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 employee 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 or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, 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 Civil Service Commission 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:

(i) 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.¹

(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 an 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.

¹ As amended by Executive Order 10548 of August 2, 1954.

or of the alteration of the form of government of the United States by unconstitutional means:

(5) → Knowing membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organization) which is totalitarian, fascist, communist, subversive, or which has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others 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.³ ←

(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.²

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission 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

² As amended by Executive Order 10491 of October 13, 1953.

³ As amended by Executive Order 11605 of July 2, 1971.

investigative facilities of the Civil Service Commission and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted 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) ⁴ 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 Civil Service Commission 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 Commission 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 Civil Service Commission 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

⁴ As amended by Executive Order 10531 of May 27, 1954.

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 Civil Service Commission 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 Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

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

(b) The head of each department and agency shall be furnished by the Attorney General with the name of each organization which shall be or has been heretofore designated under this order. Except as specifically provided hereafter, nothing contained herein shall be construed in any way to affect previous designations made pursuant to Executive Order No. 10450, as amended.

(c) The Subversive Activities Control Board shall, upon petition of the Attorney General, conduct appropriate hearings to determine whether any organization is totalitarian, fascist, communist, subversive, or whether it has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others 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.

(d) The Board may determine that an organization has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others their constitutional or statutory rights or that an organization seeks to overthrow the government of the United States or any State or subdivision thereof by unlawful means if it is found that such group engages in, unlawfully advocates, or has among its purposes or objectives, or adopts as a means of obtaining any of its purposes or objectives.—

(1) The commission of acts of force or violence or other unlawful acts to deny others their rights or benefits guaranteed by the Constitution or laws of the United States or of the several States or political subdivisions thereof; or

(2) The unlawful damage or destruction of property; or injury to persons; or

(3) The overthrow or destruction of the government of the United States or the government of any State, Territory, district, or possession thereof, or the government of any political subdivision therein, by unlawful means;

or

(4) The commission of acts which violate laws pertaining to treason, rebellion or insurrection, riots or civil disorders, seditious conspiracy, sabotage, trading with the enemy, obstruction of the recruiting and enlistment service of the United States, impeding officers of the United States, or related crimes or offenses.

(e) The Board may determine an organization to be "totalitarian" if it is found that such organization engages in activities which seek by unlawful means the establishment of a system of government in the United States which is autocratic and in which control is centered in a single individual, group, or political party, allowing no effective representation to opposing individuals, groups, or parties and providing no practical opportunity for dissent.

(f) The Board may determine an organization to be "fascist" if it is found that organization engages in activities which seek by unlawful means the establishment of a system of government in the United States which is characterized by rigid one-party dictatorship, forcible suppression of the opposition, ownership of the means of production under centralized governmental control and which fosters racism.

(g) The Board may determine an organization to be "communist" if it is found that such organization engages in activities which seek by unlawful means the establishment of a government in the United States which is based upon the revolutionary principles of Marxism-Leninism, which interprets history as a relentless class war aimed at the destruction of the existing society and the establishment of the dictatorship of the proletariat, the government ownership of the means of production and distribution of property, and the establishment of a single authoritarian party.

(h) The Board may determine an organization to be "subversive" if it is found that such organization engages in activities which seek the abolition or destruction by unlawful means of the government of the United States or any State, or subdivision thereof.

(i) The Board may further determine, after consideration of the evidence, that an organization has ceased to exist. Upon petition of the Attorney General or upon petition of any organization which has been designated pursuant to this section the Board after appropriate hearings may determine that such organization does not currently meet the standards for designation. The Attorney General shall appropriately revise or modify the information furnished to departments and agencies consistent with the determinations of the Board.

(j) The Board shall issue appropriate regulations for the implementation of this section.⁵

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 Civil Service Commission, 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.

⁵ As amended by Executive Order 11605 of July 2, 1971. NB. Section 706 of the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973, approved October 25, 1972, Public Law 92-544, provides as follows:

"SEC. 706. No part of the funds appropriated by this Act shall be available to the Department of Justice or the Subversive Activities Control Board to carry out, execute or implement the provisions of Executive Order 11605 of July 2, 1971."

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 Civil Service Commission 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.⁵

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

(c) To assist the Civil Service Commission 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 Commission 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 Civil Service Commission 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.⁶

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

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 27, 1953.

⁶ As amended by Executive Order 10550 of August 5, 1954.

Security Requirements for Government Employment

Executive Order 11785. June 4, 1974.

AMENDING EXECUTIVE ORDER NO. 10450, AS AMENDED, RELATING TO SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYMENT, AND FOR OTHER PURPOSES

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, 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 designated. 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

The White House,
June 4, 1974.

[Filed with the Office of the Federal Register, 3:05 p.m.,
June 4, 1974]

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June 10, 1974



Office of the Attorney General

Washington, D.C.

December 5, 1947

MEMORANDUM FOR MR. HOOVER,
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

This will refer to your memorandum of November 22 with reference to the Marquis Childs column appearing in The Washington Post on November 18, 1947 and to your letters of November 21, the one addressed to Mr. Childs and the other addressed to Mr. Paul A. Walker, Acting Chairman, Federal Communications Commission.

It is my view that the Bureau's practice of passing along to the various Government departments and agencies information which comes to its attention in connection with the conduct of investigations normally and regularly within the Bureau's jurisdiction is entirely appropriate and correct. Indeed, it would appear that the Bureau would be remiss in its duty if it failed to pass along information coming to it which might prove to be in the interest of the general welfare. It is not the Bureau's responsibility to determine whether the information is or is not of importance to the particular agency in the carrying out of its current activities and responsibilities and whether or not any action is taken by the department or agency is not, of course, a principal concern of the Bureau.

I believe, therefore, that the Bureau should continue its practice of passing along information which it is believed might be of interest to the various departments and agencies. At the same time I believe that it would be appropriate either (a) to prepare a circular to the various departments and agencies explaining the Bureau's purpose in furnishing information from time to time, or (b) to make a particular effort for a time when transmitting individual items of information to explain in the transmittal memorandum the Bureau's purpose in making such transmittal.

Attorney General

