



**Office of the Inspector General
United States Office of Personnel Management**

**Statement of the Honorable
Patrick E. McFarland
Inspector General**

before the

**Subcommittee on the Efficiency & Effectiveness of
Federal Programs & the Federal Workforce**

and

**Subcommittee on Financial and Contracting Oversight
Committee on Homeland Security and Governmental Affairs
United States Senate**

on

**“Safeguarding Our Nation’s Secrets:
Examining the Security Clearance Process”**

June 20, 2013

Chairmen Tester and McCaskill, Ranking Members Portman and Johnson and other distinguished Members of the Subcommittees:

Good afternoon. My name is Patrick E. McFarland. I am the Inspector General of the U.S. Office of Personnel Management (OPM). Thank you for inviting me to testify at today’s hearing about our oversight work related to OPM’s Federal Investigative Services program office.

There are many procedures which must be followed before an individual, whether a Federal employee or a contractor, is granted a security clearance by a Federal agency. The very first step, no matter the type of clearance, is a background investigation. Consequently, it is *vital* that Congress and the taxpayers have confidence that these background investigations are conducted appropriately, and in a timely and cost-effective manner.

As you know based upon recent discussions between our staffs, my office has been alarmed for several years about the lack of oversight of OPM's Federal Investigative Services program. However, our hands have been tied due to OPM's interpretation of the statute governing the funding of OPM's background investigations program.¹ I fear I will spend a great deal of time during this hearing saying "I don't know" or "We have not looked into that issue" because our resources remain woefully inadequate, preventing us from performing the level of oversight that such an important program requires. Therefore, in addition to providing you with an update regarding our audit and investigative findings related to the Federal Investigative Services, I respectfully request your assistance in amending this statute so that you and the American public can trust that our national security interests are being protected, and their tax dollars are being wisely spent.

Background

You specifically requested that I speak today about our past and current work related to the Federal Investigative Services program and the issues that were uncovered. Before doing this, however, I would like to provide some context for my remarks.

OPM, through its Federal Investigative Services office, conducts 90 percent of all background investigations for the Federal Government. During Fiscal Year 2012, the Federal Investigative Services delivered over two million investigative products. The background investigations that it conducted were for Federal and contractor positions, including those related to national security. The information gathered during these background investigations is then used by the requesting Federal agencies to determine whether employees and contractors are suitable for their positions, and whether they are eligible for a security clearance.

¹ 5 U.S.C. § 1304(e).

OPM conducts these background investigations on a reimbursable basis, much like a private business. OPM is obligated to set the price for these background investigations at a level that will generally allow it to recover the actual costs of conducting them. These monies are deposited directly into a Revolving Fund that is maintained separately from OPM's other appropriations accounts due to the fact that OPM is not permitted to use its other appropriated funds to subsidize the Federal Investigative Services' activities. For Fiscal Year 2014, the Federal Investigative Services' estimated obligations from this Revolving Fund are over \$1 billion.

The problem that my office has encountered is that the Office of the Inspector General's (OIG) oversight costs are not permitted to be charged against the Revolving Fund.² This creates a curious situation where a business-like enterprise is not required to fund even the most basic oversight practices, such as an annual financial audit. No private sector shareholder would invest in a \$1 billion enterprise without adequate assurance that it had effective internal controls – and yet, that is exactly what the American taxpayers are being asked to do.

The Administration has recognized the urgency of this problem and included our legislative remedy to this situation in the President's Fiscal Year 2014 Budget. I will describe this legislative proposal later in my testimony.

Fabrication of Background Investigations

I cannot emphasize enough how important the Federal Investigative Services is to protecting the nation's security and the public trust. Consequently, it is vital that there is effective, independent oversight of this program. As I mentioned above, a background investigation is the first step in the issuance of any security clearance. If that background investigation is not thorough, accurate, and reliable, then all other decisions made related to the issuance of the security clearance are suspect.

One of the most flagrant criminal violations that we encounter is the falsification of background investigation reports. We refer to these as "fabrication cases." These are situations where the Federal Investigative Services' background investigators, either Federal employees or contractors, report interviews that never occurred,

² In contrast, the OPM retirement, health care, and life insurance trust funds are charged for the cost of the OIG's oversight of those programs.

record answers to questions that were never asked, and document records checks that were never conducted.

For example, a record searcher fabricated 1,600 credit checks that she never actually completed. Ironically, her own background investigation had been falsified by a background investigator convicted in a *different* fabrication case.

Since we began investigating this type of case in 2006, 18 background investigators and record searchers have been criminally convicted. These 18 cases alone resulted in court-ordered restitution of \$1,287,899 to the Revolving Fund. This money represented the costs that the Federal Investigative Services incurred to reinvestigate the fabricated background investigations.

Last month, a 19th background investigator pled guilty, and the 20th is expected to enter a guilty plea this week. One of these individuals not only falsified his background investigations reports, but also attempted to tamper with witnesses after his fraud was discovered. Both of these background investigators were contractors.

Right now, we are actively working fabrication cases against 9 background investigators in addition to the 2 mentioned above, and we have cases pending against 36 background investigators.³ Pending cases are those that have been referred to us by the Federal Investigative Services' Integrity Assurance office and which we intend to investigate, but currently lack the resources to do so.

Since 2008, we have had a consistent backlog of fabrication cases pending criminal investigation. The longer it takes before we can conduct the criminal investigation, the more likely it is that witnesses' memories will fade to the extent that they are no longer good witnesses for trial. As a result, prosecution may not be possible, leaving administrative remedies as the only option.

Because the Federal Investigative Services utilizes both Federal employees and contractors to conduct background investigations, we are often asked which population commits the most fraud. To provide an accurate answer regarding whether variations between the populations are statistically significant would require detailed analysis of the data. Such analysis should consider the amount of work performed by each population as well as all OPM and contractor

³ Of the 11 active cases, 4 individuals were Federal employees and 7 were contractors. Of the 36 pending cases, 2 involve Federal employees and 34 involve contractors.

administrative actions with regard to suspected fabrication, some of which may not have risen to the level of referral to the OIG. The Federal Investigative Services would be in a better position to perform this analysis.

Of the 18 individuals convicted of fabrication, 11 (61 percent) were Federal employees and the rest were contractors. However, this is not an accurate reflection of the rate of falsification/commission of fraud within each population. Because we do not have the financial resources to investigate all of the fabrication cases referred to us in a timely manner, the criteria we consider when prioritizing cases are whether the individual is a Federal employee, the number of suspected falsifications, and the age of the case.

All other things being equal, we prioritize cases involving Federal employees because of the high cost to OPM. When Federal employees are suspected of falsification, the Federal Investigative Services generally places them on paid administrative leave until the case is resolved and sufficient evidence is gathered to support termination. There are a greater number of immediate administrative remedies available for contractors suspected of falsification. The Federal Investigative Services typically removes them promptly from the contract and is able to recover the costs of re-investigating their work through contract off-sets.⁴

Other Types of OIG Investigations

I have addressed primarily fabrication cases, but such cases are not the only type of crime related to the Federal Investigative Services that we investigate. We also investigate other types of employee misconduct. Two brief examples include death threats made by a former background investigator against a Federal Investigative Services official, and background investigators who falsely represent themselves as Federal law enforcement officers. One such individual attempted to use his OPM-issued credentials to justify carrying a firearm to an elementary school.

⁴ In contrast, the only way that the Federal Investigative Services can recover the costs of re-investigating reports fabricated by Federal employees is through court-ordered restitution subsequent to criminal investigation by the OIG.

Need for Suspension and Debarment

One administrative remedy available to address misconduct within the Federal Investigative Services is debarment. This prevents an individual or company from contracting with any Federal entity.

We are very concerned that OPM lacks an adequate suspension and debarment program for any of its programs or contracting activities, other than those related to the Federal Employees Health Benefits Program. The fact that OPM was not exercising its legal authority to suspend or debar was particularly disturbing considering the number of convictions involving the Federal Investigative Services background investigators.

When misconduct or lack of integrity is substantiated, the Federal Investigative Services takes prompt administrative action, such as placing a Federal employee on administrative leave or removing a contractor from an OPM contract. However, removal from the OPM contract alone is not sufficient because it is not equivalent to a Government-wide suspension or debarment. Consequently, there remains the potential for these individuals to be employed by, or do business with, other Federal agencies. In fact, we learned that a contract background investigator, who was removed from an OPM contract for falsifying reports, was later able to obtain contract employment performing background investigations for another Federal agency - *while a criminal indictment for fabricating reports was pending*.

In the fall of 2012, we brought this issue to the attention of former OPM Director John Berry. Former Director Berry acted upon our recommendation and OPM officials worked with our office, the Office of Management and Budget, and the Interagency Suspension and Debarment Committee to establish a debarment program that became effective on March 20, 2013.

Since March 2013, our office has referred to the OPM Suspension and Debarment program eight cases involving background investigators. We are currently in the process of preparing additional debarment referrals. To date, OPM has not suspended or debarred any individuals based upon these OIG referrals.

Audit and Financial Issues

Even though national security concerns trump other matters, I would be remiss if I did not also address the audit work that we have not been able to perform due to a lack of financial resources.

When our Office of Audits conducted a risk assessment of the Federal Investigative Services program in 2010, the division that was ranked as having the highest risk of being susceptible to fraud, waste, and abuse was the one that handled financial management, including billing, pricing, and budgeting issues. In a time when taxpayers and Government entities alike are dutifully watching every dollar, these are areas that demand additional oversight. However, because of our limited resources, we have been unable to pursue the issues identified in this risk assessment.

Our concerns are compounded by the fact that the Revolving Fund, which finances the Federal Investigative Services, has never had its annual financial statements audited in their entirety. I find this simply unacceptable. The Revolving Fund totals approximately \$2 billion annually, and slightly more than half of that is used to fund the Federal Investigative Services.

We are not the only ones concerned about the Federal Investigative Services' financial matters. In recent years, the Government Accountability Office and Members of Congress have raised concerns about the lack of transparency in its pricing and whether the program has a methodology in place to ensure its products and services are priced appropriately. The customer-agencies that make these purchases from the Federal Investigative Services do so using their own Federal appropriations. Consequently, even though the Federal Investigative Services itself does not receive an annual appropriation from Congress, the funds that flow through it are still Federal tax dollars.

To provide an idea of the amount of public funds at stake, we have provided a table on page 8 that lists the top ten Federal Investigative Services customers for Fiscal Years 2010, 2011, and 2012. Clearly evident is that even a small increase in efficiency could result in significant savings to the taxpayers. However, an audit of the Federal Investigative Services' pricing methodology must be second to the investigation of the fabrication cases, given their national security implications.

TABLE: FEDERAL INVESTIGATIVE SERVICES' TOP TEN CUSTOMERS FOR FISCAL YEARS 2010, 2011, AND 2012

Please note that these figures represent the value of all services purchased by these customers in the fiscal years shown. These services might be developed and delivered over multiple years, and thus the agencies may pay these “bills” over multiple years.

FY 2010		
Rank	Federal Entity	Amount (millions)
1	Defense	\$252.9
2	Army	\$215.8
3	Navy	\$148.4
4	Air Force	\$137.5
5	Energy	\$49.6
6	Homeland Security	\$44.4
7	Justice	\$41.4
8	Veterans Affairs	\$18
9	Treasury	\$13.6
10	Health and Human Services	\$13
Total		\$934.6

FY 2011		
Rank	Federal Entity	Amount (millions)
1	Defense	\$274
2	Army	\$212
3	Navy	\$160.8
4	Air Force	\$131.2
5	Homeland Security	\$57.3
6	Energy	\$44.5
7	Justice	\$28
8	Veterans Affairs	\$16.8
9	Health and Human Services	\$13.2
10	Treasury	\$11.9
Total		\$949.7

FY 2012		
Rank	Federal Entity	Amount (millions)
1	Defense	\$306.5
2	Army	\$199.2
3	Navy	\$164.6
4	Air Force	\$135.8
5	Homeland Security	\$57
6	Energy	\$47
7	Justice	\$35.1
8	Veterans Affairs	\$23.5
9	OPM	\$13.4
10	Treasury	\$11.8
Total		\$993.9

OIG Initiative Regarding the Federal Investigative Services

Due to problems uncovered by our prior and current work, our Office of Audits and Office of Investigations have initiated a joint effort to evaluate the policies and procedures that the Federal Investigative Services and its contractors utilize to review background investigations case files.

I will, of course, continue to keep your Subcommittees informed of the progress of our work in this area.

Legislative Proposal

As I mentioned earlier, the OIG does not have access to the Revolving Fund to support its oversight work of the Revolving Fund programs, including the Federal Investigative Services. This has resulted in these programs receiving a *de minimis* level of independent oversight.

Although the OIG's total annual appropriation is approximately \$24 million, \$21 million of this amount is from the retirement, health care, and life insurance trust funds and thus may be used solely for oversight of those programs. Consequently, we are left with \$3 million to conduct oversight of not only the Federal Investigative Services, but also the other commercial-like activities funded by the Revolving Fund (*e.g.*, Human Resources Solutions and USAJOBS), as well as all other non-trust fund programs that OPM operates (*e.g.*, the Combined Federal Campaign, the flexible spending account program, the dental and vision insurance program, and the long-term care insurance program).

We have sought funding to increase our oversight of OPM's Revolving Fund activities, including the Federal Investigative Services, since 2006, and have specifically requested direct access to the Revolving Fund itself since 2009. OPM has long taken the position that the Revolving Fund may not be used to fund OIG oversight work under the current statutory language, which permits the recovery only of the agency's "actual cost" in administering the programs. However, I am pleased to say that in the President's Fiscal Year 2014 Budget, the Administration has accepted our suggestion and proposed a legislative amendment that would make it clear that OIG oversight costs should be taken into account when setting the prices charged for Revolving Fund products and services.

I would like to state that this is not a radical proposal. Indeed, it simply seeks to have the OIG treated as part of OPM for purposes of the Revolving Fund, as the OIG is treated for all other budgetary purposes.⁵ Like OPM, the OIG would be required to submit an annual budget request and report detailing its Revolving Fund work. Further, the OIG would be limited to requesting up to one-third of one percent of the entire Revolving Fund budget estimate. For Fiscal Year 2014, when OPM estimates that the Revolving Fund budget will be approximately \$2 billion, this amount would equal \$6.6 million.

The financial impact of this proposal on OPM's Revolving Fund customers is negligible. Let me put this into context. If the OIG accessed the *entire maximum amount* under the proposal (\$6.6 million), then a customer would pay an additional \$3.30 for every \$1,000 spent on a Revolving Fund product or service. Money recovered or saved as a result of the OIG's oversight of the Revolving Fund programs would be returned directly back to the Revolving Fund. Considering that over the past 5 years our office has achieved an average return of \$7 for each oversight dollar we expend, I believe that OPM customers, as well as the taxpayers, would agree that this money would be well spent.

Conclusion

I wish that I could appear before you today and say that our office has a thorough understanding of the issues, challenges, and problems related to the Federal Investigative Services. Instead what I will tell you is that, given what our limited work has uncovered thus far, I know for a fact that there is a vast array of critical work that must be done to ensure the integrity of the Federal Investigative Services.

The Administration's legislative proposal, along with favorable support by your Subcommittees, would remedy this situation. It would provide our office with the resources it needs so that the next time I appear before you, I can provide you with the kind of factual information that you need in order to satisfy your Congressional oversight activities.

I would like to thank the Subcommittees for their work on this issue. We have been meeting with your staff and I very much appreciate your assistance in our

⁵ For example, the OIG's funds are considered part of OPM's appropriation in the President's Budget, and are contained within OPM's appropriation as enacted by Congress.

effort to stop fraud, waste, and abuse within OPM programs. I would be happy to respond to any questions that you may have.