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Last year’s Navy Yard shootings and the performance of USIS in the government screening process continues to receive attention in Washington.

As we reported in last month’s edition of *The Washington Report*, the Justice Department filed a complaint against USIS on January 22nd alleging that the company made false claims and false statements, as well as breached its contract with the Office of Personnel Management (OPM) in the course of its conduct of background checks conducted for the government, allegedly resulting in millions of dollars in payments and performance bonuses to USIS that the company otherwise would not have received.

On February 11th, the House Committee on Oversight and Government Reform held a hearing on the Navy Yard shooting entitled “DC Navy Yard Shooting: Fixing the Security Clearance Process.” Witnesses included, among others, the Director of the Office of Personnel Management and the CEO of USIS.

The Committee also published dueling Staff reports on the matter with titles that reflect the different areas of emphasis by the Committee’s majority and minority. The Staff Report for the Republican majority was titled “Slipping Through the Cracks: How the D.C. Navy Yard Shooting Exposes Flaws in the Federal Security Clearance Process.” The Democratic minority’s report was titled “Contracting Out Security Clearance Investigations: The Role of USIS and Allegations of Systematic Fraud.”

The Majority reported noted that GAO found that “87 percent of OPM’s background investigation files are ‘incomplete.’ That number is completely unacceptable.” The Majority report indicates that a number of changes to the law governing the federal screening process are under consideration by members of the Committee, including:

* Requiring a system of continuous investigations be implemented to replace the current system where there may be several years or more between the time an investigation is conducted and a follow-up reinvestigation of the individual occurs.
* Authorizing OPM to conduct Internet and Social Media searches as part of the investigation process, something the Committee found to be largely prohibited today under the terms of the OPM Investigator’s handbook.
* Increasing communication between OPM and its screening contractors with those that adjudicate the results of the screening reports to allow follow-up questions about the contents of the file.
* Considering changes to the application process to make mental health information more readily available to investigators.
* Requiring increased cooperation from state and local law enforcement agencies.

The Majority’s report noted the allegations against USIS and indicated that the Committee would continue to monitor developments. The Minority’s report, in contrast, focused much more on USIS and deemed the Majority report “incomplete” because “it did not present the full findings of the Committee’s investigation into the role of [USIS].” The Minority report noted “an exodus of senior officials” from USIS, with 24 executives having “resigned, retired, or been terminated” including USIS’s former Chief Executive Officer and Chief Financial Officer, as well as the President of the company’s Investigations Services Division, who apparently resigned “suddenly” at the beginning of February. In addition to addressing concerns raised in the Majority report about improving local law enforcement cooperation and continuous monitoring, the minority report calls into question the outsourcing of certain screening activities:

“Congress should reconsider the extent to which outsourcing critical investigative functions may impact national security, such as the performance of Top Secret level investigations, subject interviews, and final quality reviews of investigations.”

In his testimony, USIS CEO Sterling Phillips echoed earlier statements by the Company noting that he was not at USIS when the alleged misconduct occurred and that the “allegations in the complaint relate to a small group of individuals over a specific time period and our inconsistent with our values and strong record of customer service.” He noted that since first learning of the allegations, the company has “acted decisively to ensure the quality of USIS’s work and compliance with OPM requirements. New leadership has been installed, oversight has been enhanced and internal controls have been strengthened. From the outset, the company has fully cooperated with the government’s investigation and will continue to do so.”

On February 10th, Rep. Stephen Lynch (D-MA)—a member of the Oversight and Government Reform Committee--introduced H.R. 4022, the “Security Clearance Reform Act of 2014,” a bill co-sponsored by the Committee’s Ranking Member, Elijah Cummings (D-MD). Congressman Lynch stated that his bill would, “Implement a continuous evaluation and monitoring system across the federal government so that we can immediately identify and address red flags that arise in a security clearance holder’s background.” In addition, the bill would:

* Require the President, within six months of enactment, to submit a strategic plan to Congress to improve security clearance and background investigation activities conducted by the federal government including plans for ensuring that federal employees handle certain key investigative functions;
* Prohibiting OPM from awarding contracts to firms for investigative support services and background investigation fieldwork at the same time to avoid potential conflicts of interest of the type alleged against USIS;
* Requiring OPM to report to Congress any state or local government criminal justice agency that fails to cooperate with three or more investigation requests and creating a mechanism to withhold certain federal funds from state and local criminal justice agencies that fail to cooperate; and
* Requiring periodic reports by OPM on the quality of background investigations conducted.

The USIS hearings and litigation to date have not been focused on Fair Credit Reporting Act issues or background screening generally. The focus of the House Oversight and Government Reform minority report on how outsourcing screening functions “may impact national security”, however, could have implications for the broader employment and tenant screening communities over the longer term. *The Washington Report* will continue to monitor developments in this area.

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