

**SUPPORTING STATEMENT FOR INVESTIGATIVE REQUESTS FOR;
GENERAL REQUEST FOR INVESTIGATIVE INFORMATION (INV 40),
EMPLOYMENT DATA AND SUPERVISOR INFORMATION (INV 41),
PERSONAL INFORMATION (INV 42),
EDUCATIONAL REGISTRAR AND DEAN OF STUDENTS RECORD
DATA (INV 43)
LAW ENFORCEMENT DATA (INV 44)
OMB #3206-0165**

Justification:

1. **Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

Depending upon the purpose of the investigation, the United States Government is authorized to ask for this information under Executive Orders (E.O.) 10450, 10577, 12968; section 9101 of title 5, United States Code; and parts 731, 732, and 736 of title 5, Code of Federal Regulations.

2. **Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The INV 40, 41, 42, 43, and 44 are used to conduct the "written inquiries" portion of the National Agency Check with Inquiries (NACI). They are also used in any investigation requiring the same written inquiries, including suitability investigations; investigations for employment in a sensitive national security position; certain investigations for eligibility for access to classified information; certain investigations for fitness for employment in the excepted service or as a contract employee, pursuant to investigative requirements prescribed by employing and contracting agencies; and investigations for identity credentials for long-term physical and logical access to Federally controlled facilities and information systems. The INV forms 40 and 44, in particular, facilitate U. S. Office of Personnel Management's (OPM), Federal Investigative Services (FIS) access to criminal history record information.

The content of the INV forms is also designed to meet notice requirements in 5 C.F.R. part 736 for personnel investigations. These notice requirements apply to any "investigation to determine the suitability, eligibility, or qualifications of individuals for Federal employment, for work on Federal contracts, or for access to classified information or restricted areas."

None of the forms is used for any purpose other than a personnel background investigation, as described above. The completed forms are maintained by OPM subject to the protections of the Privacy Act of 1974, as amended.

Procedurally, the subject of a personnel background investigation discloses the identity of relevant sources, such as supervisors, coworkers, neighbors, friends, current or former spouses, instructors, relatives, or schools attended, on the standard form (SF) 85, Questionnaire for Non-Sensitive Positions; the SF 85P, Questionnaire for Public Trust Positions; or the SF 86, Questionnaire for National Security Positions. After OPM receives a completed SF 85, SF 85P, or SF 86, the INV forms are distributed to the provided source contacts through an automated mailing operation.

The INV 40 is used to collect records from a Federal or State record repository or a credit bureau. The INV 44 is used to collect law enforcement data from a criminal justice agency. The INV 41, 42, and 43 are sent to employment references, associates, and schools attended. The forms disclose that the source's name was provided by the subject to assist in completing a background investigation to help determine the subject's suitability for employment or security clearance, and request that the source complete the form with information to help in this determination. Generally the subject of the investigation will identify these employment references, associates, and schools on his or her SF 85, SF 85P, or SF 86 questionnaire. If information is omitted on the questionnaire, however, the information may be provided in a follow-up contact between the subject and an investigator. By their terms, the INV 41, 42, and 43 forms are not to be sent to employment references, associates, and schools that have not been identified by the subject of the investigation.

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Data are collected through an automated, scanning procedure that allows for accurate and efficient processing. A bar code scanning procedure was implemented to improve the use of Information Technology. The forms are subject to the Government Paperwork Elimination Act (GPEA). However, they are not posted on OPM's website because the forms contain individually pre-printed information. Therefore, it is not practical, due to privacy considerations, to access the forms through the OPM website.

4. **Describe efforts to identify duplication.**

The information collected on these forms is individual specific and not available from other sources, thus minimizing duplication.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

Not applicable. This collection of information does not affect small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The INV 40, 41, 42, 43, and 44 are used to conduct the "written inquiries" portion of the National Agency Check with Inquiries (NACI). They are also used in any investigation requiring the same written inquiries, including suitability investigations; investigations for employment in a sensitive national security position; certain investigations for eligibility for access to classified information; certain investigations for fitness for employment in the excepted service or as a contract employee, pursuant to investigative requirements prescribed by employing and contracting agencies; and investigations for identity credentials for long-term physical and logical access to Federally controlled facilities and information systems. If this information is not collected, agencies cannot comply with Executive Orders (E.O.) 10450, 10577, 12968; section 9101 of title 5, United States Code; and parts 731, 732, and 736. of title 5, Code of Federal Regulations.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

Not applicable. This information collection is in compliance with 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

A notice of the proposed information collection was published in the Federal Register on February 2, 2010 (Federal Register Notices / Volume 75, Number 21, pages 5358-

5359) as required by 5 CFR 1320, affording the public an opportunity to comment on the form (s). Two (2) comments were received.

1. The National Treasury Employees Union provided four areas of comment:

a. NTEU commented that INV 41, 42, and 43 solicit “adverse information” about the subject of the investigation that is not “relevant and necessary” to OPM’s purposes. OPM believes that the forms are a reasonable means to collect information relevant to the investigations for which the forms are used. Open-ended questions are the most effective means to gather source information in an investigation, since leading questions will tend to distort responses. On January 19, 2011, the Supreme Court ruled in National Aeronautics and Space Administration v. Nelson, 131 S. Ct. 746, that the INV 42 form’s “open-ended inquiries . . . are reasonably aimed at identifying capable employees who will faithfully conduct the Government’s business” and that these inquiries “further the Government’s interests in managing its internal operations.” 131 S. Ct. at 759, 761. The forms include instructions designed to prevent irrelevant responses. Moreover, since OPM is required by executive order to make these inquiries in connection with personnel investigations, retention of the forms in OPM’s system of investigative records is consistent with Privacy Act requirements.

b. NTEU commented that the INV 41, 42, and 43 require disclosure of highly personal information that is not narrowly tailored to meet the government’s needs. OPM rejects the commenter’s assertion. The Supreme Court ruled in Nelson that the Government, “when it requests job-related personal information in an employment background check,” does not have “a constitutional burden to demonstrate that its questions are ‘necessary’ or the least restrictive means of furthering its interests.” 131 S. Ct. at 760. OPM concludes that the information collection is appropriate for the investigations in which it may be used, namely investigations of suitability for Federal employment; investigations for employment in a sensitive national security position; investigations for eligibility for access to classified information; investigations for fitness for employment in the excepted service or as a contract employee; and investigations for identity credentials for long-term physical and logical access to Federally controlled facilities and information systems. Further, there are adequate protections against the unauthorized redisclosure of reports of investigation in the Privacy Act. See Nelson, 131 S. Ct. at 762-64. Additional protections are found in section 9(c) of E.O. 10450, as amended, and in agency restrictions on the release of personally identifiable information.

c. NTEU commented that the forms request information beyond that to which the employee has consented in the Authorization for Release of Information as there is no indication that information regarding general behavior and conduct will be solicited from individuals who might offer information regarding personal habits. The commenter is incorrect. The authorization is part of a questionnaire that specifically informs the subject that the investigative process is designed to develop information to show “whether you are reliable and trustworthy, and of good conduct and character.”

d. NTEU commented that the forms do not adequately explain the purpose for which the information is sought and its routine nature, and therefore allow the reference to infer that the subject is under suspicion of wrongdoing. OPM has received no evidence to support this suggestion during its longstanding use of these forms. The form instructions make clear that the form is part of a background vetting process, not part of a criminal or disciplinary proceeding.

2. An OPM investigator commented that the INV 44 should instruct responding law enforcement agencies to withhold traffic violations if the fine was less than \$300 and did not involve alcohol or drugs, since subjects of national security investigations are not required to disclose such violations on their SF 86, Questionnaire for National Security Positions. OPM does not accept this recommendation at this time because 1)the INV 44 is used for investigations based on other investigative questionnaires (SF 85, SF 85P) which do not include exceptions for traffic violations that resulted in fines less than \$300; and 2)subjecting responding law enforcement agencies to the burden of parsing such violations from their records when responding to OPM requests may deter responses or result in response errors.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable. Individuals voluntarily complete these forms to assist in completing a background investigation to help determine the applicant's suitability or fitness for employment by or on behalf of the Government, or eligibility for a security clearance or an identity credential.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The forms include a Privacy Act Information statement. The statement indicates, to the recipient, that the investigative inquiry is in full compliance with the Privacy Act of 1974 and other laws protecting the civil rights of the applicant. Further, the forms note that the information provided by the recipient, including the identity of the recipient, may be disclosed to the applicant upon request. OPM is proposing to modify the INV 40, 41, and 42 to provide instruction to respondents to mark, by making a check, when the respondent requests confidentiality of his or her identity, and to call an office at OPM to receive approval of the request before completing the form. Under OPM's regulations implementing Privacy Act exemption (k)(5), a pledge of confidentiality is not offered to an educational record provider (INV 43) or to a law enforcement record provider (INV 44). See 5 C.F.R. 736.102(c)(1).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the

information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The INV 41 and 42 forms ask designated references open-ended questions about the investigative subject's abuse of alcohol and/or drugs and mental or emotional stability, in the context of employment suitability or eligibility for a security clearance. These questions are relevant to adjudicative criteria established under law, regulation and executive order.

12. Provide estimates of the hour burden of the collection of information.

Each INV form takes an estimated 5 minutes to complete. The number of forms completed varies depending on the number of investigations requested/completed each year. Estimates are provided below:

	<u>Number of Respondents</u>	<u>Burden Hours</u>
INV 40	279,000	23,250
INV 41	2,243,000	186,900
INV 42	1,882,000	156,800
INV 43	464,000	38,700
INV 44	<u>1,546,000</u>	<u>128,800</u>
	6,135,200	511,200

It is estimated that the total number of respondents for the INV 40, INV 41, INV 42, INV 43 and INV 44 is 6,135,200 annually. Accordingly, the estimated annual burden is 511,200 hours.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information.

There is no cost to individual respondents.

14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff) and any other expenses that would not have been incurred without the paperwork burden.

It is estimated that the approximate cost to print, maintain and process the INV 40, INV 41, INV 42, INV 43, and INV 44 forms is \$583,712. This figure is based on the annual total INV 40s used (6,531,400) x cost per form (\$0.08) = \$552,512 + \$31,200

labor pay rate (\$15 hourly technician pay rate x 40 hours per week = \$600 x 52 weeks per year = \$31, 200) = \$583,712.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

The overall annual public burden hours for the INV 40, INV41, INV 42, INV 43, and INV 44 have increased from 333,350 to 511,200 hours to reflect an adjustment of the annual burden hours from previous hours cited. The increase reflects an increase in the number of investigations requested and completed.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Not applicable. Information collected on the forms will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

Not applicable.