

# STAFF BACKGROUND INVESTIGATIONS

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## EXECUTIVE SUMMARY

*Based on a request from the House Subcommittee on Oversight and Investigations (Subcommittee) of the Committee on Financial Services, we reviewed the Commission's staff background investigation process. We found that the process needs improvement in several respects, including: (1) timely initiation or completion of initial background investigations; (2) timely reinvestigations of staff in National Security positions; (3) determinations that staff who transferred from other federal agencies (including the military and US Courts) were previously investigated; and (4) position risk determinations.*

*OAPM concurred with our recommendations. During the audit, they began to implement the recommendations.*

## SCOPE AND OBJECTIVES

The Subcommittee asked several specific questions about Commission policies and procedures for processing staff background investigations.<sup>1</sup> Our audit was designed to obtain answers to those questions; as well as, to identify other needed improvements.

During the audit, we interviewed Commission and Office of Personnel Management (OPM) staff, reviewed applicable documentation, and performed tests of the background investigation process, among other procedures.

The audit was performed from May to July 2001 in accordance with generally accepted government auditing standards, with one exception. Because of time constraints, we did not evaluate the validity and reliability of data from two computer systems used in the audit. The Department of Interior's (DOI) payroll and personnel system (the Commission uses this system), and OPM's Personnel Investigations Processing System (PIPS). However, we have no indication that the data from these systems are not generally valid and reliable.

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<sup>1</sup> The Subcommittee also requested information about background investigations for contractors. We considered that issue in a separate audit (No. 340).

# BACKGROUND

## *General Information*

The Office of Administrative and Personnel Management (OAPM) administers the Commission's staff background investigation process. OAPM has developed internal policies and procedures that describe the process, including assigning position risk designations, securing investigation files, and making suitability determinations. According to OAPM, the policies and procedures implement 5 CFR (Code of Federal Regulations) sections 731, 732, and 736; Executive Order 10450; and OPM notices. The policies and procedures are updated as necessary (*e.g.*, when OPM issues new guidance or the law changes).

OPM (or an OPM contractor) is responsible for performing the background investigation. The position designation and the assigned risk level determine the investigation's scope. Positions are designated as either National Security or Public Trust. The risk levels for Public Trust positions are High Risk, Moderate Risk, and Low Risk. The risk levels for National Security positions are Special Sensitive, Critical Sensitive, and Non-Critical Sensitive.

## *Prior Reviews*

We have previously identified needed improvements in the background investigation process (Audit No. 167, dated July 1992, and Audit Memorandum No. 5, dated January 19, 1996). In addition, OPM recently asked the Commission to perform a self-assessment of the process.<sup>2</sup> OPM told us that (based on the self-assessment, as well as their knowledge of the Commission's implementation of the background investigation requirements) they do not consider the problems at the Commission to be "critical".

The OIG recently conducted an audit that evaluated the management controls surrounding staff and contractor access to sensitive information (*e.g.*, market sensitive, business proprietary information, and information of interest to foreign governments) throughout the Commission. We found that improvements were needed.

The Commission hired a contractor (Kroll & Associates) to assist it in improving the controls. As part of the contractor's work, they reviewed the staff background investigation process. They obtained an understanding of the several types of background investigations performed on recently hired employees, especially those holding sensitive positions. They reviewed the Commission's policy, responsibilities

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<sup>2</sup> OPM established the areas to be reviewed, and the sample sizes. OPM instructed the Commission to select a representative sample of 25 individuals in Public Trust positions, and 25 individuals in National Security positions. The Commission chose to perform testing on all 28 individuals in National Security positions. OPM plans to conduct an on-site review within the next year. Currently, the scope of the review will include all the significant aspects of the staff background investigation process, including the items of interest by the Subcommittee. OPM's last on-site review was 1992.

of the various individuals involved in the process, procedures, and the implementation. Overall, they found that the process is “basically sound.”

Prior to receiving the Subcommittee’s request, we initiated a follow-up audit. The follow-up audit is focusing on the adequacy of, and compliance with the new management controls (*e.g.*, document classification) to protect sensitive information.

## AUDIT RESULTS

As described below, we found that the staff background investigation process needs improvement in several respects, including: (1) timely initiation or completion of initial background investigations; (2) timely reinvestigations of staff in National Security positions; (3) determinations that staff who transferred from other federal agencies (including the military and US Courts) were previously investigated; and (4) position risk determinations.

OAPM concurred with our recommendations. During the audit, they began to implement the recommendations.

### TIMELINESS OF BACKGROUND INVESTIGATIONS

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Background investigations must be initiated within fourteen days of an individual’s placement (most often, the start date of a new employee, but possibly a transfer or promotion of an existing employee) in either a Public Trust or Non-Critical Sensitive National Security position.<sup>3</sup> For Critical Sensitive National Security positions, the background investigation must be done prior to placement, unless a waiver is approved.<sup>4</sup> According to OPM, the Commission may elect to complete the background investigation process prior to hiring any individual.<sup>5</sup>

#### *Public Trust*

We selected a sample (See Appendix A for a description of the sampling used throughout the audit) of thirty individuals in Public Trust positions to determine whether the investigation was initiated within fourteen days. For each individual, we determined the time period until the investigation was initiated.

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<sup>3</sup> Summer interns, temporary employees, and staff detailed from other agencies are not subject to a background investigation.

<sup>4</sup> The Commission does not have any positions designated as Special Sensitive.

<sup>5</sup> Kroll & Associates recommended that background investigations be completed before individuals are placed in positions with access to sensitive information. The Commission has not made a final determination on this recommendation because the contractor did not identify this as a high priority recommendation. We were told that the Commission is considering and implementing, where appropriate, the highest priority recommendations first.

We found that the background investigation was initiated timely in five instances (17%).<sup>6</sup> In the other twenty-five instances (83%), the background investigation was initiated late.<sup>7</sup>

OAPM staff indicated that delays generally relate to the background investigation forms (*e.g.*, SF-85, SF-86- these forms require information regarding past employment history, education, residences, etc.) completed by the staff. Sometimes, the forms are submitted late, incomplete, or with discrepancies that must be resolved, prior to initiating the background investigation. OAPM is considering changes to its procedures to improve the timeliness.

### *National Security*

We performed a similar test (we took into account whether the position required an investigation be initiated within fourteen days of placement or completed prior to placement, unless a waiver is obtained) for the twenty-seven individuals<sup>8</sup> in National Security positions. We found that:<sup>9</sup>

- 9 individuals had a background investigation completed or initiated, as required. We included in this category, individuals who apparently had their job responsibilities change (which resulted in the need for a security clearance) after they were already in the position;
- 17 individuals did not have a background investigation completed or initiated, as required. However, background investigations were eventually conducted.<sup>10</sup> The Office of the Executive Director (OED), which receives National Security information for the Commission, stated that it does not provide National Security information to any individual that has not yet received a National Security clearance (as a result of successfully completing the background investigation) and signed a non-disclosure agreement. We are unaware of any instances of an individual receiving National Security information prior to obtaining a National Security clearance; and
- For 1 individual we were unable to determine whether the requirements were met because he was investigated before 1985.<sup>11</sup>

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<sup>6</sup> The Commission's self-assessment, found that in three of the twenty-five instances (12%), the initiation of the background investigation was timely.

<sup>7</sup> These investigations were, on average, initiated approximately forty-six days after the fourteen day requirement lapsed. The range was 1 to 213 days overdue.

<sup>8</sup> When the Commission conducted its self-assessment, there were 28 individuals in National Security positions. However, there were 27 individuals (not including the Commissioners) as of when our audit testing was performed (*i.e.*, May 2001). According to Commission staff, the White House is responsible for initiating, documenting, etc. background investigations for all Presidential Appointees, including SEC Commissioners. As a result, our audit testing excludes the Commissioners.

<sup>9</sup> The Commission's self-assessment found that it is generally complying with the timeliness requirements for individuals in National Security positions.

<sup>10</sup> The investigations were, on average, initiated or completed approximately 4 months after placement. The range was from 1 to 8 months.

<sup>11</sup> OPM generally deletes their records after 15 years.

### *Recommendation A*

OAPM should implement procedures to ensure that background investigations are: (1) initiated within fourteen days of placement for individuals in Public Trust or Non-Critical Sensitive National Security positions; or (2) completed prior to placement, unless a waiver is obtained, for individuals in Critical Sensitive National Security positions.

## **REINVESTIGATIONS OF COMMISSION STAFF**

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The Commission's policies and procedures require that staff in Critical Sensitive National Security positions must be reinvestigated every five years, while staff in Non-Critical Sensitive National Security positions must be reinvestigated every ten years. Staff in Public Trust positions are not required to be reinvestigated. However, according to OPM, the Commission may elect to reinvestigate these individuals.

Based on our review, of the twenty-seven individuals in National Security positions, we found that:<sup>12</sup>

- 3 individuals were reinvestigated timely;
- 6 individuals were reinvestigated, but not timely<sup>13</sup>;
- 3 individuals have not been reinvestigated, but should have been<sup>14</sup>;
- 14 individuals are not yet subject to a reinvestigation; and
- 1 individual had their clearance withdrawn because it was no longer needed.

### *Recommendation B*

OAPM should improve its monitoring procedures of reinvestigations of staff in National Security positions, to ensure that reinvestigations are timely.

### *Recommendation C*

OAPM should initiate reinvestigations for the staff overdue for a reinvestigation.

## **TIMELINESS OF ADJUDICATION**

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Final employment decisions are generally made prior to the completion of the background investigation, except for Critical Sensitive National Security positions. However, in terms of adjudicating issues in a timely manner, if problems are

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<sup>12</sup> The Commission's self-assessment found that reinvestigations were initiated as required for those individuals in National Security positions.

<sup>13</sup> These reinvestigations were, on average, late by approximately 10 months. The range was from 4 to 18 months.

<sup>14</sup> These reinvestigations are, on average, approximately 3 years overdue. The range is from 1 to 4 years.

identified during the pre-employment screening process,<sup>15</sup> the individual might be prevented from starting work. If problems are identified as a result of the background investigation, they are to be resolved as soon as possible, but not later than 90 days from receipt of the background investigation report.

We determined the timeliness of the adjudication process for a judgment sample of twenty cases adjudicated since October 2000, and for all twelve cases currently (as of when the audit test was performed) being adjudicated. We found that the adjudication process is generally timely. In nineteen of the twenty adjudicated cases, the adjudication was timely (within ninety days), and the one exception was completed within 109 days. The twelve cases currently being adjudicated are all less than ninety days old.<sup>16</sup>

## DOCUMENTATION OF INVESTIGATION

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OPM requires that only the Certificate of Investigation (COI; see Appendix C) be kept in the individual's Official Personnel File (OPF). Prior to 1985, a stamp was placed on the individual's employment application (Form SF-171) to document that a background investigation was completed.<sup>17</sup>

### *Public Trust*

We selected a statistically designed sample of 150 individuals in Public Trust positions, and reviewed their OPFs. We found that in most cases (86%), the background investigation was properly documented (*e.g.*, COI, stamp, etc.). Specifically, we found that:<sup>18</sup>

- 130 individuals had a COI (or other documentation) in their OPF;
- 2 individuals were missing the COI (or other documentation) in their OPF, but they were investigated;
- 3 individuals were missing the COI (or other documentation) in their OPF. They transferred from another federal agency (including the military or US courts), which was responsible for initiating and completing a background investigation. We were able to determine that two of the individuals had a background investigation; and

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<sup>15</sup> The individual is given Form 306 to complete. It asks a series of questions in which some potential adverse issues are identified (See Appendix B).

<sup>16</sup> The Commission's self-assessment found that it is complying with the ninety day requirement for adjudication.

<sup>17</sup> The Commission stated that agencies that have delegated authority to conduct their own background investigations (*i.e.*, do not rely on OPM) could use something other than a COI (or Stamp) to document the completion of a background investigation. We noticed instances of this with respect to some individuals who transferred to the Commission. We considered these alternative forms of documentation sufficient.

<sup>18</sup> The Commission's self-assessment found a COI (or other documentation) in the OPF for all twenty-five individuals in Public Trust positions.

- 15 individuals were missing the COI (or other documentation) in their OPF, and they were apparently never investigated.<sup>19</sup> OAPM staff (who administer the background investigation process) use a list of new employees attending Orientation to ensure that a background investigation is initiated. However, we were told that the list is sometimes inaccurate.

### ***Recommendation D***

OAPM should establish procedures to ensure that a COI (or other documentation) is forwarded from other federal agencies that have performed a background investigation on transferred staff.

### ***Recommendation E***

OAPM should initiate a background investigation for the individuals who apparently have not been investigated.

### ***Recommendation F***

OAPM should ensure that its staff receives an accurate list of new employees (*e.g.*, from the DOI payroll and personnel system).

## ***National Security***

We found a COI (or other documentation) in the OPF for all 27 individuals in National Security positions.<sup>20</sup>

## **OTHER ISSUES**

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During the audit, we identified three issues unrelated to the work requested by the Subcommittee, as discussed below.

### ***Designation of Position Risk Levels***

OPM provides guidance on designating a position's risk level. Agencies are allowed to consider any unique circumstances (*e.g.*, access to market sensitive information), in designating the risk level.

According to the Divisions of Enforcement and Corporation Finance, and the Offices of the Chief Accountant, the General Counsel, and Compliance, Inspections and Examinations, OAPM has not discussed position risk designation with them. These divisions and offices generally have the most market sensitive information (*e.g.*,

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<sup>19</sup> Based on this result (with 99% confidence), according to the Office of Economic Analysis, the incidence of such failures (*i.e.*, the lack of a COI, and a background investigation was not conducted) in the universe of cases (*i.e.*, all Commission staff in Public Trust Positions) is between five and seventeen percent.

<sup>20</sup> The Commission's self-assessment found a COI (or other documentation) in the OPF for all twenty eight individuals in National Security positions.

knowledge of unannounced mergers) in the Commission, and could provide significant insight into the risks of their positions.

For example, we found that some GS-14 accountants in the Office of the Chief Accountant (with access to market sensitive information) have the same risk level designation as GS-14 accountants in the Office of the Comptroller (without access to market sensitive information).

### ***Recommendation G***

OAPM, in consultation with the divisions and offices, should reevaluate the appropriateness of position risk level designations, focusing on those positions with access to market sensitive information.

### ***Vacancy Announcements***

Some Commission vacancy announcements state “Favorable results on a background investigation may be a condition of employment,” while others do not. To ensure consistent treatment of all applicants and full disclosure of the Commission’s hiring practices, we believe all vacancy announcements should include a statement about background investigations.

### ***Recommendation H***

OAPM should include a statement about background investigations in all vacancy announcements.

### ***Data Errors***

Our audit tests disclosed the following errors in the Commission’s personnel records in the DOI system:

- Eight of twenty-seven individuals in National Security positions had a position risk designation associated with a Public Trust position. OAPM staff indicated that wrong information was apparently inadvertently recorded.
- Fifty-seven of the 2,920 individuals in Public Trust positions had a position risk designation associated with a National Security position. OED staff indicated that some of these individuals are actually in National Security positions, but have not completed the paperwork needed to initiate a background investigation for a National Security position. Therefore, the individual is currently classified as being in a Public Trust position, and they are not given access to National Security information (controlled by the OED).<sup>21</sup> In other cases, the position risk designation appears to be wrong (*e.g.*, a GS-7 Securities Compliance Examiner designated in a National Security position). In five of these

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<sup>21</sup> The Commission receives little national security information compared to other federal agencies. Thus, their lack of a security clearance is apparently not affecting their ability to perform their job.



fifty-seven cases, apparently no background investigation of any kind was ever conducted.

- Fifty-six individuals in Public Trust positions do not have a position risk designation recorded, due to an apparent oversight when the information was recorded in DOI.

### ***Recommendation I***

OAPM should correct the errors identified above.

### ***Recommendation J***

OAPM should initiate a background investigation for the five individuals that have apparently not had a background investigation.

### ***Recommendation K***

OAPM, in consultation with the appropriate divisions and offices, should review the appropriateness of the position risk designations for the fifty-seven employees identified above.

## APPENDIX A

### DESCRIPTION OF STATISTICAL SAMPLING

Subcommittee staff requested that we use statistical sampling with a confidence level of 99% for certain audit tests. The Commission's Office of Economic Analysis (OEA) <sup>22</sup> assisted us in determining the appropriate sample size and sampling methodology.

Based on the number of staff in Public Trust positions, OEA suggested a sample size of 150 individuals. OEA then used a random number generator to identify the specific individuals to be selected.<sup>23</sup>

We used a judgment sample of thirty individuals selected from our larger sample of 150 individuals to determine whether background investigations were initiated within fourteen days for individuals in Public Trust positions. Our judgment sample excluded individuals hired by the Commission prior to January 1995, or transferred from another federal agency.

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<sup>22</sup> This office has extensive experience in statistical sampling.

<sup>23</sup> A total of six individuals were rejected and replaced with other individuals. Three of the six had been recently hired, and a background investigation had not yet been completed. The other three individuals were students, and are not subject to a background investigation.