DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

A Follow-up Review of the Transportation Security Officer Background Check Process

Homeland
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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This review serves as a follow-up to our January 2004 report entitled *A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports.* The current report was based on interviews with relevant agencies, direct observations, and a review of applicable documents and data.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

Richard L. Skinner
Inspector General

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Abbreviations
ANACI   Access National Agency Check and Inquiries
DHS   Department of Homeland Security
FSD   Federal Security Director
NACI   National Agency Check and Inquiries
OPM   Office of Personnel Management
TSA   Transportation Security Administration
TSO   Transportation Security Officer

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Executive Summary

In February 2002, the Transportation Security Administration assumed responsibility for passenger and baggage screening at airports. Screening is performed by Transportation Security Officers. To ensure no officer presents a threat to national security or public trust, job applicants undergo a background investigation. In a January 2004 report, *A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports*, we discovered a variety of limitations to this background check process. We conducted this follow-up review to determine the Transportation Security Administration's progress in improving its background check process.

We determined the process has improved since our 2004 report, but some important challenges remain. Officers still undergo a background investigation with employment standards exceeding most national security positions, and the checks are inefficient in some respects. We concluded the Transportation Security Administration has not implemented all necessary steps that would improve security and reduce costs.

We are making nine recommendations to improve the management of the background check process.

Background

The Transportation Security Administration (TSA) was established with the enactment of the Aviation and Transportation Security Act in November 2001. The Act requires TSA to hire a sufficient number of Federal employees, now known as Transportation Security Officers (TSOs) or screeners, to conduct the screening of all passengers and baggage at airports.[1] The law requires TSOs to undergo a background investigation, including a criminal record check. TSA must ensure TSOs are U.S. citizens who have no convictions within the past 10 years for 28 specific disqualifying felonies (see Appendix E).[2] The background check process for TSOs judges an individual's credit and criminal history, honesty, use of intoxicants, and other factors.

TSA was established as an agency with "excepted service" employees instead of "competitive service" employees. Such a designation was meant to provide greater flexibility in management of personnel.[3] Congress decided to give TSA the latitude to determine the terms of employment of TSOs. The Aviation and Transportation Security Act grants TSA the power to employ, appoint, discipline, terminate, and fix the compensation for TSOs, notwithstanding any other provision of law.[4]

Starting in Fiscal Year 2004, Congress instituted a national cap of 45,000 full time equivalent TSOs.[5] TSA has usually maintained a staffing level slightly below this threshold. Based on data we received from TSA, there were 41,093 full-time equivalent TSOs in May 2007.

To assess each applicant's suitability for TSO positions, TSA takes information from various credit and criminal history checks and compares the individual's record with the agency's suitability standards. To expedite hiring, a prehire process is used that only evaluates an individual's credit history and any fingerprint records held by the Federal Bureau of Investigation. Successful completion of this phase allows the individual to begin work as a TSO while a more elaborate posthire background check is

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[1] 49 U.S.C § 44901(a). Although the term TSO was developed in 2006 as the new title for passenger and baggage screeners, this report will use the term TSO when referencing the position in prior years.

[2] 49 U.S.C. § 44935(e); 49 U.S.C § 44936(b).

[3] 49 U.S.C. § 114(n); 49 U.S.C. § 40122(g)(1).

[4] 49 U.S.C. § 44935 note.

[5] Department of Homeland Security Appropriations for FY 2004 through 2007; Pub. L. 108-90, Title II (Oct. 1, 2003); Pub. L. 108-334, Title II (Oct. 18, 2004); Pub. L. 109-90, Title II (Oct. 18, 2005); Pub. L. 109-295, Title II (Oct. 4, 2006).

performed. The Office of Personnel Management (OPM) performs the posthire background check, which can take several months.

TSA has adopted hiring policies that exceed what is required by law:
- Although few TSOs receive security clearances, they undergo the same kind of background investigation designed to grant secret or confidential clearances: an Access National Agency Check with Written Inquiries.
- TSA has adopted and expanded on OPM's suitability guidance to improve the agency's ability to detect undesirable behaviors and potential security or public trust risks in its TSO workforce.

In 2003, based on reports of incomplete and possibly flawed background checks, we reviewed TSA's process for checking the backgrounds of TSOs. This led to a January 2004 report, *A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports*. We noted that due to the rapid pace and high volume of hiring required getting the organization started, "TSA was hiring screeners before it was organized to do so."[6] We made 12 recommendations to improve the management of the background check process (see Appendix C).

TSA created an action plan to resolve most of our recommendations. Because our 2004 report covered a period of intense hiring, TSA believed that many problems would be temporary. Because of incomplete documentation from TSA, three recommendations in the 2004 report were still open in September 2006 when fieldwork for this follow-up review began. As this review progressed, we worked with TSA to close the 2004 recommendations.

Although TSA has passed its initial hiring challenges, the agency still hires a large number of TSOs each year. TSA hired 32,527 TSOs, an average of more than 900 a month, from October 2004 through September 2006. One TSA manager said this degree of "attrition hiring" is necessary because of a high occurrence of staff turnover. GAO reported that TSOs in 2005 had an attrition rate of 23% overall, with turnover for part-time employees exceeding 50%.[7] Fortunately there are signs that this rate of turnover is abating. TSA hired 5,134 fewer TSOs in 2006 compared to 2004.

TSA has moved toward a less centralized hiring system in order to meet the differing needs of the Nation's airports. Meanwhile, the agency continues efforts to decrease turnover among TSOs. Additionally, six airports currently have privatized screening workforces under the Screening Partnership

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[6] DHS OIG, A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports, OIG-04-08, January 2004, page 28.
[7] GAO, Aviation Security: Enhancements Made in Passenger and Checked Baggage, but Challenges Remain, GAO-06-371T, April 4, 2006, p. 9.

Program, which allows private companies to run screening operations at the approved airports.

Other factors have drawn attention to TSA hiring practices. A FY 2005 OIG report was initiated due to thousands of incidents of alleged baggage theft at airports.[8] In April 2006, six TSOs at airports in Texas were arrested for falsifying employment forms. These employees did not disclose arrests that were later discovered. There have been other incidents across the country where TSOs were arrested for theft or other unlawful activities.

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[8] DHS OIG, A Review of Procedures to Prevent Passenger Baggage Thefts, OIG-05-17, March 2005.

Results of Review

TSA has made some important improvements since our January 2004 report. One way we measured progress was through a survey of Federal Security Directors (FSDs), the people who manage TSA operations at airports. We learned that the movement away from centralized hiring was widely praised as an important reason for positive change in the TSO background check process. Survey respondents said that the process is "markedly improved" and "much better."

Additional changes and operational revisions are still necessary to ensure continued improvement and greater efficiency in the TSO background check process. The strategic limitations in the process TSA now uses to conduct TSO background checks have created some inefficiency. Our recommendations can improve the adjudication process by implementing TSA standards more quickly and making more efficient use of resources. Also, the interaction between TSA components can be enhanced to administer the background check process better. Improvements along the entire process continuum would offer more useful information, provide for faster decisions, and augment intra-agency communication.

Background Checks Do Not Reflect the Unique Nature of TSO Position

Statutory Foundation of the TSO Position
The Aviation and Transportation Security Act requires TSA to screen all passengers and personal property that will be carried aboard a passenger aircraft originating in the United States.[9] This screening is to take place before passengers board an aircraft and must be carried out by a federal employee or a contractor under the Screening Partnership Program.

Although TSA was directed by the Act to follow the Federal Aviation Administration's personnel management system, Congress also gave the agency latitude to determine the terms of employment of TSOs. According to Section 111(d) of the Aviation and Transportation Security Act, "Notwithstanding any other provision of law," TSA may "employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of Federal service" for TSOs.[10] A number of legal cases have challenged the strength of this statute. Without exception, it has been determined that the *notwithstanding* clause overrides any other conflicting provisions.[11]

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[9] 49 U.S.C. § 114(n).
[10] 49 U.S.C. § 44935 note.
[11] See, e.g., Brooks v. Department of Homeland Security, 95 M.S.P.R. 464, (2004); Schott v. Department of Homeland Security, 97 M.S.P.R. 35 (2004);

TSA is exempt from certain Federal personnel laws, including parts of Title 5 of the United States Code. Subsections of Title 5 dealing with whistleblower protection, veterans' preference, and antidiscrimination still apply to TSA. Some TSA employees, but not TSOs, have appeal rights to the Merit Systems Protection Board under certain conditions.[12]

Congress specifically prohibited the hiring of an individual with a conviction in any of 28 disqualifying felonies in the previous 10 years.[13] Background checks for TSOs must include a criminal record check, and a review of available law enforcement databases and records of other governmental and international agencies, as determined necessary by TSA. Other than these mandates in the Aviation and Transportation Security Act, the extent of the background check is within the discretion of TSA.[14]

TSOs Are Generally Held to Standards Designed for Other Positions
The TSO background check process does not take advantage of the statutory discretion granted by Congress. TSA has adopted policy identical to many statutes from which the agency is exempt. Title 5 of the Code of Federal Regulations, section 731.202, establishes criteria for making competitive service suitability determinations. The standards are referred to as the OPM Suitability Factors. TSA is not bound to implement these competitive service standards. The agency, nonetheless, has opted to use them for TSO adjudication. Based on our review of 36 ineligible files, 6 cases, or 17%, were denied in the posthire process based on parameters found in the OPM Suitability Factors.

In addition to these general standards, TSA has adopted the "OPM Suitability Issue Ranking Chart," which gives specific instructions on how to weigh issues of suitability. When determining the suitability of TSOs, TSA has also adopted the standards of Executive Orders 10450 and 12968, which apply to positions granted security clearances. Both executive orders are cited several times in guidance provided to those adjudicating TSO background checks, even though few TSOs need, or are granted, clearances.

Decisions to adopt existing government standards were made, according to TSA policy, to "promote government-wide uniformity and fairness in suitability case processing and adjudication." The agency may wish to alter these standards and can do so at any time. TSA should use existing federal

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Spain v. Department of Homeland Security, 99 M.S.P.R. 529 (2005); Conyers v. Merit Systems Protection Board, 388 F.3d 1380, 1382-83 (Fed. Cir. 2004).
[12] *Brooks v. Department of Homeland Security*, 95 M.S.P.R. 464, ¶ 13 (2004); see, 49 U.S.C. § 44935.
[13] 49 U.S.C. § 44936(b).
[14] 49 U.S.C. § 44936(a)(1).

guidelines as a basis for its own determinations about suitability, but the unique nature of the TSO position requires specific suitability standards outside of OPM's existing guidance. At a minimum, suitability standards designed for competitive service employees should be evaluated by TSA continuously.

Although TSA is only required by the Act to disqualify an applicant who was convicted of one of the 28 specific felonies within the past 10 years, the agency has enhanced its standards to include some additional disqualifying felonies and misdemeanors. TSA standards are more stringent than OPM's in two areas with a significant influence on public trust: misdemeanor and felony theft. Under TSA's enhanced standards, any theft conviction within the past 15 years is disqualifying. The Aviation and Transportation Security Act requires that felony theft be disqualifying only if the conviction occurred in the past 10 years. Under OPM suitability standards, a felony theft conviction by itself would be potentially disqualifying if it occurred in the past 3 years.

In addition to these disqualifications, TSA policy allows adjudicators to look beyond the 15-year standard to consider conduct after age 18 that has a potential negative affect on suitability for a TSO position. Thus, a 50-year-old TSO could be dismissed as a result of a posthire adjudication for a pattern of theft committed two or three decades before. We did not see such cases in our file review.

Based on our review of 36 ineligible files, 12 cases, or 33%, were denied in the post- hire process because of a disqualifying factor from the TSA enhanced standards. During our fieldwork, various interviewees noted that TSA is reviewing the utility of its enhanced standards. Abandoning the standards completely would weaken the agency's ability to fully consider the impact of some undesirable behaviors in the TSO workforce.

<u>TSA Uses Inappropriate Forms to Solicit Information From Applicants</u>
TSA uses pre-existing government forms in the TSO hiring process. While these forms are appropriate for most federal employees, given the more exacting standards for TSOs, the forms do not provide TSA with sufficient information to make a determination, and can confuse applicants. By crafting a process specifically tailored to the TSO position, TSA can gain better information about applicants, make more accurate decisions on the suitability of individual candidates, and more efficiently manage its personnel security operations.

The SF-86 is used as part of the TSO's background check. Instructions on this form note that it is to be used "primarily as the basis for investigation for access to classified information." Applicants are instructed to "complete this form only after a conditional offer of employment has been made for a position requiring a security clearance." Thus, TSOs are using a form not

meant for their position. In the past, TSOs used the SF-85P, Questionnaire for Public Trust Positions, which is a form not used in granting security clearances. OPM requires that cases be submitted on an SF-86 to receive all services of an Access National Agency Check and Inquiries (ANACI) investigation. Thus, TSA instituted policy to have TSOs use the SF-86.

The SF-86 does not contain questions tailored to determine suitability for the TSO position, making the form a poor choice for that purpose. The SF-86 only questions the applicant about the past 7 years, less than half of the period reviewed under TSA's 15-year enhanced standards. There were examples in case files of individuals questioning their dismissal because the termination standard was different from information requested on any pre-employment paperwork.

Additional Work Is Required to Educate TSOs About Various Hiring Standards

In addition to the OPM Suitability Factors and the 28 Disqualifying Felonies, TSA has adopted enhanced standards, additional disqualifying convictions, and an expanded period of review for certain types of conduct. Many of these enhanced standards are TSO-specific and designed to ensure the integrity of the workforce.

Employment application materials do not provide information about specific standards used to judge an individual's fitness for a TSO position. Applicants are not informed of the 28 Disqualifying Felonies or TSA's enhanced standards. TSOs can therefore be surprised to learn they will be dismissed for theft-related arrests and other offenses committed within 15 years of the application. Applicants are asked to complete the Declaration of Federal Employment (OF-306) and self-disclose all convictions in the past 10 years when they begin the prehire investigation. The prehire adjudicators we spoke with said the review of the OF-306 is not sufficient to judge a person's suitability for a TSO position. The Questionnaire for National Security Positions (SF-86) also asks an individual to self-disclose arrests and convictions in the past 7 years; however, the form is submitted after employment has begun. For a number of suitability issues, a posthire letter of interrogatory will be the first opportunity for an applicant to disclose potentially disqualifying information.

In our survey of Federal Security Directors (FSDs), we asked their opinion regarding whether TSO applicants have sufficient knowledge of adjudication standards. Of the 66 FSDs who answered the question, 47, or 71%, said that TSO applicants are given adequate information prior to hiring about standards used in their background check. Nonetheless, improvements are needed in this area. One FSD used the survey to say, "I constantly get inquiries from candidates about what criteria will be used for the criminal and credit checks." Another FSD suggested adding information about TSA's standards to the

original computer assessment to identify ineligible applicants before hiring. Another FSD said, "I feel uncomfortable" granting an airport access badge "when I do not in fact know that a proper review has been conducted."

An individual's financial responsibility is based on credit history, disregard for debts, or abuse of fiduciary trust. Currently, TSA uses a $5,000 "bad debt" threshold. Applicants who exceed this limit are disqualified from employment as a TSO. According to Kroll Government Services, which performs the prehire background check for TSA, this financial standard disqualifies 22% of the agency's applicants. The team leader at TSA who is charged with implementing prehire adjudications said TSO applicants' credit rejections are likely higher than the TSA average because of the relatively low pay of the TSO position. Bad debt rejections are also high in the posthire adjudication process. Several TSA officials speculate that the low pay TSOs earn might be a reason why credit problems develop after hiring. Based on our review of 36 ineligible files, 14 cases, or 39%, denied in the posthire process had bad debt as the primary disqualifying factor.

Applicants are informed only once about TSA's financial standards. We believe this is insufficient to fully inform potential TSOs of the agency's bad debt standard. Online TSO job announcements were revised in 2006 to inform applicants: "If your credit check reveals that you have defaulted on $5,000 or more in debt (excluding certain circumstances of bankruptcy), owe any delinquent Federal or State taxes, or owe any past due child support payments, you will not be eligible for this position." This additional language was a positive step, but thousands of individuals who exceed the $5,000 threshold still apply for TSO positions. One FSD said, "TSOs need to know earlier in the process what the debt requirements are." Because of the large number of applicants rejected for credit problems, TSA needs to do more to educate potential and current TSOs about the credit standard. If major credit issues are revealed in the prehire background check, a letter of interrogatory is the first opportunity for an applicant to disclose the information.

By providing more information to applicants and collecting better data on individuals' backgrounds, TSA would perform fewer checks, leading to financial savings and diminished workload for adjudicators.

We recommend that the Assistant Secretary, TSA:

Recommendation #1: Create and implement employment forms that collect information on the applicant pursuant to eligibility standards. Adjudicators should review these forms prior to a TSO's entry on duty.

Risk Designation Process Was Driven by DHS and TSA Policy
As an essential first step in planning background checks, agencies evaluate how much risk to the efficiency of federal service or to the national security is

involved in a position. The evaluation leads to a written position risk designation, which is required by Executive Order 10450. The position risk designation determines what kind of background check is required for various positions throughout the federal government.

According to the *TSA Personnel Security Manual*, a sensitivity level is designated to all positions requiring access to classified information. Since TSOs generally do not access such material, it is unclear how to proceed with assigning a sensitivity level or whether one should be assigned at all. Positions requiring access to Confidential or Secret information are designated as at least "non-critical sensitive," but there is no explanation on how to proceed with a position that does not require access to classified information.

In January 2004, we recommended TSA complete screener position risk designations with input from DHS and TSA offices. TSO position risk designation records, position descriptions, and vacancy announcements were to reflect the correct designation. Since 2004, there has been a significant improvement in the consistency of risk designation. We checked vacancy announcements posted on three dates in late August, early October, and early December 2006, a total of nearly 400 different TSO job postings. Only two of these announcements did not include the "non-critical sensitive" designation.

Although a TSO risk designation was conducted by TSA in 2004, the process did not determine the type of background check TSA should use for TSO positions. TSA provided us a Position Designation Record for the TSO position listing its "sensitivity level" as "non-critical sensitive" and its "risk level" as "moderate risk." Additionally, TSA's Office of Counsel said that the use of the current background check was "a question of policy." The comments section of the designation record corroborates this view by stating, "DHS has mandated that all positions are classified as national security positions." TSA implemented this standard by establishing that all employees must be "clearance eligible." This required use of at least the Access National Agency Check and Inquiries background check.

TSA's process led to results that did not consistently show which risk designation was appropriate for TSOs. In its Position Designation Record, the TSO position was given an unadjusted "moderate" risk level. An investigation type of "minimum background investigation" was also designated on the form. According to the *Manual*, moderate risk positions require only a National Agency Check and Inquiries, a less rigorous review than the ANACI that would not suffice to make a TSO "clearance eligible."[15] One individual in the Personnel Security Division said that "we couldn't afford" the additional expense of a minimum background investigation, which is over twice the cost of an ANACI. Although the final adjusted risk level is

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[15] TSA Personnel Security Manual, § 5.3.5.

"moderate," a minimum investigation of ANACI is listed. Table 1 lists the basic investigation requirements.

Table 1. TSA Basic Investigation Requirements

Risk/Sensitivity Level	Minimum Investigation Requirement
Special or Critical Sensitive	Single Scope Background Investigation
Non-critical Sensitive	Access National Agency Check with Written Inquires
High Risk	Background Investigation
Moderate or Low Risk	National Agency Check with Written Inquires

Officials in TSA's Personnel Security Division said the ANACI was chosen as an investigation level for TSOs "in case they need Secret Clearances in the future." Thus, the decision to assign an ANACI investigation to the TSO position was based on DHS and TSA policy, not a risk analysis and designation.

We recommend that the Assistant Secretary, TSA:

Recommendation #2: Complete a comprehensive screener position risk designation using criteria provided by personnel security officials in the Department of Homeland Security and appropriate TSA offices.

The Current Background Check Process for TSOs Shows Signs of Inefficiency

By not using its distinct legal authority to create a more unique process, TSA has created inefficiencies that need to be corrected. TSA's risk designation system recommends that "moderate risk" positions should receive, at least, a National Agency Check and Inquiries (NACI) investigation. To comply with DHS policy, TSOs undergo an ANACI investigation, which is the minimum investigation for those who receive Confidential or Secret security clearances. Since very few TSOs receive clearances, we believe the use of the ANACI expends TSA resources needlessly for limited gain. As a result of the risk designation, TSA has elected to use processes and existing standards not suited to the unique nature of the TSO position.

The NACI, which costs $100, is an investigation involving a national agency check and written inquiries to applicable local enforcement agencies, schools, and references. The ANACI investigation differs from the NACI in two major respects. The ANACI adds a credit check and a field investigation of local law enforcement records if the locality does not respond to a written inquiry. An ANACI costs $220 per investigation. Historically, NACIs are usually completed more quickly than the ANACI, but for Fiscal Year 2006, TSA's ANACIs were completed by OPM 50 days faster than the NACI.

Before TSO applicants begin employment, they undergo a credit check and criminal record check that relies on court records. Kroll performs the prehire credit check at a cost of $26 per applicant. The ANACI's credit check is then completed after the employee is hired. This credit check is usually completed in the first 2 days of the ANACI's initiation, though adjudicators do not review the credit check until after the ANACI is completed. Interestingly, even with a prehire credit check, the posthire check completed by OPM still finds a large number of TSOs unsuitable based on TSA's bad debt standard.

TSA argues that the use of both the Kroll and OPM criminal record checks is justified. During the prehire phase of the TSO background check, Kroll performs a local court check that costs $56 per applicant. A local court check is different from a local law enforcement check; the former will list only charges and convictions while the latter also lists arrests. An arrest that did not lead to a charge or conviction is of limited use to adjudicators, because the arrest itself is not a disqualifying factor.

Adjudicators and officials in the Personnel Security Division expressed frustration regarding ANACIs received from OPM in "closed pending" status. These cases include some pending or incomplete information. Adjudicators claimed such cases make their jobs difficult. One adjudicator said she often had to contact pending sources herself to confirm past employment and education of TSOs. All cases in our sample of eligible and ineligible TSO adjudication files contained at least one pending inquiry, and 16 percent of our sample contained evidence that some law enforcement agencies were not contacted for records. Such gaps in individuals' records led a senior Personnel Security Division official to say that the ANACI was "worthless" in determining whether a TSO is suitable for employment. The Chief of the DHS's Personnel Security Division told us that the ANACI is not used for headquarters employees in the department.

Since the ANACI is held in low regard, TSA needs to reevaluate the utility of this type of check compared to others. Currently, the primary justification TSA adheres to for using the ANACI is the need to make TSOs "clearance eligible." This is not sufficient justification where much less expensive or more useful checks are available. Paying to grant 42,000 individuals a secret clearance, and then not granting them, is an inefficient practice. Better options may exist. For example, the NACI is slightly less detailed, but it costs half of the ANACI's amount, even after a $10 credit check is added. A Minimum Background Investigation would more than double the cost of the current ANACI, while providing the opportunity to evaluate an individual through a personal interview.

Except for rare occurrences, ordering the more detailed Minimum Background Investigation for all TSOs is cost ineffective. Based on our interviews and data analysis, the ANACI is not valuable. The NACI check offers similar

information for half the cost. The Kroll criminal check offers a similar review at a much lower cost than the ANACI. By reviewing its options in more detail, TSA can find a more cost-effective method of background investigation, or determine if OPM even needs to perform a criminal record check, since Kroll performs one in the prehire process.

Table 2 compares the three background checks.

Table 2. Comparison of Three Background Checks

	National Agency Check and Inquiries and Credit Check	Access National Agency Check and Inquiries	Minimum Background Investigation
Items covered by check	Review of various federal systems and records; written inquiries into previous employment, education, and criminal records	The NACI, plus personal follow-up if response not received to written inquiries.	The ANACI, plus a personal interview
Personal Interview	No	No	Yes
2007 cost for 8,747 TSOs (equal to number hired in Fiscal Year 2006)	$962,170	$1,924,340	$4,592,175

TSA recently took steps to eliminate a major expense. The $390 medical check was originally provided while the prehire credit check took place. Thus, thousands of annual applicants who were disqualified by the prehire credit check received a medical check. Assuming the 22% prehire rejection rate of the credit check and the hiring of 32,527 TSOs over the past 3 fiscal years, over 9,000 applicants were deemed ineligible by the credit check. Medical checks for these 9,000 individuals cost $3.5 million. A TSA memo delaying the medical evaluation was not finalized until November 2006.

We believe that better application forms, a thorough risk designation mechanism, and continued oversight over implementation of the background check process will create a great deal of efficiency for TSA. As a revised process is implemented, TSA will be able to craft policies that relate directly to the unique TSO position, ensuring immediate and long-term improvements.

Recommendation #3: Select the background check most appropriate for the TSO position based on the findings from the risk designation process.

The Adjudication Process Is Designed to Identify Individuals Who Do Not Meet Employment Standards

TSA's Personnel Security Division administers the adjudication process for TSOs. Through both federal and contracted adjudicators, the Division conducts the numerous steps required to complete a background check, which

ends with a determination of an individual's suitability for a TSO position. The two primary factors leading to determination of a TSO's ineligibility are criminal activity and bad debt exceeding $5,000.

Letters of interrogatory are used to request additional information from applicants or TSOs when the agency wishes to know more about issues that could pose suitability problems. These letters can be sent to either applicants or employees, depending on the phase of the background check process that revealed questionable information.

We examined the adjudication decisions made for 77 individuals. Of these, 40 were hired and 37 were not hired. Our review of adjudication files illustrated for us the challenges TSA faces from the limitations discussed earlier in this report, but we did not find cases where TSA hired someone with obviously disqualifying criminal convictions.

The TSO Adjudication Process Determines a Person's Risk to Security and Public Trust

According to the *TSA Personnel Security Manual*, adjudication is "an examination of a sufficient period a person's life to make an affirmative determination that the person is an acceptable security risk." After a TSO is hired and their ANACI is completed, an adjudicator reviews the results. The court records check performed by Kroll is also reviewed, as well as each person's SF-86 and OF-306. Based on this material, the adjudicator will complete an adjudication worksheet that summarizes potentially disqualifying issues and recommends a course of action. If an adjudicator is concerned about an issue or additional information is needed, a letter of interrogatory is sent that requests further details from the TSO. An adjudicator approves an employee's background check if the process ends without the existence of disqualifying issues.

The 28 disqualifying felonies found in the Aviation and Transportation Security Act do not offer discretion for adjudicators. Individuals with convictions in these areas cannot be hired. However, most criminal conduct is not automatically disqualifying. For example, one drunk driving conviction or even misdemeanor spousal abuse would not necessarily prohibit an individual from being a TSO. When faced with such issues from an individual's file, an adjudicator weighs various factors, with special emphasis on more recent conduct. For example, a drunk driving conviction from a few months before would weigh more heavily than a conviction that occurred 10 years before.

In October 2003, TSA published an adjudication guide for use in examining the criminal and credit history of TSOs. This document, the *Screener Standardization Guide*, was revised in September 2004. Adjudicators use the guide and other reference materials to make determinations of eligibility for TSO applicants and those on the job. Another document, the *Personnel*

Security Manual, provides general guidance on how adjudicators are to make suitability determinations for TSA employees.

The Personnel Security Division completes the prehire credit and fingerprint checks. If this process reveals no disqualification, the candidate begins work as a TSO, and the ANACI-based background check begins. After the ANACI is completed by OPM, depending on the location of the airport where the TSO works, the Personnel Security Division will use one of three regional teams to conduct posthire adjudications.

The time needed to dismiss TSOs who are determined ineligible in the posthire phase can be significant. New employees have 2 weeks to submit their SF-86. An ineligible individual, who promptly fills out all necessary forms, responds to letters of interrogatory, or self-discloses disqualifying information, may still remain employed for a protracted period. An individual who does not fill out forms or is slow to reveal disqualifying information can remain employed for an even longer time. We view these delays as significant.

Federal Security Directors differ in their views on the effect of this extended period. Forty-one of 66 FSDs said the process did not cause major problems, but it should be faster, while 14 said the time required to complete adjudications did not affect daily airport operations. Eleven of the 66 responding FSDs said major problems are caused by the slow nature of the process. One FSD mentioned an employee fired for suitability reasons after 4 ½ years on the job. In some cases reported to us by FSDs, individuals who received several letters of interrogatory from TSA ended up resigning before TSA moved to terminate their employment. These included two cases where individuals worked for an extended period without even filling out forms necessary to begin the posthire background check.

Adjudicators Use A Bad Debt Standard as Part of their Evaluation
TSA has instituted a policy prohibiting the hiring or continued employment of an individual with more than $5,000 of bad debt. Several types of past due accounts can be considered bad debt, including items assigned to a collection agency or part of a dismissed bankruptcy.

As the *Personnel Security Manual* notes, "An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." We discovered evidence showing some cases where TSA took over 14 months to terminate individuals with ongoing credit problems. Because so many TSOs fail the adjudication process due to credit issues, consistent and timely implementation of the bad debt threshold is an important part of TSA's personnel security efforts.

Adjudicating credit issues can be complicated. Personnel security staff must determine if specific overdue amounts qualify as bad debt. Also, a TSO may respond to an interrogatory letter with updated credit information, such as evidence of payment or proof of payment plans. This means the process could take longer than simply reviewing an individual's credit report.

Table 3 shows five cases from our file review where an extended period of time elapsed before an individual was terminated for credit reasons. In these and other instances, TSA pulled multiple credit reports and waited many months before taking action against TSOs with serious debt problems. The *Screener Standardization Guide* requires an individual to respond to a bad debt interrogatory letter within 30 days; however, TSA was slow to act when it failed to receive a response, or a TSO's letter was incomplete.

Table 3. Five Bad Debt Cases In Our Sample

	Case A	Case B	Case C	Case D	Case E
First credit report date	2/1/05	6/4/04	9/30/04	9/26/05	9/15/05
Days until first letter of interrogatory sent	141	147	176	28	0
Days until second credit report	146	203	419	112	110
Days until second letter of interrogatory	104	N/A	N/A	8	N/A
Days until termination letter	133	78	134	192	71
Total days from first credit report to termination of TSO	**524**	**428***	**729**	**340**	**181****

* This individual resigned on the 428th day.
** This individual requested reconsideration of the termination decision, which was denied. For a reason not evident in the case file, the original termination letter was rescinded. A final termination letter was sent 6 months after the original termination letter.

The file for Case B included an electronic mail message from an adjudicator to airport management noting, "I can not make a decision" in the applicant's favor, and requesting that the TSO contact the adjudicator. This message was sent 10 weeks after a second credit report had been pulled with bad debt far in excess of TSA's standard. Action should have been taken much sooner.

These cases display the time that can pass between credit checks, letters of interrogatory, and TSA action. Neither the *Screener Standardization Guide* nor *Personnel Security Manual* envisions such a protracted process. Moving more quickly to terminate employees with ongoing debt problems gives TSA an opportunity to truly implement an important suitability criterion. The large number of applicants rejected because of credit problems highlights the need to close bad debt cases for TSOs who fail to meet TSA's credit standard.

Officials in TSA's Employee Relations Office shared some suggestions on the general use of letters of interrogatory. These officials believe the letters need to be more direct, specifically outlining actions required by the recipient, as well as enforcing timeframes found in TSA policy. TSOs and applicants need to understand that failure to respond to the letters will have consequences. It was suggested that the letters inform TSOs or applicants that they will be dismissed or deemed ineligible in a certain number of days if a response to the letter of interrogatory is not received.

Improvements to interrogatory letters are key to enforcing reasonable time frames. Letters of interrogatory are necessary to collect additional information from candidates, but they must not be a major source of delay in the adjudication process. Individuals who currently reply to the letters with disqualifying information are being terminated more rapidly than those with similar problems who game the system through a lack of response to TSA.

We recommend that the Assistant Secretary, TSA:

Recommendation #4: Issue a notice of disqualification to applicants or a letter of termination to TSOs who fail to respond to letters of interrogatory within 30 days of receipt.

TSA Adjudicators Need More Training About the Falsification Standard
Adjudicators review the honesty of an applicant or employee by focusing on whether an applicant or employee falsifies information on their SF-86 or OF-306 forms. If information is revealed during a background investigation that contradicts information on submitted documents, an accusation of falsification may arise. Falsification determinations are much more subjective compared to other types of suitability issues, such as bad debt or illegal behavior.

Applicants are required to sign the SF-86 form. By signing the form, the applicants attest that they are aware that knowingly falsifying or concealing a "material" fact is a felony. According to the TSA-adopted "OPM Suitability Issue Chart/Characterization Chart," falsification that is more recent is a disqualifying issue on level with armed robbery or murder and would keep someone from being employed in federal service for at least 3 years. One instance of falsification by itself may support a negative suitability determination.

There are two major issues in determining whether an applicant has committed falsification. First, it must be clear the offense was intentional. Second, the information omitted or misrepresented must be classified as "material." Proving an intentional omission or misrepresentation of fact can be difficult. For example, an applicant with a credit problem may not know that the bad debt exists, or the extent of the debt may be unknown. Additionally, individuals can be charged with an arrest when they are not

present or they may believe a conviction was reduced or expunged. Also, an applicant may not understand a question asked on the SF-86 or may have simply forgotten to reveal information.

For competitive service applicants, a "material" statement is one capable of influencing, or having a natural tendency to affect, an official decision.[16] This definition does not apply to excepted service TSOs. For TSO adjudications, TSA has recommended the definition of "material" be a conviction of a disqualifying offense or a "substantial" and "major" issue as outlined in the OPM Issue Characterization Chart. A false but immaterial statement is considered a "minor" suitability issue. Thus, a TSO who does not display a pattern of dishonesty may be declared suitable and hired after making a false statement about an immaterial fact.

OPM retains jurisdiction in all competitive service cases involving evidence of material, intentionally false statements, deception, or fraud.[17] Agencies must refer these cases to OPM for adjudication. Since TSO positions are excepted service, TSA adjudicators must judge these cases. Unlike OPM, TSA officials and adjudicators receive no specialized training on falsification. Additionally, most applicants can appeal to a TSA disciplinary review board only if they have been employed by TSA for 2 years.

In 2005, our investigation of Houston-area TSOs discovered 30 applicants had possibly falsified the SF-86. These falsifications involved the omission of arrests that were later revealed in the background investigation. After TSA sent interrogatory letters to the individuals in question, the agency concluded that 24 of the cases were not serious enough to be considered material falsifications. For the remaining six cases, the U.S. Attorney's Office for the Southern District of Texas, working with our Office of Investigations, pursued criminal charges. Only one of the six falsification charges led to a conviction. The other cases were dismissed after the omission of fact was determined to be unintentional or immaterial. Two of the six individuals were determined to be eligible for employment by TSA; only one so far has pursued a return to duty.

Our review of files led us to believe TSO adjudicators need a better understanding of how falsification criteria should be applied. This can come through formation of more complete policy guidance followed by additional adjudicator training. TSA adjudicators have applied accusations of falsification broadly and routinely. In some cases, letters of interrogatory accused individuals of falsification because criminal charges were not disclosed, but the information was never asked for on the SF-86. In other cases, TSA used the OPM competitive service definition of falsification in

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[16] 5 C.F.R. § 731.101(b).
[17] 5 C.F.R. § 731.103(a).

termination letters and letters of interrogatory. In many bad debt cases, applicants were accused of falsification when no clear intent to falsify was established. The DHS Personnel Security Division Chief said falsification for bad debt is very difficult to sustain, an observation with which TSA adjudicators concurred. The existence of undisclosed bad debt is not necessarily evidence of intentional misrepresentation by the applicant.

In December 2006, staff from various parts of TSA met to discuss the agency's policy on falsification. Based on our subsequent discussions with some agency staff, the results of this meeting were a disappointment. Insight into how to deal with falsification cases was expected, but the meeting did not provide new guidance on how to deal with falsification, according to program managers in TSA's Personnel Security Division.

Issues of honesty remain in TSA's criteria for evaluating all applicants, but falsification is a complicated issue that can usually be avoided by TSA. If an applicant fails to disclose disqualifying behavior, the behavior itself can be used to render the individual unsuitable for a TSO position. A senior member of the Personnel Security staff agreed that most cases can be resolved in this manner, but a small number of cases merit determinations of ineligibility on falsification alone. These more serious situations could include a felony involving "dishonesty, fraud, or misrepresentation," which is one of the 28 disqualifying offenses mandated by Congress. For most cases, however, accusations of falsification are unnecessary and can be addressed through existing suitability standards.

For more severe cases where falsification alone may merit ineligibility, current or revised suitability guidelines offer an opportunity to help adjudicators. For instance, a "false statement" is a moderate issue that can be used to find an individual unsuitable. It does not require the same burden of proof as falsification. Additionally, it allows for mitigation and is not coupled with the potentially severe future employment prohibition and criminal penalties of falsification. Of course, TSA retains the authority to develop its own suitability standards for honesty outside of OPM's current rules.

Recommendation #5: Establish clear and objective policies for adjudication of false statements and omissions, including more specific suitability guidelines.

Use of Internal Review Team Lessens the Chance of Adjudication Errors
A single adjudicator does not always make the final suitability determination. The Personnel Security Division uses an internal review team to examine many adjudication decisions. The review process, which began in October 2004, examines all initially ineligible cases and some eligible determinations. The internal review team leader said that TSA intends to review 30% of

eligible determinations; however, the availability of files and other issues reduces the actual amount to less than 15%.

After the internal review team examines a case, the team and the adjudicator will discuss cases where each reached a different conclusion. If the adjudicator is persuaded by the team's decision, no further intervention is necessary and the original adjudication is changed. If consensus remains elusive, the Personnel Security Division Director would make the final decision. Over their first 2 years, internal review teams reviewed 2,386 eligible cases and 1,637 ineligible cases. Only 16, less than one percent of the eligible cases, were ultimately overturned while internal review changed 106, less than seven percent of the ineligible cases, to eligible. These numbers include TSOs and other employees adjudicated by the Personnel Security Division.

Although the rate of ineligible overturns from the internal review process is low, there is merit to a complete review of all cases. Adjudicators face a variety of decisions about each case; human error can be diminished through additional review. One prominent example occurred in an October 2003 adjudication decision. This case, completed before the internal review team was created, was an unfortunate incident of mistaken identity. A local criminal check found a disqualifying conviction, but the individual's name did not fully match the full name of the TSO. The jurisdiction's court records did not have a date of birth, so the adjudicator erroneously determined the TSO should be terminated. The TSO was placed on administrative leave while he documented that the adjudication decision was erroneous. After 3 weeks, TSA confirmed the veracity of the TSO's documentation and he was allowed to return to work. We are confident the internal review process described to us currently lessens the chance of such errors.

Changes to the way TSA uses data would improve the efficiency of the internal review process. Data we reviewed on the rates of overturned adjudication decisions were not stratified by type of job. It might be useful for TSA to note the percentage of overturns and other data for TSOs compared to air marshals, for example. Additionally, the agency could benefit from analyzing the rate that individual adjudicators are overturned by internal review. Tracking overturns in this manner offers the ability to know if certain adjudicators need targeted training or if additional policies or resources may be needed to help adjudicators complete their work.

TSA Should Focus on Decreasing the Number of Adjudication Decisions Overturned in the Reconsideration Process

In 2004, we reported that 42% of TSOs won when they requested further review of their ineligible determination. In recent cases, an even higher percentage of ineligible adjudication decisions was overturned when individuals requested reconsideration. Between October 2004 and October

2006, 1,031 individuals requested reconsideration of their post-adjudication ineligibility determination. That was 62% of the number determined ineligible for the period. A total of 514 of the 1,031 individuals were determined to be eligible after the reconsideration process. Thus, even with the internal review process examining every ineligible determination prior to a formal rejection, half of the decisions were reversed after individuals initially determined to be ineligible asked for a review of their cases. A Personnel Security Division official said that reconsiderations are not tracked by type of job, so we were not able to determine how many of these reconsiderations were TSOs. Since the bulk of the Division's adjudications are for TSOs, the data is illustrative of the TSO reconsideration process. TSOs included in the above data would have still been in their probationary period, which, for most TSOs, would be two years.

Various factors, some outside of TSA's control, explain the high reconsideration success rate. The large number of closed-pending cases resulting from OPM's review makes it difficult for TSA to get a complete picture of an individual. Adjudicators might make incorrect determinations as a result of this incomplete information. Second, matters that seem disqualifying to an adjudicator may have been minor or quickly corrected. An individual who documents such episodes has a good chance of prevailing in reconsideration. Third, some adjudicators might not have examined a case thoroughly enough, thereby failing to uncover exculpatory information. One Personnel Security Division official said this lack of "robust" adjudications hampers the process in some situations. An adjudicator said the existence of the internal review team makes one more likely to rule against a marginal case. This appears to be an unfortunate byproduct of the internal review system. Adjudicators should not see internal review as the means to avoid more difficult decisions. Finally, debt problems could get corrected before a credit report was adjudicated.

Personnel Security Division leaders and adjudicators suggested that an applicant interview would be one way to gain information that could decrease the need for reconsiderations. An interview offers an interpersonal experience conducive to explanation and self-disclosure. As TSA conducts an examination of the TSO background check process as discussed earlier in this report, it should study the utility of a personal interview.

When asked about the 50 percent reconsideration reversal rate, TSA pointed out that many are the result of TSO candidates submitting, only after an adverse decision, mitigating information that they should have provided earlier to TSA. Posthire letters of interrogatory are frequently not acted on with sufficient urgency by the TSO. The level of reconsideration overturns is elevated by TSOs failing to respond until a more stringent letter of termination is received. We agree that some reconsideration overturns occur because of good-faith ineligibility decisions that are later corrected in the light of

additional information. Nonetheless, our interviews with adjudicators and leaders in TSA's Personnel Security Division have led us to conclude that additional training for adjudicators would help address some of the issues we discovered, such as overuse of falsification allegations. We believe that a specific training program for TSO adjudications would also help to reduce the rate of reconsideration.

We recommend that the Assistant Secretary, TSA:

Recommendation #6: Develop training specific to TSO adjudications to focus on ways adjudicators can make more complete and accurate decisions.

Pending Systems Improvements and Administrative Changes Should Improve the Process

One of the inefficiencies described in our January 2004 report noted TSA's lack of an information technology infrastructure to track TSO background checks efficiently. We noted, "TSA had no comprehensive picture of the status of investigations" because of a limited use of computer systems. What was used to track the process was "wholly inadequate" to manage the process.[18] Important progress has been made in this area. With additional work, communication, and resources, TSA can avoid some problematic situations and continue to improve the background check process.

Tracking System Should Improve With Pending Redesign
The Background Investigations Tracking System is now used by the Personnel Security Division to administer the background check process for TSOs and other positions. Each adjudicator uses the system to update the status of applicants from the beginning of the process. The internal review team also uses the system to track its work. TSA continues to update the system; a redesign is slated for completion in May 2007.

The existence of a computerized tracking system is an area of improvement since 2004, but the Background Investigations Tracking System has important limitations in its current form. The system relies on information entered manually, which makes it difficult to ensure complete and consistent data entry by all adjudicators. Another defect is the inability to include more than one entry date per item for each individual. This can cause a great deal of confusion when tracking individual background checks. When TSOs resign and later reapply for another TSO position, nonsensical information displayed in the system makes tracking impossible. In our review of 40 eligible adjudication files, there were 15 individuals who started work in 2006, but had

[18] DHS OIG, A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports, OIG-04-08, January 2004, p. 33.

adjudications completed in 2003. This meant the 15 individuals worked as a TSO 3 years before, left the position, and returned in 2006. Since their more recent background investigation had not yet closed, the original determination remained the only date shown in the system.

The Background Investigation Tracking System is not yet a truly precise picture of each individual's adjudication status. Until the system can completely and accurately inform TSA staff at headquarters and airports about the adjudication status of applicants and employees, the system's utility will be severely limited.

The redesigned system will offer several important improvements including:

- The ability to have more than one date for each entry field;
- Extra storage space that will allow the inclusion of scanned documents;
- Prompts to alert users about incomplete data fields; and
- Less reliance on Social Security numbers as identifiers, in line with federal privacy standards.

A program manager in Personnel Security Division said that Federal Security Directors are able to request access to certain Background Investigation Tracking System spreadsheets. This information allows airports to know about the status of potential hires and employees. TSA noted in its 2005 Office of Security Annual Report that the system "provides timely information to field staff offices on the status of employee investigations." Our survey demonstrated that further engagement with FSDs is necessary, since few see the Background Investigations Tracking System as important to operations. In our survey of the FSDs only 2 of 67 respondents, about three percent, said the system was very useful to their work, while 42, which is 63 percent of respondents, noted they had no basis to judge or were not familiar with the system. One survey respondent even noted an inability to access the system despite repeated attempts. Involving FSDs in the further development of the Background Investigations Tracking System would help make the system useful to those hiring TSOs.

Integration of Components' Information Would Lessen the Chance of Conflicting Results in Adjudicaiton and Falsification Issues
Both TSA's Personnel Security Division and the Office of Human Capital are involved in the TSO adjudication process. Personnel Security completes the adjudications and sends letters of interrogatory, while different groups in the Office of Human Capital administer the hiring and termination processes. After our review of the process, we have concluded changes could be made to improve workflow and decrease redundancy.

We reviewed the adjudication files for each of the six Houston TSOs who were indicted for providing false information on their background check paperwork. One of these individuals received an interrogatory letter from the Personnel Security Division asking that he explain the possible falsification issues. Just before that letter was sent, airport management fired the individual for not being truthful on his employment documents. In this case, different parts of TSA were not coordinating on that action. Six months after his dismissal, the TSO attempted to get his job back after being exonerated in court. In comments sent in response to our survey, a FSD provided a similar example. After planning to terminate some employees because of financial issues, the airport discovered that the Personnel Security Division was working with the TSOs to document mitigation of the concerns. The FSD said TSA looks "horribly incompetent" when different parts of the agency work in contradictory ways.

The avoidable nature of these cases illustrates how TSA should use data available in one component to minimize mistakes made in the management of individual cases. Further integration of TSA components' data should lessen the chance of such problems. To complete the hiring and termination process for TSOs, Employee Relations staff in the Office of Human Capital work on a system not directly linked to the Background Investigations Tracking System. Thus, airport management often does not know the status of the background investigation. Communication between airports and headquarters is important when adjudicators and airport management are simultaneously reviewing the same concern. If airports responsible for terminating employees knew when a TSO had a letter of interrogatory pending, TSA could avoid the deliverance of a termination letter for an issue being reviewed by the Personnel Security Division.

Recommendation #7: Implement systems changes to ensure that the Personnel Security Division, the Office of Human Capital, and Federal Security Directors are concurrently aware of a TSO under review for termination as a result of the adjudication process.

TSA Should Increase Resources for the Personnel Security Division and Move the Issuance of Termination Letters to that Division
We discussed the TSO adjudication process with managers and team leaders in both TSA's Personnel Security Division and the Employee Relations Division of the Office of Human Capital. The two divisions interact daily while hiring, and firing, TSOs. When TSA was working to fulfill hiring mandates in 2003, the Office of Human Capital was charged with issuing termination letters for those TSOs deemed ineligible by adjudicators. Personnel Security officials believe the human resources functions performed by the Employee Relations staff naturally fit the role of issuing termination letters. Conversely, Employee Relations leadership no longer wishes to perform the function of firing ineligible TSOs.

Issuance of a termination letter starts when the Personnel Security Division officially completes its review of an ineligible case. At that point, Employee Relations staff in the Office of Human Capital receives the documentation in the case file and completes what one manager called a "quick internal review" to ensure the adjudication decision was "sufficient and appropriate." Then, Employee Relations sends the case back to Personnel Security for a signature on the termination letter, which finally is sent back to Employee Relations for release to the Federal Security Director at the TSO's airport.

We believe this is an inefficient approach. A streamlined process where the Personnel Security Division issues the letters directly would lead to quicker action on TSO terminations. This would save TSA time and resources. The Division charged with conducting the adjudication of candidates should also directly send termination letters for those who are deemed ineligible by the adjudication process.

There would be a need to ensure the Personnel Security Division gains sufficient legal and administrative expertise to fully effectuate this more efficient practice. This can be accomplished by fully grasping the Division's overall needs first, then proceeding with the accumulation of sufficient knowledge that would allow the Division to issue termination letters directly.

Further organizational changes may be warranted. Some senior members of the Personnel Security Division suggested their office be merged with the Office of Human Capital to provide maximum efficiency to the background check process. One individual noted, "I always thought suitability was a part of employee relations until I got to TSA." There may be some merit to this idea, but we are not formally recommending such a course because it would touch on myriad administrative issues outside the scope of this review.

We recommend that the Assistant Secretary, TSA:

Recommendation #8: Ensure sufficient resources exist in the Personnel Security Division to move the issuance of adjudication termination letters from Employee Relations in the Office of Human Capital to the Personnel Security Division.

An Internal Audit Procedure Could Enhance TSO Background Checks

TSA should institute an ongoing internal audit process to ensure continuing improvement in TSO background checks. This process could help discover problems at all levels. Internal audits would allow TSA to continually evaluate the efficiency and utility of the background check process. Knowing more about the validity of each step would allow TSA to make more informed

decisions about needed revisions. At the micro level, internal auditing offers the ability to examine case files and other parts of the process to determine bottlenecks, overdue adjudications, and areas where TSA could benefit from additional staff training.

Statutory Requirements Exist to Perform Internal Audits

The Aviation and Transportation Security Act required TSA to "review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel."[19] TSA is also required to "provide for the periodic audit of the effectiveness of criminal history record checks" done for the TSO population.[20] Fully implementing these legal requirements grants TSA the opportunity to ensure ongoing improvement in the performance of TSO background checks.

TSA components do examine their processes. For example, the Office of Human Capital has studied and changed various parts of the hiring process. Also, as noted, the Personnel Security Division initiated a review of falsification issues in an attempt to clarify TSA's policy in the area. Congress envisioned TSA's use of a more dynamic internal audit process, capable of providing insights into how the agency can make strategic and tactical changes to the background check process.

An Internal Auditing Program Would Ensure More Consistent Implementation of TSA Policies

We received information on an internal review conducted by TSA following the arrest of the six TSOs in Houston. TSA's Office of Inspection, an independent internal unit reporting to the Assistant Secretary, completed this review to determine if the Houston arrests indicated a systemic problem.

Although this type of review has value for TSA, staff in the Office of Inspection noted the office should not be seen as fulfilling the congressional intent of systematic reviews of TSO background checks. We concur. The Office of Inspection does not help run the operations of TSA's components; it merely reviews problem areas on a generally ad hoc basis and offers suggestions.

TSA needs an ongoing effort that can effect sustained and rigorous change throughout the background check process. The development of an internal auditing function for the background check process could build on the current internal review team in TSA's Personnel Security Division. This would require an expanded mission and extra staffing for that unit.   There may be merit in simply hiring new staff with expertise in compliance and internal auditing to ensure more rapid change.

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[19] 49 U.S.C. 44935(e)(3).
[20] 49 U.S.C. 44936(a)(3).

We agree with TSA's November 2006 decision to refrain from medical testing of applicants until after completion of prehire credit checks. Ongoing internal review offers the chance to make such basic changes more quickly. TSA can use internal auditing to ensure that its resources are spent wisely and that components of the background check process, such as the pre- and posthire criminal checks, truly complement each other.

More vibrant internal auditing presents TSA with an opportunity to realize efficiencies on an ongoing basis. Ad hoc efforts to examine particular problems are not as useful as an ongoing review of the overall background check process. Tracking information from adjudication files, systems, and other sources of data would provide a more complete picture of the background check system. The ability to detect problems can also ensure more consistent implementation of TSA policies.

We recommend that the Assistant Secretary, TSA:

Recommendation #9: Construct and implement an internal auditing function that will study the overall background check process, including an ongoing review of the type of check performed for the TSO population, to maximize efficiencies and improve the administration of particular segments of the process.

Management Comments and OIG Analysis

TSA provided general and technical comments on our draft report, including responses to the recommendations. We considered each of these comments and responses, and additional documentation provided, and made responsive edits and additions to some parts of the report, including revisions to one recommendation.

In its response to our draft, TSA noted that the Enhanced Suitability Standards were rescinded on April 23, 2007. TSA noted that various parts of TSA concluded that the standards created "confusion and redundancies." We believe that TSA's lack of TSO-specific application materials, not the existence of the enhanced standards, was the source of the problem. Our report continues to note, "Abandoning the standards completely would weaken the agency's ability to fully consider the impact of some undesirable behaviors in the TSO workforce." Additional information from TSA on the process by which the enhanced standards were rescinded would provide clarification.

TSA fully concurred with eight of the nine recommendations and concurred in part with one recommendation. Below is a summary of TSA's response to

each recommendation, and our analysis. Appendix B contains a complete copy of TSA's response.

Recommendation 1: Create and implement employment forms that collect information on the applicant pursuant to eligibility standards. Adjudicators should review these forms prior to a Transportation Security Officer's (TSO) entry on duty.

TSA response: TSA has considered creating and implementing employment forms that would capture information regarding the disqualifying offenses and suitability factors, and to review these forms prior to a TSO's entry on duty. TSA envisions that applicants will complete the new forms during the online application process.

OIG Analysis: This recommendation is resolved, but remains open. We agree that the online application process would be a favorable time for applicants to complete the new forms. Providing upfront information to applicants will serve to educate applicants more completely about the hiring process and permit those with disqualifications to identify themselves and withdraw from further consideration. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 2: Complete a comprehensive screener position risk designation using criteria provided by personnel security officials in the Department of Homeland Security and appropriate TSA offices.

TSA response: TSA states that establishing an official screener position risk designation is currently a high priority. No estimation is offered for when it might be complete.

OIG Analysis: The risk designation is key to TSA's entire background check process. This recommendation is resolved, but remains open. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 3: Select the background check most appropriate for the TSO position based on the findings from the risk designation process.

TSA response: TSA agreed to select the background check most appropriate for the TSO position based on the findings from the risk designation process. TSA also plans to adjust use of forms based on the background check. No estimation is offered for when TSA actions will be taken.

OIG Analysis: This recommendation is resolved, but remains open. TSA has articulated a reasonable course that should aid in the final selection of the type of background check. Additional documentation on the risk designation process and the background check selected will be an important step in the

corrective action process. We request that TSA inform us within 90 days of their progress to implement this change.

Recommendation 4: Issue a notice of disqualification to applicants or a letter of termination to TSOs who fail to respond to letters of interrogatory within 30 days.

TSA response: TSA states that letters of interrogatory issued to TSOs will will be revised to clearly define their responsibility to provide a timely response and will document consequences, up to and including removal from their position, for non-compliance. No estimation is offered for when these revisions will be made.

OIG Analysis: This recommendation is resolved, but remains open. The revision described by TSA will be responsive to the intent of the recommendation. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 5: Establish clear and objective policies for adjudication of false statements and omissions, including more specific suitability guidelines.

TSA response: TSA reported that they have established a monthly Adjudication Workshop to address issues of uniformity of adjudication practices and to provide clearer understanding of TSA considerations. Additionally, TSA's policy on Personnel Security, currently in draft, will incorporate falsification considerations and application criteria.

OIG Analysis: This recommendation is resolved, but remains open. The OIG encourages TSA to include its falsification consideration and application criteria in the Personnel Security Manual for adjudicators to reference. We expect that TSA's work in this area will decrease the number of falsification allegations made against TSOs and applicants, as well as provide a process to deal with obvious incidents of falsification. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 6: Develop training specific to TSO adjudications to focus on ways adjudicators can make more complete and accurate decisions.

TSA response: TSA's response noted that the unique nature of the TSO hiring and vetting process creates the need for specialized adjudicator training. TSA has established a monthly Adjudication Workshop designed to improve consistency through communication of agency-specific policies.

OIG Analysis: This recommendation is resolved, but remains open. TSA's new Adjudication Workshops appear to be an appropriate forum for establishing procedures that would lead to consistent and accurate decisions.

TSA's response did not indicate how many adjudicators would attend these workshops, or how workshop improvements would be communicated to the adjudicators not in attendance. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 7: Implement systems changes to ensure that the Personnel Security Division, the Office of Human Capital, and Federal Security Directors are concurrently aware of a TSO under review for termination as a result of the adjudication process.

TSA response: TSA reports that it is currently developing policy that will respect privacy concerns of the officer and also notify Federal Security Directors when potentially disqualifying issues are identified during the background investigation. This new policy will require coordination with the Office of Law Enforcement, the Office of Human Capital, the Office of Chief Council, and the Office of Security Operations. No estimation is offered for when the policy will be implemented.

OIG Analysis: This recommendation is resolved, but remains open. The final process that develops should help to avoid difficulties encountered when TSOs receive contradictory information from different parts of TSA. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 8: Ensure sufficient resources exist in the Personnel Security Division to move the issuance of adjudication termination letters from Employee Relations in the Office of Human Capital to the Personnel Security Division.

TSA response: TSA concurred in part with this recommendation. The agency reports that it is conducting position management reviews of several offices within TSA. The review of the Personnel Security Division will specifically determine what resources that office will need to draft and issue suitability termination letters. No estimation is offered for when these reviews will be completed.

OIG Analysis: Although TSA concurred in part, this recommendation is resolved, but remains open. The response indicates that the position management reviews have already commenced. The response further states that the Personnel Security Division should be given the resources it would require "to achieve its goals and objectives, including drafting/issuing suitability termination letters." TSA did not describe how it non-concurred with this recommendation. We request that TSA inform us within 90 days of their progress in implementing this change.

Recommendation 9: Construct and implement an internal auditing function that will study the overall background check process, including an ongoing review of the type of check performed for the TSO population, to maximize efficiencies and improve the administration of particular segments of the process.

TSA response: TSA reports that it will expand upon the internal review structure currently within the Personnel Security organization to enhance auditing of the background check process.

OIG Analysis: This recommendation is resolved, but remains open. We believe that this function is important to the background check process. Implementation of this recommendation will allow TSA find ongoing efficiencies. We request that TSA inform us within 90 days of their progress in implementing this change.

Purpose, Scope, and Methodology

The purpose of our review was to determine whether TSA processed background checks of its Transportation Security Officers in an efficient and effective manner and according to applicable laws, federal regulations, guidelines, and standards. The scope of our review focused on background checks of Transportation Security Officers and included administrative and programmatic activities from September 2003 to January 2007.

Our fieldwork was conducted from September 2006 to January 2007. During this period, we conducted 21 interviews. Among those interviewed were representatives from TSA's Personnel Security Division, Office of Human Capital, Office of Counsel, and Office of Inspection. We also interviewed two TSA Federal Security Directors and representatives from two firms with Screening Partnership Program contracts. We used an Internet survey tool to collect data for a judgmental sample of various aspects of the background check process. Of 96 Federal Security Directors who received the survey, 67 replied. We also spoke with officials from OPM, our field offices, and the DHS Personnel Security Division.

We supplemented these interviews with extensive document review and analysis efforts. We studied related laws, regulations, executive orders, and legal opinions. We reviewed TSA manuals and policy directives, and analyzed TSA employment data. We also reviewed 77 adjudication files of current and former Transportation Security Officers. Lastly, we examined reports from GAO, relevant speeches, testimony, and news articles.

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the *Quality Standards for Inspections,* issued by the President's Council on Integrity and Efficiency.

Office of the Assistant Secretary

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220

JUL·0 9 2007

**Transportation
Security
Administration**

INFORMATION

MEMORANDUM FOR: Richard L. Skinner
                    Inspector General
                    Department of Homeland Security

FROM: Kip Hawley
                    Assistant Secretary

SUBJECT: Transportation Security Administration's (TSA) Response to
                    Department of Homeland Security (DHS) Office of Inspector
                    General's (OIG) Draft Report titled "A Follow-up Review of the
                    Transportation Security Officer Background Check Process,"
                    May 2007

Purpose
This memorandum constitutes TSA's response to the DHS OIG draft report "A Follow-Up
Review of the Transportation Security Officer Background Check Process," May 2007. TSA
appreciates the opportunity to review and provide comments to your draft report. TSA concurs
with the report and recommendations. While this draft report serves as an update of a previous
review completed in January 2004, it is important to note that TSA will continue to seek
efficiencies and streamlined processes.

Background
In the fall of 2005, the Personnel Security Division (PerSec), the program responsible for the
vetting process for Transportation Security Officers (TSOs), was reorganized under the direction
and leadership of the Chief Security Officer (CSO). This critical realignment of PerSec under
CSO brings the Office in conformance with the Department of Homeland Security's (DHS)
model for security, thus affording the opportunity to formulate effective strategies both to
improve security programs and foster cooperation with other elements within TSA and DHS in
addressing mutual security concerns. The additional integration of the CSO into the Office of
Law Enforcement/Federal Air Marshal Service (OLE/FAMS) further supports the increased
partnership necessary to effect change across organizational elements.

Discussion
There are a few items contained in the report for which TSA would like to provide comment. In response to the section in the DHS IG report that raised concern about TSA's consideration to abandon the enhanced standards for TSO adjudication, it is noted that effective April 23, 2007, the TSA Enhanced Suitability Standards were rescinded. This action was based on recommendations made by a committee chaired by the CSO and included members from PerSec, the Office of Chief Counsel (OCC), and the Office of Human Capital (OHC). The committee concluded that the standards created confusion and redundancies. More importantly, the committee found that the existing framework for suitability and security eligibility is measured against the suitability factors and the adjudicative guidelines, both of which are used consistently to assess the entire security background, particularly when derogatory information is discovered. The continued use of the enhanced standards prevented the adjudicator from applying the "whole person concept" and limited the adjudicator's role to simply applying defined disqualifications without regard for waivers or mitigation.

With respect to comments concerning the use of two criminal record checks by TSA, clarification regarding this perceived redundancy is necessary. The current hiring and background check process includes a fingerprint-based criminal history record check completed by the Federal Bureau of Investigation (FBI) through the Office of Personnel Management (OPM). The pre-hire process also includes completion and review of checks completed by KROLL, to include credit checks and criminal history checks. The duplication is necessary since many criminal history records obtained from the FBI/OPM do not include disposition of arrests. The KROLL report, in addition to the National Crime Information Center (NCIC) checks conducted by PerSec staff, provides the adjudicator with additional details of the disposition of arrests. Once the TSO is hired, and the full OPM background investigation is initiated, OPM will not require submission of additional fingerprint cards if the investigation is initiated within 120 days of the previously conducted Special Agency Check. If that 120-day period expires, new fingerprints are required. While this process may appear duplicative, from an investigative standpoint it minimizes security risk to the agency when considerable time has passed between when the applicant was screened and ultimately hired. Fortunately, changes to the local hiring process have dramatically decreased the time lapse between the completion of a favorable pre-hire check and the Entry on Duty (EOD) date for the TSO.

Additionally, the preliminary checks facilitate a pre-hire determination of whether the employee has a conviction for one of the 28 disqualifying crimes. The subsequent criminal check completed by OPM facilitates a more thorough analysis of the employee's criminal history.

Finally, while TSA agrees that additional training for TSA adjudicators would be beneficial, we do not completely agree with the data provided to support the recommendation. It may create a presumption that approximately half of all ineligible cases for TSOs are reversed (after an individual's request for reconsideration of their post-adjudication ineligibility determination is made). Three clarifications are offered:

1) The "Reconsideration" process is an administrative process extended to TSOs serving in a trial period (i.e., on board for less than 2 years if non-preference eligible; 1 year for preference eligible) to allow them a final opportunity to refute the suitability decision.

The TSO serving in a trial period is issued a Notice of Removal (NOR) once deemed unsuitable, and there is no right to respond (orally or in writing) or to appeal. The only opportunity for TSOs to refute the issues raised during the investigation is limited to the Letters of Interrogatory (LOI) process. Many TSOs, however, do not respond to the LOIs and are thus issued an NOR based solely on the issues identified in the investigation. Upon receipt of the NOR, these TSOs typically provide mitigation or other documentation to support a reversal of the unsuitability determination and the NOR. The majority of overturned cases fall into this category.

Conversely, TSOs who have completed the applicable trial period are issued a Notice of Proposed Removal (NOPR), which includes a formal opportunity to respond orally and in writing to the findings outlined in the NOPR before a final determination concerning suitability is made. If the TSO is not successful in mitigating his/her issues, an NOR is issued. The TSO then has appeal rights to the TSA Disciplinary Review Board (DRB).

2) The data in the report did not take into consideration the unsuitability findings related to TSOs who are no longer serving in a probationary period. These TSOs have due process rights (i.e., right to respond to the NOR and to appeal the decision to the DRB), which afford them additional opportunities to refute derogatory information. The reversal rate for this category of TSOs is comparatively low.

3) Because the reconsideration process frequently involves cases in which TSOs were unresponsive during the LOI process, the apparent high reversal rate is attributable to the TSOs' failure to refute the issues in a timely manner—not inadequacies within the adjudication or internal review process.

With the aforementioned organizational modifications, TSA has successfully refined the TSO hiring processes and moved toward a less centralized hiring system to meet the differing needs of the Nation's airports. Under the new structure, TSA expects to continue to make positive changes in process improvement, which will result in greater efficiencies. In addition, the vetting process for TSOs has been refined over the last few years, and this response demonstrates that we have taken steps to further improve program operations consistent with a number of your recommendations. TSA leadership is committed to continually improving our TSO vetting practices.

Our responses to the recommendations in the report follow:

Recommendation 1: Create and implement employment forms that collect information on the applicant pursuant to eligibility standards. Adjudicators should review these forms prior to a Transportation Security Officer's (TSO) entry on duty.

TSA Concurs: TSA has considered the possibility of creating a TSO applicant questionnaire that would capture specific information regarding the disqualifying criminal offenses and other disqualifying suitability factors consistent with the latitude set forth in the Aviation and Transportation Security Act (ATSA) screening requirements. Implementation of this recommendation will eliminate the hiring of TSOs that may later fail to meet the TSA suitability

standards. While the pre-hire suitability adjudication does evaluate criminal history records against disqualifying criminal factors, the current process only includes a review of the Optional Form 306. Completion of a more specific form during the onset of the process would allow applicants to identify disqualifiers and perhaps withdraw from the application process. Many past TSO applicants would not have applied for the position had they been fully aware of the disqualifying standards against which they would be measured.

This effort will require additional adjustments to the current local hiring process. As a result of TSO hiring demands, TSA adopted a refined local hiring process that eliminated the completion of the security questionnaire until after EOD. Implementation of this recommendation will require the TSO candidates to complete one security questionnaire prior to EOD. We envision that this will occur during the on-line application process, and applicants will subsequently be required to complete and submit the Standard Form necessary to initiate their background investigation at OPM. The OPM requirement for completion of the Standard Form cannot be eliminated. This fact notwithstanding, implementation of this recommendation would capture the 28 disqualifying factors and other suitability disqualifiers and significantly strengthen the pre-hire investigative and adjudicative process.

Recommendation 2: **Complete a comprehensive screener position risk designation using criteria provided by personnel security officials in the Department of Homeland Security and appropriate TSA offices.**

TSA Concurs: In December 2003, through follow-up of recommendations made in the DHS OIG 2004 report entitled *A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports*, the Credentialing Program Office (CPO), which exists as an element of PerSec, formed a focus group with representatives from OHC, Aviation Operations, and Workforce Performance and Training. The focus group worked to establish an official Position Designation Record for all TSO positions; however, with turnover of CPO/CSO program management, this undertaking was overcome by other competing priorities. However, the effort to establish official Position Designation Records for all TSA positions, including the TSO position, is currently a high priority for the Agency. The position designation review will be consistent with current DHS Personnel Security policy as prescribed in the DHS Personnel Security Management Directive (MD) 11050.2.

Recommendation 3: **Select the background check most appropriate for the TSO position based on the findings from the risk designation process.**

TSA Concurs: The results of the position designation review for the TSO will determine the appropriate level of background investigation for TSOs. If the ultimate designation of the TSO results in a public trust designation (rather than national security), the Standard Form 86 currently used will be changed to the Standard Form 85P, or to an appropriate TSA Form as described in Recommendation 1, once that form is developed and coordinated. The ensuing results of the position designation review, to include the required level of the background investigation, will meet the requirements of the current DHS Personnel Security policy as prescribed in the DHS MD 11050.2.

Recommendation 4: **Issue a notice of disqualification to applicants or a letter of termination to TSOs who fail to respond to letters of interrogatory within 30 days.**

TSA Concurs: The OLE/FAMS is working to revise and implement personnel security policies and practices. Processing of LOIs will be clearly documented, with established timelines and follow-through requirements. Additional measures will be established to better manage the process, and specific documented procedures will be created that require closer coordination with OHC regarding TSOs who fail to comply with personnel security processing. Also, LOIs issued to TSOs will clearly define their responsibilities in providing timely responses and will document consequences, up to and including removal from their position, for non-compliance.

Recommendation 5: **Establish clear and objective policies for adjudication of false statements and omissions, including more specific suitability guidelines.**

TSA Concurs: Effective May 23, 2007, TSA PerSec held the first in a series of monthly internal Adjudication Workshops. The Adjudication Workshop was created to address issues of uniformity of adjudication practices and to provide clearer understanding of TSA considerations. Falsification issues surrounding "material and intentional" will also be addressed in this forum. Additionally, TSA's policy on Personnel Security, currently in draft, will incorporate falsification considerations and application criteria.

Recommendation 6: **Develop training specific to TSO adjudications to focus on ways adjudicators can make more complete and accurate decisions.**

TSA Concurs: TSA agrees and recognizes the need for increased TSA-specific adjudication training due to the uniqueness of the TSA hiring and vetting process. Coincidentally, the first TSA Adjudicator Workshop focused on the distinct differences between trial-period TSOs and TSOs who have completed their probationary period. The monthly Adjudicator Workshops will provide necessary improved consistency through communication of agency-specific policies.

Recommendation 7: **Implement systems changes to ensure that the Personnel Security Division, the Office of Human Capital, and Federal Security Directors are concurrently aware of a TSO under review for termination as a result of the adjudication process.**

TSA Concurs: The PerSec policy currently in development will specifically address a timely and official notification process to the Federal Security Directors (FSDs) when potentially disqualifying issues are identified during the background investigation. Due to privacy concerns of the TSO, this approach must be coordinated with OLE/FAMS, OHC, OCC and the Office of Security Operations. Discussions in this regard have been initiated. Intermediate measures will be implemented in the short term, pending coordination and completion of the existing draft personnel security policy.

Recommendation 8: **Ensure sufficient resources exist in the Personnel Security Division to move the issuance of adjudication termination letters from Employee Relations in the Office of Human Capital to the Personnel Security Division.**

TSA Concurs In Part: To refine the April 2006 TSA Headquarters restructuring, OHC is conducting position management reviews of several organizations within TSA, including OLE/FAMS, under which PerSec is aligned. These reviews assess the goals and objectives of each office and the requirements for each position within the office to determine the optimal resource requirements needed to ensure that an office has the tools necessary to reach its goals and objectives.

During PerSec's position management review, OHC will document the processes used by the Employee Relations office to perform work on behalf of PerSec and identify the skill sets required to perform that work. OHC will then determine what additional resources are needed in PerSec to enable it to achieve its goals and objectives, including drafting/issuing suitability termination letters.

Recommendation 9: **Construct and implement an internal auditing function that will study the overall background check process, including an ongoing review of the type of check performed for the TSO population, to maximize efficiencies and improve the administration of particular segments of the process.**

TSA Concurs: TSA will research the development of an internal auditing function for the background check process for the TSOs. To identify efficiencies, an Internal Review/Quality Assurance & Training Program is currently embedded within the PerSec organizational structure. However, TSA agrees that a further examination is necessary to determine the level of review and audit expansion necessary. Additionally, it is expected that the position management review will be a critical exercise in the development of this important program, which may include broader enhancements to the current PerSec internal review structure.

Recommendations From the January 2004 OIG Report

In our January 2004 report entitled, *A Review of Background Checks for Federal Passenger and Baggage Screeners at Airports,* we made the following 12 recommendations:

Recommendation 1: Complete screener position risk designations with input from the personnel security officials of the Department of Homeland Security and from appropriate TSA offices, including the Credentialing Program Office, Human Resources Office, and Aviation Operations. Screener position risk designation records, position descriptions, and vacancy announcements should reflect the correct designation.

Recommendation 2: Complete the comparison study of the effectiveness of Office of Personnel Management and private sector background checks. Incorporating the review's results, the Administrator should modify screener background checks as needed to ensure they suit the position risk designation, meet Department of Homeland Security standards, and are cost-efficient.

Recommendation 3: Ensure, without exception, that all screeners undergo a fingerprint-based criminal history records check and receive a favorable adjudication before they begin training and work.

Recommendation 4: Incorporating guidance from the Department of Homeland Security, define the role that contract adjudicators will play in TSA's background check process and the minimum requirements that TSA must meet to fulfill its oversight responsibilities.

Recommendation 5: Institute precautions to protect against terminations that are based on incorrect information.

Recommendation 6: Establish mechanisms to prevent and abort background checks on applicants and employees whom TSA disqualifies.

Recommendation 7: Strengthen procedures for completing and retaining the Employment Eligibility Verification Form (Form I-9).

Recommendation 8: Implement personnel security management policies and procedures and document departures from them.

Recommendation 9: Document the Credentialing Program Office workload and then plan and hire staff to meet workload requirements.

Recommendation 10: Ensure that TSA program managers formally document contract modifications and instructions, maintain a substantive presence with

contractors in order to provide guidance and oversight, and require status reports to track mission accomplishment.

<u>Recommendation 11:</u> Create a personnel security management tracking system that provides management with accurate, timely, and integrated information on the status of security investigations. The information should reflect the complete cycle of personnel security management, including data on incoming staff, separations, and reconsiderations.

<u>Recommendation 12:</u> Improve records management policies, procedures, and practices governing the content, organization, and storage of personnel security management case files.

Recommendations in This Report

Our current report makes the following recommendations to the Assistant Secretary of the Transportation Security Administration:

Recommendation #1: Create and implement employment forms that collect information on the applicant pursuant to eligibility standards. Adjudicators should review these forms prior to a TSO's entry on duty.

Recommendation #2: Complete a comprehensive screener position risk designation using criteria provided by personnel security officials in the Department of Homeland Security and appropriate TSA offices.

Recommendation #3: Select the background check most appropriate for the TSO position based on the findings from the risk designation process.

Recommendation #4: Issue a notice of disqualification to applicants or a letter of termination to TSOs who fail to respond to letters of interrogatory within 30 days of receipt.

Recommendation #5: Establish clear and objective policies for adjudication of false statements and omissions, including more specific suitability guidelines.

Recommendation #6: Develop training specific to TSO adjudications to focus on ways adjudicators can make more complete and accurate decisions.

Recommendation #7: Implement systems changes to ensure that the Personnel Security Division, the Office of Human Capital, and Federal Security Directors are concurrently aware of a TSO under review for termination as a result of the adjudication process.

Recommendation #8: Ensure sufficient resources exist in the Personnel Security Division to move the issuance of adjudication termination letters from Employee Relations in the Office of Human Capital to the Personnel Security Division.

Recommendation #9: Construct and implement an internal auditing function that will study the overall background check process, including an ongoing review of the type of check performed for the TSO population, to maximize efficiencies and improve the administration of particular segments of the process.

28 Disqualifying Felonies

Pursuant to 49 U.S.C. § 44936(b) and 49 C.F.R. § 1542.209(d), applicants convicted of one or more of the following 28 felony crimes within the past ten years are not eligible to serve as screeners:

1. Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

2. Interference with air navigation, 49 U.S.C. 46308;

3. Improper transportation of a hazardous material, 49 U.S.C. 46312;

4. Aircraft piracy, 49 U.S.C. 46502;

5. Interference with flight crew members or flight attendants, 49 U.S.C. 46504;

6. Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

7. Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

8. Conveying false information and threats, 49 U.S.C. 46507;

9. Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

10. Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

11. Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

12. Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

13. Murder;

14. Assault with intent to murder;

15. Espionage;

16. Sedition;

17. Kidnapping or hostage taking;

18. Treason;

19. Rape or aggravated sexual abuse;

20. Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

21. Extortion;

22. Armed or felony unarmed robbery;

23. Distribution of, or intent to distribute, a controlled substance;

24. Felony arson;

25. Felony involving a threat;

26. Felony involving:

    a) willful destruction of property;
    b) importation or manufacture of a controlled substance;
    c) burglary;
    d) theft;
    e) dishonesty, fraud, or misrepresentation;
    f) possession or distribution of stolen property;
    g) aggravated assault;
    h) bribery; or
    i) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

27. Violence at international airports, 18 U.S.C. 37;

28. Conspiracy or attempt to commit any of the criminal acts listed above.

Survey Questions and Answers

1. **Please select the security category(ies) of the airport(s) under your jurisdiction**

	Responses
X	18
I	39
II	16
III	17
IV	18

2. **From your perspective, how well does TSA's process for checking the backgrounds of screeners identify and reject applicants or employees with certain types of criminal or credit problems, or other potentially disqualifying factors?**

	Responses
5 (the process works very well)	6
4	17
3 (the process works adequately)	23
2	17
1 (the process works poorly)	3

3. **From your perspective, does the time required to complete a TSO's background check cause staffing issues or other difficulties at your airport(s)?**

	Responses
No or very few problems, the process does not impact day-to-day operations	14
A few problems, the process could be faster	41
Many difficulties arise from the slowness of the process	11

4. **In your opinion, how easy is it to work with TSA Headquarters to resolve any issues related to the background check process for TSOs at your airport(s)?**

	Responses
5 (very easy)	5
4	12
3 (few or minor issues)	27
2	10
1 (very difficult)	9

5. **Do you have any concern about TSA's ability to ensure that only U.S. citizens are eligible for employment as TSOs?**

	Responses
Yes	11

No   56

6. **To what extent does TSA's Background Investigation Tracking System (BITS) play a role in your management of the TSO hiring process or your ability to respond to applicant or TSO inquiries about their background check?**

	Responses
5 (BITS is very useful)	2
4	4
3 (BITS provides some help)	16
2	3
1 (BITS does not help by my airport(s)	4
No basis to judge/not familiar with BITS	38

7. **Has a situation arisen where you were hesitant to dismiss TSOs with poor performance because of concerns that the background checks for replacement employees would take too long or lead to new hires with potentially disqualifying criminal or credit problems?**

	Responses
Yes	5
No	62

8. **What is your assessment of TSA's standard that $5,000 of bad debt is a disqualifying factor for a TSO position?**

	Responses
The standard does not need to be revised. It is a sufficient way to limit criminal conduct or diminish security concerns.	29
There is some merit to keeping the policy or revising the amount to a limited extent.	21
I recommend TSA consider revising this standard because it prohibits good employees from either becoming a TSO or keeping their job as a TSO.	10
I recommend TSA consider revising this standard because it does not sufficiently detect criminal or security risks in the applicant or TSO population.	7

9. **In general, do you belive that TSO applicants are sufficiently informed about the credit and criminal standards that will be used to determine their suitability for work as a TSO?**

	Responses
Yes	47
No	19

10. **Please share any additional comments you believe may be helpful in our review. This could include positive comments about TSA's background check process, descriptions of specific cases in which you encountered difficulties with background checks, or you suggestions on how TSA could improve the background check process.**

Prehire Background Investigation Process

At airport assessment center, applicant completes:
OF-306
Fair Credit Reporting Act Authorization
Authorization for Release of Medical
Information
Authorization for Release of Information
Non disclosure Information
Electronic fingerprints

TSA runs applicants' names through terrorist watch lists and TSA no-hire list

Kroll performs
Credit check
Local court check

Electronic fingerprints are sent to the FBI

TSA receives results from all sources electronically.
Personnel Security Division prehire adjudicator checks:
Kroll credit check for $5,000 bad credit threshold
- FBI fingerprint record for unsuitable or disqualifying felonies

Interrogatory letter(s) clarify potential problems

Personnel Security Division informs airport electronically of applicant's status. If applicant is eligible, airport contacts applicant to schedule a start date.

Posthire Background Investigation Process

After being hired, new TSOs fill out an electronic version of the SF-86 form

Electronically, OPM receives SF-86. OPM performs ANACI background investigation, which includes:
National Agency Check
Employment, education check
Credit check

Posthire Adjudicators check:
ANACI results for suitability, disqualifying felonies and $5000 of bad debt
Kroll Court Check for suitability, disqualifying felonies

Interrogatory letter(s) clarify potential problems

After adjudicator's decision, internal review team checks posthire adjudicators' work (all ineligible and some eligible determinations)

Disciplinary review board can hear appeals for non probationary TSOs

Background Investigation Tracking System informs airport electronically that the applicant has been fully cleared.

Douglas Ellice, Chief Inspector, Department of Homeland Security, Office of Inspections

Darin Wipperman, Inspector, Department of Homeland Security, Office of Inspections

W. Preston Jacobs, Inspector, Department of Homeland Security, Office of Inspections

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