



APTA STANDARDS DEVELOPMENT PROGRAM
RECOMMENDED PRACTICE

American Public Transportation Association
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APTA Security Risk Management
Working Group

Conducting Background Investigations

Abstract: This *Recommended Practice* provides transit agencies with guidance for the selection of security background investigation methodologies and the establishment of policies and procedures for conducting background investigations.

Keywords: background, contractor, employee, investigation, security, transit

Summary: This *Recommended Practice* discusses policy and procedural guidelines for the implementation and oversight of background investigations. It includes criteria for selection of security background investigation methodologies based on different factors, including transit agency size, regulatory requirements, resource intensity (cost) and threat conditions. This *Recommended Practice* includes a summary of the relevant provisions in the “Implementing Recommendations of the 9/11 Commission Act of 2007” (Public Law 110-53), as well as Federal Transit Administration and Transportation Security Administration guidelines and recommendations for background checks. It is recommended that transit agencies conduct security background checks consistent with these federal guidelines. Specifically, transit agencies should use the federally approved list of disqualifying criminal offenses when conducting background checks and should ensure that an appropriate redress process is available.

Scope and purpose: This *Recommended Practice* is applicable to all transit agencies, regardless of size. It is not intended to substitute for regulatory or national/homeland security-related requirements promulgated in official emergency preparedness protocols or incident response procedures. This document offers a set of recommendations to assist transit agencies in their implementation of security background investigation systems. The purpose of this *Recommended Practice* is to provide transit agencies with guidance for the selection of security background investigation methodologies, and to establish policies and procedures for conducting investigations.

This Recommended Practice represents a common viewpoint of those parties concerned with its provisions, namely, transit operating/planning agencies, manufacturers, consultants, engineers and general interest groups. The application of any standards, practices or guidelines contained herein is voluntary. In some cases, federal and/or state regulations govern portions of a transit system's operations. In those cases, the government regulations take precedence over this standard. APTA recognizes that for certain applications, the standards or practices, as implemented by individual transit agencies, may be either more or less restrictive than those given in this document.

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1. Types of background checks

Four types of background checks are detailed below. These investigations can help agencies identify issues such as criminal histories or identity theft that would disqualify an individual from consideration for employment or further employment. Factors that should be considered before performing these background checks are described in Sections 2 and 3.

1.1 Social Security number trace

A Social Security number search will verify the applicant's Social Security number (SSN); identify previous residential addresses and/or names used by an applicant for up to seven years; flag SSNs that have not been issued by the Social Security Administration or have been filed with death claims; and detect the fraudulent use of SSNs.

Locating every address where an individual has lived determines which counties' records need to be searched. Many individuals try to avoid disclosure of prior addresses where they may have a criminal violation or problematic employment history. The SSN trace helps employers to detect this sort of information during a standard pre-employment background investigation.

1.2 Nationwide county background check

A nationwide county investigation uses a large number of researchers to obtain current and complete criminal records. Researchers directly visit courthouses to check criminal records at the county level. The Social Security number is used to locate a minimum of seven years of previous addresses, which are used to track undisclosed addresses where the subject has previously resided.

The nationwide county investigation locates criminal records, both felonies and misdemeanors, from courts in other states in addition to the current state of residence. County criminal searches contain both arrest and disposition records. Furthermore, a compliance department evaluates the data to confirm accuracy of subject and adherence to Fair Credit Reporting Act (FCRA) requirements. This search and evaluation technique minimizes vulnerability to career criminal activity and reduces exposure to negligent hiring and discriminatory labor practices litigation.

1.3 Nationwide federal background check

Researchers visit all federal courthouses associated with addresses derived from the SSN search, checking for outstanding warrants, arrests, convictions and any other relevant data that would negate hiring. (This search is similar to the nationwide county investigation, except it is done at federal courthouses.)

1.4 Database criminal background investigation

The database criminal background investigation complements and broadens the county and multi-county criminal background search. However, the use of this investigative tool requires caution, as it is inappropriate for use as a primary criminal search vehicle due to the frequency of data collection and other qualitative limitations. Data features that restrict its utility include the following:

- Records date back at least five years.
- Not all counties in a given state report information to this database.
- It has a limited jurisdictional scope.
- Updates may be done monthly, quarterly or semi-annually.
- Only the latest incarceration information may be available.

In spite of these limitations, this tool produces a relatively comprehensive report created from the largest criminal database available, with more than 300 million offense records covering all 50 states currently online.

2. Federal government requirements and guidelines

A transit agency should consider the requirements and guidelines issued by the Federal Transit Administration (FTA), Transportation Security Administration (TSA) and other government entities before implementing a background check program. In particular, a transit agency should ensure that its program is compliant with the requirements set forth in “Implementing Recommendations of the 9/11 Commission Act of 2007,” which is excerpted in Annex C of this document.

2.1 FTA and TSA guidance on background checks

In 2006, TSA and FTA issued “TSA/FTA Security and Emergency Management Action Items for Transit Agencies,” recommending a number of practices to improve their security. Item 14 in the guidance recommends that operators conduct background investigations on all new frontline operations and maintenance employees, as well as employees and contractors with access to sensitive security information and security critical facilities and systems.

In March 2008, TSA released “Additional Guidance on Background Checks, Redress and Immigration Status,” which contains factors to consider on the recommended scope of and procedures for voluntarily conducted background checks. Specifically, the guidance states that to the extent a transit agency chooses to conduct criminal background checks on employees and contractors, it should consider using the federally established list of disqualifying crimes applicable to hazardous materials drivers and transportation workers at ports (see 49 CFR § 1572.103).

TSA further recommends that transit agencies use an appeal and waiver process similar to the system established for the hazardous material drivers and transportation workers at ports (see 49 CFR Part 1515). An internal redress process for individuals who are adversely impacted can help to ensure both fairness and security. The process would provide an opportunity to correct mistakes in court records or to prove mistaken identity. A redress process also can provide an opportunity to demonstrate rehabilitation or facts surrounding a conviction that mitigate security concerns. Examples of information that may be relevant include the following:

- Circumstances of the disqualifying offense
- Restitution made
- Letters of reference from clergy, employers or probation/parole officers
- Other evidence that bears on a person’s good character

2.2 Security background check requirements in Public Law 110-53

Public Law 110-53, “Implementing Recommendations of the 9/11 Commission Act of 2007,” directs the Department of Homeland Security (DHS) to complete a threat assessment and immigration status check on all public transportation and rail frontline employees. In addition, the law directs DHS to include certain requirements if and when it issues a rule, regulation or directive mandating a public transportation agency or contractor/subcontractor of a public transportation agency or rail carrier to perform a security background check of a covered individual (6 USC 1143 and 49 USC 20109, respectively). The requirements include a list of disqualifying crimes, limitations on look-back periods and requirements for a redress process.

2.2.1 Threat assessments and immigration status checks

Section 1411 of the 9/11 Act requires DHS to complete a name-based security background check against the consolidated terrorist watch list and an immigration status check for all public transportation frontline employees.

2.2.2 Disqualifying offenses and look-back restrictions

If DHS requires transit agencies to conduct background checks, then P.L. 110-53 requires that transit agencies be required to use the federally established list of disqualifying crimes applicable to hazardous material drivers and transportation workers at ports. Under these rules, transit agencies would be prohibited from making an adverse employment decision, including removal or suspension of the employee, unless it is determined that the employee:

1. Has been convicted of, has been found not guilty of by reason of insanity, or is under want, warrant or indictment for a permanent disqualifying criminal offense listed in 49 CFR Part 1572;
2. Was convicted of or found not guilty of by reason of insanity or an interim disqualifying offense listed in 49 CFR Part 1572, within seven years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check; or
3. Was incarcerated for an interim disqualifying criminal offense listed in 49 CFR Part 1572 and released from incarceration within five years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check.

Permanent disqualifying offenses are listed in 49 CFR § 1572.103.

2.2.3 Redress process

If DHS requires a transit agency to conduct security background checks on employees, then P.L. 110-53 requires that DHS provide an adequate redress process consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation workers at ports. Further, DHS/TSA would have authority to issue appropriate remedies, including reinstatement of an affected employee.

Under the appeals and waiver process established for hazmat and port workers, an employee has 60 days to initiate an appeal of an adverse employment decision taken as a result of information obtained during a security background check. At that time, an employee may request copies of the information obtained during the security background check. After receiving that information, the employee has an additional 60 days to respond to the information and to provide additional information to dispute erroneous information.

TSA, which is the agency responsible for conducting security background checks on hazmat and port workers, must issue a final determination on the employee's appeal within 60 days of receiving the employee's response. While the hazmat and port regulations place these requirements on TSA, it can be presumed that in passing P.L. 110-53, Congress intended these same requirements to apply to transit agencies.

In addition to the appeal requirements, the hazmat and port regulations provide a process for granting waivers where an employee has committed a permanent or interim disqualifying offense, but where it can be determined that the employee does not pose a security threat. In considering whether or not a waiver should be granted, the following factors should be considered:

- The circumstances of the disqualifying act or offense

- Restitution made by the employee
- Any federal or state mitigation remedies
- Court records or official medical release documents indicating that the applicant no longer lacks mental capacity
- Other factors that indicate that the employee does not pose a security threat.

Decisions on an employee's request for a waiver must be made within 30 days.

Under the hazmat and port regulations, denials of appeals and waiver requests can be appealed to an administrative law judge (ALJ). ALJ decisions may then be appealed to the TSA final decision maker, and those decisions can be appealed to a court of law.

3. Considerations for conducting background investigations

Background investigation of current and prospective employees presents a number of challenges. Preeminent among these is ensuring that, whatever the system or approach selected, transit agency policies and requirements control implementation and routine operational decisions. This means ensuring that a cost-effective background check system is implemented, consistent with the scale of the transit agency's operations. Programs and procedures must be developed that integrate employee and contractor background investigations with existing human resources and security plans. Achieving this goal requires careful planning, potentially involving the use of pilot tests on segments of an employee population in order to tailor a turnkey system to a transit agency's particular needs.

3.1 Background investigation methodologies

Selection of appropriate background investigation approaches requires a clear statement of transit agency requirements and the identification of unique factors that may complicate implementation of a new system. Such factors may include the following:

- Legal and regulatory requirements unique to a particular location (e.g., New York City)
- Alert-based exceptions to agency-wide security rules and regulations
- Interoperability concerns raised by security and emergency preparedness collaboration with neighboring jurisdictions and partner transit agencies

Section 1 identifies a number of factors that can serve as decision-making criteria for selection of a particular investigation system and/or vendor. Two broad approaches to background investigations exist. These are periodic mass-recurrent background investigations, as well as initial-hire and other aperiodic background investigations. The next section describes each approach in greater detail.

3.1.1 Background investigation data quality and frequency

This type of background investigation methodology focuses on validating information provided by a job applicant or a candidate for promotion to a new position within an organization. Industry standard initial hire background checks typically utilize data resellers to obtain personal identifying information. Concerns with data quality may recommend the use of primary data sources (PDSs) if possible, if not in the initial checks, then in subsequent data quality audits.

Current industry practice is to use data brokers as information sources used during background checks. Increasingly common are proprietary solutions that use PDSs, which amounts to researchers physically consulting primary public records repositories (i.e., county, state and federal courthouses) during a background checks to verify addresses and other information provided by a potential employee or contractor.

Subsequent to the investigation, if no disqualifying information surfaces (as determined by policy) a positive (favorable) security result is communicated to the human resources department for further deliberation and decision-making. Notwithstanding the particular background check method selected, all prospective employees and contractors should be subject to *some* investigation before being allowed access to critical areas or access-controlled premises and business systems.

Many organizations have policies that require an employee or volunteer to notify them of an arrest. However, this is not always the case. Therefore, a successful background check program consists of ongoing background checks. The transit agency must define the frequency for themselves, taking into account the costs and potential benefits. Individuals who hold security clearances are reinvestigated every five years. There are also advantages to performing background checks on an aperiodic basis.

3.1.2 Considerations for selection among background investigation methodologies

This section describes factors that should be taken into account when selecting a background check methodology.

Cost

Factors influencing cost derive from both the requirements of the organization and the characteristics of the applicant. For example, if a person has been a local resident for many years, it may be necessary to consult only a single data source for high-confidence identity and background verification. Background checks may be more time consuming if the individuals have resided in various jurisdictions or foreign locations. Many times, it is not possible to determine the frequency of an individual's changed addresses until an SSN trace is obtained. From this trace, a decision can be made on the level of further investigation that is necessary.

Size of transit system

The resources available to conduct employee background checks are predictably limited for some transit systems. In these cases, consideration should be given to partnering with another public agency in order to gain access to a more rigorous and resource rich background check/human resources system. Another alternative is to ask detailed questions of a prospective background investigation service provider concerning the following:

- Any problems ensuring data quality.
- Clarity on the comprehensiveness of background investigations (i.e., clarity on time-limited, geography-limited records checks, etc.).
- Pricing and timeliness tradeoffs. For example, for a charge of perhaps \$50, a very comprehensive background check may be achieved. However, a \$10 background check with a more limited geographic scope may be sufficient for more limited applications such as temporary workers. Benchmarks of price/scope and timeliness help a transit agency to understand the services being purchased, tailoring them to their particular needs as much as is possible.

Transit agencies should attempt to anticipate future requirements for security-based background investigation, including both contractor checks *and* employee reinvestigation tasks.

Type of transit system

Transit agencies vary in their size and makeup, making different background check options appropriate for some but not others. For public agencies, policy direction on the handling of personal identifying information on employees may restrict the availability of private data broker-centric alternatives for background investigations. In the absence of clear legal guidance, public agencies may wish to adopt a conservative approach to the use of outsourced background check services, favoring internal alternatives based on federal

or state-operated background investigation methods. The search for more economical alternatives may suggest a private sector option. These should be explored in the knowledge that efficiencies may come at a significant potential cost (see “External vs. internal administration of background investigation” below).

Smaller transit agencies might seek to leverage the skills and resources of neighboring jurisdictions to meet their own needs. This will raise the level of background investigations available to them, while at the same time preserving scarce resources for other purposes. Smaller agencies also may wish to consider DHS threat and vulnerability information as criteria for the level of background checks necessary for their operations. Selecting a methodology based on threat and vulnerability assessments offers an efficient way of managing risk, helping to facilitate the integration of smaller operations into regional and national surface transportation mode terrorism-risk management programs.

Contractor-centric applications

Contractors are commonly treated as exceptions to a transit agency’s background check requirements. Where a formal requirement for background checks is articulated by a hiring transit agency, it will frequently emphasize cost concerns over other issues, such as comprehensiveness and validated data-source quality. Homeland security concerns bring into question the advisability of this approach. It appears defensible to state a basic principle: Whatever contractor-specific background investigations are performed should at least match the baseline checks implemented for permanent employees. Based on existing agency policy and sensitivity of the position, background check requirements for contract employees should either be built into the contract process or performed directly by the agency.

Permanent employee-centric applications

Permanent employees require the most thorough background checks, because they have the greatest access to critical transit agency information, facilities and, ultimately, passengers. The scope and intensity of background investigation must be determined by policy. The governing approach should emphasize completeness of background checks based on high-quality data sources. Data obtained from a PDS is to be preferred over that gained from data brokers. If third-party data or background investigation administration is present, then PDS access should be used as a check on data quality.

Novel applications

Programs implemented for background checks should allow for an evolution of the needs and requirements of the transit agency. Where possible, industry standard solutions should be adopted, reserving a potential for the adoption of future alternatives.

Regulatory requirements

Current regulatory requirements on background investigations vary widely. Privacy concerns offer a framework for the handling of sensitive personal identifying information. In the absence of legal mandates, a standards-based response presents a conservative approach to management of background investigations.

Standards must be developed in the context of the clear awareness that legal restrictions on transit agency flexibility in investigating the backgrounds of current employees may be significant. Risks regarding violations of collective bargaining agreements, or third-party legal liability, must be carefully researched before significant changes in methods can be implemented.

External vs. internal administration of background investigation

Background investigations are a core function, most commonly performed by a transit agency’s human resources department. This function is also frequently contracted out to an external vendor. Both approaches have advantages and disadvantages.

For some agencies, external contracting offers access to dedicated background investigation expertise and the possibility of leveraging the skills and resources of a large organization to local benefit. However, such outsourcing places personal identifying information on employees in the hands of non-transit agencies, opening the potential for security problems.

Internal operation of background investigations retains for the organization control over employee personal identifying information, but it may well limit the scope of background checks. A typical transit agency will approach a third-party data aggregator to support an internal background check activity. As was observed in “Permanent employee-centric applications,” some problems can flow from the use of non-PDS data. Nonetheless, an internal background investigation operation could seek to identify PDS alternatives for investigation applications or could select a vendor to do so. Under these circumstances, it is possible that automated systems based on PDSs could approximate the price advantages commonly attributed to data resellers and external background investigation firms. Thorough research is the best way to identify low-cost options for the performance of this critical function.

3.2 Common baseline background investigation requirements

The following list of essential elements should be addressed in any implementation of transit agency personnel security background investigations:

- High-quality access to PDSs used as a primary information repository, or as data-quality check on a third-party background investigation application.
- Geographic and time-sensitive searches for addresses of potential employees and employees subject to reinvestigation.
- Policies and protocols for the handling of disqualifying information.
- Policies and protocols for the handling of inadvertent leaks of personal identifying information that could lead to identity theft.
- Protocols for adjudicating background investigations that uncover ambiguous information.
- Policies and procedures for implementing aperiodic reinvestigations for critical job categories.
- Protocols for confirming and offering waivers to ordinary background check requirements to employees claiming possession of U.S. federal government security clearances.

4. Recommended background investigation practices

Taking into account the factors listed above, policies and procedures should be established that include the following recommendations:

- A background investigation program is an essential part of a transit agency’s risk management plan. A transit agency, by preventively identifying individuals who, based on past behavior, could be a safety risk, has the potential to limit its liability from the individual’s actions. Therefore, an agency’s background check program should be as in depth and as frequent as possible, based on the factors discussed in Section 3.1.2.
- Background investigations should be conducted on all frontline employees, maintenance personnel and employees with access to sensitive security information and security-critical facilities and systems.
- Both contractors and permanent employees should receive the same level of background investigation. The transit agency is responsible for contract oversight to be sure the required checks are being done for contracted employees.
- When considering background investigation policies, collaborate with local law enforcement agencies in determining appropriate investigation levels.

- Background checks should take place at both initial hire and afterward in accordance with the known risk conditions confronting a transit agency.
- Background checks should, when possible, be undertaken using PDSs, with ancillary information used only where price and/or other factors make PDSs unavailable.
- Transit agencies should consider the federally approved list of permanent and interim disqualifying offenses in making employment determinations based on security background checks.
- Transit agencies should seek to collaborate with neighboring transit or governmental entities to ensure that their background checks take advantage of the purchasing power resident in larger software applications, and to promote information sharing among agencies.
- Background checks should use information sources that are national in scope.
- Contractors selected to provide background investigation services should be certified, either by an industry body or an insurer, or at least registered by the state where the transit agency is based, and should be periodically reviewed for both information quality and sourcing.
- Transit agencies should provide employees with a redress, appeals and waiver process similar to that provided in the federal regulations governing hazmat and port employees.
- The background investigation program should be consistent with the transit agency's labor agreements.

Annex A: Future risk avoidance and risk management concepts in background investigations

The governing federal government standard for and background checks is provided by HSPD-12. For the text of this directive, see http://www.dhs.gov/xabout/laws/gc_1217616624097.shtm.

A description of the FBI National Instant Background Check System (NICS) is available at <http://www.fbi.gov/hq/cjisd/nics/index.htm#generalinfo>.

Annex B: The statutory basis for background investigations – information resources

FCRA (the Fair Credit Reporting Act)

Background information on FCRA is available at <http://www.ftc.gov/os/statutes/031224fcra.pdf>.

The National Instant Background Check System

<http://www.fbi.gov/hq/cjisd/nics/nicsindex.htm>

Criminal records checks via the U.S. State Department

http://travel.state.gov/travel/tips/emergencies/emergencies_1201.html

“Additional Guidance on Background Checks, Redress and Immigration Status”

http://www.tsa.gov/assets/pdf/guidance_employee_background_checks.pdf

Annex C: Implementing Recommendations of the 9/11 Commission Act of 2007

Public Law 110-53
110th Congress

SEC. 1411. THREAT ASSESSMENTS.

Not later than 1 year after the date of enactment of this Act, the Secretary shall complete a name-based security background check against the consolidated terrorist watch list and an immigration status check for all public transportation frontline employees, similar to the threat assessment screening program required for facility employees and longshoremen by the Commandant of the Coast Guard under Coast Guard Notice USCG-2006-24189 (71 Fed. Reg. 25066 (April 8, 2006)).

SEC. 1414. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS FOR PUBLIC TRANSPORTATION.

(a) **Definitions.**—In this section, the following definitions apply:

- (1) Security background check.—The term “security background check” means reviewing the following for the purpose of identifying individuals who may pose a threat to transportation security, national security, or of terrorism:
 - (A) Relevant criminal history databases.
 - (B) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.
 - (C) Other relevant information or databases, as determined by the Secretary.
- (2) Covered individual.—The term “covered individual” means an employee of a public transportation agency or a contractor or subcontractor of a public transportation agency.

(b) **Guidance.**—

- (1) Any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall contain recommendations on the appropriate scope and application of such a security background check, including the time period covered, the types of disqualifying offenses, and a redress process for adversely impacted covered individuals consistent with subsections (c) and (d) of this section.
- (2) Not later than 60 days after the date of enactment of this Act, any guidance, recommendations, suggested action items, or any other widely disseminated voluntary action item issued by the Secretary prior to the date of enactment of this Act to a public transportation agency or a contractor or subcontractor of a public transportation agency relating to performing a security background check of a covered individual shall be updated in compliance with paragraph (b)(1).
- (3) If a public transportation agency or a contractor or subcontractor of a public transportation agency performs a security background check on a covered individual to fulfill guidance issued by the Secretary under paragraph (1) or (2), the Secretary shall not consider such guidance fulfilled unless an adequate redress process as described in subsection (d) is provided to covered individuals.

(c) **Requirements.**—If the Secretary issues a rule, regulation or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, then the Secretary shall prohibit a public transportation agency or contractor or subcontractor of a public transportation agency from making an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive with respect to a covered

individual unless the public transportation agency or contractor or subcontractor of a public transportation agency determines that the covered individual—

- (1) has been convicted of, has been found not guilty of by reason of insanity, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;
- (2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date that the public transportation agency or contractor or subcontractor of the public transportation agency performs the security background check; or
- (3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the public transportation agency or contractor or subcontractor of a public transportation agency performs the security background check.

(d) Redress Process.—If the Secretary issues a rule, regulation, or directive requiring a public transportation agency or contractor or subcontractor of a public transportation agency to perform a security background check of a covered individual, the Secretary shall—

- (1) provide an adequate redress process for a covered individual subjected to an adverse employment decision, including removal or suspension of the employee, due to such rule, regulation, or directive that is consistent with the appeals and waiver process established for applicants for commercial motor vehicle hazardous materials endorsements and transportation workers at ports, as required by section 70105(c) of title 49, United States Code; and
- (2) have the authority to order an appropriate remedy, including reinstatement of the covered individual, should the Secretary determine that a public transportation agency or contractor or subcontractor of a public transportation agency wrongfully made an adverse employment decision regarding a covered individual pursuant to such rule, regulation, or directive.

(e) False Statements.—A public transportation agency or a contractor or subcontractor of a public transportation agency may not knowingly misrepresent to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check. Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a regulation that prohibits a public transportation agency or a contractor or subcontractor of a public transportation agency from knowingly misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

(f) Rights and Responsibilities.—Nothing in this section shall be construed to abridge a public transportation agency's or a contractor or subcontractor of a public transportation agency's rights or responsibilities to make adverse employment decisions permitted by other Federal, State, or local laws. Nothing in the section shall be construed to abridge rights and responsibilities of covered individuals, a public transportation agency, or a contractor or subcontractor of a public transportation agency under any other Federal, State, or local laws or collective bargaining agreement.

(g) No Preemption of Federal or State Law.—Nothing in this section shall be construed to preempt a Federal, State, or local law that requires criminal history background checks, immigration status checks, or other background checks of covered individuals.

(h) Statutory Construction.—Nothing in this section shall be construed to affect the process for review established under section 70105(c) of title 46, United States Code, including regulations issued pursuant to such section.

Section 1512. Railroad Carrier Assessments and Plans

(e)(2) Security Coordinator Requirements.—The Secretary shall require that the individual serving as the security coordinator ... is a citizen of the United States. The Secretary may waive this requirement with respect to an individual if the Secretary determines that it is appropriate to do so based on a background check of the individual and a review of the consolidated terrorist watchlist.

References

Public Law 110-53, “Implementing Recommendations of the 9/11 Commission Act of 2007,” August 2007. <http://intelligence.senate.gov/laws/pl11053.pdf>

Transportation Security Administration and Federal Transit Administration, “TSA/FTA Security and Emergency Management Action Items for Transit Agencies,” 2006. <http://transit-safety.volpe.dot.gov/security/securityinitiatives/ActionItems/default.asp>

Transportation Security Administration, “Additional Guidance on Background Checks, Redress and Immigration Status,” 2008. http://www.tsa.gov/assets/pdf/guidance_employee_background_checks.pdf

Definitions

background investigation: The process of looking up and compiling criminal records, commercial records, and financial records of an individual.

background check: see background investigation

contractor: A third-party business firm or individual not employed directly by a transit agency, who is engaged to provide a service or to perform an activity under contract.

data brokers: Commercial entities that offer databases containing personal identifying information for sale.

data resellers: Commercial entities that sell the contents of databases containing commercial and value-added information directly to the end user (rather than simply to other data brokers).

disqualifying/derogatory information: Data and/or behavior that potentially disqualify an individual from employment or access to the premises or business systems of a transit agency, according to established policy guidelines.

expungement of records: The removal of police and court records from public inspection. If an individual has been charged with a crime, including a traffic violation for which a term of imprisonment may be imposed, he or she may file a petition for expungement if the record meets the necessary factor(s), depending upon the jurisdiction.

Fair Credit Reporting Act (FCRA): The federal legislation governing the collection, dissemination and use of consumer credit information. The law provides the framework within which data resellers’ activities are governed. FCRA was passed in 1992 and was amended in 2003 to allow individual consumers to receive a free annual credit report in order to verify the accuracy of the information contained.

Homeland Security Presidential Directive 12: HSPD-12 creates a common identification standard for federal employees and contractors. This standard is mandatory for federal departments and was signed by President Bush on August 27, 2004. Associated with this standard are common background investigation protocols based on the National Agency Check and Investigation (NACI), and rules governing the distribution and dissemination of personal identifying information generated during a background check.

periodic background investigation: Checks that take place on initial hire and then according to a schedule stipulated by transit agency policy.

primary data sources (PDSs): Sources that hold original records of the disposition of people covered by transit agency background investigation policies. This includes information on employees and potential employees, including agency executives and board members.

risk avoidance: An approach to background investigations that emphasizes the filtering of a prospective employee population at the point of initial hire so as to ensure that certain risk factors and behaviors are avoided.

risk management: An approach to background investigations that emphasizes changes in risk exposure flowing from an individual’s life experiences and employment background during a career. The mechanism through which risks are managed is the recurrent application of computer database queries on the background and behavior of current and prospective employees (see the discussion of mass-recurrent background investigation). A guiding assumption in this methodology is that risk factors present at the time of initial hire are not necessarily accurate predictors of future behavior. Longer-term risk management, taking into account behavioral and performance changes over time, is viewed as a more effective means for managing the potential risk to the enterprise posed by existing employees.

“sealing” criminal records: The procedure under which an individual can petition the court to prevent his or her criminal record from being made available to the public. Petitions of this type are available in most states and involve an applicant showing, among other extenuating factors, that he or she was not charged, that the case against him or her was completely dismissed, or that he or she was acquitted of all charges.

security clearance: A status granted to individuals allowing them access to classified information. The term “security clearance” is also sometimes used in private organizations that have a formal process to vet employees for access to sensitive information.

Abbreviations and acronyms

ALJ	administrative law judge
DHS	Department of Homeland Security
FBI	Federal Bureau of Investigation
FCRA	Fair Credit Reporting Act
FTA	Federal Transit Administration
HSPD	Homeland Security Presidential Directive
NICS	National Instant Background Check System (operated by the FBI)
NACI	National Agency Check and Inquiry
PDS	primary data source
P.L.	public law
SSN	Social Security number
TSA	Transportation Security Administration