



APTA SS-SRM-RP-004-11, Rev. 1

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APTA Security Risk Management
Working Group

Conducting Background Screening Investigations

Abstract: This recommended practice provides transit agencies with guidance for selecting security background screening investigation methodologies and establishing policies and procedures for conducting background screening investigations.

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

Summary: This recommended practice discusses policy and procedural guidelines for the implementation and oversight of background screening investigations. It includes criteria for selection of security background screening 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 screening investigations 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 screening investigation systems. The purpose of this recommended practice is to provide transit agencies with guidance for the selection of background screening investigation methodologies, and to establish policies and procedures for conducting investigations.

This document 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 recommended practices or guidelines contained herein is voluntary. APTA standards are mandatory to the extent incorporated by an applicable statute or regulation. In some cases, federal and/or state regulations govern portions of a transit system’s operations. In cases where there is a conflict or contradiction between an applicable law or regulation and this document, consult with a legal adviser to determine which document takes precedence.

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Introduction

This introduction is not part of APTA SS-SRM-RP-004-11, Rev. 1, "Conducting Background Screening Investigations or 'Security Background Checks'"

APTA recommends the use of this document by:

- individuals or organizations that operate mass transit systems;
- individuals or organizations that contract with others for the operation of mass transit systems; and
- individuals or organizations that influence how mass transit systems are operated (including but not limited to consultants, designers and contractors).

Conducting Background Screening Investigations

1. Types of background screening investigations

Four types of background screening investigations 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 screening investigations are described in Sections 2 and 3.

1.1 I-9 employment eligibility verification

Prior to employing an individual in the United States, the Department of Homeland Security requires the following:

All U.S. employers must properly complete Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. Both employees and employers (or authorized representatives of the employer) must complete the form. On the form, an employee must attest to his or her employment authorization. The employee must also present his or her employer with acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and to relate to the employee and record the document information on the Form I-9.

Reasonable and prudent investigations processes will address the I-9 attestation and associated confirmation of work status prior to proceeding with further investigations.

1.2 Social security number trace

A social security number trace will verify the applicant's 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 require search. 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 detect this sort of information during a standard pre-employment background screening investigation.

1.3 County-level background screening investigation

A county-level background screening investigation obtains current and complete criminal records from counties in which the subject of the investigation has resided. The SSN 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-level 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

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and disposition records. Furthermore, the individual(s) or department responsible for compliance should evaluate the data to confirm accuracy while adhering to Fair Credit Reporting Act requirements. This search and evaluation technique may minimize vulnerability to criminal activity, particularly from reoffenders, and reduce negligent hiring and discriminatory labor practices.

1.4 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 preclude hiring. This search is like the nationwide county investigation, except that it is done at federal courthouses. Where travel is challenging and/or restricted and systems are available to conduct a thorough investigation without visiting courthouses, use of these systems may be considered an acceptable alternative.

1.5 Database criminal background screening investigation

The database criminal background screening investigation complements and broadens the county and multicounty 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 each state report information to this database.
- It has a limited jurisdictional scope.
- Updates may be done monthly, quarterly or semiannually.
- Only the latest incarceration information may be available.

Despite 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.

1.6 Social media profiles review (optional)

Social media investigations include a comprehensive review of a prospective employee's open-source information to identify potential areas of concern. Often referred to as a personal information exposure assessment, the purpose of this type of investigation is to identify comments and/or trends that may pose a problem for the agency from a public relations standpoint or, more importantly, may identify radicalization of the individual in a manner that may pose a potential risk to the traveling public. Agencies should work closely with stakeholders to identify appropriate items to consider in their evaluation of an individual's ideologies.

Further, the information should be viewed from the eyes of a potential adversary to identify whether the individual's level of information sharing poses a risk to information systems and/or assets by way of easing social engineering, spear-phishing, and/or answering password reset questions or bypassing other security measures. It is imperative that the criteria not be politically charged and/or motivated, but instead remain focused on the safety and security of the public and the public's view of the agency as a safe means of transportation.

2. Federal government requirements and guidelines

A transit agency should consider the requirements and guidelines issued by the Federal Transit Administration, Transportation Security Administration 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 Appendix B of this document.

2.1 FTA and TSA guidance on background checks

In September 2014, the FTA issued a revised version of the “FTA Security and Emergency Preparedness Action Items for Transit Agencies” document, recommending several practices to improve security. Item 14 in the guidance recommends that operators conduct background screening investigations on all new frontline operations and maintenance employees, and employees, contractors and vendors with access to sensitive security information (SSI) and security-critical facilities and systems. Further, agencies should develop specific criteria for investigations based on job type and expected access to systems and information.

TSA recommends that transit agencies use an appeal and waiver process like the system established for 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 (P.L.) 110-53, “Implementing Recommendations of the 9/11 Commission Act of 2007,” directs 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 that a public transportation agency or contractor/subcontractor of a public transportation agency or rail carrier 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 lookback 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 lookback restrictions

If DHS requires transit agencies to conduct background checks, then P.L. 110-53 requires that transit agencies 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:

- has been convicted of, has been found not guilty of by reason of insanity or is under warrant, indictment for a permanent disqualifying criminal offense listed in 49 CFR Part 1572;
- 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
- 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 because 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 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. When considering granting a waiver, 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 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 screening investigations

Background screening investigation of current and prospective employees presents several challenges. Preeminent among these challenges 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 and consistent with the scale of the transit agency's operations. Programs and procedures must be developed that integrate employee and contractor background screening 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 to tailor a turnkey system to a transit agency's particular needs.

3.1 The employment application

The background screening investigations process should begin at the incipient stages of the employee screening process with the employment application playing a key role in framing the investigative process. Items identified in the employment application include but are not limited to full and complete name, aliases, current and prior addresses, education (level, institutions, dates, final status), previous employment, military service, and discharge type. The application should not be shown to have any potential impact on or otherwise call in to question the employer's compliance with protected status under federal employment discrimination regulations, guidance and precedence.

3.2 Background screening investigation methodologies

Selection of appropriate background screening 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 (federal, state and local)
- 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 of this document identifies factors that can serve as decision-making criteria for selection of a particular investigation system and/or vendor. Two broad approaches to background screening investigations exist: periodic mass-recurrent background screening investigations, as well as initial-hire and other aperiodic background screening investigations. The next section describes each approach in greater detail.

3.2.1 Background screening investigation data quality and frequency

This type of background screening investigation methodology focuses on validating information provided by a job applicant or a candidate for promotion to a new position within an organization. Where practical, the use of primary data sources (PDS) is recommended. If these are not available to the agency, information from third parties and data resellers may be utilized; however, they should be reviewed for quality, accuracy and completeness.

Increasingly common are proprietary solutions that use PDS, which amounts to researchers physically consulting primary public records repositories (i.e., county, state and federal courthouses) during a background check to verify addresses and other information provided by a potential employee or contractor.

After 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 background check method selected, all prospective employees and contractors should be subject to a background screening investigation that is commensurate with their level of access to critical areas, access-controlled premises and business systems. A risk assessment conducted by the agency's security department or designees should indicate critical areas and minimum levels of protection and surety required to allow access.

A comprehensive background screening investigation program should consider including recurring background checks. The transit agency should define the frequency of the recurring investigations, based upon the criticality of the information, assets, systems, etc. to which the employee has access. Additionally, it is recommended that agencies have a policy in place that requires employees to report potentially adverse items such as arrests, summonses and other court activities (criminal or civil) to the agency.

3.2.2 Considerations for selecting a background screening investigation methodology

This section describes factors that should be considered when selecting a background check methodology.

3.2.2.1 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.

3.2.2.2 Size of transit system

In cases where proprietary investigative resources are limited, consideration should be given to partnering with another public agency to gain access to a more rigorous and resource-rich background check/human resources system. Another alternative is to contract an appropriately licensed investigations firm to conduct the investigations and provide a comprehensive report to the agency. When considering prospective investigations firms, the agency would benefit from asking detailed questions concerning the following:

- Previous or current litigation involving the firm's investigatory practices.
- Foreign ownership and/or influence.
- Problems ensuring data quality and how they have been remediated.
- Clarity on the comprehensiveness of background screening investigations (clarity on time-limited, geography-limited records checks, etc.).
- Pricing and timeliness trade-offs. The cost of security background screening varies based upon the level of intensity (based on risk) required for the individual being screened. Agencies should leverage procurement options and alternatives to achieve the best pricing available given the detail required. The General Services Administration's Multiple Award Schedule, Category 561611, provides insight into current and expected costs of screening for budgetary purposes. Benchmarks of price/scope and timeliness help a transit agency to understand the services being purchased, tailoring them to their needs as much as is possible.

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

3.2.2.3 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 screening 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 screening 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 Section 3.2.2.7).

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 screening 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.

3.2.2.4 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 screening 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.

3.2.2.5 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 screening 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 screening investigation administration is present, then PDS access should be used as a check on data quality.

3.2.2.6 Regulatory requirements

Current regulatory requirements on background screening 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 screening 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.

3.2.2.7 External vs. internal administration of background screening investigations

Background screening 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 screening 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 screening 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 observed in Section 3.2.2.5, some problems can flow from the use of non-PDS data.

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Nonetheless, an internal background screening 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 PDS could approximate the price advantages commonly attributed to data resellers and external background screening investigation firms. Thorough research is the best way to identify low-cost options for the performance of this critical function.

3.3 Common baseline background screening investigation requirements

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

- comprehensive employment application
- high-quality access to PDS, used as a primary information repository or as a data-quality check on a third-party background screening 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 screening 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

3.4 Recommended background screening investigation practices

Considering the factors listed above, transit agencies should establish policies and procedures that include the following recommendations:

- A background screening investigation program is an essential part of a transit agency's risk management plan. By preventively identifying individuals who, based on past behavior, could be a safety risk, a transit agency 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 3.2.2.
- Background screening investigation processes should be documented and include the method/type of background check utilized, positions that require background checks, who is responsible for conducting the investigation, and other factors of consideration (e.g., policies restricting the commencement of employment until after the investigation is complete).
- Background screening investigation processes should be reviewed by an agency legal professional to confirm that procedures are consistent with applicable statutes and regulations.
- Background screening investigations should be based on employee type and responsibility and include screening criteria (e.g., disqualifying conditions) based on job function, required level of access and/or responsibility.
- Background screening investigations should be conducted on all covered persons with access to SSI and security-critical facilities and systems.
- Background screening investigations' type and level of detail should be determined by the risks identified by the agency for the role or job function of the individual(s) being hired.
- Both contractors and permanent employees should receive the same level of background screening investigation. The transit agency is responsible for contract oversight, conducting an appropriate level of background check on relevant contract employees or building appropriate background check criteria into the bid process and establishing a method of verifying/auditing background checks.

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- When considering background screening investigation policies, collaborate with local law enforcement agencies in determining appropriate investigation levels.
- Background checks may 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 PDS, with ancillary information used only where price and/or other factors make PDS 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 screening 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. They should be periodically reviewed for both information quality and sourcing.
- Transit agencies should provide employees with a redress, appeals and waiver process like that provided in the federal regulations governing hazmat and port employees.
- The background screening investigation program should be consistent with the transit agency's labor agreements.
- The background screening investigation program should be consistent with state and local employment laws.

References

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

Transportation Security Administration and Federal Transit Administration, “TSA/FTA Security and Emergency Preparedness Action Items for Transit Agencies,” September 2014.
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/508_new_top_17.pdf

Definitions

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

background check: See *background screening 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.

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. The 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 George W. Bush on Aug. 27, 2004. Associated with this standard are common background screening 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 screening investigation: Checks that take place on initial hire and then according to a schedule stipulated by transit agency policy.

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

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risk management: An approach to background screening 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 screening 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.

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
- NACI** National Agency Check and Inquiry
- PDS** primary data sources
- P.L.** public law
- SSI** sensitive security information
- SSN** social security number
- TSA** Transportation Security Administration

Document history

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Appendix A: Background investigations resources

FCRA (the Fair Credit Reporting Act): <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act>

The National Instant Background Check System: <https://www.fbi.gov/services/cjis/nics>

Criminal records checks via the U.S. State Department: <https://travel.state.gov/content/travel/en/international-travel/while-abroad/criminal-record-checks.html>

Security and Emergency Preparedness Action Items for Transit Agencies:
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/508_new_top_17.pdf

Appendix B: 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

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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.

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(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.

SEC. 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.