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Security Clearance Process: Answers to Frequently Asked Questions

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Summary

This report provides a primer on some of the fundamental aspects of the security clearance process, using a "Frequently Asked Questions" format.

A security clearance is a determination that an individual—whether a direct federal employee or a private contractor performing work for the government—is eligible for access to classified national security information. A security clearance alone does not grant an individual access to classified materials. Rather, a security clearance means that an individual is eligible for access. In order to gain access to specific classified materials, an individual should also have a demonstrated "need to know" the information contained in the specific classified materials.

There are three levels of security clearances: Confidential, Secret, and Top Secret, which correspond to the levels of sensitivity of the information that a cleared individual will be eligible to access. In addition, there are two major categories of classified information that require additional handling and access restrictions—Sensitive Compartmented Information (SCI), which includes intelligence sources, methods, and processes, and Special Access Programs (SAPs), which are highly sensitive projects and programs. These categories exist for classified information that has been deemed particularly vulnerable. Eligibility standards and investigative requirements for access to SCI and SAPs are higher than for access to information otherwise classified at the same level, which further restricts the number of individuals eligible for access.

Federal employees and private contractors must be cleared in order to gain access to classified materials. An individual may not obtain or initiate a security clearance on his or her own. A sponsoring federal agency initiates the process and will make the final security clearance determination based on a background investigation.

Although the process involves a number of stages, the key steps to obtaining and maintaining a security clearance are (1) agency sponsorship and submission of clearance application materials; (2) a background investigation, the extent of which may vary by level of clearance; and (3) adjudication to determine whether an individual is deemed eligible for access. Adjudication and final clearance determinations are generally handled by the sponsoring agency. To maintain a security clearance, an individual is also subject to periodic reinvestigations and, more recently, continuous monitoring and evaluation of his or her background.

Previously, the Office of Personnel Management, Federal Investigative Services (OPM-FIS) oversaw approximately 95% of all background investigations. On October 1, 2016, President Obama transferred responsibility for investigative work and related services from OPM-FIS to the newly established National Background Investigations Bureau (NBIB). Like OPM-FIS, the NBIB conducts some of the investigative work itself and contracts the rest out to private firms.

Typically, the costs of a background investigation, including background investigations of private contractors, are paid for by the requesting agency. While the final determination to grant or deny a security clearance is typically made by the requesting agency, with certain exceptions a security clearance granted by one agency must be accepted by other agencies. It is difficult, however, to determine the degree to which reciprocity occurs between agencies.

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Introduction

The security clearance process is designed to determine the trustworthiness of an individual prior to granting him or her access to classified national security information. The process has evolved since the early 1950s, with antecedents dating to World War II.[1] This report highlights some of the fundamental aspects of the process by providing answers to frequently asked questions.[2]

What Is a Security Clearance?

A security clearance[3] is a determination that an individual—whether a federal employee or a private contractor—is eligible for access to classified national security information.[4] A security clearance may only be granted by a federal agency, and generally only upon completion of a background investigation. Using information obtained during the background investigation, the agency will make a determination as to the character and trustworthiness of the individual, and decide if he or she will be eligible for access to classified national security information.

A security clearance alone does not grant an individual access to specific classified materials. Rather, a security clearance means that an individual is eligible for access. In order to gain access to specific classified materials, an individual should also have a demonstrated "need to know" the classified information for his or her position and policy area responsibilities. In addition, prior to accessing classified information, an individual must sign an appropriate nondisclosure agreement.[5]

What Is the Difference Between a Security Clearance and a Suitability Check?

A security clearance, as noted above, is designed to determine eligibility for access to classified information. A suitability check (or suitability determination), may involve many of the same investigative elements as a security clearance investigation. A suitability check, however, is

[1] Executive Order 10450, "Security Requirements for Government Employment," 18 *Federal Register* 2489, was issued by President Eisenhower on April 27, 1953. E.O. 10450 established that "the appointment of each civilian officer or employee in any department or agency of the government shall be made subject to investigation." While E.O. 10450 has been amended by subsequent executive orders, it has never been revoked and remains in effect.

[2] Generally, this report will speak about the security clearance process broadly. Where appropriate, any differences in the process that result from variances in the levels of security clearance will be noted. For example, the background investigation (and associated cost) will vary based on the level of security clearance being sought. These differences are discussed later in the report, under the sections titled "What Are the Major Aspects of the Security Clearance Process?" and "Who Pays for Background Investigations?".

[3] The term *security clearance* is not defined in statute. This definition is derived from executive orders, statutes, and directives where the term *security clearance* is used but not defined.

[4] The government also issues security clearances (also referred to as *facility clearances*) to non-government facilities, such as university laboratories or commercial production facilities, within which contract work for the government is performed. The procedures and policies for granting facility clearances are outside the scope of this report. It is important to note, however, that each individual who performs work within a cleared facility must hold a security clearance if the work requires access to classified information. For information about the facility clearance process, see the Department of Defense (DOD), Defense Security Service's publications "Checklist for a New Facility Clearance" and "Facility Clearance Process FAQs," at http://www.dss.mil/isp/fac_clear/fac_clear.html.

[5] For example, see Standard Form 312, "Classified Information Nondisclosure Agreement," at http://www.gsa.gov/portal/forms/download/116218.

designed to determine an individual's suitability for employment or appointment to certain federal positions.[6] Unlike a security clearance, a suitability determination does not convey access to classified information.[7]

What Are the Levels of Security Clearances?

The levels of security clearances correspond to the levels of sensitivity of the information that cleared individuals will be eligible to access.[8] The three levels, in ascending order, are

- Confidential, the unauthorized disclosure of which would "cause damage to the national security";
- Secret, the unauthorized disclosure of which would "cause serious damage to the national security"; and
- Top Secret, the unauthorized disclosure of which would "cause exceptionally grave damage to the national security."[9]

In addition, there are two major categories of classified information that are commonly associated with the Top Secret level: Sensitive Compartmented Information (SCI), which refers to information involving intelligence sources and methods,[10] and Special Access Programs (SAPs), which refers to highly sensitive policies, projects, and programs.[11] These categories exist for classified information that has been deemed particularly vulnerable. Eligibility standards and investigative requirements for access to SCI and SAPs are higher than for other information classified at the same level, which further restricts the number of individuals that are eligible for access.[12]

[6] 5 C.F.R. §731.101.

[7] 5 C.F.R. §731.202 contains the criteria for making suitability determinations.

[8] The level at which a specific piece of information is classified (i.e., Confidential, Secret, or Top Secret) is determined by the agency or agencies that maintain "ownership" of the information. While guidelines exist for determining the level at which certain information should be classified, there may be dissimilarities in the types of information that different agencies classify at each level. Consequently, there may be differences in the types of positions that each agency would categorize as requiring a "Confidential," "Secret," or "Top Secret" level clearance.

[9] Executive Order 13526, "Classified National Security Information," 75 *Federal Register* 707, December 29, 2009.

[10] Office of the Director of National Intelligence, Deputy Director of National Intelligence for Policy, Plans, and Requirements, *2009 National Intelligence: A Consumer's Guide*, April 2009, p. 83, at http://handle.dtic.mil/100.2/ADA501547.

[11] Generally, SCI and SAPs are associated with the "Top Secret" clearance level, though DOD regulations suggest that at least some SAPs may be classified at the "Secret" level. Department of Defense, *Special Access Program (SAP) Security Manual, Volume II: Personnel Security*, DOD Manual 5205.07-V2, November 24, 2015, p. 8, at http://dtic.mil/whs/directives/corres/pdf/520507_vol02.pdf; Department of Defense, *Special Access Program (SAP) Policy*, DOD Directive 5205.07, July 1, 2010, p. 19, at http://www.dtic.mil/whs/directives/corres/pdf/520507p.pdf. Also see U.S. Army, *Special Access Programs (SAPs) and Sensitive Activities*, Army Regulation 380-381, April 21, 2004, at http://www.apd.army.mil/jw2/xmldemo/r380_381/head.asp.

[12] Individuals seeking access to SCI or SAPs are typically subject to additional clearance procedures. See Executive Order 12958, "Classified National Security Information," as amended, 60 *Federal Register* 19825, April 17, 1995; and Office of the Director of National Intelligence, *Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information*, October 1, 2008, at http://www.dni.gov/files/documents/ICD/ICD_704.pdf.

Who Is Eligible to Obtain a Security Clearance?

An individual who is performing work for the federal government—whether that individual is a direct government employee or a private contractor—may be eligible to obtain a security clearance if his or her work requires access to classified materials. With certain limited exceptions,[13] an individual must hold a security clearance in order to gain access to classified materials.

Generally, only U.S. citizens are eligible to obtain a security clearance.[14] Under Executive Order 12968, with limited exceptions,

> eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information.[15]

Can an Individual Obtain a Security Clearance on His or Her Own?

An individual may not obtain or initiate a security clearance on his or her own. An individual seeking employment with the federal government, or who wishes to do work as a contractor for the government, may be interested in obtaining a security clearance on his or her own, believing that holding a security clearance may expedite the hiring process, or provide him or her with an advantage when competing for government contracts. Yet, only a sponsoring agency may initiate the security clearance process.[16]

According to the Office of Personnel Management (OPM), "clearances are based on investigations requested by Federal agencies, appropriate to specific positions and their duties. Until a person is offered such a position, the government will not request or pay for an investigation for a clearance."[17]

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[13] See the section of this report titled "Are Constitutional Officers (e.g., the President, Members of Congress) Required to Hold a Security Clearance to Access Classified Information?".

[14] Under "compelling" circumstances, an agency may grant limited access to non-U.S. citizens who possess a special expertise and "only if the prior 10 years of the subject's life can be appropriately investigated." Executive Order 12968, "Access to Classified Information," 60 *Federal Register* 40245, August 2, 1995.

[15] Ibid. Under "exceptional circumstances" an individual may be granted temporary access to classified information prior to the completion of an investigation.

[16] A sponsoring agency may, however, initiate the security clearance background investigation process for a new government employee prior to his or her start date. Generally, the background investigation for a new government employee begins after the agency extends a conditional offer of employment to the selectee. Office of Personnel Management, *Hiring Elements End-to-End Hiring Roadmap*, 2011, p. 8, http://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/hiringelements.pdf.

[17] See http://www.opm.gov/investigations/background-investigations/.

Are Constitutional Officers (e.g., the President, Members of Congress) Required to Hold a Security Clearance to Access Classified Information?

Security clearances are not mandated for the President, Vice President, Members of Congress, Supreme Court Justices, or other constitutional officers. The criteria for election or appointment to these positions are specified in the U.S. Constitution, and except by constitutional amendment, no additional criteria (e.g., holding a security clearance) may be required.[18] Further, "by tradition and practice, United States officials who hold positions prescribed by the Constitution of the United States are deemed to meet the standards of trustworthiness for eligibility for access to classified information."[19]

Additionally, as Commander-in-Chief, the President has the authority to establish the standards for access to classified national security information. This authority is typically exercised through the issuance of executive orders. Executive Order 13467, which covers suitability checks and security clearances for federal employees, applicants, and contractors, includes a determination of which executive branch individuals are covered and which are exempted.

> 'Covered individual' means a person who performs work for or on behalf of the executive branch, or who seeks to perform work for or on behalf of the executive branch, but does not include:
>
> (i) the President or (except to the extent otherwise directed by the President) employees of the President under section 105 or 107 of title 3, United States Code; or
>
> (ii) the Vice President or (except to the extent otherwise directed by the Vice President) employees of the Vice President under section 106 of title 3 or annual legislative branch appropriations acts.[20]

[18] For example, qualifications for Members of Congress may be found in Article I, Section 2, clause 2, of the U.S. Constitution, and qualifications for President may be found in Article II, Section 1, clause 5. Also see *Powell v. McCormack*, 395 U.S. 486 (1969).

[19] Information Security Oversight Office (ISOO), *Classified Information Nondisclosure Agreement (Standard Form 312) Briefing Booklet*, Spring 2001, p. 66, at http://www.archives.gov/isoo/training/standard-form-312.pdf. ISOO notes, however, that Members of Congress, as constitutionally elected officials, are not exempt from the "need-to-know" requirement, and might not have unlimited access to all classified information if such access is not required. Instead, ISOO writes that "[Members] are not inherently authorized to receive all classified information, but agencies provide access as is necessary for Congress to perform its legislative functions, for example, to members of a committee or subcommittee that oversees classified executive branch programs."

[20] Executive Order 13467, "Reforming Processes Relating to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information," 73 *Federal Register* 38103, July 2, 2008. The statutory provisions cited in the order refer to sections of law that provide for the appointment of certain personnel within the Executive Office of the President.

Are Congressional Staff and Judicial Staff Required to Hold a Security Clearance to Gain Access to Classified Information?

Congressional staff and judicial staff are required to hold security clearances to gain access to classified information. The requirements are established, for the most part, by public laws, congressional rules, and judicial procedures.

For example, the *Rules of Procedure* of the U.S. Foreign Intelligence Surveillance Court states that "each member of the Court's staff must possess security clearances at a level commensurate to the individual's responsibilities."[21] Within Congress, the Office of House Security and the Office of Senate Security require that staff obtain the appropriate security clearances and sign nondisclosure agreements in order to be eligible for access to classified national security information.[22]

How Many Individuals Hold Security Clearances in Total and at Each Level?

According to the Office of the Director of National Intelligence (ODNI), approximately 4.3 million individuals held security clearances (of any level) as of October 1, 2015.[23] This includes 2,885,570 security clearances at the Confidential or Secret level and 1,363,483 security clearances at the Top Secret level.[24]

A total of 638,679 security clearances were approved during FY2015.[25] This includes 408,262 clearances approved at the Confidential or Secret level and 230,417 at the Top Secret level.[26] It is important to note that the number of security clearances approved in FY2015 includes initial clearances and renewals of existing clearances that were subject to reinvestigation in FY2015. For this reason, the number of clearances approved does not reflect the number of new clearances issued.

Table 1 provides a breakdown of these figures by government and contractor employees.

[21] Foreign Intelligence Surveillance Court, "Title II: National Security Information," in *Rules of Procedure*, November 1, 2010, p. 1, at http://www.uscourts.gov/uscourts/rules/FISC2010.pdf.

[22] U.S. Senate, Office of Senate Security (OSS), *Security Manual* (revised, 2007), p. 8. Also see U.S. House of Representatives, Rule XXIII, clause 1 (114th Congress); and CRS Report RS20748, *Protection of Classified Information by Congress: Practices and Proposals*, by Frederick M. Kaiser.

[23] Office of the Director of National Intelligence, *2015 Annual Report on Security Clearance Determinations*, January 2016, p. 5, at https://www.odni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2015-Annual_Report_on_Security_Clearance_Determinations.pdf. The ODNI report consolidates the data on Confidential and Secret level security clearance determinations, and does not provide separate figures for the two levels.

[24] Ibid.

[25] Ibid., p. 7.

[26] Ibid.

Table 1. Security Clearances Approved and Total Clearances Held, FY2015

	Government Employees		Contractor/Other Employees	
	Approved in FY2015	Total as of End of FY2015	Approved in FY2015	Total as of End of FY2015
Confidential/Secret	315,859	2,261,587	92,403	623,983
Top Secret	118,033	746,836	112,384	616,647
Total	433,892	3,008,423	204,787	1,240,630

Source: ODNI, *2015 Annual Report on Security Clearance Determinations,* pp. 5,7.

Notes: Contractor/Other Employees includes figures reported for contractor employees and individuals who could not be identified as either government employees or contractor employees. The ODNI report consolidates the data on Confidential and Secret level security clearance determinations.

What Are the Major Aspects of the Security Clearance Process?

Although the security clearance process involves a number of stages, the key steps to obtaining and maintaining a security clearance are pre-investigation, investigation, adjudication, and reinvestigation.

- **Pre-Investigation.** During this phase, the agency makes a determination that an employee or contractor requires access to classified information for the completion of his or her duties.[27] At the request of the sponsoring agency, the individual will submit his or her clearance application material (e.g., Standard Form SF86).
- **Investigation.** Using the information provided by the applicant in his or her clearance application materials, a background investigation of the applicant is conducted. The background investigation may vary in terms of content, cost, and length of time for completion depending, in part, on the level of clearance being sought.[28] The National Background Investigations Bureau (NBIB) within OPM is responsible for overseeing the majority of personnel background investigations.[29]
- **Adjudication.** Once the background investigation is complete, the application enters the adjudication phase. During this phase, a determination is made whether to grant the applicant a security clearance. Generally, this decision is made by the sponsoring agency and is based on the information obtained during the background investigation.
- **Reinvestigation.** Individuals who hold security clearances are subject to periodic reinvestigations. Previously, the maximum number of years that a security clearance remained valid was tied to the individual's clearance level. For example, reinvestigations for someone with a Confidential clearance, the least demanding, occurred at least once every 15 years; Secret, at least once every ten

[27] This designation applies to the position rather than to a specific individual who holds the position.

[28] For example, some but not all background investigations include a polygraph examination.

[29] For additional information, see the section of this report titled "Which Agencies Are Responsible for Conducting Background Investigations?".

years; and Top Secret, at least once every five years.[30] OPM and the Office of the Director of National Intelligence (ODNI), however, reduced the reinvestigation timeline to five years for all clearance holders, regardless of access level.[31]

Are Private Contractors Subject to the Same Clearance Process as Federal Employees?

Private contractors are subject to the same clearance procedures as direct government employees. As noted above, an individual may not obtain or initiate a security clearance on his or her own. The process to obtain a security clearance must be initiated by a sponsoring federal agency. The process differs slightly for an individual who is employed by a company that performs work under contract with the federal government. First, the contractor must determine whether the employee requires access to classified information in order to perform the duties of his or her position.[32] The contractor must inform the sponsoring agency (i.e., the "customer" agency for whom the work is being performed) that the employee requires access to classified materials. The sponsoring agency will consider the request and then determine whether to initiate the security clearance process for the employee.[33]

Which Agencies Are Responsible for Conducting Background Investigations?

Previously, the Office of Personnel Management, Federal Investigative Services (OPM-FIS) oversaw approximately 95% of all background investigations.[34] On October 1, 2016, President Obama transferred responsibility for investigative work and related services from OPM-FIS to the newly established National Background Investigations Bureau (NBIB).[35] Like OPM-FIS, the NBIB conducts some of the investigative work itself and contracts the rest out to private firms.

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[30] P.L. 108-258 at 118 Stat. 3706. OMB *Security Processes Review*, p. 2.

[31] U.S. Office of Personnel Management, Testimony of Beth F. Cobert, Acting Director, Before the House Committee on Oversight and Government Reform, Hearing on "Security Clearance Reform: The Performance Accountability Council's Path Forward", Washington, DC, February 25, 2016, p. 4, at https://www.opm.gov/news/testimony/114th-congress/security-clearance-reform-the-performance-accountability-councils-path-forward.pdf. Also see Office of Management and Budget (Performance Accountability Council), Insider Threat and Security Clearance Reform: Cross Agency Priority Goal Quarter Progress Update FY2016 Q1, March 2016, pp. 17, 22, at https://www.performance.gov/node/3407/view?view=public#progress-update.

[32] Ibid. Also see DOD Defense Security Service publication "Industrial Personnel Security Clearance Process," at http://www.dss.mil/psmo-i/indus_psmo-i_process_applicant.html.

[33] Ibid. In some instances, if the individual is a former government employee or had previously performed work as a contractor for the government, he or she may already hold a security clearance at the necessary level. In such cases, the agency may accept the individual's existing clearance, or the agency may request an additional background investigation. See the section of this report titled "May a Security Clearance Granted by One Agency Be Accepted by Other Agencies?".

[34] This figure includes non-security clearance background investigations, such those conducted for "suitability checks."

[35] National Background Investigations Bureau, "Safeguarding Integrity and Transparency: About Us," at https://nbib.opm.gov/about-us. Also see Executive Office of the President, "Modernizing & Strengthening the Security & Effectiveness of Federal Background Investigations," (White House Fact Sheet), January 22, 2016, at https://www.whitehouse.gov/blog/2016/01/22/modernizing-strengthening-security-effectiveness-federal-background-investigations.

While OPM oversees the majority of security clearance background investigations, at least 21 federal agencies have delegated or statutory authority to conduct all or some of their own investigations.[36] For example, the Federal Bureau of Investigation (FBI), the U.S. Marshals Service (USMS), and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) have authority to conduct security clearance background investigations of certain categories of contractor positions.[37] The Central Intelligence Agency (CIA) has authority to conduct its own security clearance background investigations.[38] The CIA also conducts background investigations for ODNI employees and contractors.[39]

Who Pays for Background Investigations?

Typically, the requesting agency pays for background investigations of federal employees and contractor employees.[40] As stated above, the vast majority of federal background investigations are handled by OPM, which charges other federal agencies for the investigations it oversees.[41] The cost of background investigations vary depending on the level of clearance requested and the scope of the investigation conducted.[42]

The requesting agency is responsible for any costs associated with the adjudication process and period reinvestigations. The requesting agency is also responsible for certain costs arising from an applicant's appeal of a security clearance denial or revocation, or an applicant's challenge of certain aspects of his or her background investigation (e.g., an appeal of unfavorable results of a polygraph examination).[43]

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[36] U.S. Office of Management and Budget, *Suitability and Security Processes Review Report to the President*, February 2014, p. 2, at http://www.whitehouse.gov/sites/default/files/omb/reports/suitability-and-security-process-review-report.pdf.

[37] U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *Review of the Department's Contractor Personnel Security Process*, March 2013, p. 4, at http://www.justice.gov/oig/reports/2013/e1303.pdf.

[38] Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations*, p. 5.

[39] Ibid.

[40] According to the testimony of Stephen Lewis, Deputy Director, Security Directorate, Office of the Under Secretary of Defense (Intelligence), the costs for background investigations of individuals employed by companies who contract with DOD are paid for by the department and not the contractor because "analysis shows that if we were to allow the contractors to build [the cost of those clearances] into the contract ... then they would add overhead on the management of that, so the most cost-effective way was to manage it from the department. We pay those costs, because we pay it either way." U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Efficiency and Effectiveness of Federal Programs and the Federal Workforce and Subcommittee on Financial and Contracting Oversight, *Safeguarding our Nation's Secrets: Examining the Security Clearance Process*.

[41] A summary of the investigative products offered by OPM-FIS is available at https://www.opm.gov/investigations/background-investigations/reference/fis-annual-report-for-fiscal-year-2014.pdf.

[42] For example, the cost of initial "Tier 3" background investigations, which are used for certain "moderate risk" positions, such as select positions that require Confidential-level access, is $421. The cost for initial background investigations for positions that require Top Secret access is more than ten times higher, ranging from $5,389 for standard processing to $5,820 for priority processing. Additional "à la carte" services, such as Bar Association license checks and Enhanced Subject Interviews, are also offered by OPM at additional cost. OPM's Investigations Reimbursable Billing Rates for FY2016 are available at https://www.opm.gov/investigations/background-investigations/federal-investigations-notices/2016/fin-16-06.pdf. OPM's "Position Designation Tool," which provides agencies with guidelines for determining the type of investigation required for certain government and contractor positions, is available at https://www.opm.gov/investigations/background-investigations/position-designation-tool/position-designation-system-with-glossary-2015.pdf.

[43] Possible options for appealing the outcome of a security clearance investigation and adjudication are discussed in

On Average, How Long Does It Take to Obtain a Security Clearance?

The ODNI's *2015 Report on Security Clearance Determinations* provides data on the longest and shortest security clearance processing times for each element of the intelligence community.[44] The ODNI's 2015 Report also noted that, in FY2015, processing times were negatively impacted by external events, including (1) increased demand of resources due to the backlog of periodic reinvestigations, (2) delays due to the OPM breach and the temporary shutdown of the e-QIP system, which is used by applicants to electronically submit their clearance forms, and (3) OPM's loss of a major contract investigative service provider.[45]

For FY2015, more security clearance cases were pending over four months—from initiation to adjudication—than in FY2014.[46] The longest processing time for the fastest 90% of Top Secret cases ranged from 134 days for the National Security Agency (NSA) to 395 days for the National Geospatial-Intelligence Agency (NGA).[47] For Secret or Confidential Clearances, the longest processing time for the fastest 90% ranged from 153 days for the Department of State to 197 days for the CIA.[48]

Are There Guidelines of Standards for Approving, Denying, or Revoking a Security Clearance?

All adjudicative decisions are made by federal employees—not contractors—using the 13 adjudicative guidelines provided in the 2005 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*.[49] The 13 adjudicative guidelines that federal adjudicators use when making security clearance determinations are (1) Allegiance to the United States; (2) Foreign Influence; (3) Foreign Preference; (4) Sexual Behavior; (5) Personal Conduct; (6) Financial Considerations; (7) Alcohol Consumption; (8) Drug Involvement; (9) Psychological Conditions; (10); Criminal Conduct; (11) Handling Protected Information; (12) Outside Activities; and (13) Use of Information Technology Systems.

Each guideline describes the associated circumstances that could raise a security concern and notes which circumstances may be disqualifying. Adverse information regarding one of the

more detail below. See the section of this report titled "Can the Outcome of a Security Clearance Determination Be Appealed?"

[44] Office of the Director of National Intelligence, *2015 Annual Report on Security Clearance Determinations*, p. 8.

[45] Ibid., p. 3.

[46] Ibid.

[47] Ibid., p. 8.

[48] Ibid.

[49] Memorandum from Stephen J. Hadley, Assistant to the President for National Security Affairs, Adjudicative Guidelines, Attachment Tab A: *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, December 29, 2005 (hereafter, *Adjudicative Guidelines*. For copy, please see author of this memorandum). Also see 32 C.F.R. §147.1. Adjudicative guidelines for access to SCI are slightly different and are available in Intelligence Community Policy Guidance (ICPG) 704.2, "Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Programs," October 2, 2008, at http://www.dni.gov/files/documents/ICPG/ICPG_704_2.pdf. Criteria for making suitability determinations, which are also different than the adjudicative guidelines for making security clearance determinations, are available at 5 C.F.R. §731.202.

guidelines will not automatically result in denial of a security clearance.[50] Adjudicators are instructed to consider the recentness of the information and whether it demonstrates a recurring pattern of adverse behavior.[51] Adjudicators are also instructed to consider any conditions that could mitigate the associated security concerns.[52]

Can the Outcome of a Security Clearance Determination Be Appealed?

An individual whose clearance has been denied or revoked has an opportunity to appeal the determination. Each agency that is responsible for adjudicating and granting security clearances has its own policies and procedures governing the appeal of a security clearance determination in accordance with guidelines established in Executive Order 12968.[53] In addition, some agencies may allow applicants to appeal or challenge unfavorable results of a polygraph examination that was conducted as part of his or her security clearance background investigation.[54] Appeals are typically handled within the agency and decided by the agency's personal security appeals board or by an administrative judge.[55] While the outcome of a security clearance determination may be appealed, security clearance decisions are generally not subject to judicial review.[56]

May a Security Clearance Granted by One Agency Be Accepted by Other Agencies?

With certain exceptions, a security clearance granted by one agency must be accepted by other agencies, though it is difficult to determine the degree to which reciprocity of security clearance

[50] 32 C.F.R. §147.2(d).

[51] Ibid.

[52] For example, having associates who are connected with a foreign government is a condition that may cause a security concern under "foreign influence." The security concern may be mitigated, however, if those contacts were the result of official U.S. government business. 32 C.F.R. §147.4.

[53] For example, Intelligence Community Policy Guidance Number 704.3, which applies to agencies within the Intelligence Community (as defined in the National Security Act of 1947), establishes policies and procedures for appealing a denial or revocation of access to SCI. Office of the Director of National Intelligence, *Denial or Revocation of Access to Sensitive Compartmented Information, Other Controlled Access Program Information, and Appeals Processes*, October 2, 2008, at http://www.dni.gov/files/documents/ICPG/icpg_704_3.pdf.

[54] For example, FBI policy allows an applicant to appeal the results of certain pre-employment and personnel security polygraph examinations. U.S. Department of Justice, Office of the Inspector General, Evaluations and Inspections Division, *Use of Polygraph Examinations in the Department of Justice*, I-2006-008, September 2006, pp. 44-50, at http://www.justice.gov/oig/reports/plus/e0608/final.pdf.

[55] For example, see Office of the Inspector General of the Department of Defense, Deputy Inspector General for Intelligence, *DoD Security Clearance Adjudication and Appeal Process*, December 12, 2003, pp. 7-12, at http://www.dodig.mil/Ir/reports/fy04/04-INTEL-02.pdf.

[56] Under E.O. 10450, individuals were prohibited from appealing unfavorable national security position determinations with the Loyalty Review Board, a board established by President Truman under the Civil Service Commission to hear appeals from federal employees who were found to lack "complete and unswerving loyalty" to the United States. See Executive Order 9835 (revoked by E.O. 10450), "Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government," 12 *Federal Register* 1935. In 1979, the Civil Service Reform Act (P.L. 95-454) transferred the employee appeals function of the Civil Service Commission to the newly formed MSPB. Also see Elizabeth L. Newman, *Security Clearance Law and Procedure*, 2nd ed. (Arlington, VA: Dewey Publications, 2008), p. 13.

background investigations and determinations actually occurs between agencies. Under Section 3001(d) of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, "all security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudication agency shall be accepted by all agencies."[57] There are, however, exceptions to this general principle, particularly among Top Secret, SCI, and SAPs. For example, each agency has authority to conduct an additional investigation if the one on record is a certain number of years old, and each agency may add additional requirements to the process, such as a polygraph examination. Reports by the Government Accountability Office (GAO) and ODNI cite anecdotal evidence which suggests that agencies may be reluctant to accept the background investigations or security clearance determinations made by other agencies.[58]

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[57] P.L. 108-458.

[58] See, for example, *Security Clearance Reform—Upgrading the Gateway to the National Security Community*, House Permanent Select Committee on Intelligence, H.Rept. 110-916, November 20, 2008; Charles B. Sowell, Deputy Assistant Director for Special Security, Office of the Director of National Intelligence, for Senate Homeland Security and Government Affairs Committee hearing on Security Clearance Changes, June 21, 2012; and *Personnel Security Clearance, Progress Has Been Made to Improve Timeliness but Continued Oversight Is Needed to Sustain Momentum*, The Government Accountability Office, November 2010. GAO-11-65, p. 27, at http://www.gao.gov/products/GAO-11-65.