



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 are commonly associated with the Top Secret level: Sensitive Compartmented Information (SCI), which refers to intelligence sources and methods, and Special Access Programs (SAPs), which refers to highly sensitive policies, 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, four 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; (3) an adjudication to determine whether an individual will be deemed eligible for access; and (4) periodic reinvestigations. Adjudication and final clearance determinations are generally made by the sponsoring agency. To maintain a security clearance, an individual is also subject to periodic reinvestigations. The frequency of reinvestigations vary by level of clearance.

The Office of Personnel Management, Federal Investigative Services (OPM-FIS) oversees approximately 90% of all background investigations. 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 may be accepted by other agencies. It is difficult, however, to determine the degree to which reciprocity occurs between agencies.

This report will be updated as events warrant.

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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

For additional analysis of the security clearance process and protection of classified information, see the CRS products listed in the **Appendix** of this report.

What Is a Security Clearance?

A security clearance³ is a determination that an individual—whether a direct 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.⁵ 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.⁶

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 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 additional information on background investigations, see the section of this report titled “What Are the Major Aspects of the Security Clearance Process?”

⁶ For example, see Standard Form 312, “Classified Information Nondisclosure Agreement,” at <http://www.gsa.gov/portal/forms/download/116218>.

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, which may involve many of the same investigative elements as a security clearance investigation, is designed to authorize employment by the federal government. 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 intelligence sources and methods, and Special Access Programs (SAPs), which refers to highly sensitive policies, projects, and programs.¹⁰ 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.¹¹

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 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. See Department of Defense, *National Industrial Security Program Operating Manual*, DOD 5220.22-M, March 28, 2013, p. C-4, at <http://www.dtic.mil/whs/directives/corres/pdf/522022m.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.

¹¹ 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,¹² 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.¹³ 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.¹⁴

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.¹⁵

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.”¹⁶

¹² 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?”

¹³ 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.

¹⁴ *Ibid.* Under “exceptional circumstances” an individual may be granted temporary access to classified information prior to the completion of an investigation.

¹⁵ 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 tentative 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>.

¹⁶ 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.¹⁷

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.¹⁸

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

¹⁷ 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).

¹⁸ 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.

to the individual’s responsibilities.”¹⁹ Within Congress, the Office of House Security and the Office of Senate Security require staff that need access to classified information to have security clearances and to sign nondisclosure agreements in order to be eligible for access to classified national security information.²⁰

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

According to the Office of the Director of National Intelligence (ODNI), approximately 4.9 million individuals held security clearances (of any level) as of October 1, 2012. This includes 3,507,782 security clearances at the Confidential or Secret level and 1,409,969 security clearances at the Top Secret level.²¹

A total of 798,618 security clearance adjudications were approved during FY2012.²² This includes 511,476 clearances approved at the Confidential or Secret level and 287,142 at the Top Secret level.²³ It is important to note that the number of security clearances approved in FY2012 includes initial clearances and renewals of existing clearances that were subject to reinvestigation in FY2012. 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.

Table 1. Security Clearances Approved and Total Clearances Held as of FY2012

	Government Employees		Contractor/Other Employees	
	Approved in FY2012	Total as of End of FY2012	Approved in FY2012	Total as of End of FY2012
Confidential/Secret	364,498	2,757,333	146,978	750,449
Top Secret	140,016	791,200	147,126	618,769
Total	504,514	3,548,533	294,104	1,369,218

Source: Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations*, pp. 3-4.

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.

¹⁹ 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>.

²⁰ U.S. Senate, Office of Senate Security (OSS), *Security Manual* (revised, 2007), p. 8. Also see CRS Report RS20748, *Protection of Classified Information by Congress: Practices and Proposals*, by Frederick M. Kaiser.

²¹ Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations*, January 2013, p. 3, at <http://www.dni.gov/index.php/newsroom/reports-and-publications/193-reports-publications-2013/841-2012-report-on-security-clearance-determinations>. The ODNI report consolidates the data on Confidential and Secret level security clearance determinations, and does not provide separate figures for the two levels.

²² *Ibid.*, p. 4.

²³ *Ibid.*

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. 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. OPM oversees over 90% of background investigations.²⁴ 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.²⁵
- **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. The frequency of reinvestigations may vary across agencies, though they are typically conducted at regular intervals depending on the level of clearance. A reinvestigation for someone with a Confidential clearance, the least demanding, is at least once every 15 years from the closing date of the previous investigation; Secret, at least once every 10 years; and Top Secret, at least once every 5 years.²⁶

²⁴ For additional information, see the section of this report titled “Which Agencies Are Responsible for Conducting Background Investigations?”

²⁵ For example, some but not all background investigations include a polygraph examination. The components of a background investigation may also vary by agency. For example, the investigative elements of a background investigation for a Top Secret level clearance with the Federal Bureau of Investigation may differ from the investigative elements of a background investigation for a Top Secret level clearance with the Department of Health and Human Services. Also see the section of this report titled “On Average, How Long Does it Take to Obtain a Security Clearance?”

²⁶ See U.S. General Accounting Office (now, the U.S. Government Accountability Office), *More Accurate Estimate of Overdue Security Clearance Reinvestigations is Needed*, GAO/T-NSIAD-00-246, September 20, 2000, p. 1, at <http://gao.gov/assets/110/108657.pdf>. Also see U.S. Government Accountability Office, *Personnel Security Clearances: Continuing Leadership and Attention Can Enhance Momentum Gained from Reform Effort*, GAO-12-815T, June 21, 2012, at <http://gao.gov/assets/600/591784.pdf>.

Are Private Contractors Subject to the Same Clearance Process as Direct Government 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.²⁷ 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.²⁸

Which Agencies Are Responsible for Conducting Background Investigations?

The Office of Personnel Management, Federal Investigative Services (OPM-FIS) oversees approximately 90% of all background investigations.²⁹ The actual investigations, for the most part, are conducted by private investigative firms under contract with OPM-FIS. According to Merton W. Miller, Associate Director of Investigations for OPM-FIS, the nationwide network of OPM-FIS investigators includes more than 2,500 federal employees and 6,700 contractors.³⁰ Of the investigative work conducted by contractors, approximately 45% is conducted by US Investigations Services, LLC (USIS).³¹ Most of the remaining investigative work by contractors

²⁷ 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.

²⁸ 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 an active 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?”

²⁹ This includes background investigations conducted as part of the process for granting a security clearance and investigations conducted as part of a suitability determination. See <http://www.opm.gov/investigations/background-investigations>.

³⁰ See 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*, hearing, 113th Congress, 1st sess., June 20, 2013.

³¹ Ibid. Information on USIS is available at <http://www.usis.com/investigations.aspx>. A price list for the investigative services that USIS offers through the General Services Administration’s (GSA’s) Federal Supply Schedule is available at https://www.gsaadvantage.gov/ref_text/GS22F9736H/0L6B9C.2JF5M9_GS-22F-9736H_USIS738X27.PDF.

is conducted by three companies: CACI Premier Technology (CACI), Omniplex World Services Corporation (OMNI), and KeyPoint Government Solutions (KeyPoint).³²

In certain instances, an agency may have jurisdiction to conduct all or some of its own security clearance background investigations. 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.³³ The Central Intelligence Agency (CIA) has authority to conduct its own security clearance background investigations.³⁴ The CIA also conducts background investigations for ODNI employees and contractors.³⁵

Who Pays for Background Investigations?

Typically, the requesting agency pays for background investigations of federal employees and contractor employees.³⁶ As stated above, the vast majority of federal background investigations (over 90%) are handled by OPM-FIS, which charges other federal agencies for the investigations it oversees.³⁷ The cost of background investigations vary depending on the level of clearance requested and the scope of the investigation conducted.³⁸

³²See Federal Procurement Data System, at https://www.fpds.gov/fpdsng_cms. Information on CACI, OMNI, and Keypoint are available at <http://www.caci.com/fcc/ILS>, <http://omniplex.com/investigative.cfm>, and <http://www.keypoint.us.com/Solutions/Investigative>, respectively. GSA Schedule price lists for CACI, OMNI, and Keypoint are available at https://www.gsaadvantage.gov/ref_text/GS02F0179N/0GN3TD.20SEF2_GS-02F-0179N_0179NSUPP6BA20090625.PDF, https://www.gsaadvantage.gov/ref_text/GS15F0051L/0KBU9A.2F3S1B_GS15F0051L_GS-15F-0051L-3-6-2012-693979.PDF, and https://www.gsaadvantage.gov/ref_text/GS02F0054S/OLM2RS.2M4L2C_GS02F0054S_GS-02F-0054S-4-16-2013-884762.PDF, respectively.

³³ 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>.

³⁴ Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations*, p. 5.

³⁵ Ibid.

³⁶ 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*.

³⁷ A summary of the investigative products offered by OPM-FIS is available at <http://www.opm.gov/investigations/background-investigations/reference/annual-report-for-fiscal-year-2012.pdf>.

³⁸ For example, the cost of an initial background investigation for certain “moderate risk” positions that require a Confidential or Secret level clearance may range from \$752 to \$809, while the cost of an initial background investigation for positions that require a Top Secret level clearance range from \$4,005 to \$4,399. Additional “à la carte” services, such as Bar Association license checks, are also offered by OPM-FIS at little or no additional cost. OPM’s Investigations Reimbursable Billing Rates for FY2013 are available at <http://www.opm.gov/investigations/background-investigations/federal-investigations-notices/2012/fin12-07.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 <http://archive.opm.gov/investigate/resources/position/Position%20Designation%20System%20October%202010.pdf>.

The requesting agency is also 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).³⁹

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

The ODNI's *2012 Report on Security Clearance Determinations* provides data on the longest and shortest security clearance processing times for each element of the intelligence community.⁴⁰ For FY2012, the longest processing time for the fastest 90% of Top Secret security clearance cases—from initiation to adjudication decision—ranged from 73 days for the Department of State to 454 days for the CIA. For Secret or Confidential Clearances, the longest processing time for the fastest 90% ranged from 56 days for the Department of State to 500 days for the CIA.

The ODNI's *IRTPA Title III Annual Report for 2010* provides average processing times, and notes that “overall, the government has continued to show a significant improvement in security clearance processing times, reducing the combined investigative and adjudicative processing time from an average of 165 days in 2006 to an average of 53 days in the 4th [quarter of] FY 2010 for the fastest 90% of initial security clearances government-wide.”⁴¹

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

There are 13 adjudicative guidelines that government agencies must use when making security clearance determinations.⁴² The guidelines are explained in Title 32 of the *U.S. Code of Federal Regulation*, and cover (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) emotional, mental, and personality disorders; (10)

³⁹ Possible options for appealing the outcome of a security clearance investigation and adjudication are discussed in more detail below. See the section of this report titled “Can the Outcome of a Security Clearance Determination Be Appealed?”

⁴⁰ Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations*, April 12, 2013, p. 6, at <http://www.dni.gov/files/documents/2012%20Report%20on%20Security%20Clearance%20Determinations%20Final.pdf>.

⁴¹ Office of Director of National Intelligence, *IRTPA Title III Annual Report for 2010*, February 15, 2011, p. 2, at http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Security%20Clearance%20Determination_Report.pdf. Title III of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 required the ODNI to report annually on the processing times for security clearances through February 2011. For this reason, the *Annual Report for 2010* is the final (and the most recent) IRTPA report published.

⁴² These guidelines apply to “all United States Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information.” 32 C.F.R. § 147.1.

criminal conduct; (11) security violations; (12) outside activities; and (13) misuse of information technology systems.⁴³

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 guidelines will not automatically result in denial of a security clearance.⁴⁴ Adjudicators are instructed to consider the recentness of the information and whether it demonstrates a recurring pattern of adverse behavior.⁴⁵ Adjudicators are also instructed to consider any conditions that could mitigate the associated security concerns.⁴⁶

Can the Outcome of a Security Clearance Determination Be Appealed?

An individual who applied for a clearance may appeal an unfavorable outcome of 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.⁴⁷ 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.⁴⁸ Appeals are typically handled within the agency and decided by the agency's personal security appeals board or by an administrative judge.⁴⁹ While the outcome of a security clearance determination may be appealed, security clearance decisions are generally not subject to judicial review.⁵⁰

⁴³ 32 C.F.R. §§ 147.3-147.15.

⁴⁴ 32 C.F.R. § 147.2(d).

⁴⁵ Ibid.

⁴⁶ 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.

⁴⁷ 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.

⁴⁸ 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>.

⁴⁹ 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>.

⁵⁰ Elizabeth L. Newman, *Security Clearance Law and Procedure*, 2nd ed. (Arlington, VA: Dewey Publications, 2008), p. 13.

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 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.”⁵¹ 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.⁵²

⁵¹ P.L. 108-458.

⁵² 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>.

Appendix. Additional CRS Products on Security Clearances and Protection of Classified Information

Below is a list of additional CRS products on security clearances and access to classified information.

- CRS Report RS20748, *Protection of Classified Information by Congress: Practices and Proposals*, by Frederick M. Kaiser
- CRS Report RS21900, *The Protection of Classified Information: The Legal Framework*, by Jennifer K. Elsea
- CRS Report R41404, *Criminal Prohibitions on the Publication of Classified Defense Information*, by Jennifer K. Elsea
- CRS Report WSLG552, *What Functions May Contractors Perform?: Leaks of Classified Information Raise Questions*, by Kate M. Manuel
- CRS Report R43134, *NSA Surveillance Leaks: Background and Issues for Congress*, by Marshall C. Erwin and Edward C. Liu
- CRS Congressional Distribution Memorandum, *Security Clearance Process: Recent Developments and Continuing Challenges*⁵³

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⁵³ Available upon request from Michelle D. Christensen, Analyst in Government Organization and Management.