



*Employee Conduct Issues Are Not
Considered When Prioritizing Overdue
Background Reinvestigations*

November 6, 2019

Reference Number: 2020-10-002

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

2 = Law Enforcement Techniques/ Procedures and Guidelines for Law Enforcement Investigations or Prosecutions.

3 = Personal Privacy Information.

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

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HIGHLIGHTS

EMPLOYEE CONDUCT ISSUES ARE NOT CONSIDERED WHEN PRIORITIZING OVERDUE BACKGROUND REINVESTIGATIONS

Highlights

Final Report issued on November 6, 2019

Highlights of Reference Number: 2020-10-002 to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

Federal regulations require Government employees in positions designated as moderate risk to have their background reinvestigated at least once every five years. As of Fiscal Year 2018, the IRS determined that it had 42,250 employees in moderate-risk positions. Due to the sensitivity of taxpayer data handled by IRS employees, the IRS must be particularly cognizant of continuing to employ only those individuals who are suitable for Federal employment.

WHY TIGTA DID THE AUDIT

The overall objective of this audit was to assess the potential risks associated with overdue moderate-risk background reinvestigations at the IRS.

WHAT TIGTA FOUND

As of the beginning of Fiscal Year 2018, 25,520 moderate-risk employees were overdue for a background reinvestigation. According to IRS Personnel Security office management, this large backlog resulted from multiple factors, including changes in Federal guidance and budget and staffing constraints.

Based on a review of publicly available records, TIGTA believes this backlog presents a high risk to the IRS. TIGTA reviewed external public records and identified more than 1,000 employees with possible suitability issues, including more than 100 employees with serious criminal issues, e.g., sexual misconduct, fraud, and theft.

IRS leadership recognizes the importance of the requirement to investigate individuals in moderate-risk positions at least once every five years. In May 2018, the IRS began initiating moderate-risk background reinvestigations and stated that, as of April 30, 2019, it had forwarded approximately 13,000 reinvestigations to the Office of Personnel Management at a cost of approximately \$4.7 million. By September 12, 2019, the IRS reported that the number of reinvestigations forwarded to the Office of Personnel Management had increased to more than 21,000.

However, the IRS does not use internal employee conduct information to prioritize which reinvestigations to initiate from its backlog. By not considering conduct information, the IRS may be focusing its limited resources on employees who present a lesser risk to the integrity of the IRS.

For example, TIGTA's review of the IRS's internal employee conduct records found that approximately 3,000 employees with overdue background reinvestigations had serious misconduct issues since their last background check was completed. Examples of the misconduct identified include violent behavior, sexual misconduct, drug use, and driving while intoxicated.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Human Capital Officer work with the Office of Personnel Management to develop a risk-based method to prioritize the backlog of background reinvestigations. In its response, IRS management agreed with the recommendation and stated that the Office of Personnel Management is willing to evaluate the remaining backlogged inventory submitted by the IRS and consult with the IRS to determine prioritization of the most serious investigation cases.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

November 6, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Employee Conduct Issues Are Not Considered
When Prioritizing Overdue Background Reinvestigations
(Audit # 201810014)

This report presents the result of our review to assess the potential risks associated with overdue moderate-risk background reinvestigations at the Internal Revenue Service (IRS). This audit was included in our Fiscal Year 2019 Annual Audit Plan and addresses the management challenge of Security Over Taxpayer Data and Protection of IRS Resources.

Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendation. If you have any questions, please contact me or Heather Hill, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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Abbreviations

ABIS	Automated Background Investigation System
ALERTS	Automated Labor and Employee Relations Tracking System
C.F.R.	Code of Federal Regulations
CLEAR	Consolidated Lead Evaluation and Reporting
EO	Executive Order
IRS	Internal Revenue Service
ODNI	Office of the Director of National Intelligence
OPM	Office of Personnel Management
TIGTA	Treasury Inspector General for Tax Administration
WRD	Workforce Relations Division



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Background

In January 2009, the President issued Executive Order (EO) 13488¹ to simplify and streamline the system of Federal Government personnel investigative processes to make them more efficient and effective. The EO requires individuals in moderate-risk positions to be periodically reinvestigated in order to ensure that they remain suitable for continued employment. Prior to the issuance of EO 13488, Federal agencies were only required to conduct reinvestigations for employees in high-risk and national security positions.²

Subsequent to the issuance of EO 13488, the Office of Personnel Management (OPM) proposed amendments to Title 5 of the Code of Federal Regulations (C.F.R.) Parts 731³ and 732⁴ in an effort to clarify the new requirements and procedures prescribed under the EO. The proposed changes to Title 5 C.F.R. Part 731 were implemented in December 2011 and require agencies to conduct a background reinvestigation every five years for moderate-risk positions. However, the rule changes to Title 5 C.F.R. Part 731 and the proposed changes to Title 5 C.F.R. Part 732 created the risk that an employee will unnecessarily be subject to two separate reinvestigations every five years,⁵ once for risk level⁶ and again for national security sensitivity designations.⁷

The OPM stated that the Internal Revenue Service (IRS) would not be penalized if it held off on submitting the five-year moderate-risk reinvestigations until the guidance could be corrected. Therefore, the IRS halted the moderate-risk reinvestigations and planned to resume once the guidance was clarified. Further, in January 2013, the President issued a memorandum directing the OPM and the Office of the Director of National Intelligence (ODNI) to jointly issue new

¹ Exec. Order 13488, *Granting Reciprocity on Expected Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust* (2009). Public trust includes positions at a high or moderate risk level and may involve a significant risk for causing damage or realizing personal gain.

² National security positions include 1) positions that involve activities of the Government that are concerned with the protection of the Nation from foreign aggression or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of the military strength of the United States and 2) positions that require regular use of, or access to, classified information.

³ OPM Proposed Rule, 74 Fed. Reg. 211 (Nov. 3, 2009) (to be codified at 5 C.F.R. Part 731).

⁴ OPM Proposed Rule, 75 Fed. Reg. 239 (Dec. 14, 2010) (to be codified at 5 C.F.R. Part 732).

⁵ 5 C.F.R. Part 731 and the proposed changes to 5 C.F.R. Part 732 require agencies to reinvestigate an employee's background at least once every five years.

⁶ Agency heads must designate every covered position within the agency at a high, moderate, or low risk level as determined by the position's potential for adverse impact to the efficiency or integrity of the Federal Service.

⁷ Positions in which the occupant could bring about a material adverse effect on national security at one of three sensitivity levels: special-sensitive, critical-sensitive, or noncritical-sensitive.



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Designation of National Security Positions guidance.⁸ As a result, the OPM and the ODNI jointly proposed updated guidance in May 2013 that withdrew the changes to 5 C.F.R. Part 732 and replaced Part 732 with Chapter IV, Part 1400,⁹ which became effective in July 2015. Figure 1 provides a timeline for the development of laws and regulations associated with background reinvestigations of employees in moderate-risk positions.

Figure 1: Timeline of Moderate-Risk Background Reinvestigation Requirements

Date	Description
January 2009	EO 13488 – The President signed the EO stating that individuals in positions of moderate risk shall be subject to reinvestigation under standards as determined by the OPM to ensure their suitability for continuing employment.
November 2009	5 C.F.R. Part 731 – The OPM published a proposed rule to guide agencies in carrying out a five-year reinvestigation requirement for positions of moderate risk with respect to suitability requirements.
December 2010	5 C.F.R. Part 732 – The OPM proposed a revised regulation to clarify the requirements and procedures agencies should observe when designating national security positions with respect to sensitivity requirements.
December 2011	5 C.F.R. Part 731 – The OPM implemented the five-year reinvestigation requirement for moderate-risk positions.
January 2013	Presidential Memorandum – The President issued a memorandum directing the OPM and the ODNI to jointly propose new rules for designating positions in the Competitive Service as National Security Sensitive.
May 2013	5 C.F.R. Section (§) 1400 – The proposed rule change to 5 C.F.R. Part 732 from December 2010 was withdrawn, and the OPM and the ODNI jointly proposed a new rule at 5 C.F.R. Chapter IV, § 1400 for Designation of National Security Positions in the Competitive Service and Related Matters.
July 2015	5 C.F.R. § 1400 – The OPM and the ODNI final rule is implemented, which includes the five-year reinvestigation requirement for both national security and public trust positions not requiring access to classified information.

Source: EO 13488 and C.F.R. Parts 731, 732, and § 1400 taken from the Federal Register.

The C.F.R. requires agency heads to designate every position within an agency as either high, moderate, or low risk, as determined by the position’s potential for adverse impact on the efficiency or integrity of the Federal Service. If there is a change in position risk, *i.e.*, an

⁸ Presidential Memorandum, *Rulemaking Concerning the Standards for Designating Positions in the Competitive Service as National Security Sensitive and Related Matters* (January 2013).

⁹ 5 C.F.R. § 1400 *Designation of National Security Positions* (2015).



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employee moves to a position at a higher risk level than the previous position, the employee must meet the investigative requirements of the new position and undergo an updated investigation. In addition, the C.F.R. requires a background reinvestigation every five years for employees in moderate-risk positions.¹⁰ Examples of moderate-risk positions at the IRS include revenue agents, appeals officers, and information technology specialists.

Processes related to moderate-risk background investigations

The Personnel Security office within the IRS initiates and manages the background reinvestigation process. The actual background reinvestigation, however, is completed by the National Background Investigations Bureau within the OPM.¹¹ To request a background reinvestigation, the Personnel Security office sends a completed reinvestigation questionnaire¹² for an employee to the OPM. Once the OPM completes the background reinvestigation, it sends the results back to the IRS. The IRS will then evaluate the information and make a determination with respect to the employee's continued employment. If the findings are favorable, the case is closed. If the findings are unfavorable, IRS management, with the assistance of Workforce Relations Division (WRD) personnel, makes a determination on disciplinary actions that may be imposed, including termination.¹³

In addition, the OPM obtains an employee's fingerprints as part of the employee's initial background investigation upon being hired. The OPM submits the fingerprint images to the Federal Bureau of Investigation, which retains this information. If an employee is subsequently arrested, the Federal Bureau of Investigation forwards the criminal arrest information to the OPM, which then forwards the information to the employing agency. This process is referred to as the post-appointment arrest information process.

This review was performed at the Personnel Security office in Covington, Kentucky, and with information obtained from the Human Capital Office's Employment, Talent, and Security Division and the WRD during the period March through December 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and

¹⁰ In June 2018, the OPM issued a variation to the C.F.R. 731 regulation to temporarily extend, for a two-year period, moderate-risk reinvestigations from five years to seven years.

¹¹ In October 2016, the National Background Investigations Bureau was established as the primary service provider of Governmentwide background investigations for the Federal Government.

¹² The Electronic Questionnaires for Investigations Processing system is used by IRS employees to electronically enter, update, and transmit their personal investigative data. It is maintained by the National Background Investigations Bureau, which is a department within the OPM.

¹³ See Appendix IV for a detailed explanation of the background reinvestigation process.



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methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

**Actions Have Been Taken to Address the Significant Backlog in
Moderate-Risk Background Investigations**

In June 2012, the IRS began initiating requests for background reinvestigations of moderate-risk employees.¹⁴ According to the IRS, it had completed 8,100 reinvestigations at a cost of approximately \$1.7 million as of April 2013. However, in April 2013, the IRS postponed the initiation of reinvestigations based on further clarification of C.F.R. changes proposed by the OPM as well as IRS budget and staffing constraints. As of October 1, 2017, 25,520 employees were overdue for moderate-risk background reinvestigations.¹⁵

Based on a review of publicly available records,¹⁶ we believe this backlog presents a high risk to the IRS. We determined that 1,228 of the employees with overdue background reinvestigations had information in public records indicating possible suitability issues. Of these, 148 employees had serious criminal issues since their last background investigation,¹⁷ such as violent behavior, driving under the influence, theft, fraud, sexual misconduct, or drug-related issues that could affect their suitability for employment.

As noted previously, to implement the January 2009 EO stating that individuals in positions of moderate risk shall be subject to periodic reinvestigation, the OPM promulgated initial regulations in December 2011 requiring agencies to conduct background reinvestigations of employees in moderate risk positions every five years. The IRS began moderate-risk reinvestigations in June 2012 but postponed further reinvestigations in April 2013, after the President instructed the OPM and the ODNI to issue new guidance. That guidance became effective in July 2015, but due to budget and staffing limitations, the IRS did not resume moderate-risk reinvestigations until May 2018.

¹⁴ IRS employees may also be reinvestigated if, at any time, there is any indication that they can no longer meet the standards for access to classified information.

¹⁵ According to an Automated Background Investigation System database report of all moderate-risk reinvestigations that were initiated but not completed as of October 1, 2017 (provided by the IRS Personnel Security office).

¹⁶ Public records we identified included resources such as Consolidated Lead Evaluation and Reporting, Public Access to Court Electronic Records, Westlaw, Lexis Nexus, and local law enforcement websites that provide information to identify potential suitability issues related primarily to criminal behavior and dishonest conduct that occurred outside of the workplace.

¹⁷ Not all criminal cases resulted in a conviction. When considering suitability, primary emphasis is on the nature of the criminal conduct, which may or may not have resulted in arrests, charges, or convictions.



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Examples 1 through 4 illustrate the serious conduct and criminal issues that our review of public records identified that occurred since the employee's last background investigation. Based on a draft version of this report, the IRS provided additional information that has been incorporated into the examples. These issues, along with any other issues identified during a background reinvestigation, would need to be considered to determine whether an employee remains a suitable candidate for continued employment with the IRS.

Example 1: Example of an Employee Sexual Misconduct Case

The employee's last background investigation was completed in ***3*** 1994. Based on a Treasury Inspector General for Tax Administration (TIGTA) investigation, the IRS was informed on or about *****3*****, that the employee pleaded guilty in **3** for *****3*****. He was sentenced to ***3*** in jail and *****3***** probation and was also required to register as a sex offender. The employee also confirmed that he had been arrested in *****3***** **3** and disclosed to TIGTA that he had engaged in *****3***** On *****3***** the IRS proposed removing the employee based on flagrant off-duty criminal conduct, conduct unbecoming an IRS employee, and lack of candor regarding a matter of official interest. The IRS later mitigated the removal to a ***3*** suspension based on mitigating factors. On *****3***** and on *****3***** *****3***** The IRS permitted the employee to exhaust remaining annual leave, and thereafter, the IRS placed the employee on non-paid status (leave without pay or absent without leave). The IRS learned from TIGTA in November 2017 that the employee had been sentenced to *****3*****. On *****3***** during the course of our audit and after providing the employee with due process procedures, the IRS removed the employee for flagrant off-duty misconduct.

Source: Individual Automated Labor and Employee Relations Tracking System (ALERTS) database and Consolidated Lead Evaluation and Reporting (CLEAR) database case files, as well as information provided by the IRS.¹⁸

¹⁸ The CLEAR database contains public records on individuals and organizations.



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Example 2: Example of an Employee Sexual Misconduct Case

The employee's last background investigation was completed in ****3****1989. Based on a search of public records, TIGTA found that, in ****3**** the employee was charged in ****3**** with **3* sex offender registry. The employee was convicted in **3**. Details of the penalties associated with the conviction were not available, but the employee is found in the sex offender registry. According to IRS officials, the employee's background reinvestigation was referred to the OPM on August 19, 2019.

Source: Individual CLEAR database case file, as well as information provided by the IRS.

Example 3: Example of an Employee Fraud Case

The employee's last background investigation was completed in ****3**** 1994. Based on a search of public records, TIGTA found that, in ****3**** the employee was charged with making false representations and documents. Court documents show the employee knowingly and willfully made materially false, fictitious, and fraudulent statements and representations, and made and used false documents in ****3**** in order ****3****. The employee falsely represented ****3**** and stated they were ****3****. However, the employee was ****3****. In ****3**** the employee submitted a signed guilty plea and agreed to pay \$**3** in restitution. The plea deal shows that the employee admitted to ****3****. On ****3**** the IRS's Labor Relations function created a case on the IRS's internal conduct tracking system based on information showing the employee had been charged with and pleaded guilty to knowingly and willfully making false, fictitious, and fraudulent statements and representations, and making and using false documents. During the course of our audit, the employee was removed from Federal Service on ****3**** for pleading guilty to a crime for which imprisonment may be imposed and false statements.

Source: Individual CLEAR database case file, as well as information provided by the IRS.



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Example 4: Example of an Employee Theft Case

The employee's last background investigation was completed in **3** 2008. Based on a search of public records, TIGTA found that, on *****3***** the employee was charged with theft of property or services with a value of more than ***3*** but less than ****3***** and in ****3***** the employee pleaded guilty to the theft charge. The employee was ordered to pay ****3**** in restitution, *****3***** The court also ordered a ***3*** prison sentence with *****3*****

IRS management evaluated the arrest for theft as an off-duty misconduct case. Such cases require IRS management to determine if a nexus exists between the misconduct and the agency's ability to carry out its mission successfully. According to the IRS's internal conduct tracking system, IRS management did not find a nexus between the misconduct and the employee's duties and did not find that the misconduct adversely affected the mission of the IRS. Management issued a closed without action letter to the employee. According to IRS officials, the employee's background reinvestigation was referred to the OPM on March 7, 2019.

Source: Individual CLEAR database case file, as well as information provided by the IRS.

While addressing the significant backlog of reinvestigations will be a significant endeavor, IRS leadership recognizes the importance of the requirement to investigate individuals in moderate-risk positions at least once every five years. In February 2018, the IRS Personnel Security office completed a risk assessment to address the moderate-risk reinvestigation backlog. As part of this assessment, the IRS stated that it had completed position risk reviews and determined that the agency had 42,250 moderate-risk positions. Accordingly, the IRS resumed routine background reinvestigations of moderate-risk employees in May 2018 and created a five-year plan to eliminate the backlog of overdue reinvestigations. In addition, IRS management stated that the IRS has hired additional staff in an effort to complete the overdue moderate-risk reinvestigations. As of April 30, 2019, IRS management stated that it had forwarded approximately 13,000 reinvestigations to the OPM at a cost of approximately \$4.7 million.¹⁹ By September 12, 2019, the IRS reported that the number of reinvestigations forwarded to the OPM had increased to more than 21,000.

The OPM has also taken actions that may expedite certain background reinvestigations. In June 2018, the OPM issued guidance requiring all employees due for a reinvestigation to complete a supplemental Governmentwide questionnaire.²⁰ The questionnaire collects information related to education, travel, and background. The goal is to reduce the

¹⁹ The cost of a reinvestigation depends on whether the reinvestigation includes a subject interview. In addition, the IRS incurs costs for Personnel Security office staffing to complete its part of the reinvestigation process.

²⁰ Joint memorandum with the OPM and the ODNI, *Transforming Workforce Vetting: Measures to Reduce the Federal Government's Background Investigation Inventory in Fiscal Year 2018* (June 2018).



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OPM's background investigation inventory by screening new reinvestigation requests and to allow a deferment of reinvestigations if screening results are favorable.²¹

Continued employment of individuals who do not meet OPM suitability requirements for Federal employment could increase the insider threat risk to taxpayer data, IRS systems, and facilities. The actions taken by the IRS and the OPM to address and eliminate the backlog of moderate-risk background reinvestigations should help to mitigate this risk.

Employee Conduct Information Is Not Considered When Prioritizing Moderate-Risk Background Reinvestigations

The OPM recently issued guidance stating that agencies should use a risk management approach to promptly reduce the inventory of pending reinvestigations. IRS management stated that it is currently prioritizing the overdue reinvestigations of 1) employees whose previous background investigation was completed by the U.S. Investigations Services Inc.²² and 2) employees with the longest amount of time elapsed since their last background investigation. While OPM officials stated that the IRS could not research publicly available information to prioritize reinvestigations for transmission to the OPM, OPM officials stated that the IRS could use internal conduct information to determine which reinvestigations should receive priority. However, the IRS does not consider an employee's conduct issues.

Our analysis of IRS internal conduct records identified 3,019 of the employees with overdue background reinvestigations who had cases of confirmed misconduct.²³ Examples of these misconduct cases included absence without leave, violent behavior, driving under the influence, off-duty misconduct, sexual misconduct, falsification of documents, late-filed or unpaid taxes, criminal misconduct, and unauthorized access to taxpayer accounts.

By not considering conduct information, the IRS may be focusing its limited resources on reinvestigating employees who present a lesser risk to the integrity of the IRS. In addition, if employees with known issues are not reinvestigated promptly, employees with potentially serious suitability issues may continue to be employed at the IRS, thus increasing the risk to taxpayer data and IRS employees, systems, and facilities.

²¹ The Government Accountability Office reported that, as of February 2018, the National Background Investigations Bureau had a backlog of more than 710,000 pending investigations. Government Accountability Office, GAO-18-431T, *Personnel Security Clearances: Additional Actions Needed to Implement Key Reforms and Improve Timely Processing of Investigations* (March 7, 2018).

²² According to IRS officials, this priority was based on the findings from a prior TIGTA report: TIGTA, Ref. No. 2018-10-021, *Review of Questionable Background Investigations Performed by the Office of Personnel Management's Former Contractor U.S. Investigations Services, Inc.* (May 2018).

²³ Cases were limited to those which were substantiated with a disciplinary action of admonishment or higher or for which the employee resigned or retired.



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Examples 5 through 8 illustrate the serious conduct and criminal issues that our review of internal IRS conduct records identified that occurred since the employee's last background investigation. Based on a draft version of this report, the IRS provided additional information that has been incorporated into the examples. These issues, along with any other issues identified during a background reinvestigation, would need to be considered to determine whether an employee remains a suitable candidate for continued employment with the IRS.

Example 5: Example of an Employee Violent Behavior Case

The employee's last background investigation was completed in **3** 2011. Based on a TIGTA investigation, IRS management was informed on or about *****3***** that the employee had been arrested on three separate occasions for off-duty misconduct. In *****3***** the employee was charged with criminal *****3***** and subsequently pleaded guilty to harassment and had a protective order issued against him. In *****3***** filed a complaint with TIGTA that the employee *****3***** *****3***** In *****3***** the employee was charged with harassment and criminal contempt. In *****3***** the employee was charged with ***3*** *****3***** *****3***** On *****3***** the IRS suspended the employee for 15 days for conduct unbecoming an IRS employee. According to IRS officials, the employee's background reinvestigation was referred to the OPM on August 16, 2019.

Source: Individual ALERTS database case file, as well as information provided by the IRS.

Example 6: Example of an Employee Sexual Misconduct Case

The employee's last background investigation was completed in *****3*****2010. In *****3***** the IRS's internal conduct tracking system showed that the IRS closed a conduct case in which the employee was accused of sexual misconduct *****3***** The IRS suspended the employee for three days on *****3***** for inappropriate conduct *****3***** In *****3***** *****3*** complained of sexual harassment while *****3***** *****3***** According to IRS officials, the IRS suspended the employee for 15 days on *****3***** for engaging in sexual misconduct. During the course of our audit, the employee resigned from the IRS effective *****3*****

Source: Individual ALERTS database case file, as well as information provided by the IRS.



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Example 7: Example of an Employee Drug Case

The employee's last background investigation was completed in ***3*** 2011. According to the IRS's internal conduct tracking system, in *****3***** the employee was arrested and charged with felony counts of *****3***** The employee cooperated with the prosecution to help identify the criminal drug activity. However, in *****3***** the employee was sentenced for the offenses, given probation, and *****3***** According to the IRS's internal conduct tracking system, the IRS suspended the employee for 15 days on *****3***** for off-duty misconduct. According to IRS officials, the employee's background reinvestigation was referred to the OPM on August 3, 2019.

Source: Individual ALERTS database case file, as well as information provided by the IRS.

Example 8: Example of an Employee Driving While Intoxicated

The employee's last background investigation was completed in ***3*** 2001. According to the IRS's internal conduct tracking system, in **3**, the employee was sentenced to serve jail time for a misdemeanor of driving while intoxicated. In *****3***** and concerning a separate incident, the employee was indicted for *****3***** The IRS indefinitely suspended the employee in *****3***** According to the IRS's internal conduct tracking system, on *****3***** the employee pleaded guilty to *****3***** and received *****3***** probation. The IRS proposed removing the employee on *****3***** for conduct unbecoming an IRS employee and removed the employee on *****3***** an arbitrator overturned the indefinite suspension and removal, finding the IRS had failed to prove the deciding official had appropriately considered the Douglas Factors (see footnote 24). According to the IRS's internal conduct tracking system, following her return to duty, the employee also had several conduct issues including *****3***** and *****3***** and *****1***** for which she received reprimands. According to IRS officials, the employee's background reinvestigation was referred to the OPM on September 9, 2019.

Source: Individual ALERTS database case file, as well as information provided by the IRS.

When we informed the IRS of the results of our research, IRS management stated that they had not considered using this information, but were interested in it as an input to their process. IRS management also noted that the IRS has a robust employee conduct program in place, managed by its WRD, with which individual employee conduct cases are routinely identified by management and addressed without waiting until a reinvestigation is due. In addition, IRS management stated that the IRS has procedures in place to handle IRS employees who are

²⁴ The Merit Systems Protection Board in its landmark decision, *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981), established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.



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arrested during the course of their employment. These programs are designed to give the IRS the necessary assurances that employees remain suitable candidates by addressing unfavorable conduct and taking the appropriate administrative actions.

Due to the sensitivity of data handled by IRS employees, the IRS must be careful to employ only those individuals who are suitable for Federal employment. Serious misconduct and potential criminal issues, such as those we identified, create doubt about an employee's judgment, reliability, and trustworthiness. Prioritizing and initiating background reinvestigations on employees with known issues would assist the IRS to determine whether these employees are fit for continued employment.

Recommendation

Recommendation 1: The Human Capital Officer should work with the OPM to develop a risk-based method for prioritizing the backlog of background reinvestigations.

Management's Response: IRS management agreed with this recommendation. On August 30, 2019, the IRS began working with the OPM to determine whether it is willing to develop a risk-based method for prioritizing the IRS's backlog of background reinvestigations. The OPM is willing to evaluate the remaining backlogged inventory submitted by the IRS and consult with the IRS to determine prioritization of the most serious investigation cases. Further, the IRS is committed to acting on the results from the most serious background investigation cases and to taking appropriate actions as required by statute, regulation, collective bargaining agreement, and applicable case law as expeditiously as possible after receiving them from the OPM to ensure that IRS employees remain suitable for their positions and are of the highest integrity, reliability, and character. The IRS will notify TIGTA of the OPM's final response.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to assess the potential risks associated with overdue moderate-risk background reinvestigations at the IRS. To accomplish our objective, we:

- I. Determined the applicable policies, procedures, and controls that are in place for conducting moderate-risk employee background reinvestigations.
 - A. Identified and reviewed Federal laws, regulations, OPM guidance, Treasury Directives, and IRS guidance related to initiating, conducting, and completing employee background reinvestigations.
 - B. Interviewed key personnel from the OPM and the IRS Personnel Security office and other IRS management officials to document their roles and responsibilities in initiating background reinvestigations.
- II. Identified IRS employees who had overdue moderate-risk background reinvestigations to determine if any risk indicators were present that would make the employees potentially unsuitable to maintain their current position within the IRS.
 - A. Obtained a list of all IRS personnel who had overdue moderate-risk background reinvestigations as of October 1, 2017.
 - B. Obtained an extract of the ALERTS database.¹ We determined the data to be sufficiently reliable for the purposes of the audit by 1) performing electronic testing of required data elements and 2) reviewing existing information about the data and the system that produced them.
 - C. Matched the list of IRS employees with overdue moderate-risk background reinvestigations to the ALERTS database extract to identify any employees who were subject to disciplinary action for a conduct issue since their last investigation.
 - D. Matched the list of IRS employees with overdue moderate-risk background reinvestigations to the CLEAR² database to identify any IRS employees who had issues of concern in the CLEAR database. These issues include (but were not limited to): tax violations, bankruptcy, drug use, making violent threats, and other criminal activity.

¹ The ALERTS database is an internal IRS database that tracks allegations of misconduct and related disciplinary actions.

² The CLEAR database contains public records on individuals and organizations.



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- E. Selected case studies to determine details of the CLEAR database match results and used the OPM suitability guidelines to look for indications of whether the results of Steps II.C. and II.D. could potentially affect continued employment with the IRS, or retention in current position, if the reinvestigation had been performed timely.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: Federal regulations and the IRS's policies and procedures for conducting moderate-risk employee background reinvestigations. We evaluated these internal controls by reviewing the guidance related to the reinvestigation process, interviewing IRS Personnel Security office and OPM staff and management, and reviewing systems for reporting and tracking reinvestigations. We also reviewed the IRS's internal conduct records and public records to analyze selected case files.



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Appendix II

Major Contributors to This Report

Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations)

Deann L. Baiza, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations)

Troy D. Paterson, Director

LaToya R. Penn, Audit Manager

Melinda H. Dowdy, Acting Audit Manager

Evan A. Close, Lead Auditor

Sharon M. Downey, Senior Auditor

Michael S. Russell, Auditor



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Appendix III

Report Distribution List

Deputy Commissioner for Operations Support
Human Capital Officer
Director, Employment, Talent, and Security
Deputy Director, Employment, Talent, and Security
Director, Enterprise Audit Management



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Appendix IV

Background Reinvestigation Process

During the employee reinvestigation phase, the Personnel Security office within the IRS manages and initiates the background investigation process; however, the actual background investigation is completed by the OPM.¹ According to the IRS, the employee should be informed of their reinvestigation status six months prior to the five-year time frame for reinvestigation. To request a background investigation, the Personnel Security office will send a reinvestigation questionnaire for an employee to the OPM. Once the OPM completes the investigation, it sends the results back to the IRS. The IRS will then adjudicate² the employee based on this information.

The Personnel Security office tracks all initial background investigations and reinvestigations through its Automated Background Investigation System (ABIS) database.³ If an OPM background investigation does not identify any issues, the Personnel Security office automatically adjudicates the background investigation favorably.⁴ However, if an investigation returns unfavorable information, the Personnel Security office forwards the case to IRS Human Capital Office WRD personnel. In these cases, the employee's management chain, in consultation with the WRD Labor Relations office, must make determinations about whether employees are fit for continued employment and then appropriate management action would be taken on those issues, if necessary. WRD personnel input this information to the ALERTS database.⁵ WRD personnel track the information in the ALERTS database, and once the case is closed, the results systematically update the ABIS database. If the findings are favorable, the case is closed and the five-year reinvestigation cycle restarts in the ABIS database. If the findings are unfavorable, IRS management, with the assistance of WRD personnel, makes a determination on disciplinary actions that may be imposed, including termination. Figure 1 provides a graphical depiction of the background reinvestigation process.

¹ The OPM or an agency to which the OPM has delegated the authority.

² Adjudication is the process followed to evaluate the results of a background investigation and make a determination with respect to the employee's continued employment based on this information.

³ The ABIS database is used by the IRS to track and monitor background investigations while they are being conducted. Personnel Security office employees manually update the system.

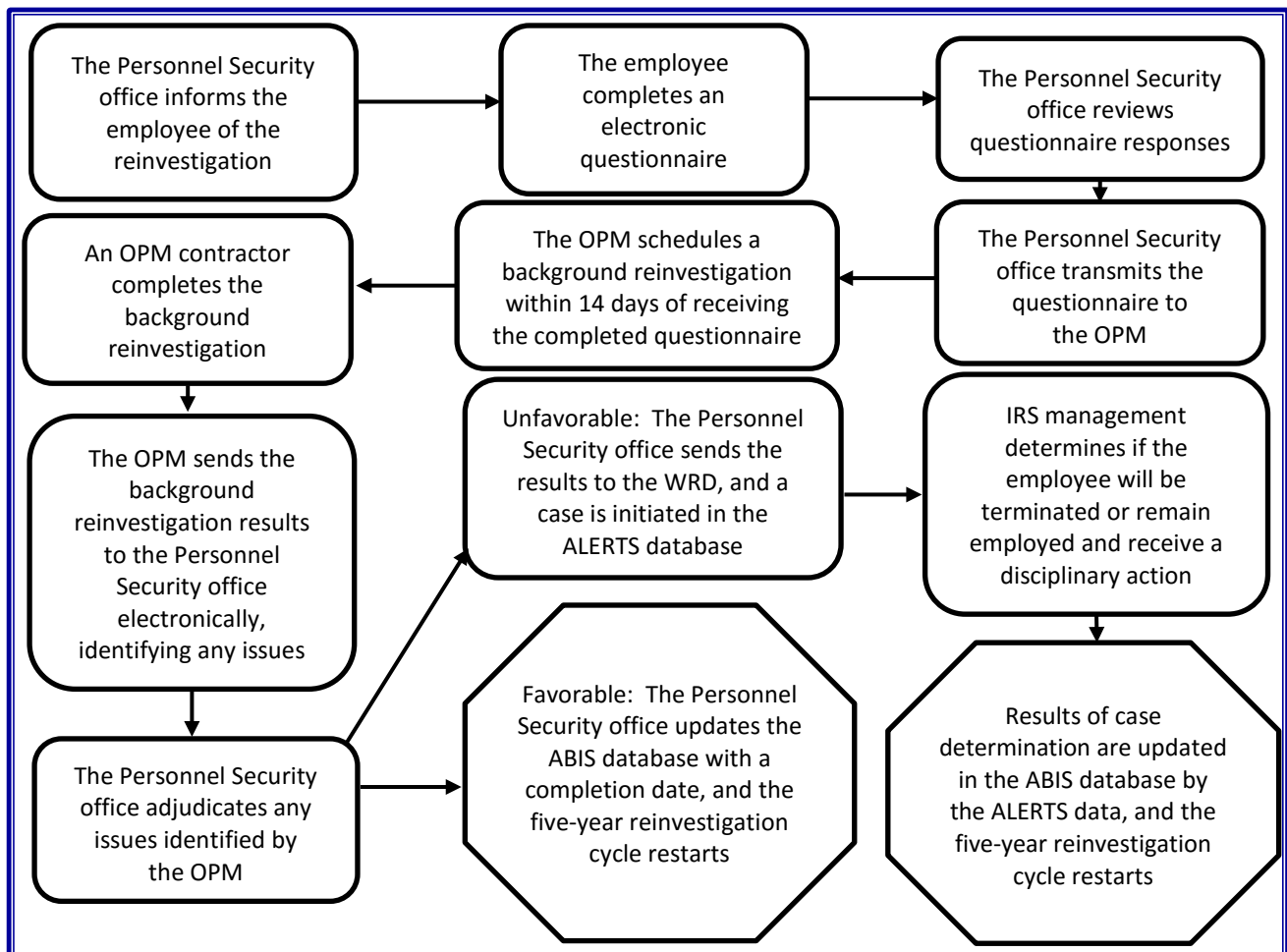
⁴ For the adjudication process, the adjudicator carefully weighs information gathered during the background investigation (whether favorable or unfavorable) to reach a final determination. Each case is judged on its own merits, using adjudicative guidelines, to determine if an individual's access to classified information is consistent with the interests of national security.

⁵ The ALERTS database is a system for tracking Labor Relations activities. Case types include conduct cases, employee tax matters, and TIGTA Reports of Investigation.



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Figure 1: The IRS's Background Reinvestigation Process



Source: TIGTA's graphical depiction of the IRS background reinvestigation process.



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Appendix V

Management's Response to the Draft Report

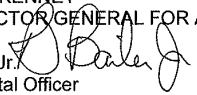


HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 10 2019

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robin D. Bailey, Jr. 
IRS Human Capital Officer

SUBJECT: Draft Audit Report - Employee Conduct Issues Are Not
Considered When Prioritizing Overdue Background
Reinvestigations (Audit #201810014)

Thank you for the opportunity to review TIGTA Draft Report #201810014 – Employment Conduct Issues Are Not Considered When Prioritizing Overdue Background Reinvestigations, dated August 12, 2019. The Internal Revenue Service (IRS) takes seriously our responsibility to ensure that all employees meet the highest ethical standards and remain suitable for federal employment.

The objective of this audit was to assess the potential risks associated with overdue moderate-risk reinvestigations (MRRs) at the IRS. We are pleased to share that we have significantly mitigated the potential risks by releasing 96-percent of the backlogged MRRs to the Office of Personnel Management (OPM), the agency that conducts and oversees the investigations.

While the original number of moderate-risk employees who were overdue for a background reinvestigation at the time of TIGTA's data collection in the beginning of Fiscal Year 2018 was 25,520, the number declined as employees separated, retired, or moved to another risk level and are no longer serving in a moderate-risk position. Currently, we have 23,249 employees designated as moderate risk and overdue for reinvestigation, and 669 employees in moderate-risk positions are pending retirement or on extended military or medical leave. Of the remaining 22,580 cases, the IRS has submitted (released) 96-percent of the MRRs to the OPM. Of the remaining four percent: the one percent of our overdue MRR employees who have so far failed to complete the MRR Electronic Questionnaire for Investigations Processing (eQIP) will be issued a direct order to submit a complete eQIP package by a date certain, and the last three percent are Chief Counsel bargaining-unit employees for whom we finished negotiating with the union on September 30, 2019. We will closely track both categories of unreleased overdue MRRs to ensure full compliance. Further, OPM has completed



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68-percent of the reinvestigations received from the IRS, and we have taken or have plans to take appropriate action as warranted by the results of those investigations.

In performing this audit, TIGTA used both publicly available information and IRS conduct records to assess the risks associated with the overdue reinvestigations. While we earnestly agree all employees must meet the highest ethical standards for employment, the IRS confirmed that it lacks the authority and is prohibited from searching or using employees' publicly available information (e.g., CLEAR) to prioritize the backlogged reinvestigations, as set forth in the Executive Correspondence Memo dated June 1, 2018, Subject: *Transforming Workforce Vetting: Measures to Reduce the Federal Government's Background Investigation Inventory in Fiscal Year 2018*. Further, we were advised that using information identified by TIGTA from public records would be a violation of general privacy principles because we do not have an authorized purpose to search employees' public records for background investigation purposes given that OPM, and not the IRS, conducts background investigations.

The IRS has procedures in place to ensure its employees are suitable for employment. The IRS currently receives external conduct information through several sources: (1) TIGTA's Reports of Investigation; (2) TIGTA's Complaint Referral memoranda; (3) notifications of post-appointment arrests; and (4) results of completed background investigations, which are validated using more than first name, last name and date of birth. Should TIGTA send validated, publicly available information to the IRS as part of TIGTA Reports of Investigation or TIGTA Complaint Referral memoranda, we will take appropriate action.

Moreover, employees may be disciplined for off-duty misconduct only where there is a nexus between the off-duty misconduct and the efficiency of the Service. The IRS has procedures in place to analyze whether off-duty misconduct has a nexus to the employee's job. In determining an appropriate action, the IRS is required by statute, regulation, collective bargaining agreement and applicable case law, to consider numerous factors. Among these are the Douglas Factors, established by a Merit Systems Protection Board ruling. Management holds the delegated authority to consider these factors in each case and determine the appropriate action. When action is taken, the employee is entitled to due process.

The IRS agrees with TIGTA's recommendation. On August 30, 2019, the IRS began working with OPM to determine whether they are willing to develop a risk-based method for prioritizing the remaining backlog of MRRs. OPM is willing to evaluate the backlogged inventory submitted by the IRS and consult with us to determine prioritization of the most serious investigation cases. Further, the IRS is committed to acting on the results from the most serious background investigation cases and to taking appropriate actions as required by statute, regulation, collective bargaining agreement and applicable case law



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as expeditiously as possible after receiving them from OPM. The IRS will notify TIGTA of OPM's final response.

It is also important to note that TIGTA's methodology for conducting the searches in the CLEAR database used the employee's first name, last name and date of birth to obtain a list of all hits in the database and that additional data sets may have been used to verify that it was an IRS employee. However, such information would need to be validated through the investigation process to ensure the person identified with a possible suitability concern or criminal conduct is in fact the same person who is an IRS employee.

Finally, the report highlighted eight case studies. As the case studies note, the IRS was unaware of one of employee's misconduct, because the IRS was not informed of that employee's conviction. That employee remains at the IRS while we await the results of OPM's MRR. For the other seven cases, the IRS referred those cases to the appropriate business unit for potential administrative action under IRS conduct procedures. Of those seven, three employees are still employed with the IRS, one resigned, and the IRS removed three. (An arbitrator subsequently ordered one of the removed employees reinstated.)

If you have any questions, please contact me at 202-317-7600, or a member of your staff may contact Sylana Tramble, director, Employment, Talent & Security Division, at 202-317-4172.

Attachment



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Attachment

RECOMMENDATION:

The Human Capital Officer should work with OPM to develop a risk-based method for prioritizing the backlog of background investigations.

CORRECTIVE ACTION:

The IRS agrees with this recommendation, as clarified by TIGTA's leadership. On August 30, 2019, the IRS began working with OPM to determine whether they are willing to develop a risk-based method for prioritizing the IRS's backlog of background reinvestigations. OPM is willing to evaluate the remaining backlogged inventory submitted by the IRS and consult with us to determine prioritization of the most serious investigation cases. Further, IRS is committed to acting on the results from the most serious background investigation cases and to taking appropriate actions as required by statute, regulation, collective bargaining agreement and applicable case law as expeditiously as possible after receiving them from OPM to ensure IRS employees remain suitable for their positions and they are of the highest integrity, reliability and character. The IRS will notify TIGTA of OPM's final response.

IMPLEMENTATION DATE:

December 15, 2019

RESPONSIBLE OFFICIAL:

Director, Employment, Talent & Security Division, Human Capital Office

CORRECTIVE ACTION MONITORING PLAN:

HCO will enter accepted corrective actions into the Joint Audit Management Enterprise System (JAMES). These corrective actions are monitored monthly until completion.