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Efficiency and Effectiveness of Federal  
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Committee on Homeland Security and  
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# PERSONNEL SECURITY CLEARANCES

## Actions Needed to Help Ensure Correct Designations of National Security Positions

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Defense Capabilities and Management

# GAO Highlights

Highlights of [GAO-14-139T](#), a testimony before the Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

Personnel security clearances allow individuals access to classified information that, through unauthorized disclosure, can in some cases cause exceptionally grave damage to U.S. national security. A sound requirements process to determine whether a national security position requires access to classified information is needed to safeguard classified data and manage costs. The DNI reported that more than 4.9 million federal government and contractor employees held or were eligible to hold a security clearance in 2012. GAO has reported that the federal government spent over \$1 billion to conduct background investigations (in support of security clearances and suitability determinations—the consideration of character and conduct for federal employment) in fiscal year 2011.

This testimony addresses policies and procedures executive branch agencies use when (1) first determining whether federal civilian positions require a security clearance and (2) periodically reviewing and revising or validating existing federal civilian position security clearance requirements. This testimony is based on a July 2012 GAO report (GAO-12-800), in which GAO (1) reviewed relevant federal guidance and processes, (2) examined agency personnel security clearance policies, (3) obtained and analyzed an OPM tool used for position designation, and (4) met with officials from ODNI and OPM because of their Directors' assigned roles as Security and Suitability Executive Agents. Because DOD and DHS grant the most security clearances, that report focused on the security clearance requirements of federal civilian positions within those agencies.

View [GAO-14-139T](#). For more information, contact Brenda S. Farrell at (202) 512-3604 or [farrellb@gao.gov](mailto:farrellb@gao.gov).

November 20, 2013

## PERSONNEL SECURITY CLEARANCES

### Actions Needed to Help Ensure Correct Designations of National Security Positions

## What GAO Found

In July 2012, GAO reported that the Director of National Intelligence (DNI), as Security Executive Agent, had not provided executive branch agencies clearly defined policy and procedures to consistently determine if a position requires a personnel security clearance. Absent this guidance, agencies are using an Office of Personnel Management (OPM) position designation tool to determine the sensitivity and risk levels of civilian positions which, in turn, inform the type of investigation needed. OPM audits, however, found inconsistency in these position designations, and some agencies described problems implementing OPM's tool. For example, in an April 2012 audit OPM assessed the sensitivity levels of 39 positions, and its designations differed from the agency in 26 positions. Problems exist, in part, because OPM and the Office of the Director of National Intelligence (ODNI) did not collaborate on the development of this tool, and because their respective roles for suitability and security clearance reform are still evolving. As a result, to help determine the proper designation, GAO recommended that the DNI, in coordination with the Director of OPM, issue clearly defined policy and procedures for federal agencies to follow when determining if federal civilian positions require a security clearance. The DNI concurred with this recommendation. In May 2013, the DNI and OPM jointly drafted a proposed revision to the federal regulation on position designation which, if finalized in its current form, would provide additional requirements and examples of position duties at each sensitivity level. GAO also recommended that once those policies and procedures are in place, the DNI and the Director of OPM, in their roles as Executive Agents, collaborate to revise the position designation tool to reflect the new guidance. ODNI and OPM concurred with this recommendation and recently told GAO that they are revising the tool.

GAO also reported in July 2012 that the DNI had not established guidance to require agencies to periodically review and revise or validate existing federal civilian position designations. GAO reported that Department of Defense (DOD) and Department of Homeland Security (DHS) component officials were aware of the requirement to keep the number of security clearances to a minimum, but were not always required to conduct periodic reviews and validations of the security clearance needs of existing positions. GAO found that without such a requirement, executive branch agencies may be hiring and budgeting for initial and periodic security clearance investigations using position descriptions and security clearance requirements that do not reflect current national security needs. Further, since reviews are not done consistently, executive branch agencies cannot have assurances that they are keeping the number of positions that require security clearances to a minimum. Therefore, GAO recommended in July 2012 that the DNI, in coordination with the Director of OPM, issue guidance to require executive branch agencies to periodically review and revise or validate the designation of all federal civilian positions. As of October 2013, ODNI and OPM are finalizing revisions to the federal regulation on position designation. While the proposed regulation requires agencies to conduct a one-time reassessment of position designation within 24 months of the final rule's effective date, it does not require a periodic reassessment of positions' need for access to classified information. GAO continues to believe that periodic reassessment is important.

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Chairman Tester, Ranking Member Portman, and Members of the Subcommittee:

Thank you for the opportunity to be here to discuss executive branch agencies' requirements for personnel to have access to classified information. As you know, my recent testimony on the government-wide security clearance process before your Subcommittee on June 20, 2013 included a discussion of our work on the steps that executive branch agencies use to first determine whether a federal civilian position requires access to classified information.<sup>1</sup> Today, I am here to elaborate on that process and report on the extent of progress by executive branch agencies in implementing our recommendations.

Personnel security clearances allow federal government and industry personnel (contractors) to gain access to classified information that, through unauthorized disclosure, can in some cases cause exceptionally grave damage to U.S. national security. In 2008, I testified that developing a sound requirements process to determine whether a position requires a security clearance for access to classified information is important because unnecessary requests for clearances have the potential to increase investigative workload and related costs.<sup>2</sup> As you know, a high volume of clearances continue to be processed and a sound requirements determination process is needed to effectively manage costs, since agencies spend significant amounts annually on national security and other background investigations.

In addition to cost implications, limiting the access to classified information and reducing the associated risks to national security underscore the need for executive branch agencies to have a sound process to determine which positions require a security clearance. In 2012, the Director of National Intelligence (DNI) reported that more than 4.9 million federal government and contractor employees held or were

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<sup>1</sup>GAO, *Personnel Security Clearances: Further Actions Needed to Improve the Process and Realize Efficiencies*, [GAO-13-728T](#) (Washington, D.C.: June 20, 2013).

<sup>2</sup>GAO, *Personnel Clearances: Key Factors to Consider in Efforts to Reform Security Clearance Processes*, [GAO-08-352T](#) (Washington, D.C.: Feb. 27, 2008); GAO, *Personnel Clearances: Key Factors for Reforming the Security Clearance Process*, [GAO-08-776T](#) (Washington, D.C.: May 22, 2008); and GAO, *Personnel Security Clearances: Preliminary Observations on Joint Reform Efforts to Improve the Governmentwide Clearance Eligibility Process*, [GAO-08-1050T](#) (Washington, D.C.: July 30, 2008).

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eligible to hold a security clearance.<sup>3</sup> Furthermore, in fiscal year 2011, the federal government spent over \$1 billion to conduct more than 2 million background investigations in support of both personnel security clearances and suitability determinations<sup>4</sup> for government employment outside the intelligence community.

My statement today will primarily discuss our July 2012 report in which we evaluated federal government practices for identifying federal civilian positions that require personnel security clearances.<sup>5</sup> Specifically, my statement will address policies and procedures that executive agencies use (1) when first determining whether federal civilian positions require a security clearance and (2) to periodically review and revise or validate existing federal civilian position security clearance requirements.

My statement is based primarily on our July 2012 report on defining policy for civilian position requirements.<sup>6</sup> A list of products from our body of work focused on the personnel security clearance process appears at the end of my statement. As part of the work for our 2012 report, we reviewed relevant executive orders and federal guidance and processes, examined agency personnel security clearance policies, obtained and analyzed an Office of Personnel Management (OPM) tool used for position designation, and interviewed executive branch agency officials. Specifically, the scope of our work focused on the security clearance requirements of federal civilian positions from selected components within the Department of Defense (DOD) and Department of Homeland Security (DHS), due to the volume of clearances that these two agencies process. Further, as part of our ongoing effort to determine the status of agency actions to address our prior recommendations, we reviewed the current proposal to revise a relevant federal regulation regarding position designation.

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<sup>3</sup>Office of the Director of National Intelligence, *2012 Report on Security Clearance Determinations* (January 2013).

<sup>4</sup>Determinations of suitability for government employment in positions in the competitive service and for career appointment in the Senior Executive Service include consideration of aspects of an individual's character or conduct that may have an effect on the integrity or efficiency of the service.

<sup>5</sup>GAO, *Security Clearances: Agencies Need Clearly Defined Policy for Determining Civilian Position Requirements*, [GAO-12-800](#) (Washington, D.C.: July 12, 2012).

<sup>6</sup>[GAO-12-800](#).

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The work upon which this testimony is based was conducted 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Further details about the scope and methodology can be found in each of these related products.

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## Background

In light of delays in completing security clearance background investigations and adjudicative decisions, as well as a significant backlog of clearances to be processed, Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),<sup>7</sup> which set objectives and established requirements for improving the personnel security clearance process, including improving the timeliness of the clearance process, achieving interagency reciprocity, establishing an integrated database to track investigative and adjudicative information, and evaluating available technology for investigations and adjudications.

In July 2008, Executive Order 13467 designated the DNI as the Security Executive Agent, who is responsible for developing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of background investigations and adjudications relating to determinations of eligibility for access to classified information and eligibility to hold a sensitive position.<sup>8</sup> Additionally, the order designated the Director of OPM as the Suitability Executive Agent. Determinations of suitability for government employment include consideration of aspects of an individual's character or conduct. Accordingly, the Suitability Executive Agent is responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of suitability.

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<sup>7</sup>Pub. L. No. 108-458 (2004) (relevant sections codified at 50 U.S.C. § 3341).

<sup>8</sup>Positions designated as sensitive are any positions within a department or agency where the occupant could bring about, by virtue of the nature of the position, a material adverse effect on national security.

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The order also established a Suitability and Security Clearance Performance Accountability Council, commonly known as the Performance Accountability Council,<sup>9</sup> to be the government-wide governance structure responsible for driving implementation and overseeing security and suitability reform efforts. Further, the executive order designated the Deputy Director for Management at the Office of Management and Budget (OMB) as the chair of the council and states that agency heads shall assist the Performance Accountability Council and Executive Agents in carrying out any function under the order, as well as implementing any policies or procedures developed pursuant to the order.

The relevant orders and regulations that guide the process for designating national security positions include executive orders and federal regulations. For example, Executive Order 10450, which was originally issued in 1953, makes the heads of departments or agencies responsible for establishing and maintaining effective programs for ensuring that civilian employment and retention is clearly consistent with the interests of national security. Agency heads are also responsible for designating positions within their respective agencies as sensitive if the occupant of that position could, by virtue of the nature of the position, bring about a material adverse effect on national security.<sup>10</sup>

In addition, Executive Order 12968, issued in 1995, makes the heads of agencies—including executive branch agencies and the military departments—responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of national security. This order also

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<sup>9</sup>The Performance Accountability Council is comprised of the Director of National Intelligence as the Security Executive Agent, the Director of OPM as the Suitability Executive Agent, and the Deputy Director for Management, OMB, as the chair with the authority to designate officials from additional agencies to serve as members. As of June 2012, the council included representatives from the Departments of Defense, Energy, Health and Human Services, Homeland Security, State, Treasury, and Veterans Affairs, and the Federal Bureau of Investigation.

<sup>10</sup>Sensitivity level is based on the potential of the occupant of a position to bring about a material adverse effect on national security. Some factors include whether the position requires access to classified information or involves the formulation of security-related policy. The sensitivity level of a position then informs the type of background investigation required of the individual in that position. The relationship between sensitivity and resulting clearances is detailed in Figure 1.

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states that, subject to certain exceptions, eligibility for access to classified information shall only be requested and granted on the basis of a demonstrated, foreseeable need for access. Further, part 732 of Title 5 of the Code of Federal Regulations provides requirements and procedures for the designation of national security positions, which include positions that (1) involve activities of the government that are concerned with the protection of the nation from foreign aggression or espionage, and (2) require regular use of or access to classified national security information.<sup>11</sup>

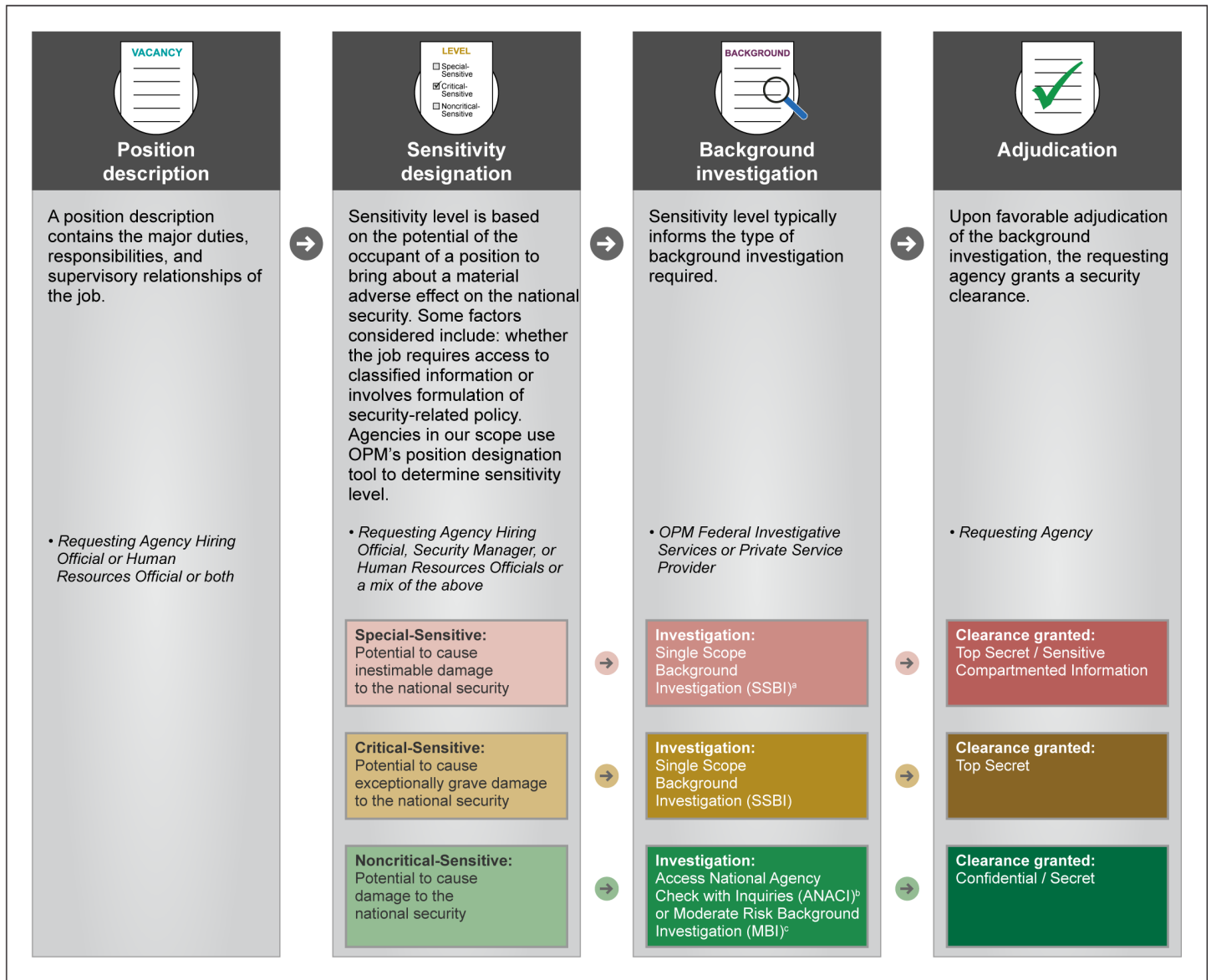
Part 732 of Title 5 of the Code of Federal Regulations also states that most federal government positions that could bring about, by virtue of the nature of the position, a material adverse effect on national security must be designated as a sensitive position and require a sensitivity level designation. The sensitivity level designation determines the type of background investigation required, with positions designated at a greater sensitivity level requiring a more extensive background investigation. Part 732 establishes three sensitivity levels—special-sensitive, critical-sensitive, and noncritical-sensitive—which are described in figure 1. According to OPM, positions that an agency designates as special-sensitive and critical-sensitive require a background investigation that typically results in a top secret clearance. Noncritical-sensitive positions typically require an investigation that supports a secret or confidential clearance. OPM also defines non-sensitive positions that do not have a national security element, but still require a designation of risk for suitability purposes. That risk level informs the type of investigation required for those positions. Those investigations include aspects of an individual's character or conduct that may have an effect on the integrity or efficiency of the service.

As previously mentioned, DOD and DHS grant the most security clearances. Figure 1 illustrates the process used by both DOD and DHS to determine the need for a personnel security clearance for a federal civilian position generally used government-wide.

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<sup>11</sup>Those requirements in Part 732 apply to national security positions in the competitive service, Senior Executive Service positions filled by career appointment within the executive branch, and certain excepted service positions.

**Figure 1: Departments of Homeland Security and Defense Security Clearance Determination Process for Federal Civilian Positions**



Source: GAO analysis of Department of Homeland Security (DHS) and Department of Defense (DOD) data.

<sup>a</sup>A Single Scope Background Investigation (SSBI) is conducted so that an individual can obtain a top secret clearance (including Sensitive Compartmented Information) and includes a review of the locations where an individual has lived, attended school, and worked. In addition, an SSBI includes interviews with four references who have social knowledge of the subject, interviews with former spouses, and a financial record check.

<sup>b</sup>An Access National Agency Check and Inquiries (ANACI) is used for the initial investigation for federal employees at the confidential and secret access levels. It consists of employment checks,



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education checks, residence checks, reference checks, and law enforcement agency checks, as well as a National Agency Check, which includes data from military records and the Federal Bureau of Investigation's investigative index.

<sup>c</sup>A Moderate Risk Background Investigation (MBI) includes an ANACI and provides issue-triggered enhanced subject interviews with issue resolution. DHS uses the MBI for non-critical sensitive positions when a position is first designated as high, moderate, or low risk.

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## DNI and OPM are Collaborating to Finalize Clearly Defined Policy Guidance for Determining When a Federal Civilian Position Needs a Security Clearance

During the course of our 2012 review, we found that the executive branch had not issued clearly defined policy guidance for determining when a federal civilian position needs a security clearance.<sup>12</sup> In the absence of such guidance, agencies are using a position designation tool that OPM designed to determine the sensitivity and risk levels of civilian positions that, in turn, inform the type of investigation needed. Further, we found that OPM's position designation tool lacked input from the DNI and that audits had revealed problems with the use of OPM's tool, leading to some incorrect position designations.

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## The DNI Has a Role to Guide Agencies in Designating Positions for Security Clearances, But Has Not Yet Provided Agencies with Clearly Defined Policy Guidance

The first step in the personnel security clearance process is to determine if the occupant of a federal position needs a security clearance to effectively and efficiently conduct work. However, we found in July 2012 that the DNI had not provided agencies with clearly defined policy through regulation or other guidance to help ensure that executive branch agencies use appropriate and consistent criteria when determining if positions require a security clearance. According to Executive Order 13467, issued in June 2008, the DNI, as the Security Executive Agent, is responsible for developing uniform policies and procedures to ensure the effective, efficient, and timely completion of investigations and adjudications relating to determinations of eligibility for access to classified information or to hold a sensitive position. Further, the order states that agency heads shall assist the Performance Accountability Council and Executive Agents in carrying out any function under the order, as well as implementing any policies or procedures developed pursuant to the order. Although agency heads retain the flexibility to make determinations regarding which positions in their agency require a

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<sup>12</sup>[GAO-12-800](#).

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security clearance, the DNI, in its capacity as Security Executive Agent, is well positioned to provide guidance to help align the personnel security clearance process.

Determining the requirements of a federal position includes assessing both the risk and sensitivity level associated with a position, which includes consideration of whether that position requires access to classified information and, if required, the level of access. Security clearances are generally categorized into three levels of access: top secret, secret, and confidential.<sup>13</sup> The level of classification denotes the degree of protection required for information and the amount of damage that unauthorized disclosure could reasonably be expected to cause to national defense or foreign relations.

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**OPM Has Developed a Tool to Help Agencies Determine the Proper Sensitivity Level for Most Federal Positions; However the Tool Was Not Developed with Input from the DNI**

In the absence of clearly defined guidance to help ensure that executive branch agencies use appropriate and consistent criteria when determining if positions require a personnel security clearance, agencies are using an OPM-designed tool to determine the sensitivity and risk levels of civilian positions which, in turn, inform the type of investigation needed. We reported in July 2012 that in order to assist with position designation, the Director of OPM—the Executive Agent for Suitability—has developed a process that includes a position designation system and corresponding automated tool to guide agencies in determining the proper sensitivity level for the majority of federal positions.<sup>14</sup> This tool—namely, the Position Designation of National Security and Public Trust Positions—enables a user to evaluate a position’s national security and suitability requirements so as to determine a position’s sensitivity and risk levels, which in turn dictate the type of background investigation that will be required for the individual who will occupy that position.

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<sup>13</sup>A top secret clearance is generally also required for access to Sensitive Compartmented Information—classified intelligence information concerning or derived from intelligence sources, methods, or analytical processes that is required to be protected within formal access control systems established and overseen by the Director of National Intelligence.

<sup>14</sup>According to OPM’s Federal Investigations Notice No. 10-06, *Position Designation Requirements* (Aug. 11, 2010), the tool is recommended for all agencies requesting OPM investigations and required for all positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service.

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In most agencies outside the Intelligence Community, OPM conducts the background investigations for both suitability and security clearance purposes. The tool does not directly determine whether a position requires a clearance, but rather helps determine the sensitivity level of the position. The determination to grant a clearance is based on whether a position requires access to classified information and, if access is required, the responsible official will designate the position to require a clearance.

OPM developed the position designation system and automated tool for multiple reasons. First, OPM determined through a 2007 initiative<sup>15</sup> that its existing regulations and guidance for position designation were complex and difficult to apply, resulting in inconsistent designations. As a result of a recommendation from the initiative, OPM created a simplified position designation process in 2008. Additionally, OPM officials noted that the tool is to support the goals of the security and suitability reform efforts, which require proper designation of national security and suitability positions.

OPM first introduced the automated tool in November 2008, and issued an update of the tool in 2010. In August 2010, OPM issued guidance (1) recommending all agencies that request OPM background investigations use the tool, and (2) requiring agencies to use the tool for all positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service.<sup>16</sup> Both DOD and DHS components use the tool. In addition, DOD issued guidance in September 2011<sup>17</sup> and August 2012<sup>18</sup> requiring its personnel to use OPM's tool to determine the proper position sensitivity

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<sup>15</sup>The Hadley-Springer commission was an initiative between OPM and the Assistant to the President for National Security Affairs that focused on simplifying the federal government investigative and adjudicative procedures to improve security requirements to determine eligibility for access to classified information, among other things.

<sup>16</sup>OPM's Federal Investigations Notice No. 10-06, *Position Designation Requirements* (Aug. 11, 2010).

<sup>17</sup>DOD, Washington Headquarters Services, *Implementation of the Position Designation Automated Tool* (Sept. 27, 2011).

<sup>18</sup>DOD Instruction 1400.25, Volume 731, *DoD Civilian Personnel Management System: Suitability and Fitness Adjudication For Civilian Employees* (Aug. 24, 2012).

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designation. A DHS instruction requires personnel to designate all DHS positions—including positions in the DHS components—by using OPM’s position sensitivity designation guidance, which is the basis of the tool.<sup>19</sup> Office of the Director of National Intelligence (ODNI) officials told us that they believe OPM’s tool is useful for determining a position’s sensitivity level. However, although the DNI was designated as the Security Executive Agent in 2008, ODNI officials noted that the DNI did not have input into recent revisions of OPM’s position designation tool.

This lack of coordination for revising the tool exists, in part, because the execution of the roles and relationships between the Director of OPM and the DNI as Executive Agents are still evolving, although Executive Order 13467 defines responsibilities for each Executive Agent. Accordingly, we found in July 2012 that the Director of OPM and the DNI had not fully collaborated in executing their respective roles in the process for determining position designations. For example, OPM has had long-standing responsibility for establishing standards with respect to suitability for most federal government positions. Accordingly, the sections of the tool to be used for evaluating a position’s suitability risk level are significantly more detailed than the sections designed to aid in designating the national security sensitivity level of the position. While most of OPM’s position designation system, which is the basis of the tool, is devoted to suitability issues, only two pages are devoted to national security issues. Moreover, OPM did not seek to collaborate with the DNI when updating the tool in 2010.

During our review completed in 2012, human capital and security officials from DOD and DHS and the selected components we examined affirmed that they were using the existing tool to determine the sensitivity level required by a position. However, in the absence of clearly defined policy from the DNI and the lack of collaborative input into the tool’s design, officials explained that they sometimes had difficulty in using the tool to designate the sensitivity level of national security positions.

## Audits Show Problems with Position Designation

OPM regularly conducts audits of its executive branch customer agency personnel security and suitability programs, which include a review of position designation to assess the agencies’ alignment with OPM’s

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<sup>19</sup>DHS Management Instruction 121-01-007, *Department of Homeland Security Personnel Suitability and Security Program* (June 2009).

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position designation guidance. In the audit reports we obtained as part of our 2012 review, OPM found examples of inconsistency between agency position designation and OPM guidance, both before and after the implementation of OPM's tool. For instance, prior to the implementation of the tool, in a 2006 audit of an executive branch agency, OPM found that its sensitivity designations differed from the agency's designation in 13 of 23 positions.

More recently, after the implementation of the tool, in an April 2012 audit of a DOD agency, OPM assessed the sensitivity levels of 39 positions, and OPM's designations differed from the agency's designations in 26 of those positions. In the April 2012 report, the DOD agency agreed with OPM's recommendations related to position designation, and the audit report confirmed that the agency had submitted evidence of corrective action in response to the position designation recommendations. OPM provided us with the results of 10 audits that it had conducted between 2005 and 2012, and 9 of those audit reports reflected inconsistencies between OPM position designation guidance and determinations of position sensitivity conducted by the agency. OPM officials noted, however, that they do not have the authority to direct agencies to make different designations because Executive Order 10450 provides agency heads with the ultimate responsibility for designating which positions are sensitive positions. ODNI conducted a separate position designation audit in response to the Intelligence Authorization Act for Fiscal Year 2010.<sup>20</sup> In that 2011 report, ODNI found that the processes the executive branch agencies followed differed somewhat depending whether the position was civilian, military, or contractor.<sup>21</sup>

#### Agency Officials Raised Concerns with Designation Tool

During the course of our 2012 review, DOD and DHS officials raised concerns regarding the guidance provided through the tool and expressed that they had difficulty implementing it. Specifically, officials from DHS's U.S. Immigration and Customs Enforcement stated that the use of the tool occasionally resulted in inconsistency, such as over- or underdesignating a position, and expressed a need for additional clear, easily interpreted guidance on designating national security positions. DOD officials stated that they have had difficulty implementing the tool

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<sup>20</sup>Pub. L. No. 111-259 (2010).

<sup>21</sup>Office of the Director of National Intelligence, *2011 Report on Position Requirements for Security Clearances*, n.d.

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because it focuses more on suitability than security, and the national security aspects of DOD's positions are of more concern to them than the suitability aspects.

Further, an official from DOD's Office of the Under Secretary of Defense for Personnel and Readiness stated that the tool and DOD policy do not always align and that the tool does not cover the requirements for some DOD positions. For example, DOD's initial implementing guidance on using the tool stated that terms differ between DOD's personnel security policy and the tool, and the tool might suggest different position sensitivity levels than DOD policy required. Also, officials from the Air Force Personnel Security Office told us that they had challenges using the tool to classify civilian positions, including difficulty in linking the tool with Air Force practices for position designation. Moreover, an Air Force official stated a concern that the definition for national security positions is broadly written and could be considered to include all federal positions.

Because we found that the executive branch had not provided clear guidance for the designation of national security positions, we recommended that the DNI, in coordination with the Director of OPM and other executive branch agencies as appropriate, issue clearly defined policy and procedures for federal agencies to follow when determining if federal civilian positions require a security clearance. In written comments on our July 2012 report, the ODNI concurred with this recommendation and agreed that executive branch agencies require simplified and uniform policy guidance to assist in determining appropriate sensitivity designations.

We routinely monitor the status of agency actions to address our prior report recommendations. As part of that process, we found that a January 25, 2013 presidential memo authorized the DNI and OPM to jointly issue revisions to part 732 of Title 5 of the Code of Federal Regulations, which is intended to provide requirements and procedures for the designation of national security positions. Subsequently, ODNI and OPM drafted the proposed regulation, published it in the Federal Register on May 28, 2013, and obtained public comment on the regulation through June 27, 2013. ODNI and OPM officials told us they plan to jointly adjudicate public

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comments and prepare the final regulation for approval from OMB during October 2013.<sup>22</sup>

In reviewing the proposed regulation, we found that it would, if finalized in its current form, meet the intent of our recommendation to issue clearly defined policy and procedures for federal agencies to follow when determining if federal civilian positions require a security clearance. Specifically, the proposed regulation appears to add significant detail regarding the types of duties that would lead to a critical-sensitive designation, or those national security positions which have the potential to cause exceptionally grave damage to national security. Critical-sensitive positions detailed in the proposed regulation include positions

- that develop or approve war plans, major or special military operations, or critical and extremely important items of war,
- involve national security policy-making or policy-determining positions,
- with investigative duties, including handling of completed counter-intelligence or background investigations,
- having direct involvement with diplomatic relations and negotiations,
- in which the occupants have the ability to independently damage public health and safety with devastating results, and
- in which the occupants have the ability to independently compromise or exploit biological select agents or toxins, chemical agents, nuclear materials, or other hazardous materials, among several others.

Further, we also recommended in 2012 that once clear policy and procedures for position designation are issued, the DNI and the Director of OPM should collaborate in their respective roles as Executive Agents to revise the position designation tool to reflect that guidance. ODNI concurred with this recommendation in its written comments on our report and stated that it planned to work with OPM and other executive branch

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<sup>22</sup>Part 732 of Title 5 of the Code of Federal Regulations currently provides requirements and procedures for the designation of national security positions. OPM and ODNI are jointly reissuing and renumbering the proposed regulation in a new chapter IV, part 1400 of Title 5, Code of Federal Regulations.

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agencies to develop a position designation tool that provides detailed descriptions of the types of positions where the occupant could bring about a material adverse impact to national security due to the duties and responsibilities of that position. OPM also concurred with this recommendation, stating that it was committed to revising the tool after revisions to position designation regulations are complete.

The proposed revisions to part 732 of Title 5 of the Code of Federal Regulations appeared in the Federal Register, but have not yet been issued, and we recommended that the position designation tool be revised once policies and procedures for position designation are issued. We note that the proposed regulation states that OPM issues, and periodically revises, a Position Designation System,<sup>23</sup> which describes in greater detail agency requirements for designating positions that could bring about a material adverse effect on the national security. Further, the proposed regulation would require that agencies use OPM's Position Designation System to designate the sensitivity level of each position covered by the regulation.

As part of our ongoing processes to monitor agency actions in response to our recommendations, ODNI and OPM officials told us that actions were underway to revise the tool. For example, officials stated that an interagency working group had been established to oversee the updates to the current tool, while also determining the way forward to creating a new tool, and that officials were developing a project plan to guide the revision process. We plan to continue to review OPM guidance on the Position Designation System and to review steps taken by OPM and the DNI to revise the associated position designation tool to determine if the revised regulation and actions taken to revise the tool meet the intent of our recommendation.

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<sup>23</sup>OPM developed a process that includes a position designation system and corresponding automated tool to guide agencies in determining the proper sensitivity level for the majority of federal positions. OPM's Federal Investigations Notice No. 10-06, *Position Designation Requirements* (Aug. 11, 2010), states that the tool is recommended for all agencies requesting OPM investigations and required for all positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments in the Senior Executive Service.



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## The Executive Branch Does Not Have a Process for Periodically Reviewing and Validating Existing Security Clearance Designations for Civilian Positions

In July 2012, we reported that the executive branch did not have a consistent process for reviewing and validating existing security clearance requirements for federal civilian positions.<sup>24</sup> According to Executive Order 12968, the number of employees that each agency determines is eligible for access to classified information shall be kept to the minimum required, and, subject to certain exceptions, eligibility shall be requested or granted only on the basis of a demonstrated, foreseeable need for access. Additionally, Executive Order 12968 states that access to classified information shall be terminated when an employee no longer has a need for access, and that requesting or approving eligibility for access in excess of the actual requirements is prohibited.

Also, Executive Order 13467 authorizes the DNI to issue guidelines or instructions to the heads of agencies regarding, among other things, uniformity in determining eligibility for access to classified information. However, we reported in 2012 that the DNI had not issued policies and procedures for agencies to periodically review and revise or validate the existing clearance requirements for their federal civilian positions to ensure that clearances are 1) kept to a minimum and 2) reserved only for those positions with security clearance requirements that are in accordance with the national security needs of the time. Position descriptions not only identify the major duties and responsibilities of the position, but they also play a critical role in an agency's ability to recruit, develop, and retain the right number of individuals with the necessary skills and competencies to meet its mission. Position descriptions may change, as well as the national security environment as observed after September 11, 2001.

During our 2012 review of several DOD and DHS components, we found that officials were aware of the requirement to keep the number of security clearances to a minimum but were not always subject to a standard requirement to review and validate the security clearance needs of existing positions on a periodic basis. We found, instead, that agencies' policies provide for a variety of practices for reviewing the clearance needs of federal civilian positions. In addition, agency officials told us that their policies are implemented inconsistently. DOD's personnel security

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<sup>24</sup>[GAO-12-800](#).

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regulation and other guidance<sup>25</sup> provides DOD components with criteria to consider when determining whether a position is sensitive or requires access to classified information, and some DOD components also have developed their own guidance. For example, we found that:

- An Air Force Instruction requires commanders to review all military and civilian position designations annually to ensure proper level of access to classified information.<sup>26</sup>
- The Army issued a memorandum in 2006 that required an immediate review of position sensitivity designations for all Army civilian positions by the end of the calendar year and requires subsequent reviews biennially.<sup>27</sup> That memorandum further states that if a review warrants a change in position sensitivity affecting an individual's access to classified information, then access should be administratively adjusted and the periodic reinvestigation submitted accordingly. However, officials explained that improper position sensitivity designations continue to occur in the Army because they have a limited number of personnel in the security office relative to workload, and they only spot check clearance requests to ensure that they match the level of clearance required.
- Officials from DOD's Washington Headquarters Services told us that they have an informal practice of reviewing position descriptions and security designations for vacant or new positions, but they do not have a schedule for conducting periodic reviews of personnel security designations for already-filled positions.

According to DHS guidance, supervisors are responsible for ensuring that (1) position designations are updated when a position undergoes major changes (e.g., changes in missions and functions, job responsibilities, work assignments, legislation, or classification standards), and (2) position security designations are assigned as new positions are

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<sup>25</sup>DOD 5200.2-R, *Department of Defense Personnel Security Program* (January 1987, reissued incorporating changes Feb. 23, 1996), as modified by Under Secretary of Defense Memorandum, *Implementation of the Position Designation Automated Tool* (May 10, 2011).

<sup>26</sup>Air Force Instruction 31-501, *Personnel Security Program Management* (Jan. 27, 2005).

<sup>27</sup>Army Director of Counterintelligence, Human Intelligence, Disclosure and Security Memorandum, *Civilian Position Sensitivity Review* (Dec. 31, 2006).

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created. Some components have additional requirements to review position designation more regularly to cover positions other than those newly created or vacant. For example,

- U.S. Coast Guard guidance<sup>28</sup> states that hiring officials and supervisors should review position descriptions even when there is no vacancy and, as appropriate, either revise or review them.
- According to officials in U.S. Immigration and Customs Enforcement, supervisors are supposed to review position descriptions annually during the performance review process to ensure that the duties and responsibilities on the position description are up-to-date and accurate. However, officials stated that U.S. Immigration and Customs Enforcement does not have policies or requirements in place to ensure any particular level of detail in that review.

Some of the components we met with as part of our 2012 review were, at that time, in the process of conducting a onetime review of position designations. In 2012, Transportation Security Administration officials stated that they reevaluated all of their position descriptions during the last 2 years because the agency determined that the re-evaluation of its position designations would improve operational efficiency by ensuring that positions were appropriately designated by using OPM's updated position designation tool. Further, those officials told us that they review position descriptions as positions become vacant or are created. Between fiscal years 2010 and 2011, while the Transportation Security Administration's overall workforce increased from 61,586 to 66,023, the number of investigations for top secret clearances decreased from 1,483 to 1,127.

Conducting background investigations is costly. The federal government spent over \$1 billion to conduct background investigations in fiscal year 2011. Furthermore, this does not include the costs for the adjudication or other phases of the personnel security clearances process. DOD and DHS officials acknowledged that overdesignating a position can result in expenses for unnecessary investigations. When a position is overdesignated, additional resources are unnecessarily spent conducting

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<sup>28</sup>U.S. Coast Guard, CG-121, *Civilian Hiring Guide for Supervisors and Managers*, ver. 2 (June 11, 2010).

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the investigation and adjudication of a background investigation that exceeds agency requirements.

Specifically, the investigative workload for a top secret clearance is about 20 times greater than that of a secret clearance because it must be periodically reinvestigated twice as often as secret clearance investigations (every 5 years versus every 10 years) and requires 10 times as many investigative staff hours. The fiscal year 2014 base price for an initial top secret clearance investigation conducted by OPM is \$3,959 and the cost of a periodic reinvestigation is \$2,768. The base price of an investigation for a secret clearance is \$272. If issues are identified during the course of an investigation for a secret clearance, additional costs may be incurred.

Agencies employ varying practices because the DNI has not established a requirement that executive branch agencies consistently review and revise or validate existing position designations on a recurring basis. Such a recurring basis could include reviewing position designations during the periodic reinvestigation process. Without a requirement to consistently review, revise, or validate existing security clearance position designations, executive branch agencies—such as DOD and DHS—may be hiring and budgeting for both initial and periodic security clearance investigations using position descriptions and security clearance requirements that do not reflect national security needs. Finally, since reviews are not being done consistently, DOD, DHS, and other executive branch agencies cannot have reasonable assurance that they are keeping to a minimum the number of positions that require security clearances on the basis of a demonstrated and foreseeable need for access.

Therefore, we recommended in July 2012 that the DNI, in coordination with the Director of OPM and other executive branch agencies as appropriate, issue guidance to require executive branch agencies to periodically review and revise or validate the designation of all federal civilian positions. In written comments on that report, the ODNI concurred with this recommendation and stated that as duties and responsibilities of federal positions may be subject to change, it planned to work with OPM and other executive branch agencies to ensure that position designation policies and procedures include a provision for periodic reviews. OPM stated in its written comments to our report that it would work with the DNI on guidance concerning periodic reviews of existing designations, once pending proposed regulations are finalized.

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ODNI and OPM are currently in the process of finalizing revisions to the position designation federal regulation. As part of our ongoing processes to routinely monitor the status of agency actions to address our prior recommendations, we note that the proposed regulation would newly require agencies to conduct a one-time reassessment of position designations within 24 months of the final regulation's effective date, which is an important step towards ensuring that the current designations of national security positions are accurate. However, the national security environment and the duties and descriptions of positions may change over time, thus the importance of periodic review or validation. The proposed regulation does not appear to require a periodic reassessment of positions' need for access to classified information as we recommended. We believe this needs to be done and, as part of monitoring the status of our recommendation, we will continue to review the finalized federal regulation and any related guidance that directs position designation to determine whether periodic review or validation is required.

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In conclusion, the correct designation of national security positions is a critical first step for safeguarding national security and preventing unnecessary and costly background investigations. We are encouraged that in response to our recommendations, ODNI and OPM have drafted a revised federal regulation and plan to jointly address comments and finalize these regulations. We will continue to monitor the outcome of the final federal regulation as well as other agency actions to address our remaining recommendations.

Chairman Tester, Ranking Member Portman, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions that you or the other Members of the Subcommittee may have at this time.

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## GAO Contacts and Acknowledgement

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