



December 10, 2019

The Honorable Alma S. Adams, PhD
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Burr
United States Senate
217 Russell Senate Office Building
Washington, DC 20510

The Honorable David E. Price
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, DC 20515

The Honorable Ted Budd
U.S. House of Representatives
118 Cannon House Office Building
Washington, DC 20515

The Honorable G. K. Butterfield
U.S. House of Representatives
2080 Rayburn House Office Building
Washington, DC 20515

Dear Representative Adams, Senator Burr, Representative Price, Representative Budd, and Representative Butterfield:

This responds to your letter of May 31, 2019, regarding the Census Bureau's (the Bureau's) background check and hiring process, in light of its employment of a registered sex offender at its Charlotte, North Carolina, Area Census Office (ACO). Mr. Kenneth Mabry began working in August 2018 as a regional recruiting manager for the Charlotte ACO after successfully completing a pre-employment suitability determination, despite having a prior criminal record. He was arrested on March 12, 2019, charged with two felonies (sexual offense with a child, indecent liberties with a child), and subsequently terminated on March 14, 2019.

At your request, we specifically address

- the hiring and vetting processes at the Charlotte ACO, and what happened in the hiring of Kenneth Mabry;
- whether the Census Bureau and third-party contractors are adhering to existing policies regarding employee background checks;
- what steps, if any, the Bureau has taken to address the concerns in OIG's audit report *2020 Census: The Bureau's Background Check Office Is Not Fully Prepared for the 2020 Census*, issued on February 27, 2018 (final report number OIG-18-015-A); and
- what immediate and long-term steps must be taken to ensure that similar mistakes do not occur again.

Our review of Mr. Mabry’s background investigation process included reviewing the case file, interviews with Bureau management, and reviewing applicable policies and statutes that were in place at the time of Mr. Mabry’s hiring. Based on this review—although current Office of Personnel (OPM) requirements permit a person with criminal convictions to be hired into federal service under certain conditions—we found that the hiring of Mr. Mabry did not follow OPM or Bureau guidelines, bringing into question the Bureau’s judgement in this case. We conducted our review from May to September 2019.

I. The hiring and vetting processes at the Charlotte ACO: what happened in the hiring of Kenneth Mabry?

The hiring and vetting processes

The Charlotte ACO is one of 248 area census offices that will support the 2020 Census.¹ Managerial recruitment positions at the Charlotte ACO are recruited and hired at the Atlanta Regional Census Center; suitability determinations are conducted by the Census Investigative Services (CIS) office in Suitland, Maryland. Once the prospective employee accepts a tentative offer, the regional office collects the necessary forms and signatures and submits this information to the CIS office for a suitability determination.

CIS is responsible for collecting and reviewing all required forms, vetting the results, and making a pre-employment and post-employment suitability determination. The pre-employment suitability determination must be favorable before starting, and continued employment is contingent on the results of a post-employment check.

Pre-employment. Bureau management stated that CIS begins a pre-employment background check after an employee accepts an offer and submits the required forms, which include fingerprints (which a vendor administers before sending to the FBI for checking) and self-disclosed prior criminal and credit histories.² The CIS personnel security specialist (specialist), a contract employee, then creates a case file within the Census Hiring and Employment Check (CHEC) automated system. During the pre-employment phase, the specialist’s duties include the following:

- ensuring that all the required forms are correct and complete;
- reviewing the FBI fingerprint results for pending criminal charges, and prior convictions;
- reviewing all criminal charges that lack a final disposition or are incomplete (this includes direct contact with the judicial system or the arresting agency);
- reviewing credit history and identifying financial issues;

¹ https://www.census.gov/programs-surveys/decennial-census/2020-census/planning-management/memo-series/2020-memo-2017_21.html

² Form BC-170 (U.S. Census Employment Application); OF-306 (Declaration for Federal Employment); Criminal History Check Results; e-QIP (Electronic Questionnaires for Investigations Processing)

- sending letters of interrogatory (LOIs) to the selectee to obtain missing or incomplete information;
- addressing all issues developed in the case and documenting how each issue was mitigated and/or aggravated; and
- making a recommendation based on the complete findings of the case.

Specialists refer to various policies³ to assess whether a prospective employee is suitable for federal service; they also refer to specific factors for making a suitability determination.⁴ In a case when there is a prior criminal history, the specialist assesses the risk by considering several factors (e.g., the nature of the position, the nature and seriousness of the conduct, the recency of the conduct, the age of the person at the time of the conduct, and the absence or presence of rehabilitation or efforts toward rehabilitation).⁵ Upon assessment of all relevant information, the specialist then makes either a favorable or an unfavorable recommendation.

Next, the CIS supervisor, a position that must be performed by a government employee, reviews all the information in the prospective employee's case file and then either formally approves the specialist's recommendation or returns the case to the specialist for additional action. If approved, an interim suitability determination and a start date are established.

Post-employment. After a start date is determined, the specialist begins the post-employment background check by submitting the case file to the U.S. Office of Personnel Management (OPM) for a background investigation. After completing its investigation, OPM sends the results back to the Department of Commerce Office of Security (OS) and CIS staff access the file and adjudicate the case, making a final determination as to whether the employee is suitable for federal employment. If the final adjudication is favorable, the applicant continues federal employment, whereas an unfavorable determination may result in the employee's termination.

What happened in the hiring of Mr. Mabry

We discussed the incident with CIS management at Bureau headquarters in Suitland, Maryland, on two occasions, June 12 and July 29, 2019. In addition, we reviewed the electronic case file to construct a timeline and to determine whether procedures were followed leading up to the hiring of Mr. Mabry. At the time of Mr. Mabry's termination, he received a favorable pre-employment suitability determination; however, his post-employment final adjudication was still in process.

Mr. Mabry's background check process: pre-employment. The case file included the following information for purposes of assessing Mr. Mabry's suitability for federal service, such as

³ These include the CIS onboarding procedures working guide and U.S. Office of Personnel Management suitability guidance.

⁴ 5 C.F.R. § 731.202(b).

⁵ 5 C.F.R. § 731.202(c).

- an OF-306, Declaration for Federal Employment, in which Mr. Mabry properly disclosed a prior arrest;
- fingerprint results, which reported Mr. Mabry's arrest in 2011 and conviction on July 1, 2013, for felony sexual misconduct involving a child (the results also stated that Mr. Mabry received 5 years of probation and was required to register as a sex offender in his state of residence);⁶
- a note that stated "[Finger Printing] Results—Prior 9/18/2011. Relevant Actionable"; and
- credit report and correspondence items related to an identified credit history issue.

Per the case file, the specialist requested additional information from Mr. Mabry regarding the prior credit issue, noting that this issue was satisfactorily resolved on July 23, 2018. Other than the note, there was no evidence in the case file that the specialist conducted any reviews or analysis of Mr. Mabry's prior criminal record. Specifically, we identified several issues that should have raised concerns with the specialist, including the following:

- Mr. Mabry's 2011 felony conviction of sexual misconduct involved a child, with his probation ending less than a month prior to the suitability determination. His criminal conviction was identified on the fingerprint results and was self-disclosed on Mr. Mabry's Declaration of Federal Employment. The specialist should have sent an LOI to Mr. Mabry, following up on these charges; however the case file indicates that no inquiry was made.
- An action that the specialist could have taken—but no evidence confirms that the specialist did (based on the lack of evidence in the file)—was to validate that Mr. Mabry was registered with the North Carolina Sex Offender Registry, as required by his conviction sentence. We independently confirmed that he was registered at the time of the background investigation.
- The only indication the specialist reviewed the fingerprint results was noting in the case file that a prior conviction was relevant and actionable.

The specialist made a favorable recommendation on July 26, 2018—noting that no issues were found—without evidence justifying or supporting the recommendation.

The CIS supervisor, who is required to review all the information in the case file, concurred with the specialist's recommendation and approved Mr. Mabry's pre-employment background check on July 30, 2018. Based on our review of the case file, we learned that the CIS supervisor did not document the reasons for approval—despite the evidence of a prior conviction for sexual misconduct involving a child—nor was there any evidence that the supervisor conducted follow-up regarding the concerns that we noted above. This

⁶ Mr. Mabry's probation ended on July 2, 2018. The Atlanta Regional Census Center requested the suitability determination from CIS on July 10, 2018.

indicates that the supervisor did not conduct a proper review, an illustration of a concern that we noted in our 2018 report.⁷

Based on the supervisor's approval, Mr. Mabry began his employment with the Bureau as a regional recruiting manager and was promoted to an area census office manager in January 2019. Mr. Mabry was arrested and terminated in March 2019.

Mr. Mabry's background check process: post-employment. The specialist sent the request for the post-employment background investigation to OPM on July 31, 2018. OPM responded on December 10, 2018, electronically sending the results of its investigation to OS. CIS staff are responsible for adjudicating the background investigation and approving or denying the suitability determination. We confirmed with OS that Mr. Mabry's background investigation was never adjudicated by CIS by the time he was terminated. Consequently, CIS missed another opportunity to identify Mr. Mabry's prior conviction and remove him from employment.

2. Are the Census Bureau and third-party contractors (specialists) adhering to existing policies regarding employee background checks?

Neither the specialist nor the supervisor adhered to existing policies and guidelines when adjudicating Mr. Mabry's background investigation. We learned that, in this case, the specialist neither adequately obtained and reviewed all relevant information nor identified and addressed all the issues, as required by CIS policy. Additionally, the CIS supervisor—contrary to policy—failed to conduct a full review of the case file and return it to the specialist for further action. For example, we learned the following:

- The Bureau stated that the policy it follows requires the specialist to determine suitability of employment based on prior criminal history. We found no evidence to demonstrate that this occurred. Mr. Mabry's case file showed a felony conviction for sexual misconduct involving a child, and he was registered on the North Carolina Sex Offender registry at the time of the background investigation.
- CIS policy requires that the supervisor conduct a full review of every case file before considering the specialist recommendation and verify that all documents were reviewed. In this case, there is no evidence that the supervisor conducted an adequate review, which would have included noting the discrepancies we identified, nor did the supervisor document justifications when approving the favorable recommendation.

Discussion with CIS management revealed that—during the pre-employment background check review—CIS relies on the federal employee supervisor for evaluating the adequacy of the specialist's suitability determination and making the final recommendation. In this instance, the supervisor did not conduct the appropriate level of oversight to ensure that documentation related to the specialist recommendation was present in the file. It is

⁷ U.S. Department of Commerce Office of Inspector General, February 27, 2018. *2020 Census: The Bureau's Background Check Office Is Not Fully Prepared for the 2020 Census*, OIG-18-015-A. Washington, DC: DOC OIG.

reasonable to conclude that—had both the specialist and the supervisor followed existing policies—they would have identified potential issues that raised concerns about Mr. Mabry’s suitability for employment prior to his start date.

Bureau management stated that the specialist who made the favorable recommendation left the contractor’s employment for reasons unrelated to Mr. Mabry’s hiring. The supervisor is still employed by the Bureau but is no longer working for CIS.

3. What steps, if any, has the Bureau taken to address the concerns in final report number OIG-18-015-A?

The referenced OIG report identified two findings that are relevant to the issues raised in your letter. First, OIG reported supervisors may not be adequately reviewing suitability recommendations. Although the Bureau implemented changes to the CHEC system to require supervisors to certify that they reviewed every form, the present case demonstrates how personnel may give this certification without actually reviewing every form. The Bureau also states it added a “missing required forms” tab that supervisors use to return files back to specialists when all forms are not included. As demonstrated by this case, having that tab available does not guarantee that the supervisor will follow procedures.

Second, CIS officials were not conducting adequate oversight of contractor performance. Although the prior report focused on contract surveillance, oversight also comes in the form of government-employed supervisors identifying low-quality work performed by contractor specialists. In this instance, the supervisor failed to address low-quality work performed by the specialist reviewing Mr. Mabry’s case.

We confirmed that the Bureau modified the CHEC system, per the corrective action plan, to require that all supervisors attest that they reviewed all “required documentation received from the prospective hire [applicant]” by clicking a “Complete Form Review” button in the CHEC system during the pre-employment phase. A “Reviewed Date” field after the supervisor performs this action is populated. Although the supervisor reviewing Mr. Mabry’s file affirmed that the documentation was reviewed, it is evident that the supervisor did not review the case file. The Bureau also revised and updated the supervisory function in the CIS Standard Operating Procedures.

Further—while not directly related to this situation—we also confirmed that the CHEC system requires specialists and supervisors conducting pre-employment screenings to attest that they have no prior relationship with the individual subject to the background check. Both the specialist and supervisor reviewing Mr. Mabry’s did confirm they had no relationship with Mr. Mabry.

4. What immediate and long-term steps must be taken to ensure that similar mistakes do not occur again?

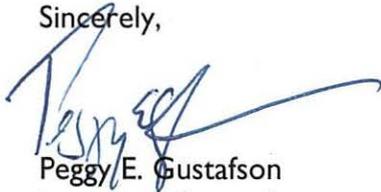
- The Bureau should review **all** prior favorable suitability determinations made by both this specialist and this CIS supervisor, to ensure that the determinations and final adjudications were properly determined and supported.

- The Bureau should implement quality assurance reviews of CIS supervisory determinations, to ensure that supervisors are conducting adequate reviews, and that adjudications are properly determined and supported.
- The Bureau should continue to train specialists and supervisors—and emphasize the importance of the supervisory role in making final suitability determinations during the background review process.

Thank you for sharing with us your concerns about what occurred during the process of the Bureau's vetting and hiring of Mr. Mabry. We share your concern and agree that conducting the decennial census in a way that ensures public safety is key to the integrity of the 2020 Census.

If you have any questions or would like to discuss these issues in further detail, please contact me at (202) 482-4661.

Sincerely,



Peggy E. Gustafson
Inspector General