

Department of State

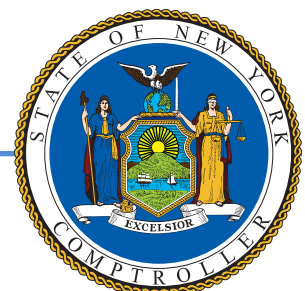
Implementation of the Security Guard Act

Report 2019-S-42 | July 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Department of State (Department) is adequately monitoring and enforcing the requirements for security guards under the Security Guard Act. The audit covered the period from April 1, 2016 to November 23, 2020.

About the Program

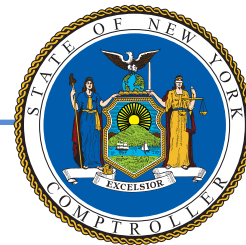
Article 7-A of the General Business Law – referred to as the Security Guard Act (Act) – requires that individuals must have a valid security guard registration issued by the Department before working as a security guard. Prospective security guards must file an application with the Department’s Division of Licensing Services (Division) and meet several criteria required by the Act, including completion of pre-assignment training and having no criminal conviction of a serious offense or misdemeanor. Security guards must renew their registrations every two years. The Department is also required to maintain a computerized registry of all security guard registration applicants, through which employers must verify the status of security guards before employment. Additionally, upon completion of a criminal history background check during the initial application process, the Division receives arrest notifications for anyone having applied for a security guard registration from the Division of Criminal Justice Services. The Division reviews arrest notifications to ensure security guards remain in compliance with the Act’s requirements. Between April 1, 2016 and September 27, 2019, the Division received 317,463 security guard applications – 130,244 original registration applications and 187,219 renewal registration applications.

Key Findings

- The Department generally complies with the Act’s requirements, having processes in place to ensure only individuals meeting the Act’s requirements are issued registration cards, and maintaining an accurate registry of security guard applicants.
- The Department lacks sufficient internal controls to proactively monitor training requirements for security guards classified as police and peace officers – a classification that includes individuals who are retired. We identified instances where the Department inappropriately renewed security guard registrations for security guards with these classifications without evidence that training was completed. For example, we identified that 26 security guards classified as police or peace officers did not complete all required trainings, including 20 armed security guards who did not complete annual firearms training.
- Improvements to strengthen the Division’s policies and procedures can be made to further enhance the Division’s oversight and provide greater assurance that registered security guards meet the Act’s requirements. For example, our review identified:
 - Fourteen of the 50 arrest notifications of registered security guards (28 percent) selected for review included security guards who were either inactive (13 guards) or had their application denied (one guard). Four (11 percent) of the remaining 36 arrest notifications did not comply with the Division’s policies and procedures.
 - Twenty-four renewal forms were received and processed in excess of six months from their expiration date, contrary to the Division’s renewal policy.

Key Recommendations

- Develop processes to effectively monitor and review training records, especially for armed security guards classified as peace/police officers, to ensure these guards are in compliance with the Act.
- Enhance current procedures for reviewing arrest notifications of registered security guards, including a clearly defined process for following criminal cases and taking action against security guards charged with serious offenses.
- Enhance current renewal application policies and procedures to ensure consistency in processing security guard renewal applications.



**Office of the New York State Comptroller
Division of State Government Accountability**

July 6, 2021

Rossana Rosado
Secretary of State
Department of State
99 Washington Avenue
Albany, NY 12231

Dear Secretary Rosado:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit *Implementation of the Security Guard Act*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
AAU	Application Audit Unit	<i>Auditee Subunit</i>
Act	Article 7-A of the General Business Law, also known as the Security Guard Act	<i>Law</i>
DCJS	Division of Criminal Justice Services	<i>Agency</i>
Department	Department of State	<i>Auditee</i>
Division	Division of Licensing Services	<i>Auditee Subdivision</i>
Employer	A person, company, or entity that employs licensed security guards	<i>Key Term</i>
Registry	Security guard registry	<i>Key Term</i>

Background

The Department of State (Department), through its Division of Licensing Services (Division), oversees the licensure, registration, and regulation of 35 occupations throughout New York State. The Division licenses over 800,000 individuals and businesses and uses its licensing and business filing capacities to promote business growth while protecting the health, safety, and welfare of all New Yorkers.

Article 7-A of the General Business Law, also known as the Security Guard Act (Act), requires that individuals working as security guards have a valid registration card, and entrusts the Department with issuing registration cards for all security guard applicants who meet the requirements and are able to perform security guard functions. The Act also requires the Department to collect information and maintain a computerized registry (Registry) of all security guards and registration card applicants in the State.

The Act defines a security guard as a person, other than a police officer, employed by a security guard company to principally perform one or more of the following functions within the State:

- Protection of individuals and/or property from harm, theft, or other unlawful activity
- Deterrence, observation, detection, and/or reporting of incidents in order to prevent any unlawful or unauthorized activity
- Street patrol service
- Response to a security system alarm installed and/or used to prevent or detect unauthorized intrusion and/or to maintain security of a protected premise

Among the Act's requirements, prospective security guards must complete and file an application with the Department, complete pre-assignment training, be of good moral character, and be mentally and physically able to perform security guard services. Additionally, applicants must generally undergo criminal history background checks through the Division of Criminal Justice Services (DCJS) and must not have been convicted of a serious offense or misdemeanor that, in the discretion of the Department, bears such a relationship to the performance of the duties of a security guard as to constitute a bar to employment.

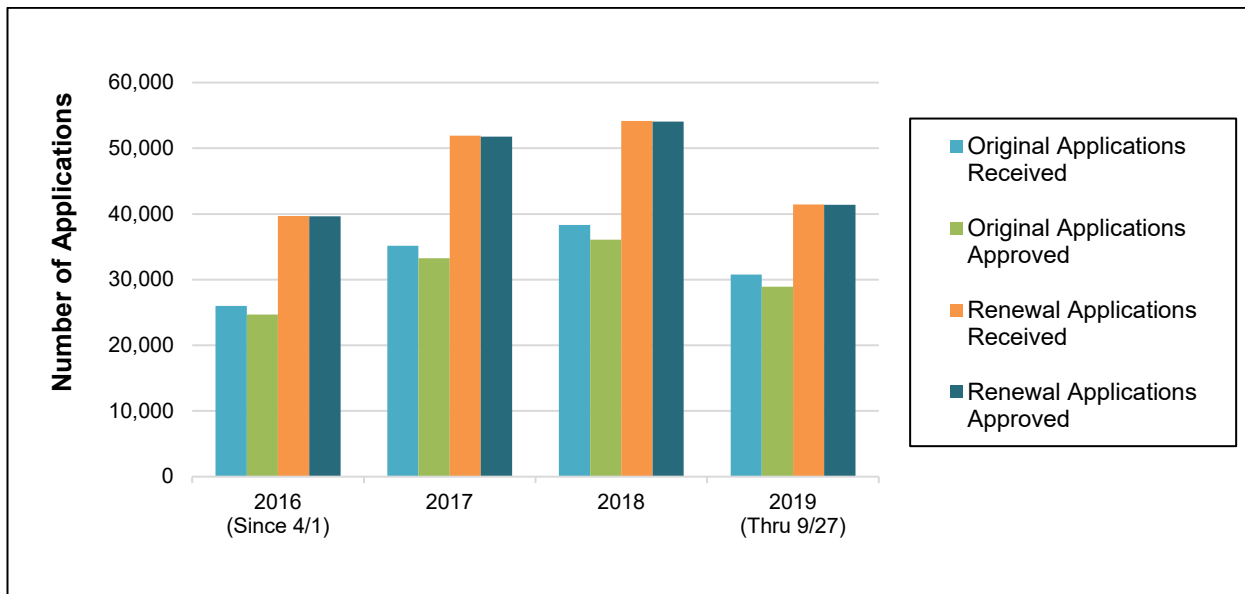
Upon receipt of an initial application, the Division assigns a unique sequential identification number to track the security guard throughout the entire application process. Division staff enter application information into the Department's database, check applicants' fingerprint results, verify training requirements, and ultimately determine whether the application qualifies for approval.

Security guards must renew their registration cards every two years. The Department outsources the processing of renewal forms to a third-party vendor; however, the vendor is unable to process handwritten forms, forms with incomplete payment information, or forms without applicant signatures. Because the vendor cannot reject applications, they forward these forms to the Division for processing. Additionally,

the Division instructs the vendor to return renewal forms to the Division if more than six months has elapsed between the registration card expiration date and the date the form was received. Division staff then review and make determinations on these renewal applications.

Between April 1, 2016 and September 27, 2019, the Division received a total of 317,463 security guard applications – 130,244 original applications and 187,219 renewal applications. The Division approved 98 percent of all applications (309,877), including 94 percent of original applications (122,983) and almost all renewal applications (186,894). According to the Division, there were over 178,400 registered security guards as of December 31, 2019 (see Figure 1).

**Figure 1 – Security Guard Applications (Original and Renewal)
April 1, 2016 Through September 27, 2019**



Audit Findings and Recommendations

The Department generally complies with the Act's requirements and has processes in place to ensure only individuals meeting the Act's requirements are approved and receive registration cards. We reviewed a sample of 50 approved security guard applications and each applicant met the Act's requirements, including being free of any criminal convictions for serious offenses and completing pre-assignment training. Additionally, the Department maintains an accurate Registry for employers to verify individuals' security guard statuses prior to employment.

However, certain registered security guards who were retired police/peace officers, including armed security guards, did not complete required trainings and the Department could be more proactive in monitoring training requirements. Additionally, the Department has not routinely notified DCJS of security guard applicants who are no longer active security guards or had their applications denied, resulting in arrest notifications for these individuals continuing to be provided to and reviewed by the Department. Consequently, more descriptive and encompassing policies and procedures related to monitoring of training requirements, processing of renewal applications, and reviewing subsequent arrests of registered security guards will provide greater assurance that registered security guards continue to comply with the Act.

Training of Registered Security Guards

According to the Act's requirements, prospective security guards must complete pre-assignment training prior to approval of their application and receipt of their registration card. They must also complete ongoing training to keep and renew their cards. These trainings include such valuable courses as de-escalation of conflict. We found that the Department lacks sufficient internal controls to monitor ongoing training requirements for certain classifications of security guards.

Training Requirements

The Act requires security guards to satisfactorily complete initial and annual training programs through certified security guard training schools, including an 8-hour pre-assignment training course; a 16-hour on-the-job training course; and, if applicable, a 47-hour firearms training course. Additionally, registered security guards must complete an 8-hour annual in-service training course and an additional 8-hour annual firearms training course for armed guards.

The Act allows for certain exemptions of the training requirements for individuals with previous law enforcement experience. For example, former police and peace officers who have been retired for 10 or less years are exempt from initial and annual in-service training requirements. However, the Act requires armed security guards, regardless of previous law enforcement experience, to complete annual firearms training.

The Act also requires these individuals to provide proof of training to their employers. The Department's database electronically pulls subsequent training completion dates and school details from DCJS' security guard training database. In most instances,

Division staff cannot approve security guard registrations unless the system shows valid completion of required training. For guards classified as police or peace officers, the system will allow approval of registrations without completed training due to variables (e.g., active or retired less than 10 years) allowing for training exemptions.

Exemptions for Retired Police and Peace Officers

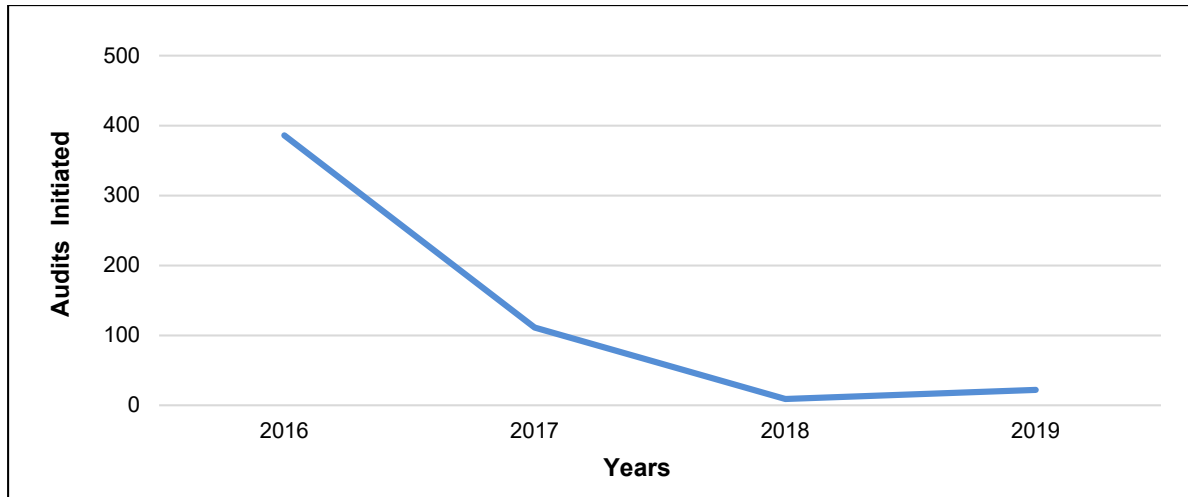
The Department lacks sufficient internal controls to properly monitor training requirements for security guards classified as police and peace officers. We identified instances where the Department inappropriately renewed security guard registrations for security guards with these classifications, or the Department did not have any evidence indicating these individuals completed required training courses.

From April 1, 2016 through September 27, 2019, the Department approved renewal forms for 21,114 security guards classified as police and peace officers, including 17,856 armed security guards. We reviewed a sample of 105 (86 armed and 19 unarmed) security guards classified as police or peace officers. We identified 26 guards who did not complete required annual trainings, including 20 armed guards who did not complete the required annual firearms training. Additionally, two of the 20 armed guards who did not complete annual firearms training, plus six additional security guards who have been retired police or peace officers for greater than 10 years, did not complete annual in-service training.

The Department's database does not document retirement dates or distinguish between security guards who are required to take training and those who are exempt. Furthermore, the Department does not validate required training for security guards classified as police or peace officers, and the system will process registration renewal forms with missing training data for these security guard classifications.

The Act places the obligation on the employer of security guards to ensure the training courses have been satisfactorily completed. Department officials claim to have internal controls in place including discretion to audit any license and requiring security guards to affirm by penalty of perjury that all requirements of the license, including continuing education and training, have been met. However, audits of security guard employers steadily decreased between April 1, 2016 and September 20, 2019, as illustrated in Figure 2. In 2016, the Department initiated 386 audits of security guard employers. Since then and through September 20, 2019, the Department initiated a total of 142 audits of security guard employers, including only nine in 2018. Officials attributed the downtrend to the Division's oversight of 35 different disciplines, and stated that they may focus enforcement efforts in different areas each year.

Figure 2 – Division’s Audits of Security Guard Companies 2016 Through 2019 (as of September 20, 2019)



Additionally, during our review of audits, the Department did not review security guard companies for employing guards with missing or outdated training records. Based on a sample of 25 audits of security guard employers, the Division did not review security guard personnel records for 18 audits. While we realize that personnel file reviews are not always necessary (e.g., if the employer does not employ guards in New York), the Department cannot be reasonably assured that security guard employers are complying with requirements under the Act absent the review of security guard personnel records. During our audit, the Division began conducting audits of training records for security guards classified as police and peace officers.

The Division sees its role as oversight of the registration of security guards, but not employment. While having an active registration does not guarantee employment, the Act requires anyone working as a security guard to have a valid security guard registration card from the Department. Employers cannot employ individuals as security guards unless they hold a valid registration card. As such, security guard registration cards are a State asset and are an indication that the holder meets the criteria set forth by the Act and is able to perform the functions and duties of a security guard. We encourage the Department to be more proactive in monitoring training to ensure our State’s security guards are equipped to appropriately protect people and property.

Subsequent Arrests of Registered Security Guards

The Department generally complied with the Act’s requirement that registered security guards be free of criminal convictions for serious offenses. Between November 1, 2019 and August 30, 2020, the Division received 4,455 arrest notifications for serious offenses attributed to over 2,800 security guards. We

reviewed 50 arrest notifications for 50 security guards and determined that, in most instances, the Division sufficiently reviewed the arrests to ensure it was still appropriate for these security guards to maintain their active security guard registrations. However, we identified 14 arrest notifications (28 percent) where the security guards were no longer active guards and four of the remaining 36 arrests (11 percent) where the Division did not follow its policies and procedures.

Through an agreement with the Department, DCJS provides arrest notifications to the Division for any individual who applies to become a security guard unless the Division notifies DCJS that such notification is no longer needed (e.g., the individual never became, or is no longer, a registered security guard). The Division's Application Audit Unit (AAU) receives and reviews these notifications. If the charges are serious offenses or offenses related to the duties of a security guard, and the security guard has an active registration, the AAU will issue an Arrest Letter to the security guard. The Arrest Letter requests that the security guard submit information about the circumstances surrounding their arrest within 30 days. Additionally, AAU staff can track certain charges through the court systems via CRIMNET, a database containing information on criminal cases that identifies future court appearances for selected New York State courts. Currently, CRIMNET contains the following counties: Bronx, Kings, New York, Queens, Richmond, Erie, Nassau, Suffolk, Westchester, Dutchess, Orange, Putnam, and Rockland.

The extent of the Division's review of subsequent arrests depends on the individual circumstances. AAU staff attempt to track the arrest and respective court cases through the adjudication process in order to render a decision on the matter. Absent available information in CRIMNET, AAU staff must rely on the security guards and/or respective counties to provide updated information on the arrests.

The Division's policies and procedures state that when a registered security guard has been convicted of a discretionary felony or misdemeanor offense or has failed to submit documentation previously requested for a felony offense pursuant to an Arrest Letter, the arrest is referred to the Discipline Unit for appropriate action. However, there were two arrests (both related to felony sex offenses) where the guards did not respond to the Arrest Letter, but the arrests were not referred to the Division's Discipline Unit. For two other arrests, there were no assurances that the Division properly followed the arrests through the criminal court process. Both arrests occurred in jurisdictions available in CRIMNET and had documented court dates of July 2020 and October 2020, respectively. The arrest files lacked documentation that Division staff reviewed the arrests following the court dates. For one arrest (July 2020 court date), the Division ultimately approved the arrest (i.e., security guard maintains active registration and no further action is required) on November 13, 2020 – the initial date of our review of arrest files and over 100 days since the last court date – because there was no conviction.

Division officials claimed to have followed procedures; however, the actions taken were not those documented in the procedures provided to the auditors. For example, officials stated that, in accordance with Division policy, an arrest notification for a guard with a registration set to expire within six months is not to be referred to

the Discipline Unit (as was the case with one of the two arrests not referred to the Discipline Unit after failure to respond to the Arrest Letter). Rather, an administrative hold is placed on the registration because a hearing and decision would likely not be rendered before the registration expiration date. In this instance, the Division did place an administrative hold on one guard's registration, which is set to expire on April 8, 2021, on November 25, 2020 – after we reviewed the arrest notifications. Also, officials stated that security guards have 30 days to respond to the last notice when multiple Arrest Letters are mailed for separate arrest dates. According to Division officials, the other security guard failing to respond to the Arrest Letters had arrests dated August 30, 2020 and October 7, 2020, and their registration was not set to expire until January 9, 2022. The last Arrest Letter was sent to the security guard on October 14, 2020, from which the guard had 30 days to respond. The Division referred the arrest to the Discipline Unit on December 13, 2020.

Lastly, Division officials ultimately referred an arrest file to the Discipline Unit on November 25, 2020 – again, after our review of arrest notifications – after the security guard (with a registration expiration date of December 2021) failed to submit documentation in response to an Arrest Letter mailed in January 2020. In this case, the court dates were systematically adjourned until October 2020 due to the COVID-19 pandemic.

Notifications of Inactive Security Guards

The Department's agreement with DCJS requires them to notify DCJS at least once every six months of:

- Names and identification numbers of individuals whose fingerprints were sent to DCJS for identification processing and retention, but whose applications were not approved for licensure by the Department; and
- Names and identification numbers of individuals who are no longer licensed by the Department.

The Division does not have comprehensive policies and procedures in place to ensure that the Department is notifying DCJS at least every six months of security guards who are no longer registered with the Department. Division officials stated they previously used an Office of Information Technology Services program to provide notifications to DCJS, but there were issues with the program and it is no longer being utilized. As a result, the Division receives a significant amount of arrest notifications that it does not need and that require Division resources to process.

The Department has since identified inactive security guards and security guard applicants in its database and intends to work with DCJS and the Office of Information Technology Services to identify a solution benefiting both DCJS and the Department.

Arrest Notifications of Inactive Security Guards

Fourteen of the 50 arrest notifications (28 percent) selected for review included security guards who were either inactive (13 guards) or had their application denied (one guard). All 13 inactive security guards had been inactive for more than six months, with a mean time between registration expiration dates and arrest notifications of 3.7 years. In one case, the security guard's registration expired on November 20, 2005, over 14 years prior to the Division receiving notification of an arrest occurring on May 27, 2020. In another case, the Department denied an application on September 22, 2011, but received notifications for the applicant over eight years later following arrests on December 20, 2019 and July 2, 2020. Between April 1, 2016 and August 30, 2020, the AAU was notified of 143,533 arrests related to security guards, including 26,478 serious offenses. As described above, 28 percent of arrest notifications – 14 of 50 sampled – included security guards who were no longer registered with the Department. Although we cannot project that this percentage holds true for the entire population of arrest notifications, we believe a significant amount include individuals for whom the Department no longer requires notifications. Because AAU staff manually look up information in their database, reducing or eliminating unnecessary arrest notifications will allow AAU staff to focus on other tasks important to the Division.

The Division does not have adequate policies and procedures for reviewing and taking action on arrest notifications for registered security guards. During the audit, AAU officials provided written procedures that outline the steps they take to receive and review arrest notifications of registered security guards. However, as mentioned above, these do not include all procedures and actions taken by AAU officials while reviewing arrest notifications.

The lack of formal written policies and procedures could affect AAU, a small unit comprising only two employees. These employees use a considerable amount of judgment in their daily tasks. For example, when a guard is convicted of an offense that is not included in the list of serious offenses, these employees must determine whether the offense relates to the duties of a security guard and which, if any, other actions should be taken (e.g., sending an Arrest Letter). Having formal written procedures provides guidance in decision making and allows current and future AAU staff to review arrest notifications and support decisions made regarding arrests on a consistent basis.

The Department generally disagreed with some of the audit findings, stating it currently does have written policies and procedures for reviewing arrest notifications. The Division is currently reviewing and updating these policies and procedures, but believes the current procedures provide a reasonable basis for following criminal cases and taking action against security guards charged with serious offenses. The Department further explained that, in many cases, the actions taken require a legal opinion and evidence gathering to ensure due process and appropriateness. In our opinion, these case-by-case circumstances make it all the more important to have comprehensive policies and procedures to provide the fundamental framework and processes for AAU staff to consistently review arrest notifications.

Renewal of Expired Security Guard Registrations

Between April 1, 2016 and September 27, 2019, the Division approved 186,894 of the 187,219 submitted renewal applications. The Act requires security guards to submit a renewal form to the Department within 30 to 60 days prior to their registration expiration date. However, the Department allows up to six months after the security guard's registration expires for them to renew their registration, and we found that the Department did not always adhere to its policy. The Department outsources the processing of renewal applications to a third-party vendor, but this vendor is not authorized to reject renewal applications, so it must forward any renewal forms it is unable to process to the Division. Instances where a form might be forwarded to the Division include a registration that expired more than six months from the date on the renewal form or a form missing a signature. Division staff review and make determinations on renewal forms that the vendor is unable to process. According to Department officials, a guard who does not renew their registration within six months after the expiration of their current registration will have to re-complete the original application process, including being fingerprinted again.

We reviewed approved renewal applications for 60 security guards who renewed their security guard registrations after six months and one week from the date their registration card expired. We were unable to determine when 14 renewal forms processed by the third-party vendor were received. For the remaining 46 renewal forms, we found that the Division approved 24 that were received outside of the six-month grace period.

The Division allows for judgment and does not adhere to the express terms of its own policy when processing renewal applications. For example, throughout the audit, Division officials informed the auditors of several grace periods during which the Division can process renewal applications – including six months, six months plus one week, and seven months. The latter two are not documented in any Division policy.

The Department generally agreed that the 24 renewal forms were processed outside the allotted six-month grace period, but argued that the 24 renewal forms compared to the overall volume of renewal forms processed was insignificant. Notwithstanding an implied low error rate (i.e., 24 renewal forms compared to over 55,000 renewal forms processed), the Department should ensure the fair and equitable treatment of security guards and apply its policy consistently. Furthermore, the Department believes its renewal policy is consistent for the processing of renewal forms, and requires security guards to renew registrations within six months of expiration. The Department provided several reasons why a renewal form might be processed outside that time frame including additional time to receive and process mail, backlogs in processing, and/or the need to obtain additional information from the applicant. However, these nuances are not formalized in the Department's procedures, resulting in Division officials applying different standards when renewing registrations.

Recommendations

1. Develop processes to effectively monitor and review training records, especially for armed security guards classified as peace/police officers, to ensure these guards are in compliance with the Act.
2. Enhance current procedures for reviewing arrest notifications of registered security guards, including a clearly defined process for following criminal cases and taking action against security guards charged with serious offenses.
3. Implement a process to notify DCJS of inactive security guards and applicants denied security guard registrations pursuant to the agreement between the Department and DCJS.
4. Enhance current renewal application policies and procedures to ensure consistency in processing security guard renewal applications.

Audit Scope, Objective, and Methodology

The objective of our performance audit was to determine whether the Department is adequately monitoring and enforcing the requirements for security guards under the Act. The audit covered the period from April 1, 2016 to November 23, 2020.

To accomplish our objective, we reviewed relevant laws and regulations as well as Department policies and procedures related to implementing the Act's requirements. We met with Department officials to gain an understanding of their role in processing applications and providing oversight of security guards and security guard employers. We also became familiar with, and assessed the adequacy of, the Department's internal controls related to our objective.

To assess the data reliability of the Department's security guard database, we selected a random sample of 50 of 122,426 original security guard applications approved and issued by the Department between April 1, 2016 and September 27, 2019 to compare the database information to the actual applications. Additionally, we randomly selected five months for each year 2016 through 2019 (20 total months) and then, using the first processing day from those 20 months, selected an application to trace back to the security guard database to ensure the data accurately contained the selected application. We found the data to be sufficiently reliable for the purposes of our audit objective.

We audited the Department's activities related to its compliance with the Act when issuing security guard registrations. We reviewed a random sample of 50 of 122,426 approved original applications processed from April 1, 2016 to September 27, 2019. Additionally, we reviewed approved original applications for a random sample of 50 of 22,158 security guards who submitted both an original security guard registration application and a renewal security guard registration application between April 1, 2016 and September 27, 2019. In total, we reviewed 100 original security guard applications for 100 registered security guards.

We reviewed renewal applications to ensure compliance with the Act and Department policies and procedures. As such, we pulled five random samples of approved renewal applications within each of the four security guard classifications, including five of 157,941 for unarmed security guards, five of 7,839 for armed security guards, five of 3,255 for unarmed police/peace officers, and five of 17,859 for armed police/peace officers – for a total of 20 of 186,894 approved renewal applications. Furthermore, we reviewed a judgmental sample of 60 approved renewal applications of 81,141 security guards who submitted two renewal applications between April 1, 2016 and September 27, 2019 and had renewal applications approved under their same identification number. The 60 security guards we selected for review included all security guards with approved renewal applications more than six months plus seven days after the expiration date for their previous registration period.

Additionally, we reviewed 20 of 115 renewal applications the Department rejected to verify each guard's status in the Registry. Two of the 20 guards were judgmentally selected based on classification (armed guard), and 18 were randomly selected from the remaining 113 rejected renewal applications.

We reviewed annual training records for 105 of 21,114 approved renewal applications for security guards classified as police/peace officers from April 1, 2016 to September 27, 2019. We judgmentally selected 10 renewal applications from our renewal application sample mentioned above, then randomly selected 30 of 7,572 renewals associated with police/peace officers who submitted two renewals between April 1, 2016 and September 27, 2019, and 65 of 2,107 renewals associated with police/peace officers who submitted one renewal between April 1, 2016 and September 27, 2019.

To review the Department's oversight of subsequent arrests of registered security guards, we selected a total of 50 of 4,455 arrest notifications for serious offenses sent from DCJS to the Department for arrests occurring from November 1, 2019 to August 30, 2020. We judgmentally selected 35 arrest notifications based on arrest category, registration status, and security guard name (i.e., focusing on unique names to avoid selecting misidentified security guards with common names) including: 13 of 62 security guards arrested on homicide-related offenses; 21 of 103 security guards arrested on sex-related offenses; and one of 18 security guards arrested on kidnapping-related offenses. We also selected a random sample of 15 of 2,817 arrest notifications (excluding kidnappings, sexual offenses, and homicides).

To assess the Department's oversight of licensed employers, we reviewed a random sample of 25 of 528 employer audits opened by the Department between January 1, 2016 and September 20, 2020. The Department does not track audits by specific date, so to ensure we obtained all audits within our scope period, we obtained all audits opened in calendar years 2016, 2017, and 2018 and through September 20, 2019. Our sample included 22 completed audits completed after April 1, 2016 and three audits active as of March 6, 2020.

The findings and conclusions resulting from our reviews of sampled items were not, and could not be, projected to the total populations from which the samples were selected.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our 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.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department of State's oversight and administration of the implementation of the Security Guard Act.

Reporting Requirements

We provided a draft version of this report to Department officials for their review and comment. We considered their comments in preparing the final report and they are attached in their entirety to the end of this report. Department officials generally agreed with the report's recommendations and indicated actions they will take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Secretary of State shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments

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ANDREW M. CUOMO
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May 5, 2021

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street - 11th Floor
Albany, NY 12236-0001

Re: Draft Audit Report 2019-S-42

Dear Mr. Reilly:

The Department of State (DOS) has reviewed the Office of the State Comptroller's (OSC) draft audit report 2019-S-42, entitled "Implementation of the Security Guard Act." We are pleased that the audit found that the Department complies with the requirements set forth in the Security Guard Act and has processes in place to ensure only individuals meeting the Act's requirements receive registration cards.

Our responses to the recommendations are as follows:

Recommendation 1: Develop processes to effectively monitor and review training records, especially for armed security guards classified as peace/police officers, to ensure these guards are in compliance with the Act.

DOS Response: We partially agree with this recommendation. The recommendation implies that processes need to be developed to effectively monitor and review training records for all guards, yet the audit finding relates only to those security guards classified as police/peace officers (Class 03 and 04 guards) due to the training exemptions allowed for that class of guards. Although the Division currently has processes in place to monitor and review training records for those guards, we agree that a refinement of such processes would effectively improve our internal controls. As such, in October 2020, the Division began implementing a program to audit the training records of Class 03 and 04 guards upon their registration renewal.

Recommendation 2: Enhance current procedures for reviewing arrest notifications of registered security guards, including a clearly defined process for following criminal cases and taking action against security guards charged with serious offenses.

DOS Response: We partially agree with this recommendation. We are pleased that the audit team found that the Department "complied with the Act's requirement that registered security guards be free of criminal convictions for serious offenses." We note that there is a significant distinction between convictions and arrests, and that the Department is obligated to provide due process to all. We do not feel that the current procedures for reviewing arrest notifications need to be enhanced, however we do agree that the written procedures should be updated to reflect the current process more clearly. The existing policies and procedures provide a process for following criminal cases and taking appropriate action against security guards charged with serious



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offenses, including the ability to engage counsel to subject the information received to a full legal review. The determinations regarding potential emergency actions benefit from retaining legal opinion(s) and evidence gathering to ensure due process is satisfied and equity to the registrant is considered while ensuring public safety and integrity. The Department is currently working on updating the written procedures to capture and memorialize these processes, which are already implemented by staff.

Recommendation 3: Implement a process to notify DCJS of inactive security guards and applicants denied security guard registrations pursuant to the agreement between the Department and DCJS.

DOS Response: We agree with this recommendation. Due to the volume of guards registered with the Department, a more effective process of notifying DCJS will need to be developed. The Department is working with DCJS and the Office for Information Technology Services (OITS) to seek a solution that will fit the needs of both agencies and comply with the agreement.

Recommendation 4: Enhance current renewal application policies and procedures to ensure consistency in processing security guard renewal applications.

DOS Response: We agree with this recommendation and have already taken action to address it. The security guard renewal processing policy and procedures were updated and communicated to all staff in May 2020. The updates included more explicit instructions regarding stamp dating renewals and ensuring renewals that have expired by more than 6 months are rejected.

Respectfully,



Rossana Rosado
Secretary of State

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