

Department of Defense
DIRECTIVE

AD-A272 290



GC, DoD
696-4598

(2)

January 2, 1992
NUMBER 5220.6

GC, DoD

SUBJECT: Defense Industrial Personnel Security Clearance
Review Program

- References:
- (a) DoD Directive 5220.6, subject as above, August 12, 1985 (hereby canceled)
 - (b) DoD 5200.2-R, "Department of Defense Personnel Security Program," January 1987, authorized by DoD Directive 5200.2, December 20, 1979
 - (c) Section 1001 of title 18, United States Code
 - (d) Section 101 et seq. of title 28, United States Code

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update policy, responsibilities, and procedures of the Defense Industrial Personnel Security Clearance Review Program implementing enclosure 1.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to collectively as "the DoD Components").

2. By mutual agreement, also extends to other Federal Agencies that include:

- a. Department of Agriculture.
- b. Department of Commerce.
- c. Department of Interior.
- d. Department of Justice.
- e. Department of Labor.

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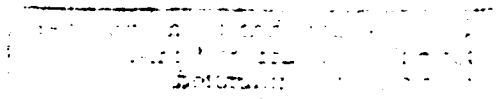
- f. Department of State.
- g. Department of Transportation.
- h. Department of Treasury.
- i. Environmental Protection Agency.
- j. Federal Emergency Management Agency.
- k. Federal Reserve System.
- l. General Accounting Office.
- m. General Services Administration.
- n. National Aeronautics and Space Administration.
- o. National Science Foundation.
- p. Small Business Administration.
- q. United States Arms Control and Disarmament Agency.
- r. United States Information Agency.
- s. United States International Trade Commission.
- t. United States Trade Representative.

3. Applies to cases that the Defense Industrial Security Clearance Office (DISCO) forwards to the Directorate for Industrial Security Clearance Review (DISCR) for action under this Directive to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

4. Provides a program that may be extended to other security cases at the direction of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C³I)).

5. Does not apply to cases in which:

a. A security clearance is withdrawn because the applicant no longer has a need for access to classified information;



b. An interim security clearance is withdrawn by the DISCO during an investigation; or

c. A security clearance is withdrawn for administrative reasons that are without prejudice as to a later determination of whether the grant or continuance of the applicant's security clearance would be clearly consistent with the national interest.

6. Does not apply to cases for access to sensitive compartmented information or a special access program.

C. DEFINITIONS

1. Applicant. Any U.S. citizen who holds or requires a security clearance or any immigrant alien who holds or requires a limited access authorization for access to classified information needed in connection with his or her employment in the private sector; any U.S. citizen who is a direct-hire employee or selectee for a position with the North Atlantic Treaty Organization (NATO) and who holds or requires NATO certificates of security clearance or security assurances for access to U.S. or foreign classified information; or any U.S. citizen nominated by the Red Cross or United Service Organizations for assignment with the Military Services overseas. The term "applicant" does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such Agencies in response to a request from NATO.

2. Clearance Decision. A decision made in accordance with this Directive concerning whether it is clearly consistent with the national interest to grant an applicant a security clearance for access to Confidential, Secret, or Top Secret information. A favorable clearance decision establishes eligibility of the applicant to be granted a security clearance for access at the level governed by the documented need for such access, and the type of investigation specified for that level in DoD 5200.2-R (reference (b)). An unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance.

D. POLICY

It is DoD policy that:

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1. All proceedings provided for by this Directive shall be conducted in a fair and impartial manner.

2. A clearance decision reflects the basis for an ultimate finding as to whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

3. Except as otherwise provided for by E.O. 10865 (enclosure 1) or this Directive, a final unfavorable clearance decision shall not be made without first providing the applicant with:

- a. Notice of specific reasons for the proposed action.
- b. An opportunity to respond to the reasons.
- c. Notice of the right to a hearing and the opportunity to cross-examine persons providing information adverse to the applicant.
- d. Opportunity to present evidence on his or her own behalf, or to be represented by counsel or personal representative.
- e. Written notice of final clearance decisions.
- f. Notice of appeal procedures.

4. Actions pursuant to this Directive shall cease upon termination of the applicant's need for access to classified information except in those cases in which:

- a. A hearing has commenced;
- b. A clearance decision has been issued; or
- c. The applicant's security clearance was suspended and the applicant provided a written request that the case continue.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence shall:

- a. Establish investigative policy and adjudicative standards and oversee their application.

b. Coordinate with the General Counsel of the Department of Defense (GC, DoD) on policy affecting clearance decisions.

c. Issue clarifying guidance and instructions as needed.

2. The General Counsel of the Department of Defense shall:

a. Establish guidance and provide oversight as to legal sufficiency of procedures and standards established by this Directive.

b. Establish the organization and composition of the DISCR.

c. Designate a civilian attorney to be the Director, DISCR.

d. Issue clarifying guidance and instructions as needed.

e. Administer the program established by this Directive.

f. Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

g. Designate attorneys to be Department Counsels assigned to the DISCR to represent the Government's interest in cases and related matters within the applicability and scope of this Directive.

h. Designate attorneys to be Administrative Judges assigned to the DISCR.

i. Designate attorneys to be Administrative Judge members of the DISCR Appeal Board.

j. Provide for supervision of attorneys and other personnel assigned or attached to the DISCR.

k. Develop and implement policy established or coordinated with the GC, DoD, in accordance with this Directive.

1. Establish and maintain qualitative and quantitative standards for all work by DISCR employees arising within the applicability and scope of this Directive.

m. Ensure that the Administrative Judges and Appeal Board members have the requisite independence to render fair and impartial decisions consistent with DoD policy.

n. Provide training, clarify policy, or initiate personnel actions, as appropriate, to ensure that all DISCR decisions are made in accordance with policy, procedures, and standards established by this Directive.

o. Provide for maintenance and control of all DISCR records.

p. Take actions as provided for in subsection F.2., below, and the additional procedural guidance in enclosure 3.

q. Establish and maintain procedures for timely assignment and completion of cases.

r. Issue guidance and instructions, as needed, to fulfill the foregoing responsibilities.

s. Designate the Director, DISCR, to implement paragraphs E.2.e. through r., above, under general guidance of the GC, DoD.

3. The Heads of the DoD Components shall provide (from resources available to the designated DoD Component) financing, personnel, personnel spaces, office facilities, and related administrative support required by the DISCR.

4. The ASD (C'I), shall ensure that cases within the scope and applicability of this Directive are referred promptly to the DISCR, as required, and that clearance decisions by the DISCR are acted upon without delay.

F. PROCEDURES

1. Applicants shall be investigated in accordance with the standards in DoD 5200.2-R (reference (b)).

2. An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DISCR to reach a clearance decision and to otherwise comply with the procedures authorized by this Directive. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant and material information or otherwise cooperate at any stage in the investigation or

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adjudicative process may prevent the DISCR from making a clearance decision. If an applicant fails or refuses to:

a. Provide relevant and material information or to authorize others to provide such information; or

b. Proceed in a timely or orderly fashion in accordance with this Directive; or

c. Follow directions of an Administrative Judge or the Appeal Board; then the Director, DISCR, or designee, may revoke any security clearance held by the applicant and discontinue case processing. Requests for resumption of case processing and reinstatement of a security clearance may be approved by the Director, DISCR, only upon a showing of good cause. If the request is denied, in whole or in part, the decision is final and bars reapplication for a security clearance for 1 year from the date of the revocation.

3. Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

a. Nature and seriousness of the conduct and surrounding circumstances.

b. Frequency and recency of the conduct.

c. Age of the applicant.

d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

e. Absence or presence of rehabilitation.

f. Probability that the circumstances or conduct will continue or recur in the future.

4. Whenever there is a reasonable basis for concluding that an applicant's continued access to classified information poses an imminent threat to the national interest, any security clearance held by the applicant may be suspended by the ASD (C'I), with the concurrence of the GC, DoD, pending a final clearance decision. This suspension may be rescinded by the same authorities upon presentation of additional information that conclusively demonstrates that an imminent threat to the national

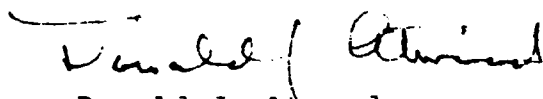
interest no longer exists. Procedures in enclosure 3 shall be expedited whenever an applicant's security clearance has been suspended pursuant to this subsection.

5. Nothing contained in this Directive shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another Department or Agency to deny or revoke a security clearance when the security of the nation so requires. Such authority may not be delegated and may be exercised only when the Secretary of Defense or the head of another Department or Agency determines that the hearing procedures and other provisions of this Directive cannot be invoked consistent with the national security. Such a determination shall be conclusive.

6. Additional procedural guidance is in enclosure 3.

G. EFFECTIVE DATE

This Directive is effective March 16, 1992, except those cases in which a statement of reasons has been issued shall be concluded in accordance with DoD Directive 5220.6 (reference (a)).


Donald J. Aewood
Deputy Secretary of Defense

Enclosures - 3

1. Executive Order 10865, "Safeguarding Classified Information Within Industry"; and Executive Order 10909, "Amendment of Executive Order No. 10865, Safeguarding Classified Information Within Industry"
2. Paragraph 2-200 and Appendix I, DoD 5200.2-R
3. Additional Procedural Guidance

EXECUTIVE ORDER 10865

SAFEGUARDING CLASSIFIED INFORMATION
WITHIN INDUSTRY

WHEREAS it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosure of classified information relating to the national defense; and

WHEREAS it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted encroachment; and

WHEREAS I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of classified defense information and to protect the national interest; and

WHEREAS I find that those provisions and procedures recognize the interests of individuals affected thereby and provide maximum possible safeguards to protect such interest:

NOW, THEREFORE, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

SECTION 1.(a) The Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, and the Administrator of the Federal Aviation Agency, respectively, shall, by regulation, prescribe such specific requirements, restrictions, and other safeguards as they consider necessary to protect (1) releases of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with their respective agencies, and (2) other releases of classified information to or within industry that such agencies have responsibility for safeguarding. So far as possible, regulations prescribed by them under this order shall be uniform and provide for full cooperation among the agencies concerned.

(b) Under agreement between the Department of Defense and any other department or agency of the United States, including, but not limited to, those referred to in subsection (c) of this section, regulations prescribed by the Secretary of Defense under subsection (a) of this section may be extended to apply to protect releases (1) of classified information to or within United States industry that relate to bidding on, or the negotiation, award, performance, or termination of, contracts with such other department or agency, and (2) other releases of classified information to or within industry which such other department or agency has responsibility for safeguarding.

(c) When used in this order, the term "head of a department" means the Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, and, in sections 4 and 8, includes the Attorney General. The term "department" means the Department of State, the Department of Defense, and the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, and in sections 4 and 8, includes the Department of Justice.

SECTION 2. An authorization for access to classified information may be granted by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, to an individual, hereinafter termed an "applicant", for a specific classification category only upon a finding that it is clearly consistent with the national interest to do so.

SECTION 3. Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

(1) A written statement of the reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.

(2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.

(3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of

which may be prescribed by regulations issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee, including, but not limited to, those officials named in section 8 of this order, for the purpose of supporting his eligibility for access authorization and to present evidence on his behalf.

(4) A reasonable time to prepare for that appearance.

(5) An opportunity to be represented by counsel.

(6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant.

(7) A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

SECTION 4. (a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

(1) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

(2) The head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe

illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause determined by the head of the department to be good and sufficient.

(b) Whenever procedures under paragraph (1) or (2) of subsection (a) of this section are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

SECTION 5. (a) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned to safeguard classified information within industry pursuant to this order.

(b) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the applicant, may be received and considered provided that: (1) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (2) the head of the department concerned or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (3) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

SECTION 6. Because existing law does not authorize the Department of State, the Department of Defense, or the National

Aeronautics and Space Administration to subpoena witnesses, the Secretary of State, the Secretary of Defense, or the Administrator of the National Aeronautics and Space Administration, or his representative, may issue, in appropriate cases, invitations and requests to appear and testify in order that the applicant may have the opportunity to cross-examine as provided by this order. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary or the Administrator, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination.

SECTION 7. Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

SECTION 8. Except as otherwise specified in the preceding provisions of this order, any authority vested in the head of a department by this order may be delegated to the

(1) Under Secretary of State or a Deputy Under Secretary of State, in the case of authority vested in the Secretary of State;

(2) Deputy Secretary of Defense or an Assistant Secretary of Defense, in the case of authority vested in the Secretary of Defense;

(3) General Manager of the Atomic Energy Commission, in the case of authority vested in the Commissioners of the Atomic Energy Commission;

(4) Deputy Administrator of the National Aeronautics and Space Administration, in the case of authority vested in the Administrator of the National Aeronautics and Space Administration;

(5) Deputy Administrator of the Federal Aviation Agency, in the case of authority vested in the Administrator of the Federal Aviation Agency; or

(6) Deputy Attorney General or an Assistant Attorney General, in the case of authority vested in the Attorney General.

SECTION 9. Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of a department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

DWIGHT D. EISENHOWER

THE WHITE HOUSE

February 20, 1960

EXECUTIVE ORDER 10909

AMENDMENT OF EXECUTIVE ORDER NO. 10865,
SAFEGUARDING CLASSIFIED INFORMATION
WITHIN INDUSTRY

By virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, and as Commander in Chief of the armed forces of the United States, Executive Order No. 10865 of February 20, 1960 (25 F.R. 1583), is hereby amended as follows:

Section 1. Section 1(c) is amended to read as follows:

"(c) When used in this order, the term 'head of a department' means the Secretary of State, the Secretary of Defense, the Commissioners of the Atomic Energy Commission, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, the head of any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and in sections 4 and 8, includes the Attorney General. The term 'department' means the Department of State, the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, any other department or agency of the United States with which the Department of Defense makes an agreement under subsection (b) of this section, and, in sections 4 and 8, includes the Department of Justice."

Section 2. Section 6 is amended to read as follows:

"Section 6. The Secretary of State, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of the Federal Aviation Agency, or his representative, or the head of any other department or agency of the United States with which the Department of Defense makes an agreement under section 1(b), or his representative, may issue, in appropriate cases, invitations and requests to appear and testify in order that the applicant may have the opportunity to cross-examine as provided by this order. Whenever a witness is so invited or requested to appear and testify at a proceeding and the witness is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standard Government Travel

Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing sentence), transportation in kind and reimbursement for actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An Officer or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, or the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination."

Section. 3. Section 8 is amended by striking out the word "or" at the end of clause (5), by striking out the period at the end of clause (6) and inserting "; or" in place thereof, and by adding the following new clause at the end thereof:

"(7) the deputy of that department, or the principal assistant to the head of that department, as the case may be, in the case of authority vested in the head of a department or agency of the United States with which the Department of Defense makes an agreement under section 1(b)."

DWIGHT D. EISENHOWER

THE WHITE HOUSE

January 17, 1961

Paragraph 2-200 of DoD 5200.2-R

Criteria for Application of Security Standards

The criteria for determining eligibility for a clearance under the security standard shall include, but not be limited to the following:

a. Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

b. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

c. Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

d. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the U.S. or of any State or which seeks to overthrow the Government of the U.S. or any State or subdivision thereof by unlawful means.

e. Unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

f. Performing or attempting to perform one's duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the U.S.

g. Disregard of public law, Statutes, Executive Orders or Regulations including violation of security regulations or practices.

h. Criminal or dishonest conduct.

i. Acts of omission or commission that indicate poor judgment, unreliability or untrustworthiness.

j. Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

k. Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the U.S., or (2) any other circumstances that could cause the applicant to be vulnerable.

l. Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

m. Habitual or episodic use of intoxicants to excess.

n. Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug.

o. Any knowing and willful falsification, coverup, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

p. Failing or refusing to answer or to authorize others to answer questions or provide information required by a congressional committee, court, or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability, and judgment.

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q. Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

APPENDIX I of DoD 5200.2-R

ADJUDICATION POLICY
GENERAL

The following adjudication policy has been developed to assist DoD adjudicators in making determinations with respect to an individual's eligibility for employment or retention in sensitive duties or eligibility for access to classified information.

While reasonable consistency in reaching adjudicative determinations is desirable, the nature and complexities of human behavior preclude the development of a single set of guidelines or policies that is equally applicable in every personnel security case. Accordingly, the following adjudication policy is not intended to be interpreted as inflexible rules of procedure. The following policy requires dependence on the adjudicator's sound judgment, mature thinking, and careful analysis as each case must be weighed on its own merits, taking into consideration all relevant circumstances, and prior experience in similar cases as well as the guidelines contained in the adjudication policy, which have been compiled from common experience in personnel security determinations.

Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis being placed on the seriousness, recency, frequency and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future. The listed "Disqualifying Factors" and Mitigating Factors" in this set of Adjudication Policies reflect the consideration of those factors of seriousness, recency, frequency, motivation, etc., to common situations and types of behavior encountered in personnel security adjudications, and should be followed whenever an individual case can be measured against this policy guidance. Common sense may occasionally necessitate deviations from this policy guidance, but such deviations should not be frequently made and must be carefully explained and documented.

The "Disqualifying Factors" provided herein establish some of the types of serious conduct under the criteria that can

justify a determination to deny or revoke an individual's eligibility for access to classified information, or appointment to, or retention in sensitive duties. The "Mitigating Factors" establish some of the types of circumstances that may mitigate the conduct listed under the "Disqualifying Factors". Any determination must include a consideration of both the conduct listed under "Disqualifying Factors" and any circumstances listed under the appropriate or corresponding "Mitigating Factors".

The adjudication policy is subdivided into sections appropriate to each of the criteria provided in paragraph 2-200, above, except for subparagraph i., for which conduct under any of the "Disqualifying Factors" of the adjudication policy or any other types of conduct may be appropriately included, if it meets the definition of subparagraph i.

In all adjudications, the protection of the national security shall be the paramount determinant. In the last analysis, a final decision in each case must be arrived at by applying the standard that the issuance of the clearance or assignment to the sensitive position is "clearly consistent with the interests of national security."

LOYALTY

(See subparagraphs a., b., c., and d. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act. Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means. Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Furnishing a representative of a foreign government information or data which could damage the national security of the United States.
2. Membership in an organization that has been characterized by the Department of Justice as one which meets the criteria in the above cited "Basis."
3. Knowing participation in acts that involve force or violence or threats of force or violence to prevent others from exercising their rights under the Constitution or to overthrow or alter the form of government of the United States or of any State.

4. Monetary contributions, service, or other support of the organization defined in "Basis", above, with the intent of furthering the unlawful objectives of the organization.

5. Participation, support, aid, comfort or sympathetic association with persons, groups, organizations involved in terrorist activities, threats, or acts.

6. Evidence of continuing sympathy with the unlawful aims and objectives of such an organization, as defined in the "Basis" above.

7. Holding a position of major doctrinal or managerial influence in an organization as defined in the "Basis" above.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Lack of knowledge or understanding of the unlawful aims of the organization.

2. Affiliation or activity occurred during adolescent/young adult years (17-25), more than 5 years has passed since affiliation was severed, and affiliation was due to immaturity.

3. Affiliation for less than a year out of curiosity or academic interest.

4. Sympathy or support limited to the lawful objectives of the organization.

FOREIGN PREFERENCE

(See subparagraph f. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Performing or attempting to perform one's duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the United States.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. The active maintenance of dual citizenship, by one or more of the following:
 - a. Possession of a passport issued by a foreign nation and use of this passport to obtain legal entry into any sovereign state in preference to use of a U.S. passport.
 - b. Military service in the armed forces of a foreign nation or the willingness to comply with an obligation to so serve, or the willingness to bear arms at any time in the future on behalf of the foreign state.
 - c. Exercise or acceptance of rights, privileges or benefits offered by the foreign state to its citizens, (e.g., voting in a foreign election; receipt of honors or titles; financial compensation due to employment/retirement, educational or medical or other social welfare benefits), in preference to those of the United States.
 - d. Travel to or residence in the foreign state for the purpose of fulfilling citizenship requirements or obligations.
 - e. Maintenance of dual citizenship to protect financial interests, to include property ownership, or employment or inheritance rights in the foreign state.
 - f. Registration for military service or registration with a foreign office, embassy or consulate to obtain benefits.
2. Employment as an agent or other official representative of a foreign government, or seeking or holding political office in a foreign state.

3. Use of a U.S. Government position of trust or responsibility to influence decisions in order to serve the interests of another government in preference to those of the United States.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Claim of dual citizenship is with a foreign country whose interests are not inimical to those of the United States and is based solely on applicant's or applicant's parent(s)' birth, the applicant has not actively maintained citizenship in the last ten years and indicates he or she will not in the future act so as to pursue this claim.

2. Military service while a U.S. citizen was in the armed forces of a state whose interests are not inimical to those of the United States and such service was officially sanctioned by United States authorities.

3. Employment is as a consultant only and services provided is of the type sanctioned by the United States government.

SECURITY RESPONSIBILITY SAFEGUARDS

(See subparagraphs e. and g. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Disregard of public law, Statutes, Executive Orders or Regulations, including violation of security regulations or practices, or unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by Statute, Executive Order or Regulation.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Deliberate or reckless disregard of security regulations, public law, statutes or Executive Orders which could have resulted in the loss or compromise of classified information.

2. Deliberate or reckless violations of security regulations, including, but not limited to, taking classified information home or carrying classified data while in a travel status without proper authorization, intentionally copying classified documents in order to obscure classification markings, disseminating classified information to cleared personnel who have no "need to know", or disclosing classified information, or other information, disclosure of which is prohibited by Statute, Executive Order or Regulation, to persons who are not cleared or authorized to receive it.

3. Pattern of negligent conduct in handling or storing classified documents.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Violation of security procedures was directly caused or significantly contributed to by an improper or inadequate security briefing, provided the individual reasonably relied on such briefing in good faith.

2. Individual is personally responsible for a large volume of classified information and the violation was merely administrative in nature.

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3. Security violation was merely an isolated incident not involving deliberate or reckless violation of security policies, practices or procedures.

CRIMINAL CONDUCT

(See subparagraph h. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Criminal or dishonest conduct.

When it is determined that an applicant for a security clearance, or a person holding a clearance, has engaged in conduct which would constitute a felony under the laws of the United States, the clearance of such person shall be denied or revoked unless it is determined that there are compelling reasons to grant or continue such clearance. Compelling reasons can only be shown by clear and convincing evidence of the following:

a. The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; and (3) the individual has demonstrated trustworthiness and respect for the law over an extended period since the offense occurred; or

b. The felonious conduct (1) did not involve an exceptionally grave offense; (2) was an isolated episode; (3) was due to the immaturity of the individual at the time it occurred; and (4) the individual has demonstrated maturity, trustworthiness, and respect for the law since that time; or

c. In cases where the individual has committed felonious conduct but was not convicted of a felony, there are extenuating circumstances which mitigate the seriousness of the conduct such that it does not reflect a lack of trustworthiness or respect for the law.

The above criteria supersede all criteria previously used to adjudicate criminal conduct involving commission of felonies under the Laws of the United States. Involvement in criminal activities which does not constitute a felony under the laws of the United States shall be evaluated in accordance with the criteria set forth below. (For purposes of this paragraph, the term "felony" means any crime punishable by imprisonment for more than a year. The term "exceptionally grave offense" includes crimes against the Federal Government, its instrumentalities, officers, employees or agents; or involves dishonesty, fraud, bribery or false statement; or involves breach of trust or fiduciary duty; or involves serious threat to life or public safety.)

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Criminal conduct involving:
 - a. Commission of a state felony.
 - b. Force, coercion, or intimidation.
 - c. Firearms, explosives, or other weapons.
 - d. Dishonesty or false statements, e.g. fraud, theft, embezzlement, falsification of documents or statements.
 - e. Obstruction or corruption of government functions.
 - f. Deprivation of civil rights.
 - g. Violence against persons.
2. Criminal conduct punishable by confinement for one year or more.
3. An established pattern of criminal conduct, whether the individual was convicted or not.
4. Failure to complete a rehabilitation program resulting from disposition of a criminal proceeding or violation of probation, even if the violation did not result in formal revocation of probation. Rehabilitation should not be considered a success or failure while the individual is still on parole/probation.
5. Criminal conduct that is so recent in time as to preclude a determination that recurrence is unlikely.
6. Close and continuing association with persons known to the individual to be involved in criminal activities.
7. Criminal conduct indicative of a serious mental aberration, lack of remorse, or insufficient probability of rehabilitative success, (e.g., spouse or child abuse).
8. Disposition:
 - a. Conviction.
 - b. Disposition on a legal issue not going to the merits of the crime.

c. Arrest or indictment pending trial when there is evidence that the individual engaged in the criminal conduct for which arrested or indicted.

9. Arrest record. In evaluating an arrest record, information that indicates that the individual was acquitted, that the charges were dropped or the subject of a "stet" or "nolle prosequi", that the record was expunged, or that the cause was dismissed due to error not going to the merits, does not negate the security significance of the underlying conduct. Personnel security determinations are to be made on the basis of all available information concerning a person's conduct and actions rather than the legal outcome of a criminal proceeding.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Immaturity attributable to the age of the individual at the time of the offense.
2. Extenuating circumstances surrounding the offense.
3. Circumstances indicating that the actual offense was less serious than the offense charged.
4. Isolated nature of the conduct.
5. Conduct occurring only in the distant past (such as more than 5 years ago) in the absence of subsequent criminal conduct.
6. Transitory conditions directly or significantly contributing to the conduct (such as divorce action, death in family, severe provocation) in the absence of subsequent criminal conduct.

MENTAL OR EMOTIONAL DISORDERS

(See subparagraph j. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

Disqualifying Factors (behavior or condition falls within one or more of the following categories):

1. Diagnosis by competent medical authority (board certified psychiatrist or clinical psychologist) that the individual has an illness or mental condition which may result in a significant defect in judgment or reliability.

2. Conduct or personality traits that are bizarre or reflect abnormal behavior or instability even though there has been no history of mental illness or treatment, but which, nevertheless, in the opinion of competent medical authority, may cause a defect in judgement or reliability.

3. A diagnosis by competent medical authority that the individual suffers from mental or intellectual incompetence or mental retardation to a degree significant enough to establish or suggest that the individual could not recognize, understand or comprehend the necessity of security regulations, or procedures, or that judgment or reliability are significantly impaired, or that the individual could be influenced or swayed to act contrary to the national security.

4. Diagnosis by competent medical authority that an illness or condition that had affected judgment or reliability may recur even though the individual currently manifests no symptoms, or symptoms currently are reduced or in remission.

5. Failure to take prescribed medication or participate in treatment (including follow-up treatment or aftercare), or otherwise failing to follow medical advice relating to treatment of the illness or mental condition.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Diagnosis by competent medical authority that an individual's previous mental or emotional illness or condition that did cause significant defect in judgment or reliability is cured and has no probability of recurrence, or such a minimal probability of recurrence as to reasonably estimate there will be none.

2. The contributing factors or circumstances which caused the bizarre conduct or traits, abnormal behavior, or defect in judgment and reliability have been eliminated or rectified, there is a corresponding alleviation of the individual's condition and the contributing factors or circumstances are not expected to recur.

3. Evidence of the individual's continued reliable use of prescribed medication for a period of at least two years, without recurrence and testimony by competent medical authority that continued maintenance of prescribed medication is medically practical and likely to preclude recurrence of the illness or condition affecting judgment or reliability.

4. There has been no evidence of a psychotic condition, a serious or disabling neurotic disorder, or a serious character or personality disorder for the past 10 years.

FOREIGN CONNECTIONS/VULNERABILITY TO BLACKMAIL OR COERCION

(See subparagraph k. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be (1) the presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or (2) any other circumstances that could cause the applicant to be vulnerable.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Indications that the individual now is being blackmailed, pressured or coerced by any individual, group, association, organization or government.

2. Indications that a vulnerable individual actually has been targeted and/or approached for possible blackmail, coercion or pressure by any individual, group, association, organization or government.

3. Indications that the individual has acted to increase the vulnerability for future possible blackmail, coercion or pressure by any individual, group, association, organization or governments, especially by or in a country designated hostile to the United States. Indicators include, but are not limited to the following:

a. Failure to report to security officials any evidence, indication or suspicion that mail to relatives has been opened, unusually delayed or tampered with in any way, or that telephone calls have been monitored.

b. An increase in curiosity or official or quasi-official inquiries about the individual to relatives in the country where they reside occasioned by the receipt of mail, packages, telephone calls or visits from the individual.

c. Contact with, or visits by officials to the individual while visiting relatives in another country, to learn more about the individual, or the individual's employment or residence, etc.

d. Unreported attempts to obtain classified or other sensitive information or data by representatives of a foreign country.

4. Conduct or actions by the individual while visiting in a country hostile to the United States that increase the individual's vulnerability to be targeted for possible blackmail, coercion or pressure. These include, but are not limited to the following:

a. Violation of any laws of the foreign country where relatives reside during visits or through mailing letters or packages, (e.g., smuggling, currency exchange violations, unauthorized mailings, violations of postal regulations of the country, or any criminal conduct, including traffic violations) which may call the attention of officials to the individual.

b. Frequent and regular visits, correspondence, or telephone contact with relatives in the country where they reside, increasing the likelihood of official notice.

c. Failure to report to security officials those inquiries by friends or relatives for more than a normal level of curiosity concerning the individual's employment, sensitive duties, military service or access to classified information.

d. Repeated telephone or written requests to the foreign government officials for official favors, permits, visas, travel permission, or similar requests which increase the likelihood of official notice.

e. Reckless conduct, open or public misbehavior or commission of acts contrary to local customs or laws, or which violate the mores of the foreign country and increase the likelihood of official notice.

f. Falsification of documents, lying to officials, harassing or taunting officials or otherwise acting to cause an increase in the likelihood of official notice or to increase the individual's vulnerability because personal freedom could be jeopardized.

g. Commission of any illicit sexual act, drug purchase or use, drunkenness or similar conduct which increases the likelihood of official notice, or which increases the individual's vulnerability because personal freedom could be jeopardized.

5. Conduct or actions by the individual that increase the individual's vulnerability to possible coercion, blackmail or pressure, regardless of the country in which it occurred, including, but not limited to the following:

a. Concealment or attempts to conceal from an employer prior unfavorable employment history, criminal conduct, mental or emotional disorders or treatment, drug or alcohol use, sexual preference, or sexual misconduct described under that section below, or fraudulent credentials or qualifications for employment.

b. Concealment or attempts to conceal from immediate family members, or close associates, supervisors or coworkers, criminal conduct, mental or emotional disorders or treatment, drug or alcohol abuse, sexual preference, or sexual misconduct described under that section below.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. The individual:

a. Receives no financial assistance from and provides no financial assistance to persons or organizations in the designated country.

b. Has been in the United States for at least 5 years since becoming a U.S. citizen without significant contact with persons or organizations from the designated country (each year of active service in the United States military may be counted).

c. Has close ties of affection to immediate family members in the United States.

d. Has adapted to the life-style in the United States, established substantive financial or other associations with U.S. enterprises or community activities.

e. Prefers the way of life and form of government in the U.S. over the other country.

f. Is willing to defend the U.S. against all threats including the designated country in question.

g. Has not divulged the degree of association with the U.S. government or access to classified information to individuals in the designated country in question.

h. Has not been contacted or approached by anyone or any organization from a designated country to provide information or favors, or to otherwise act for a person or organization in the designated country in question.

i. Has promptly reported to proper authorities all attempted contacts, requests or threats from persons or organizations from the designated country.

j. The individual is aware of the possible vulnerability to attempts of blackmail or coercion and has taken positive steps to reduce or eliminate such vulnerability.

FINANCIAL MATTERS

(See subparagraph 1. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. History of bad debts, garnishments, liens, repossessions, unfavorable judgments, delinquent or uncollectible accounts or debts written off by creditors as uncollectible losses with little or no apparent or voluntary effort by the individual to pay amounts owed.

2. Bankruptcy:

a. Due to financial irresponsibility, or

b. With continuing financial irresponsibility thereafter.

3. Indebtedness aggravated or caused by gambling, alcohol, drug abuse, or other factors indicating poor judgement or financial irresponsibility.

4. A history or pattern of living beyond the person's financial means or ability to pay, a lifestyle reflecting irresponsible expenditures that exceed income or assets, or a history or pattern of writing checks not covered by sufficient funds or on closed accounts.

5. Indication of deceit or deception in obtaining credit or bank accounts, misappropriation of funds, income tax evasion, embezzlement, fraud, or attempts to evade lawful creditors.

6. Indifference to or disregard of financial obligations or indebtedness or intention not to meet or satisfy lawful financial obligations or when present expenses exceed net income.

7. Unexplained affluence or income derived from illegal gambling, drug trafficking or other criminal or nefarious means.

8. Significant unexplained increase in an individual's net worth.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Scheduled program or systematic efforts demonstrated over a period of time (generally one year) to satisfy creditors, to acknowledge debts and arrange for reduced payments, entry into debt-consolidation program or seeking the advice and assistance of financial counselors or court supervised payment program.
2. Change to a more responsible lifestyle, reduction of credit card accounts, and favorable change in financial habits over a period of time (generally one year).
3. Stable employment record and favorable financial references.
4. Unforeseen circumstances beyond the individual's control (e.g. a major or catastrophic illness or surgery, accidental loss of property or assets not covered by insurance, decrease or cutoff of income, indebtedness resulting from court judgments not due to the individual's financial mismanagement), provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.
5. Indebtedness due to failure of legitimate business efforts or business-related bankruptcy without evidence of fault or financial irresponsibility on the part of the individual, irresponsible mismanagement of an individual's funds by another who had fiduciary control or access to them without the individual's knowledge, or loss of assets as a victim of fraud or deceit, provided the individual demonstrates efforts to respond to the indebtedness in a reasonable and responsible fashion.
6. Any significant increase in net worth was due to legitimate business interests, inheritance or similar legal explanation.

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ALCOHOL ABUSE

(See subparagraph m. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Habitual or episodic use of intoxicants to excess.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Habitual or episodic consumption of alcohol to the point of impairment or intoxication.

2. Alcohol-related incidents such as traffic violations, fighting, child or spouse abuse, non-traffic violation or other criminal incidents related to alcohol use.

3. Deterioration of the individual's health or physical or mental condition due to alcohol use or abuse.

4. Drinking on the job, reporting for work in an intoxicated or "hangover" condition, tardiness or absences caused by or related to alcohol abuse, and impairment or intoxication occurring during, and immediately following, luncheon breaks.

5. Refusal or failure to accept counseling or professional help for alcohol abuse or alcoholism.

6. Refusal or failure to follow medical advice relating to alcohol abuse treatment or to abstain from alcohol use despite medical or professional advice.

7. Refusal or failure to significantly decrease consumption of alcohol or to change life-style and habits which contributed to past alcohol related difficulties.

8. Indications of financial or other irresponsibility or unreliability caused by alcohol abuse, or discussing sensitive or classified information while drinking.

9. Failure to cooperate in or successfully complete a prescribed regimen of an alcohol abuse rehabilitation program.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Successfully completed an alcohol awareness program following two or less alcohol-related incidents and has

significantly reduced alcohol consumption, and made positive changes in life-style and improvement in job reliability.

2. Successfully completed an alcohol rehabilitation program after three or more alcohol-related incidents, has significantly reduced or eliminated alcohol consumption in accordance with medical or professional advice, regularly attended Alcoholics Anonymous or similar support organization for approximately one year after rehabilitation, and abstained from the use of alcohol for that period of time.

3. Whenever one of the situations listed below occurs, the individual must have successfully completed an alcohol rehabilitation or detoxification program and totally abstained from alcohol for a period of approximately two years:

a. The individual has had one previously failed rehabilitation program and subsequent alcohol abuse or alcohol related incidents.

b. The individual has been diagnosed by competent medical or health authority as an alcoholic, alcoholic dependent or chronic abuser of alcohol.

4. Whenever the individual has had repeated unsuccessful rehabilitation efforts and has continued drinking or has been involved in additional alcohol related incidents then the individual must have successfully completed an alcohol rehabilitation or detoxification program, totally abstained from alcohol for a period of at least three years and maintained regular and frequent participation in meetings of Alcoholics Anonymous or similar organizations.

5. If an individual's alcohol abuse was surfaced solely as a result of self referral to an alcohol abuse program and there have been no precipitating factors such as alcohol related arrests or incidents action will not normally be taken to suspend or revoke security clearance solely on the self referral for treatment.

DRUG ABUSE

(See subparagraph n. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis, or other dangerous drug.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Abuse of cannabis only, not in combination with any other substance.
 - a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.
 - b. Occasional abuse, defined as an average of not more than once a month.
 - c. Frequent abuse, defined as an average of not more than once a week.
 - d. Regular abuse, defined as an average of more than once a week.
 - e. Compulsive use, habitual use, physical or psychological dependency, or use once a day or more on the average.
2. Abuse of any narcotic, psychoactive substance or dangerous drug (to include prescription drugs), either alone, or in combination with another or cannabis, as follows:
 - a. Experimental abuse, defined as an average of once every two months or less, but no more than six times.
 - b. Occasional abuse, defined as an average of not more than once a month.
 - c. Frequent abuse, defined as an average of not more than once a week.
 - d. Regular abuse, defined as an average of more than once a week.

e. Compulsive use, habitual use, physical or psychological dependency, or use on an average of once a day or more on the average.

3. Involvement to any degree in the unauthorized trafficking, cultivation, processing, manufacture, sale, or distribution of any narcotic, dangerous drug, or cannabis or assistance to those involved in such acts whether or not the individual was arrested for such activity.

4. Involvement with narcotics, dangerous drugs or cannabis under the following conditions whether or not the individual engages in personal use:

a. Possession.

b. Possession of a substantial amount, more than could reasonably be expected for personal use.

c. Possession of drug paraphernalia for cultivating, manufacturing or distributing (e.g., possession of gram scales, smoking devices, needles for injecting intravenously, empty capsules or other drug production chemical paraphernalia.

d. Possession of personal drug paraphernalia such as needles for injecting, smoking devices and equipment, etc.

5. Information that the individual intends to continue to use (regardless of frequency) any narcotic, dangerous drug or cannabis. (NOTE: There is no corresponding Mitigating Factor for this Disqualifying Factor because it is DoD policy that, as a general rule, if any individual expresses or implies any intent to continue use of any narcotic, dangerous drug, or other controlled substance, including marijuana and hashish, without a prescription, in any amount and regardless of frequency, it is to be considered contrary to the national interest and the interests of national security to grant or allow retention of a security clearance for access to classified information for that individual.)

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. Abuse of cannabis only, as follows: (Use this to assess Disqualifying Factor 1.)

a. Experimental abuse, which occurred more than six months ago and the individual has demonstrated an intent not to use cannabis or any other narcotic, psychoactive substance or dangerous drug in the future.

b. Occasional abuse of cannabis, which occurred more than 12 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

c. Frequent abuse of cannabis occurred more than 18 months ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

d. Regular abuse of cannabis occurred more than two years ago, and the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future.

e. Compulsive, habitual use or physical or psychological dependency on cannabis occurred more than three years ago, the individual has demonstrated an intent not to use cannabis or any other narcotic, dangerous drug or psychoactive substance in the future and has demonstrated a stable life-style, with no indication of physical or psychological dependence.

2. For abuse other than cannabis alone. Use is considered cumulative and each separate substance must not be considered separately. (Use this to assess Disqualifying Factor 2.)

a. Experimental abuse occurred more than 12 months ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future and has successfully completed a drug rehabilitation program.

b. Occasional abuse occurred more than two years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle and satisfactory employment record and has successfully completed a drug rehabilitation program.

c. Frequent abuse occurred more than three years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug

abuse, and has successfully completed a drug rehabilitation program.

d. Regular abuse occurred more than four years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse and has successfully completed a drug rehabilitation program.

e. Compulsive abuse occurred more than five years ago, the individual has demonstrated an intent not to use any drugs or cannabis in the future, has a stable lifestyle, including satisfactory employment record with no further indication of drug abuse, and has successfully completed a drug rehabilitation program.

3. Use this only to assess conduct under Disqualifying Factor 3.

a. Involvement in trafficking, cultivation, processing, manufacture, sale or distribution occurred more than five years ago, the individual has demonstrated an intent not to do so in the future, and has a stable lifestyle and satisfactory employment record and has not been involved in any other criminal activity.

b. Cultivation was for personnel use only, in a limited amount for a limited period and the individual has not been involved in similar activity or other criminal activity for more than three years and has demonstrated intent not to do so again in the future.

c. Illegal sale or distribution involved only the casual supply to friends of small amounts (not for profit or to finance a personal supply) and occurred on only a few occasions more than two years ago, and the individual has demonstrated an intent not to do so again in the future.

4. Use this only to assess conduct under Disqualifying Factor 4 in the corresponding subparagraphs.

a. No possession of drugs or other criminal activity in the last two years.

b. The individual has not possessed drugs in the last three years, has had no other criminal activity in the last three

years and has demonstrated an intent not to be involved in such activity in the future.

c. The individual has not possessed drug paraphernalia used in processing, manufacture or distribution for the last five years, has had no other criminal activity in the last five years and has demonstrated an intent not to be involved in such activity in the future.

d. The individual has not possessed drug paraphernalia for personal use in the last year, has had no other criminal activity in the last two years and has demonstrated an intent not to be involved in such activity in the future.

1. Narcotic. Opium and opium derivatives or synthetic substitutes.

2. Dangerous Drug. Any of the non-narcotic drugs which are habit forming or have a potential for abuse because of their stimulant, depressant or hallucinogenic effect.

3. Cannabis. The intoxicating products of the hemp plant, Cannabis Sativa, including but not limited to marijuana, hashish, and hashish oil.

FALSIFICATION

(See subparagraph o. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Any knowing and willful falsification, cover-up, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Deliberate omission, concealment, falsification or misrepresentation of relevant and material facts including, but not limited to information concerning arrests, drug abuse or treatment, alcohol abuse or treatment, treatment for mental or emotional disorders, bankruptcy, military service information, organizational affiliations, financial problems, employment, foreign travel, or foreign connections from any Personnel Security Questionnaire, Personal History Statement or similar form used by any Federal agency to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance or access eligibility, or award fiduciary responsibilities.

2. Deliberately providing false or misleading information concerning any of the relevant and material matters listed above to an investigator, employer, supervisor, security official or other official representative in connection with application for security clearance or access to classified information or assignment to sensitive duties.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. The information was not relevant or material to reaching a security clearance or access determination.

2. The falsification was an isolated incident in the distant past (more than 5 years) and the individual subsequently had accurately provided correct information voluntarily during reapplication for clearance or access and there is no evidence of any other falsification misrepresentation or dishonest conduct by the individual.

3. The behavior was not willful.

4. The falsification was done unknowingly or without the individual's knowledge.

5. The individual made prompt, good faith efforts to correct the falsification before being confronted with the facts of falsification.

6. Omission of material fact was caused by or significantly contributed to by improper or inadequate advice of authorized personnel, provided the individual reasonably relied on such improper or inadequate advice in good faith, and when the requirement subsequently was made known to the individual, the previously omitted information was promptly and fully provided.

REFUSAL TO ANSWER

(See subparagraph p. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Failing or refusing to answer or to authorize others to answer questions or provide information required by a Congressional committee, court or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability and judgment.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. Failure or refusal to provide full, frank and truthful answers or to authorize others to do so, in connection with any application for security clearance or access, to include required non-disclosure and security termination agreements.
2. Failure or refusal to provide appropriate investigative forms, including release forms, for use by investigators in obtaining information from medical institutions, agencies or personal physicians, therapists, psychologists, psychiatrists, counselors, rehabilitation treatment, agencies or personnel; from police or criminal agencies, probation agencies or officers, financial institutions, employers, Federal or State agencies, professional associations or any other organizations as required as part of an investigation for security clearance, access, appointment or assignment to sensitive duties.
3. Failure or refusal to authorize others to provide relevant and material information necessary to reach a security clearance determination.
4. Failure or refusal to answer questions or provide information required by a Congressional committee, court or agency when such answers or information concern relevant and material matters pertinent to evaluating the individual's trustworthiness, reliability and judgment.

Mitigating Factors (circumstances which may mitigate disqualifying information):

1. The individual was unable to provide the information despite good faith and reasonable efforts to do so.

2. The individual was unaware of the necessity to provide the information requested or of the possible consequences of such refusal or failure to provide the information, and, upon being made aware of this requirement, fully frankly and truthfully provided the requested information.

3. The individual sought and relied in good faith on information and advice from legal counsel or other officials that the individual was not required to provide the information requested, and, upon being made aware of the requirement, fully, frankly and truthfully provided the requested information.

SEXUAL MISCONDUCT

(See subparagraph g. of paragraph 2-200 of DoD 5200.2-R, above.)

Basis: Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

Disqualifying Factors (behavior falls within one or more of the following categories):

1. The conduct involves:

- a. Acts performed or committed in open or public places.
- b. Acts performed with a minor, or with animals.
- c. Acts involving inducement, coercion, force, violence or intimidation of another person.
- d. Prostitution, pandering or the commission of sexual acts for money or other remuneration or reward.
- e. Sexual harassment.
- f. Self mutilation, self punishment or degradation.
- g. Conduct that involves spouse swapping, or group sex orgies.
- h. Adultery that is recent, frequent and likely to continue and has an adverse effect on good order or discipline within the workplace (e.g., officer/enlisted, supervisor/subordinate, instructor/student).
- i. Conduct determined to be criminal in the locale in which it occurred.
- j. Deviant or perverted sexual behavior which may indicate a mental or personality disorder (e.g., transsexualism, transvestism, exhibitionism, incest, child molestation, voyeurism, bestiality, or sodomy).

2. The conduct has been recent.

3. The conduct increases the individual's vulnerability to blackmail, coercion or pressure.

4. Evidence that the applicant has intention or is likely to repeat the conduct in question.

Mitigating Factors (circumstances which may mitigate qualifying information):

1. Sexual misconduct occurred on an isolated basis during or preceding adolescence with no evidence of subsequent conduct of a similar nature, and clear indication that the individual has no intention of participating in such conduct in the future.

2. Sexual misconduct was isolated, occurred more than 3 years ago, and there is clear indication that the individual has no intention of participating in such conduct in the future.

3. The individual was a minor or was the victim of force, or violence by another.

4. The individual has successfully completed professional therapy, has been rehabilitated and diagnosed by competent medical authority that misconduct is not likely to recur.

5. Demonstration that the individual's sexual misconduct can no longer form the basis for vulnerability to blackmail, coercion or pressure.

of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record.

20. Official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Department or Agency head concerned, to safeguard classified information within industry under E.O. 10865 (enclosure 1). An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence (28 U.S.C. 101 et seq. (reference (d))).

21. Records that cannot be inspected by the applicant because they are classified may be received and considered by the Administrative Judge, provided the GC, DoD, has:

a. Made a preliminary determination that such evidence appears to be relevant and material.

b. Determined that failure to receive and consider such evidence would be substantially harmful to the national security.

22. A written or oral statement adverse to the applicant on a controverted issue may be received and considered by the Administrative Judge without affording an opportunity to cross-examine the person making the statement orally, or in writing when justified by the circumstances, only in either of the following circumstances:

a. If the head of the Department or Agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his or her identity would be substantially harmful to the national interest; or

b. If the GC, DoD, has determined the statement concerned appears to be relevant, material, and reliable; failure to receive and consider the statement would be substantially harmful to the national security; and the person who furnished the information cannot appear to testify due to the following:

(1) Death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant; or

(2) Some other cause determined by the Secretary of Defense, or when appropriate by the Department or Agency head, to be good and sufficient.

23. Whenever evidence is received under items 21. or 22., above, the applicant shall be furnished with as comprehensive and detailed a summary of the information as the national security permits. The Administrative Judge and Appeal Board may make a clearance decision either favorable or unfavorable to the applicant based on such evidence after giving appropriate consideration to the fact that the applicant did not have an opportunity to confront such evidence, but any final determination adverse to the applicant shall be made only by the Secretary of Defense, or the Department or Agency head, based on a personal review of the case record.

24. A verbatim transcript shall be made of the hearing. The applicant shall be furnished one copy of the transcript, less the exhibits, without cost.

25. The Administrative Judge shall make a written clearance decision in a timely manner setting forth pertinent findings of fact, policies, and conclusions as to the allegations in the SOR, and whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. The applicant and Department Counsel shall each be provided a copy of the clearance decision. In cases in which evidence is received under items 21. and 22., above, the Administrative Judge's written clearance decision may require deletions in the interest of national security.

26. If the Administrative Judge decides that it is clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the DISCO shall be so notified by the Director, DISCR, or designee, when the clearance decision becomes final in accordance with item 36., below.

27. If the Administrative Judge decides that it is not clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the Director, DISCR, or designee, shall expeditiously notify the DISCO, which shall in turn notify the applicant's employer of the denial or

revocation of the applicant's security clearance. The letter forwarding the Administrative Judge's clearance decision to the applicant shall advise the applicant that these actions are being taken, and that the applicant may appeal the Administrative Judge's clearance decision.

28. The applicant or Department Counsel may appeal the Administrative Judge's clearance decision by filing a written notice of appeal with the Appeal Board within 15 days after the date of the Administrative Judge's clearance decision. A notice of appeal received after 15 days from the date of the clearance decision shall not be accepted by the Appeal Board, or designated Board Member, except for good cause. A notice of cross appeal may be filed with the Appeal Board within 10 days of receipt of the notice of appeal. An untimely cross appeal shall not be accepted by the Appeal Board, or designated Board Member, except for good cause.

29. Upon receipt of a notice of appeal, the Appeal Board shall be provided the case record. No new evidence shall be received or considered by the Appeal Board.

30. After filing a timely notice of appeal, a written appeal brief must be received by the Appeal Board within 45 days from the date of the Administrative Judge's clearance decision. The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any alleged error. A written reply brief, if any, must be filed within 20 days from receipt of the appeal brief. A copy of any brief filed must be served upon the applicant or Department Counsel, as appropriate.

31. Requests for extension of time for submission of briefs may be submitted to the Appeal Board or designated Board Member. A copy of any request for extension of time must be served on the opposing party at the time of submission. The Appeal Board, or designated Board Member, shall be responsible for controlling the Appeal Board's docket, and may enter an order dismissing an appeal in an appropriate case or vacate such an order upon a showing of good cause.

32. The Appeal Board shall address the material issues raised by the parties to determine whether harmful error occurred. Its scope of review shall be to determine whether or not:

a. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge;

b. The Administrative Judge adhered to the procedures required by E.O. 10865 (enclosure 1) and this Directive; or

c. The Administrative Judge's rulings or conclusions are arbitrary, capricious, or contrary to law.

33. The Appeal Board shall issue a written clearance decision addressing the material issues raised on appeal. The Appeal Board shall have authority to:

a. Affirm the decision of the Administrative Judge;

b. Remand the case to an Administrative Judge to correct identified error. If the case is remanded, the Appeal Board shall specify the action to be taken on remand; or

c. Reverse the decision of the Administrative Judge if correction of identified error mandates such action.

34. A copy of the Appeal Board's written clearance decision shall be provided to the parties. In cases in which evidence was received under items 21. and 22., above, the Appeal Board's clearance decision may require deletions in the interest of national security.

35. Upon remand, the case file shall be assigned to an Administrative Judge for correction of error(s) in accordance with the Appeal Board's clearance decision. The assigned Administrative Judge shall make a new clearance decision in the case after correcting the error(s) identified by the Appeal Board. The Administrative Judge's clearance decision after remand shall be provided to the parties. The clearance decision after remand may be appealed pursuant to items 28. to 35., above.

36. A clearance decision shall be considered final when:

a. A security clearance is granted or continued pursuant to item 2., above;

- b. No timely notice of appeal is filed;
- c. No timely appeal brief is filed after a notice of appeal has been filed;
- d. The appeal has been withdrawn;
- e. When the Appeal Board affirms or reverses an Administrative Judge's clearance decision; or
- f. When a decision has been made by the Secretary of Defense, or the Department or Agency head, under to item 23., above.

The Director, DISCR, or designee, shall notify the DISCO of all final clearance decisions.

37. An applicant whose security clearance has been finally denied or revoked by the DISCR is barred from reapplication for 1 year from the date of the initial unfavorable clearance decision.

38. A reapplication for a security clearance must be made initially by the applicant's employer to the DISCO and is subject to the same processing requirements as those for a new security clearance application. The applicant shall thereafter be advised he is responsible for providing the Director, DISCR, with a copy of any adverse clearance decision together with evidence that circumstances or conditions previously found against the applicant have been rectified or sufficiently mitigated to warrant reconsideration.

39. If the Director, DISCR, determines that reconsideration is warranted, the case shall be subject to this Directive for making a clearance decision.

40. If the Director, DISCR, determines that reconsideration is not warranted, the DISCR shall notify the applicant of this decision. Such a decision is final and bars further reapplication for an additional one year period from the date of the decision rejecting the reapplication.

41. Nothing in this Directive is intended to give an applicant reapplying for a security clearance any greater rights than those applicable to any other applicant under this Directive.

42.. An applicant may file a written petition, under oath or affirmation, for reimbursement of loss of earnings resulting from the suspension, revocation, or denial of his or her security clearance. The petition for reimbursement must include as an attachment the favorable clearance decision and documentation supporting the reimbursement claim. The Director, DISCR, or designee, may in his or her discretion require additional information from the petitioner.

43. Claims for reimbursement must be filed with the Director, DISCR, or designee, within 1 year after the date the security clearance is granted. Department Counsel generally shall file a response within 60 days after receipt of applicant's petition for reimbursement and provide a copy thereof to the applicant.

44. Reimbursement is authorized only if the applicant demonstrates by clear and convincing evidence to the Director, DISCR, that all of the following conditions are met:

a. The suspension, denial, or revocation was the primary cause of the claimed pecuniary loss; and

b. The suspension, denial, or revocation was due to gross negligence of the Department of Defense at the time the action was taken, and not in any way by the applicant's failure or refusal to cooperate.

45. The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or denial and the applicant's interim earnings, and further shall be subject to reasonable efforts on the part of the applicant to mitigate any loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failure to act. Reimbursement is not authorized for loss of merit raises and general increases, loss of employment opportunities, counsel's fees, or other costs relating to proceedings under this Directive.

46. Claims approved by the Director, DISCR, shall be forwarded to the Department or Agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any further claim against the United States or any Federal Department or Agency, or any of its officers or employees.

47. Clearance decisions issued by Administrative Judges and the Appeal Board shall be indexed and made available in redacted form to the public.

DEPARTMENT OF DEFENSE [REDACTED]

DIRECTIVES SYSTEM TRANSMITTAL

NUMBER**5220.6, Change 2****DATE****May 20, 1994****DISTRIBUTION****5000 Series****ATTACHMENTS****None****INSTRUCTIONS FOR RECIPIENTS**

The following pen changes to DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program," January 2, 1992, are authorized:

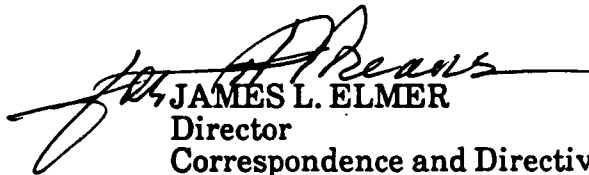
PEN CHANGES

Page 2, subsection B.3., lines 2 and 3. Change "Directorate for Industrial Security Clearance Review (DISCR)" to "Defense Office of Hearings and Appeals (DOHA), Defense Legal Services Agency"

Change the abbreviation "DISCR" to "DOHA" throughout the remainder of the Directive.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

SUPPLEMENTARY

INFORMATION

DEPARTMENT OF DEFENSE

DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
5220.6, Change 2	May 20, 1994	5000 Series

ATTACHMENTS

None

ERRATA

INSTRUCTIONS FOR RECIPIENTS

The following pen changes to DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program," January 2, 1992, are authorized:

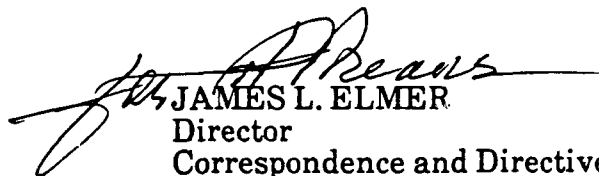
PEN CHANGES

Page 2, subsection B.3., lines 2 and 3. Change "Directorate for Industrial Security Clearance Review (DISCR)" to "Defense Office of Hearings and Appeals (DOHA), Defense Legal Services Agency"

Change the abbreviation "DISCR" to "DOHA" throughout the remainder of the Directive.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

AD-A272790

SUPPLEMENTARY

INFORMATION

DEPARTMENT OF DEFENSE

DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
5220.6, Change 1	November 22, 1993	5000 series

ATTACHMENTS

6 Pages

INSTRUCTIONS FOR RECIPIENTS

The following pen and page changes to DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program," January 2, 1992, are authorized:

PEN CHANGE

Page 8

Enclosure, 1., lines 2 through 4.

Change "; and Executive Order 10909, "Amendment of Executive Order No. 10865, Safeguarding Classified Information Within Industry" " to ", as amended by Executive Order No. 10909 of January 17, 1961, Executive Order No. 11382 of November 28, 1967, and Executive Order No. 12829 of January 6, 1993"

PAGE CHANGES

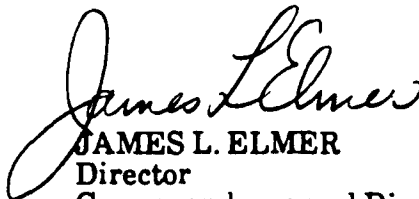
Remove: Pages 1-1 through 1-8

Insert: Attached replacement pages

Changes appear on page 1-1, 1-2, 1-4, and 1-5 and are indicated by marginal asterisks.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

AD-A272 290

EXECUTIVE ORDER 10865*

SAFEGUARDING CLASSIFIED INFORMATION
WITHIN INDUSTRY

Source: The provisions of Executive Order 10865 of Feb. 20, 1960, appear at 25 FR 1583, 3 CFR 1959-1963 Comp., p. 398, unless otherwise noted.

WHEREAS it is mandatory that the United States protect itself against hostile or destructive activities by preventing unauthorized disclosure of classified information relating to the national defense; and

WHEREAS it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted encroachment; and

WHEREAS I find that the provisions and procedures prescribed by this order are necessary to assure the preservation of the integrity of classified defense information and to protect the national interest; and

WHEREAS I find that those provisions and procedures recognize the interests of individuals affected thereby and provide maximum possible safeguards to protect such interest:

NOW, THEREFORE, under and by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

*Executive Order 10865, signed by President Eisenhower on Feb. 20, 1960, is hereby reprinted as amended by Executive Order No. 10909 of January 17, 1961, Executive Order No. 11382 of November 28, 1967, and Executive Order No. 12829 of January 6, 1993. This is an editorial format prepared by the Directorate for Industrial Security Clearance Review as one convenient source for subsequent changes to Executive Order 10865 and is not intended to be used as a definitive legal authority. This version incorporates amendments through January 6, 1993, by Presidents Dwight D. Eisenhower, Lyndon B. Johnson and George Bush.

SECTION 1. When used in this order, the term "head of a department" means the Secretary of State, the Secretary of Defense, the Secretary of Transportation, the Secretary of Energy, the Nuclear Regulatory Commission, the Administrator of the National Aeronautics and Space Administration, and, in section 4, the Attorney General. The term "head of a department" also means the head of any department or agency, including but not limited to those referenced above with whom the Department of Defense makes an agreement to extend regulations prescribed by the Secretary of Defense concerning authorizations for access to classified information pursuant to Executive Order No. 12829.

[Sec. 1 amended by EO 10909 of Jan 17, 1961, 26 FR 508, 3 CFR, 1959-1963 Comp., p. 437; EO 11382 of Nov. 28, 1967, 32 FR 16247, 3 CFR, 1966-1970 Comp., p. 691; EO 12829 of Jan. 6, 1993, 58 FR 3479]

SECTION 2. An authorization for access to classified information pursuant to Executive Order No. 12829 may be granted by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, to an individual, hereinafter termed an "applicant", for a specific classification category only upon a finding that it is clearly consistent with the national interest to do so.

[Sec. 2 amended by EO 12829 of Jan 6, 1993, 58 FR 3479]

SECTION 3. Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked pursuant to Executive Order 12829 by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

(1) A written statement of reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.

(2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.

(3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of which may be prescribed by regulations issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee, including, but not limited to, those officials named in section 8 of this

order, for the purpose of supporting his eligibility for access authorization and to present evidence on his behalf.

(4) A reasonable time to prepare for that appearance.

(5) An opportunity to be represented by counsel.

(6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant.

(7) A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

[Sec. 3 amended by EO 12829 of Jan 6, 1993, 58 FR 3479]

SECTION 4. (a) An applicant shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the applicant relating to a controverted issue except that any such statement may be received and considered without affording such opportunity in the circumstances described in either of the following paragraphs:

(1) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

(2) The head of the department concerned or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the head of the department or such special designee has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (A) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (B) due to some other cause

determined by the head of the department to be good and sufficient.

(b) Whenever procedures under paragraph (1) or (2) of subsection (a) of this section are used (1) the applicant shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, (2) appropriate consideration shall be accorded to the fact that the applicant did not have an opportunity to cross-examine such person or persons, and (3) a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

SECTION 5. (a) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the department concerned by an investigative agency pursuant to its responsibilities in connection with assisting the head of the department concerned to safeguard classified information within industry pursuant to this order.

(b) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the applicant, may be received and considered provided that: (1) the head of the department concerned or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material, (2) the head of the department concerned or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the level of access sought, be substantially harmful to the national security, and (3) to the extent that the national security permits, a summary or description of such physical evidence is made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered. In such instances a final determination adverse to the applicant shall be made only by the head of the department based upon his personal review of the case.

* SECTION 6. The head of a department of the United States or
* his representative, may issue, in appropriate cases, invitations
and requests to appear and testify in order that the applicant
may have the opportunity to cross-examine as provided by this
* order. Whenever a witness is so invited or requested to appear
* and testify at a proceeding and the witness is an officer or

employee of the executive branch of the Government or a member of the armed forces of the United States, and the proceeding involves the activity in connection with which the witness is employed, travel expenses and per diem are authorized as provided by the Standard Government Travel Regulations or the Joint Travel Regulations, as appropriate. In all other cases (including non-Government employees as well as officers or employees of the executive branch of the Government or members of the armed forces of the United States not covered by the foregoing sentence), transportation in kind and reimbursement for actual expenses are authorized in an amount not to exceed the amount payable under Standardized Government Travel Regulations. An Officer or employee of the executive branch of the Government or a member of the armed forces of the United States who is invited or requested to appear pursuant to this paragraph shall be deemed to be in the performance of his official duties. So far as the national security permits, the head of the investigative agency involved shall cooperate with the Secretary, the Administrator, or the head of the other department or agency, as the case may be, in identifying persons who have made statements adverse to the applicant and in assisting him in making them available for cross-examination. If a person so invited is an officer or employee of the executive branch of the Government or a member of the armed forces of the United States, the head of the department or agency concerned shall cooperate in making that person available for cross-examination.

[Sec. 6 amended by EO 10909 of Jan. 17, 1961, 26 FR 508, 3 CFR, 1959-1963 Comp., p. 437; EO 11382 of Nov. 28, 1967, 32 FR 16247, 3 CFR, 1966-1970 Comp., p. 691; EO 12829 of Jan. 6, 1993, 58 FR 3479]

SECTION 7. Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.

SECTION 8. Except as otherwise specified in the preceding provisions of this order, any authority vested in the head of a department by this order may be delegated to the deputy of that department, or the principal assistant to the head of that department, as the case may be.

[Sec. 8 amended by EO 10909 of Jan 17, 1961, 26 FR 508, 3 CFR, 1959-1963 Comp., p. 437; EO 11382 of Nov. 28, 1967, 32 FR 16247, 3 CFR, 1966-1970 Comp., p. 691; EO 12829 of Jan. 6, 1993, 58 FR 3479]

SECTION 9. Nothing contained in this order shall be deemed to limit or affect the responsibility and powers of the head of a department to deny or revoke access to a specific classification category if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the head of a department determines that the procedures prescribed in sections 3, 4, and 5 cannot be invoked consistently with the national security and such determination shall be conclusive.

SUPPLEMENTARY

INFORMATION

DEPARTMENT OF DEFENSE

DIRECTIVES SYSTEM TRANSMITTAL

NUMBER

5220.6, Change 2

DATE

May 20, 1994

DISTRIBUTION

5000 Series

ATTACHMENTS

None

ERRATA

INSTRUCTIONS FOR RECIPIENTS

The following pen changes to DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program," January 2, 1992, are authorized:

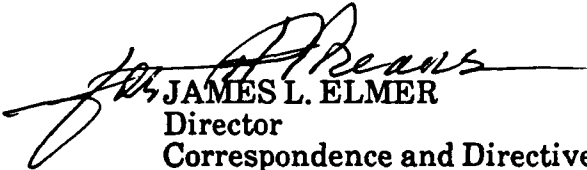
PEN CHANGES

Page 2, subsection B.3., lines 2 and 3. Change "Directorate for Industrial Security Clearance Review (DISCR)" to "Defense Office of Hearings and Appeals (DOHA), Defense Legal Services Agency"

Change the abbreviation "DISCR" to "DOHA" throughout the remainder of the Directive.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER

Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

AD-A272290

SUPPLEMENTARY

INFORMATION

**DEPARTMENT OF DEFENSE
DIRECTIVES SYSTEM TRANSMITTAL**

NUMBER	DATE	DISTRIBUTION
5220.6, Change 3	February 16, 1996	5000 Series

ATTACHMENTS

Enclosure

ERRATA

INSTRUCTIONS FOR RECIPIENTS

The following page changes to DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program," January 2, 1992, are authorized:

PAGE CHANGES

Remove: Enclosure 2

Insert: Attached replacement pages

EFFECTIVE DATE

The above changes are effective immediately and apply to all cases in which a Statement Of Reasons (SOR) is issued after the date of this change. Those cases in which an SOR had been issued prior to the effective date of this change shall be concluded in accordance with the provisions of Enclosure 2 in effect when the SOR was issued.



B. C. WHITEHEAD
Director
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

AD-A372 290

Jan 92#

5220.6 (Encl. 2)

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information

PURPOSE

The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations.

ADJUDICATIVE PROCESS

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

- The nature, extent, and seriousness of the conduct
- The circumstances surrounding the conduct, to include knowledgeable participation
- The frequency and recency of the conduct
- The individual's age and maturity at the time of the conduct
- The voluntariness of participation
- The presence or absence of rehabilitation and

First amendment (Change 3, 2/13/96)

Jan 92#

5220.6 (Encl. 2)

other pertinent behavioral changes

- The motivation for the conduct
- The potential for pressure, coercion, exploitation, or duress
- The likelihood of continuation or recurrence

Each case must be judged on its own merits and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security and considered final.

The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense determination based upon careful consideration of the following:

- A. Allegiance to the United States
- B. Foreign influence
- C. Foreign preference
- D. Sexual behavior
- E. Personal conduct
- F. Financial considerations
- G. Alcohol consumption
- H. Drug involvement
- I. Emotional, mental, and personality disorders
- J. Criminal conduct
- K. Security violations
- L. Outside activities
- M. Misuse of Information Technology Systems

Each of the foregoing should be evaluated in the context of the whole person.

Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior.

However, notwithstanding the whole person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

- (1) voluntarily reported the information;
- (2) sought assistance and followed professional guidance, where appropriate;
- (3) resolved or appears likely to favorably resolve the security concern;
- (4) has demonstrated positive changes in behavior and employment;
- (5) should have his or her access temporarily suspended pending final adjudication of the information.

If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

The information in bold print at the beginning of each adjudicative guideline provides a brief explanation of its relevance in determining whether it is clearly consistent with the interest of national security to grant or continue a person's eligibility for access to classified information.

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ADJUDICATIVE GUIDELINES

ALLEGIANCE TO THE UNITED STATES

An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

Conditions that could raise a security concern and may be disqualifying include:

- (1) involvement in any act of sabotage, espionage, treason, terrorism, sedition, or other act whose aim is to overthrow the Government of the United States or alter the form of government by unconstitutional means;
- (2) association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;
- (3) association or sympathy with persons or organizations that advocate the overthrow of the United States Government, or any state or subdivision, by force or violence or by other unconstitutional means;
- (4) involvement in activities which unlawfully advocate or practice the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

Conditions that could mitigate security concerns include:

- (1) the individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;
- (2) the individual's involvement was only with the lawful or humanitarian aspects of such an organization;
- (3) involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

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- (4) the person has had no recent proscribed involvement or association with such activities.

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FOREIGN INFLUENCE

A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are:

(1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying include:

- (1) an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
- (2) sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
- (3) relatives, cohabitants, or associates who are connected with any foreign government;
- (4) failing to report, where required, associations with foreign nationals;
- (5) unauthorized association with a suspected or known collaborator or employee of a foreign intelligence service;
- (6) conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government;
- (7) indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, coercion or pressure;
- (8) a substantial financial interest in a country, or in any

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foreign owned or operated business that could make the individual vulnerable to foreign influence.

Conditions that could mitigate security concerns include:

- (1) a determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk;
- (2) contacts with foreign citizens are the result of official U.S. Government business;
- (3) contact and correspondence with foreign citizens are casual and infrequent;
- (4) the individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;
- (5) foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

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FOREIGN PREFERENCE

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Conditions that could raise a security concern and may be disqualifying include:

- (1) the exercise of dual citizenship;
- (2) possession and/or use of a foreign passport;
- (3) military service or a willingness to bear arms for a foreign country;
- (4) accepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country;
- (5) residence in a foreign country to meet citizenship requirements;
- (6) using foreign citizenship to protect financial or business interests in another country;
- (7) seeking or holding political office in the foreign country;
- (8) voting in foreign elections; and
- (9) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

Conditions that could mitigate security concerns include:

- (1) dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (2) indicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship;

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- (3) activity is sanctioned by the United States;
- (4) individual has expressed a willingness to renounce dual citizenship.

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SEXUAL BEHAVIOR

Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, subjects the individual to undue influence or coercion, or reflects lack of judgment or discretion.¹ (Sexual orientation or preference may not be used as a basis for or a disqualifying factor in determining a person's eligibility for a security clearance)

Conditions that could raise a security concern and may be disqualifying include:

- (1) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (2) compulsive or addictive sexual behavior when the person is unable to stop a pattern of self-destructive or high-risk behavior or that which is symptomatic of a personality disorder;
- (3) sexual behavior that causes an individual to be vulnerable to undue influence or coercion;
- (4) sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

Conditions that could mitigate security concerns include:

- (1) the behavior occurred during or prior to adolescence and there is no evidence of subsequent conduct of a similar nature;
- (2) the behavior was not recent and there is no evidence of subsequent conduct of a similar nature;
- (3) there is no other evidence of questionable judgment, irresponsibility, or emotional instability;
- (4) the behavior no longer serves as a basis for undue influence or coercion.

¹ The adjudicator should also consider guidelines pertaining to criminal conduct (criterion J), or emotional, mental, and personality disorders (criterion I), in determining how to resolve the security concerns raised by sexual behavior.

PERSONAL CONDUCT

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (1) refusal to undergo or cooperate with required security processing, including medical and psychological testing; or
- (2) refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

Conditions that could raise a security concern and may be disqualifying also include:

- (1) reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;
- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
- (4) personal conduct or concealment of information that

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increases an individual's vulnerability to coercion, exploitation or pressure;

- (5) a pattern of dishonesty or rule violations¹;
- (6) association with persons involved in criminal activity.

Conditions that could mitigate security concerns include:

- (1) the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
- (2) the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
- (3) the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;
- (4) omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
- (5) the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure;
- (6) a refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information;
- (7) association with persons involved in criminal activities has ceased.

¹ To include violation of any written or recorded agreement made between the individual and the agency.

FINANCIAL CONSIDERATIONS

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (2) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (3) inability or unwillingness to satisfy debts;
- (4) unexplained affluence;
- (5) financial problems that are linked to gambling, drug abuse, alcoholism, or other issues of security concern.

Conditions that could mitigate security concerns include:

- (1) the behavior was not recent;
- (2) it was an isolated incident;
- (3) the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);
- (4) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;
- (5) the affluence resulted from a legal source; and
- (6) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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ALCOHOL CONSUMPTION

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (3) diagnosis by a credentialed medical professional¹ of alcohol abuse or alcohol dependence;
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

Conditions that could mitigate security concerns include:

- (1) the alcohol related incidents do not indicate a pattern;
- (2) the problem occurred a number of years ago and there is no indication of a recent problem;
- (3) positive changes in behavior supportive of sobriety;
- (4) following diagnosis of alcohol abuse or alcohol

¹ credentialed medical professional: licensed physician, licensed clinical psychologist, or board certified psychiatrist

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dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

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DRUG INVOLVEMENT

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

- (a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and
- (b) inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any drug abuse (see above definition);
- (2) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;
- (3) failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.³ Current drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will normally result in an unfavorable determination.

Conditions that could mitigate security concerns include:

- (1) the drug involvement was not recent;
- (2) the drug involvement was an isolated or infrequent event;
- (3) a demonstrated intent not to abuse any drugs in the future;

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- (4) satisfactory completion of a drug treatment program prescribed by a credentialed medical professional.

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EMOTIONAL, MENTAL, AND PERSONALITY DISORDERS

Emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability.

When appropriate, a credentialed mental health professional, acceptable to or approved by the government, should be consulted so that potentially disqualifying and mitigating information may be fully and properly evaluated.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a diagnosis by a credentialed mental health professional that the individual has a disorder that could result in a defect in psychological, social, or occupational functioning;
- (2) information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a diagnosed disorder, e.g. failure to take prescribed medication;
- (3) a pattern of high-risk, irresponsible, aggressive, anti-social or emotionally unstable behavior;
- (4) information that suggests that the individual's current behavior indicates a defect in his or her judgment or reliability.

Conditions that could mitigate security concerns include:

- (1) there is no indication of a current problem;
- (2) recent diagnosis by a credentialed mental health professional that an individual's previous emotional, mental, or personality disorder is cured or in remission and has a low probability of recurrence or exacerbation;
- (3) the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital

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breakup), the situation has been resolved, and the individual is no longer emotionally unstable.

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CRIMINAL CONDUCT

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- (1) the criminal behavior was not recent;
- (2) the crime was an isolated incident;
- (3) the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;
- (4) the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;
- (5) there is clear evidence of successful rehabilitation.

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SECURITY VIOLATIONS

Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (1) unauthorized disclosure of classified information;
- (2) violations that are deliberate or multiple or due to negligence.

Conditions that could mitigate security concerns include actions that:

- (1) were inadvertent;
- (2) were isolated or infrequent;
- (3) were due to improper or inadequate training;
- (4) demonstrate a positive attitude towards the discharge of security responsibilities.

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OUTSIDE ACTIVITIES

Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying include:

Any service, whether compensated, volunteer, or employment with:

- (1) a foreign country;
- (2) any foreign national;
- (3) a representative of any foreign interest;
- (4) any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology.

Conditions that could mitigate security concerns include:

- (1) evaluation of the outside employment or activity indicates that it does not pose a conflict with an individual's security responsibilities;
- (2) the individual terminates the employment or discontinues the activity upon being notified that it is in conflict with his or her security responsibilities.

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MISUSE OF INFORMATION TECHNOLOGY SYSTEMS

Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's trustworthiness, willingness, and ability to properly protect classified systems, networks, and information.

Information Technology Systems include all related equipment used for the communication, transmission, processing, manipulation, and storage of classified or sensitive information.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Illegal or unauthorized entry into any information technology system;
- (2) Illegal or unauthorized modification, destruction, manipulation, or denial of access to information residing on an information technology system;
- (3) Removal (or use) of hardware, software or media from any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;
- (4) Introduction of hardware, software or media into any information technology system without authorization, when specifically prohibited by rules, procedures, guidelines or regulations;

Conditions that could mitigate security concerns include:

- (1) The misuse was not recent or significant;
- (2) The conduct was unintentional or inadvertent;
- (3) The introduction or removal of media was authorized;
- (4) The misuse was an isolated event;
- (5) The misuse was followed immediately by a prompt, good faith effort to correct the situation.

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