

## LESSON 2

# Personnel Security Clearances

The success or failure of the NISP depends largely upon the individuals who are responsible for the proper safeguarding and handling of the classified information entrusted to them. It is essential that industrial personnel requiring access to classified information be eligible and trustworthy. The Industrial Personnel Security Clearance Program establishes a means whereby the government can determine if an individual possesses the necessary trustworthiness and integrity to enable that person to have access, and whether such access is clearly consistent with the national interest.

While the program aims to prevent penetrations of the Department of Defense by hostile intelligence, the most tangible results are to grant security clearances to persons whose past actions have indicated that they are reliable, stable, law-abiding, and free from factors that would make them vulnerable to approach by hostile intelligence, and to deny clearances to those who do not meet these criteria. It must be remembered that the granting of a clearance, either military or within industry, is a calculated risk, based on the findings of the investigation of the individual.

## OBJECTIVES

When you have completed this lesson, you should be able to do the following:

- Explain the clearance and adjudicative processes used for industry.
- Identify the types of personnel security investigations conducted on industrial personnel.
- Explain the use and purpose of Limited Access Authorizations.
- Identify the various Agency responsibilities in different clearance procedures.

## IMPORTANCE OF A PERSONNEL SECURITY CLEARANCE

A personnel security clearance is an administrative determination or prediction that an individual can be relied on to safeguard our national secrets. Why is a personnel security clearance important?

First, every security clearance is important to our country. Our national survival depends in part upon the ability of the United States to maintain technological superiority over potential enemies. To accomplish this goal, we must be able to entrust our state secrets to personnel who will safeguard them.

From another perspective, personnel security clearances are important to DoD contractors because having appropriately cleared employees is a prerequisite to the contractors' being eligible to perform on classified contracts.

In like manner, holding a security clearance is important to the individual employee. Having the clearance and a "need-to-know" for access to certain national security information makes that employee an "authorized person" permitted to deal with the classified information necessary to do the job.

## **CLEARANCE ELIGIBILITY CRITERIA**

The NISPOM defines a personnel security clearance as "an administrative determination that an individual is eligible, from a security point of view, for access to classified information of the same or lower category as the level of the personnel clearance being granted." This determination is based on investigation designed to gather, uncover, and develop information bearing on the individual's involvement with 13 eligibility criteria. Note that under the NISPOM there are no longer any minimum age requirements for the various clearances.

### **PERSONNEL SECURITY CLEARANCE ELIGIBILITY CRITERIA**

**IDEALLY, A PERSON SHOULD NOT HAVE A HISTORY OF ANY OF THE FOLLOWING 13 ACTIVITIES AND CONDITIONS, ALTHOUGH A PARTICULAR "INVOLVEMENT" WILL NOT NECESSARILY IN AND OF ITSELF BE A BASIS FOR A DENIAL OF CLEARANCE.**

**a. Guideline A: Allegiance to the United States.**

*The Concern.* 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.

**b. Guideline B: Foreign Influence**

*The Concern;* 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 obligations are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contracts 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.

**c. Guideline C: Foreign Preference**

*The Concern:* 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.

**d. Guideline D: Sexual Behavior**

*The Concern:* Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgement or discretion. 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.

**e. Guideline E: Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness,

unreliability, lack of candor, dishonesty, 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:

**f. Guideline F: Financial Considerations**

*The Concern:* 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.

**g. Guideline G: Alcohol Consumption**

*The Concern:* 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.

**h. Guideline H: Drug involvement**

*The Concern:* 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.

**i. Guideline I: Emotional, mental, and personality disorders.**

*The Concern:* 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. A credentialed mental health professional (e.g., clinical psychologist or psychiatrist), employed by, acceptable to or approved by the government, should be utilized in evaluating potentially disqualifying and mitigating information fully and properly, and particularly for consultation with the individual's mental health care provider.

**j. Guideline J: Criminal Conduct**

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

**k. Guideline K: Security Violations**

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

**l. Guideline L: Outside Activities**

*The Concern:* Involvement in certain types of activities outside employment or activities 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.

**m. Guideline M: Misuse of Information Technology Systems**

*The Concern:* 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.

## **TYPES OF INDUSTRIAL CLEARANCES**

In most cases, industrial personnel are granted final clearances at one of the three basic levels: CONFIDENTIAL, SECRET, or TOP SECRET. Such clearances may be initial (first-time) clearances or reinstated industrial clearances, or non-industrial (i.e., military) clearances converted to industrial clearances.

In certain cases, however, the level of access that may be granted and the kinds of material that may be accessed - depends on restrictions that are imposed by the type of clearance itself. This is the case with interim clearances, contractor-granted clearances, and limited access authorizations.

## **INTERIM CLEARANCES**

Applicants submitted for SECRET and CONFIDENTIAL clearances are issued interim clearances, provided that the initial investigation fails to uncover any adverse information - that is, if checks of the records maintained in the Defense Clearance and Investigations Index (DCII), a review of the information on the EPSQ and the records that the contractor has on hand that pertain to the employee are favorable. By contrast, applicants submitted for TOP SECRET clearances are granted an interim TOP SECRET clearance only at the request of the head of the User Agency or designee with exceptions. Failure to obtain the approval will result in the individual being issued an interim SECRET clearance. Interim clearances are not valid for access to RESTRICTED DATA, FORMERLY RESTRICTED DATA, NATO, COMSEC, FOREIGN GOVERNMENT INFORMATION and SCI. The one exception to this rule is that an individual with an interim TOP SECRET clearance may access SECRET material with the above caveats.

## **CONTRACTOR - GRANTED CLEARANCES**

Under previous policy, contractors were delegated authority to act on behalf of the DoD to grant CONFIDENTIAL clearances to qualified employees. This authority was rescinded, though. Contractor - granted clearances in effect might remain valid until the 1 January 2004. These clearances are not valid for access to RESTRICTED DATA, FORMERLY RESTRICTED DATA, COMSEC, SCI, ACDA, NATO (except NATO Restricted) information, classified foreign government information, or for assignment to duty stations outside the U.S.

As a rule, only U.S. citizens are eligible for a security clearance and every effort should be made to ensure non-U.S. citizens are not placed into positions that may require access. However, there may be times within industry when an exception to the rule is called for. At such a time, a qualified immigrant alien or foreign national may be granted a Limited Access Authorization (LAA) at the SECRET or CONFIDENTIAL level.

A non-U.S. Citizen may be eligible for an LAA if the following criteria are met:

- The individual must possess a rare or unusual expertise.

- A qualified U.S. citizen cannot be hired in sufficient time to meet the contractual requirements.
- The appropriate Government Contracting Activity must concur.
- The Defense Security Service must concur.

You or your agency will become involved in this process since, prior to the facility submitting the LAA request to DISCO, they must obtain a written endorsement from the contracting officer having jurisdiction over the contract for which access is proposed. The LAA is terminated upon completion of the contract for which access was originally granted.

Note that LAAs granted under the NISP are not valid for access to TOP SECRET information, RESTRICTED DATA, FORMERLY RESTRICTED DATA, COMSEC, NATO, ACDA classified information, information for which a special access authorization is required, information determined not releasable to the individual's country, and information provided by a third party government.

## **INVESTIGATIVE POLICY: PROCEDURES**

The 13 eligibility criteria remain constant for all types and levels of clearance. What differs from type to type and level to level is the extent of investigative effort devoted to examining an individual's background. The higher the level of the clearance being sought, the greater the investigative effort or "scope." As a general rule, clearance below TOP SECRET entails electronic checks of various records, while a final TOP SECRET clearance entails both record checks and a series of interviews of the Subject and of those who have known the Subject.

DoD Directive 5200.2, "DoD Personnel Security Program" (issued to implement Executive Order 10450) prescribes the policy and general procedures, including the scope, which relates to the conduct of personnel security investigations. It was modified by National Security Directive 63 (NSD 63), issued by President Bush in October 1991. NSD 63 establishes the Single Scope Background Investigation, which replaces both the Background Investigation and the Special Background Investigation.

As amended by NSD 63, DoD 5200.2 stipulates that consideration for persons requiring access to classified information will be based upon one of two general types of investigations: 1. The National Agency Check (NAC) and 2. The Single Scope Background Investigation (SSBI). (DoD 5200.2-R, "Personnel Security Program Regulation," issued under the authority of DoD Directive 5200.2, contains expanded direction and procedures.)

## **NATIONAL AGENCY CHECK WITH LOCAL AGENCY CHECKS AND CREDIT CHECK (NACLCL)**

The most common type of investigation is the National Agency Check with Local Agency Checks and Credit Check (NACLCL), conducted when an applicant who is an U.S. citizen requires access to SECRET or CONFIDENTIAL information. The NACLCL is also the

investigative basis for an interim TOP SECRET clearance for certain individuals. The credit check portion of the NACLIC is the same as the credit check done for the Single Scope Background Investigation, described below.

## **AGENCIES QUERIED DURING THE NACLIC**

As a minimum, the following checks are conducted:

- First, investigators will conduct record checks at the appropriate courts for listed or developed criminal and/or public record information for the scope of the investigation. A electronic check for this activity may be conducted in lieu of the LAC if permitted by various electronic databases within the areas of scope of the investigation.
- Second, the Federal Bureau of Investigation (FBI) conducts search of two of their own file systems consisting of 1) name check of alphabetical indices maintained by the FBI Headquarters in Washington, D.C. to determine if an investigation was ever conducted on the individual; and, 2) a technical fingerprint search with the Identification Division to ascertain if the individual has ever been arrested or convicted of criminal activities. The technical fingerprint search requires that the applicant submit fingerprints for FBI analysis. These prints are then categorized and compared against fingerprints on file.

The third check made is with the Defense Clearance and Investigations Index (DCII). This is the central index of investigative files maintained throughout the DoD, including those records retained at the Personnel Investigations Center (PIC) within the DSS. A search of DCII may reveal the existence of the file number and location of reports of investigations which have previously been conducted (or are currently being conducted) by any DoD investigative agency, including the three military departments.

Other federal agencies may be checked as deemed appropriate to the case and the individual. For example, the Office of Personnel Management (OPM), formerly the Civil Service Commission, will be queried on persons who have been civilian employees of the United States Government, the United Nations, and other public international organizations. The Immigration and Naturalization Service (INS) will be queried if the applicant is a naturalized citizen or an immigrant alien, or if there are doubts involving the individual's citizenship. The State Department, particularly the Passport Division, maintains pertinent records of U.S. citizens who have applied for a passport. This department is generally checked when an individual whose parents are U.S. citizens was born outside the United States. The Central Intelligence Agency (CIA) may be contacted if there is a question involving the individual's foreign connections or foreign travel. If an individual was formerly in the Armed Forces, the master personnel records of the Military Personnel Records Center (MPRC) in St. Louis, Missouri, will be checked. Treasury Department files - such as those of the Secret Service, the Internal Revenue Service, and the Bureau of Customs - may also be reviewed if there is reason to believe they contain significant information. Finally, other federal agency files, such as those of the Coast Guard, may be checked when pertinent.

Further investigative efforts will be performed to substantiate or disprove unfavorable information or to resolve a matter disclosed during the conduct of a NACLIC.

## **SINGLE SCOPE BACKGROUND INVESTIGATION (SSBI)**

The second type of investigation is the Single Scope Background Investigation (SSBI). This type of investigation provides the basis for TOP SECRET access authorization and authorization for access to Sensitive Compartmented Information (SCI) or other information requiring special access approval. The SSBI also provides the basis for a SECRET LAA or a CONFIDENTIAL LAA. The SSBI makes inquiries into pertinent facts bearing on the suitability and trustworthiness of the individual taking into account both positive and negative factors. The SSBI is designed to develop information upon which to base decisions regarding access authorizations, so that those granted will be clearly consistent with the national interest.

Procedures for conducting the SSBI are considerably more complicated and time-consuming than those of the NAC. The period of investigation for an SSBI covers the last ten years of a Subject's life, or from the 18th birthday, whichever is shorter. The SSBI always includes a NAC of the Subject, as described above.

### **COMPONENTS OF THE SSBI**

In addition, a NAC of the Subject's spouse or cohabitant and any non-U.S. citizen family members are conducted.

An interview of the Subject is conducted at the beginning of the investigation in order to determine essential information about the individual. This interview is normally conducted at the Subject's place of employment and normally lasts from one to two hours.

Interviews of former spouses are also conducted if the divorce occurred during the period of investigation.

When the applicant claims U.S. birth and citizenship, these are verified by the requester of the clearance, and an independent verification is made by DSS.

Credit bureau checks are conducted in the areas where the subject has worked, resided, or attended school for 6 months or more during the period under investigation.

Local Agency Checks (LACs), such as checks of files of the state police in areas where the subject has resided for a total of 6 months or more during the period of investigation, are also conducted.

A neighborhood investigation verifies the Subject's current residence, and two neighbor references are interviewed in each area where the Subject lived for a total of 6 months or more during the past 5 years.

Education records are also checked which reflect the Subject's most recent or most significant education within the period under investigation.

Public records that reflect the Subject's divorce(s), bankruptcy, and similar matters are checked.

All employment records within the period under investigation are checked. This check also includes employment references, interviews preferably with the Subject's supervisor and a co-worker. Exceptions to the interview portion of the check are for part-time and seasonal or temporary jobs (jobs of four duration or less).

Also, unemployment of more than 60 days during the period of investigation is checked.

Four character references whose combined association with the Subject covers the entire period under investigation will be interviewed. Three of the four must be "developed character references," that is, persons not listed on the Personnel Security Questionnaire.

An SSBI may include other checks, such as a check of Subject's medical records (especially those which reflect a history of mental or nervous disorders).

## **PERIODIC REINVESTIGATION**

Granting an initial clearance is not the end of the security clearance process. Continuing evaluation of the individual's suitability to hold the clearance is essential. One formal aspect of this continuing evaluation is the Periodic Reinvestigation (PR).

The PR is conducted at 5 year intervals after the initial clearance is granted. An extensive PR is conducted on cleared individuals having access to TOP SECRET, Sensitive Compartmented Information, and other selected special access programs, while a less extensive PR (NACLC and Credit Bureau Checks only) is conducted on other cleared individuals.

## **CHART**

The chart on the next page summarizes the investigative requirements and the investigative scoping that we have been discussing.

**CLEARANCE OF INDUSTRIAL PERSONNEL  
INVESTIGATIVE REQUIREMENTS**

U.S. CITIZENS			IMMIGRANT ALIENS & FOREIGN NATIONALS	
	TOP SECRET (SCI) or other special access	TOP SECRET	SECRET/ CONFIDENTIAL	SECRET LAA/CONFIDENTIAL LAA
Final	SSBI	SSBI	NACC	SSBI
Interim	Not Authorized	NACC	DCII and Available Records	Not Authorized

**INVESTIGATIVE SCOPE**

NATIONAL AGENCY CHECK With Agency Checks AND CREDIT CHECK (NACLC)	
Defense Clearance and Investigations Index (DCII)	Federal Bureau of Investigation (FBI)
Subject's name is checked against names that appear in documents of DoD agencies that investigate criminal, counterintelligence, fraud, and personnel security matters.	<ul style="list-style-type: none"> <li><b>FB11H0.</b> Subject's name is checked against names in FBI's investigative files.</li> <li><b>FBIVID.</b> Subjects fingerprints are checked against FBI's file of fingerprints submitted by law enforcement agencies.</li> </ul>
<ul style="list-style-type: none"> <li><b>Local Agency Checks</b></li> <li><b>Credit Bureau Check</b> as described under SSBI below.</li> </ul>	

**and**

Agency	If Subject:	Agency	If Subject:
Office of Personnel Management (OPM)	<ul style="list-style-type: none"> <li>- was U.S. Gov't civilian employee</li> <li>- was U.S. citizen employee of U.N.</li> <li>- had NRC or DOE clearance</li> </ul>	Central Intelligence Agency (CIA)	<ul style="list-style-type: none"> <li>- resided outside U.S. for a year or more since age 18</li> <li>- was a CIA employee</li> <li>- resided, traveled, was educated or employed since age 18 in a Designated country</li> </ul>
Immigration and Naturalization Service (INS)	<ul style="list-style-type: none"> <li>- is an alien in the U.S.</li> <li>- is a naturalized U.S. citizen (unverified)</li> <li>- is an immigrant alien</li> <li>- is a U.S. citizen through parent's naturalization (unverified)</li> </ul>	Military Personnel Record Center (MPRC)	- served in U.S. Armed Forces during the last 15 years
State, Department - Security Division (S/D) - Passport Division (P/D)	<ul style="list-style-type: none"> <li>- was a State Dept employee</li> <li>- is a U.S. citizen through birth abroad to U.S. parents (unverified)</li> </ul>	Treasury Department (Secret Service, Internal Revenue Service, Bureau of Customs)	[Only if available information indicates that a TD agency has pertinent information]
		Other agencies (e.g., Coast Guard)	[Only when pertinent to purpose of investigation]

SINGLE SCOPE BACKGROUND INVESTIGATION (SSBI)	PERIODIC REINVESTIGATION (PR)*
PERIOD OF INVESTIGATION (POI) Past 10 years or to age 18, whichever is less	Past 5 years

**NATIONAL AGENCY CHECK (NAC) of Subject**

NAC of spouse or cohabitant and any family members not U.S. citizens	Any current spouse, cohabitant, or alien family NAC not previously done for SSBI
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**INTERVIEW OF SUBJECT**

INTERVIEWS OF FORMER SPOUSES whose last date of marriage of Subject is within the POI
DATE AND PLACE OF BIRTH (DPOB) verified. (Subject provides birth certificate)

**CITIZENSHIP**

Verify U.S. citizenship if Subject claims. For Subjects who are not U.S. citizens and for all foreign-born immediate family members, verify citizenship or legal status in U.S.

**CREDIT BUREAU CHECKS**

Wherever Subject lived, worked, or attended school for 6 months or more during the POI or the past 7 years, whichever is shorter

**LOCAL AGENCY CHECKS**

Where Subject lives and wherever Subject lived, worked, or attended school for a total of 6 months or more during the POI

**NEIGHBORHOOD INVESTIGATION**

Verify current residence. 2 neighbor references in each area where Subject lived for a total of 6 months or more during the past 5 years	SSBI requirement, if not previously met
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**EDUCATION RECORDS**

Most recent or most significant attendance/degree diploma within POI. If no education within POI, last education above high school level.	SSBI requirement, if not previously met
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**PUBLIC RECORDS** of divorce(s), bankruptcy, etc., and any other court actions

**EMPLOYMENT RECORDS**

At all places of employment within POI or past 2 years, whichever longer. Federal employment/military service records are verified requester.	At current employment and wherever employment references are interviewed
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**EMPLOYMENT REFERENCES - Interviews with supervisors/co-workers**

2 references at each employment of 6 months or more within the POI and each period of military service of 6 months or more within the past 5 years	2 references at most recent employment of 6 months or more
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**UNEMPLOYMENT of more than 60 days within the POI**

**CHARACTER REFERENCES**

4 references whose combined association with Subject covers the POI; 3 must be developed, but 1 may be listed by Subject	2 developed references whose combined association with Subject covers the POI
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\* The PR for a SECRET clearance is also conducted at 5-year intervals but consists of a NAC and CREDIT BUREAU CHECKS only.

## **LIMITED INQUIRY AND POST - ADJUDICATIVE INVESTIGATION**

Two other investigations are occasionally conducted on industrial personnel: the Limited Inquiry and the Post-Adjudicative Investigation. These investigations are conducted to resolve information surfaced during an ongoing investigation (the limited inquiry) or subsequent to a previous investigation (the post-adjudicative investigation). The scope of each is limited to the type and amount of investigation necessary to resolve the issue.

## **CONTRACTOR'S RESPONSIBILITIES: INITIAL PROCESSING**

In complying with the NISP, a contractor must fulfill certain responsibilities when processing an employee for a personnel security clearance. First of all, the contractor must determine that the clearance is needed in order for the employee to perform tasks or services essential to the fulfillment of a contract or program requiring access to classified material. In other words, the contractor recognizes the applicant's need for access to classified information in order to successfully accomplish the assigned duties. In all cases, it is the responsibility of the contractor to limit the number of personnel processed for clearances to the extent possible consistent with contractual obligations. For instance, the contractor must ensure that clearances are not used as a status symbol within the facility.

Secondly, the applicant must be on the payroll of the contractor before being processed for a clearance. Being "on the payroll" means the employee will receive some type of remuneration for services. The exception to this prerequisite is:

Where a written agreement between the contractor and prospective employee for future employment exists, which stipulates a fixed date for entry on the payroll (normally within 30 days), as in the case of a college student who will report to work after graduation. In this instance, prior to the applicant's entry on the payroll, the contractor may submit an application for a clearance, provided the agreement stipulates the actual (fixed) date of entry on duty is not contingent upon the issuance of a personnel security clearance.

Once the employee has been advised of the requirement to be processed for a security clearance by the contractor, the individual is briefed on the Privacy Act of 1974, which identifies the necessity for providing the information requested on the personnel security questionnaire - the SF 86. In effect, the contractor is acting as an agent for the federal government and should ensure that the applicant understands his or her rights as stated in the Privacy Act of 1974. DSS uses an electronic version of the SF 86 known as the EPSQ. (EPSQ software can be downloaded at [www.dss.mil](http://www.dss.mil). A screen at the beginning of the form explains the privacy act provisions.)

## **DEFENSE INDUSTRIAL SECURITY CLEARANCE OFFICE**

When a contractor is satisfied that all initial requirements for clearance processing have been fulfilled, the request for clearance and the appropriate forms are completed and sent to the Defense Industrial Security Clearance Office (DISCO) in Columbus, Ohio. DISCO, which is under the direction of the Deputy Director for Security Programs for DSS, receives

and processes over 20,000 requests for clearances from industry every month. Specifically, DISCO performs the following functions:

- Screens requests for clearances and initiates paperwork for the necessary investigations
- Processes requests for interim clearances
- Issues a Letter of Consent when a clearance is granted
- Processes reinstatements and conversions of prior clearances
- Furnishes foreign governments and contractors with security assurances on U.S. personnel and facilities
- Maintains a central facility address file
- Maintains and updates pending and closed case files on contractor personnel
- Maintains the current status of a contractor employee's clearance
- Provides worldwide distribution for DoD and DISCO forms pertaining to the NISP

## **PERSONNEL INVESTIGATIONS CENTER**

For an initial clearance, DISCO checks to see that the personnel clearance applications submitted by the contractor are complete and accurate and forwards them to the Personnel Investigations Center (PIC) at Fort Meade, Maryland.

Like DISCO, the PIC is part of DSS. PIC, however, services all of DoD, that is, it receives all DoD security applications from a variety of requesters, including DISCO. If you are cleared or have been cleared in the past, your clearance request was most likely processed at the PIC.

As you know, when a TOP SECRET clearance is requested an SSBI is required as the investigative basis for it. To accomplish the SSBI, PIC sends out the security application, with the investigative leads (record checks and interviews) to be conducted, to those DSS field offices responsible for the areas where the applicant has lived, worked, or attended school during the period of investigation. Each field office completes its leads and sends a report of investigation (ROI to PIC). Through its screening program; PIC reviews the investigative findings to determine the applicant's suitability for a security clearance.

If DISCO can make a clear determination that the TOP SECRET clearance should be granted, i.e., if there is no significant derogatory information, the report of investigation is returned to DISCO. DISCO then transmits a Letter of Consent (LOC) to the applicant's facility stating that the individual may be permitted access to classified information up to the TOP SECRET (or TOP SECRET -SCI) level. These have been sent over the internet since February 2002.

PIC, like DISCO, does not deny clearances. When DISCO and PIC are unable to make a clear determination that a clearance should be granted based on the information reviewed in the applicant's Personnel Security Questionnaire, the ROI, and other documents (in other words, when a case contains major derogatory information), DISCO refers the case to the Defense Office of Hearings and Appeals (DOHA) for review to grant or deny the clearance.

## **CLEARANCE DENIAL AND REVOCATION**

From the founding of the program until 1959, there were a number of court cases dealing with industrial security. For the most part, these cases were brought by employees of defense contractors who had been denied clearance by one of the Industrial Security Boards established by the Department of Defense for the purpose of adjudicating industrial security cases. Essentially, the decisions reached prior to 1959 upheld the DoD and sanctioned the decisions that resulted in the denial or revocation of personnel security clearances. The case of *Greene v. McElroy*, unlike the others, reached the Supreme Court and resulted in a different decision.

### **EXECUTIVE ORDER 10865**

As a result of the Supreme Court's decision in favor of *Greene*, Executive Order 10865, "Safeguarding Classified Information Within Industry," was issued in February, 1960. The purpose of the executive order was two-fold: first, to help ensure against the unauthorized disclosure of classified information entrusted to U.S. industry, and second, to protect the constitutional rights of the industrial applicant for a personnel security clearance. E.O. 10865 provided the authoritative basis for industrial security clearances that the Supreme Court in its ruling had found lacking, and it specifically guaranteed an applicant whose clearance was denied the opportunity to cross-examine accusers.

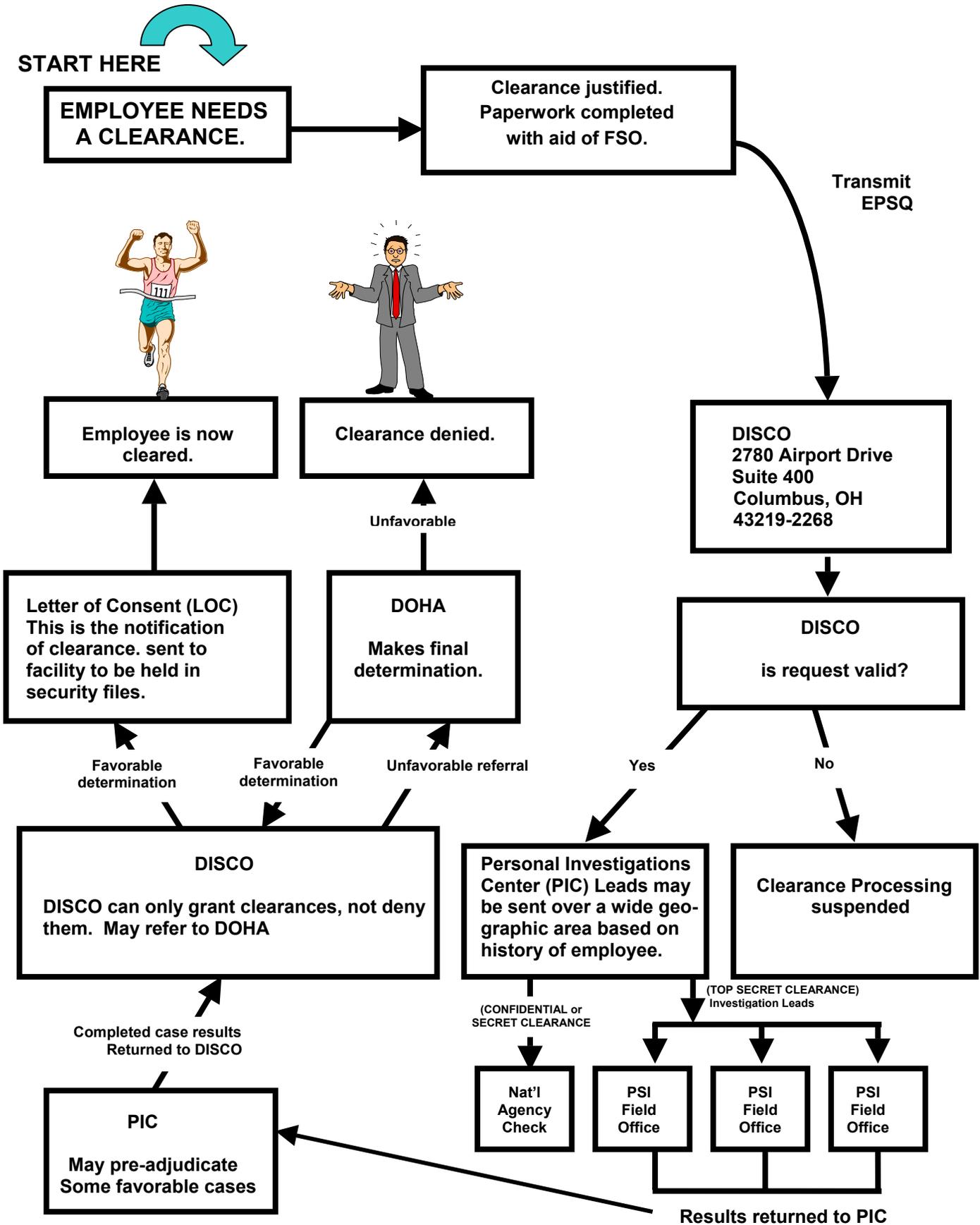
These provisions of E.O. 10865 were implemented through DoD Directive 5220.6, "Defense Industrial Personnel Clearance Review Program," which is the basis for the operating procedures of the Defense Office of Hearings and Appeals (DOHA). We'll be examining these procedures in detail in a moment, but first let's look at the provisions themselves.

Under E.O. 10865 an industrial personnel security clearance cannot be denied or revoked unless the individual is given:

1. A written statement of reasons why the clearance is denied or revoked
2. A reasonable opportunity to reply to the statement of reasons
3. A chance to make a personal appearance before a government authority
4. A reasonable time to prepare a case
5. An opportunity to be represented by legal counsel
6. An opportunity to cross-examine accusers
7. Upon conclusion of all proceedings, written notice of the government's final decision

E.O. 10865, therefore, provided the mandate and the impetus for revamping the government's procedures for clearing industrial personnel. It led directly to the establishment of the organization that is authorized to deny and revoke industrial personnel security clearances.

# LIFE CYCLE OF A PERSONNEL SECURITY INVESTIGATION



## **DEFENSE OFFICE OF HEARINGS AND APPEALS (DOHA)**

The chief function of the Defense Office of Hearings and Appeals (DOHA) is to review investigative reports and recommendations from PIC and, when warranted, to deny, suspend, or revoke clearances. DOHA has the authority to request additional investigations at any point during its review process. In an emergency, the Director of DSS has the authority to suspend a clearance for a period of one year. DOHA may suspend a clearance indefinitely.

DOHA's headquarters is in Arlington, Virginia. Although Personnel Security Divisions II & III of DOHA are collocated with DISCO in Columbus, Ohio, DOHA is not a part of DSS. DOHA reports to the Office of the General Counsel, Office of the Secretary of Defense.

### **REVIEW PROCEDURES**

When DISCO sends a clearance request to DOHA for determination, the following procedures are set in motion:

#### **1. Adjudication by Personnel Security Division.**

The case is examined by an adjudicator in the Personnel Security Division, who reviews the investigative file and determines whether access should be granted or denied. If the adjudicator decides the clearance should be granted, the case is returned to DISCO, which then sends out the Letter of Consent (LOC) to the applicant's facility.

If the decision is to not grant the clearance, the adjudicator will draft a statement of reasons (SOR) for the denial. The case, along with the SOR, is sent to the Personnel Security Division in Arlington, Virginia.

Following a review of the paperwork by a general counsel for legal sufficiency, the SOR is sent to the applicant explaining the reason for the clearance denial. The applicant then has 20 days to reply. If no reply is made, DOHA will discontinue processing the clearance application or take action to revoke the existing clearance. In the case of a revocation, the adjudicator may recommend a suspension of a clearance for up to one year, pending further proceedings.

#### **2. Review by Hearing Examiner.**

Should the applicant reply to the SOR and request a hearing, the case is referred to a hearing examiner, a qualified attorney assigned to DOHA by the Office of General Counsel, who reviews the case and the applicant's reply. A hearing is held. The purpose of the hearing is to obtain additional facts in the case in order to reach a fair and impartial determination. This is the applicant's only opportunity for full cross-examination and confrontation of accusers within the DOHA review process. Although the hearing procedures are formal in nature, the technical rules of evidence are relaxed to permit all relevant information to be addressed during the course of the proceedings. The examiner then has 30 days to prepare a final recommendation. The applicant is informed of the examiner's decision and the applicant (if denial is recommended) or the

government (if granting the clearance is recommended) may appeal the decision. If an appeal is to be made, a written notice of intent to appeal must be filed within 20 days. The actual appeal must be filed within 60 days.

### **3. Decision by Appeal Board.**

The written appeal to the hearing examiner's decision then goes before the three-member Appeal Board, appointed by the Office of the General Counsel, which makes a decision based upon majority rule. The Appeal Board then prepares a written statement of its final decision. At this point, further recourse for the applicant is available through the civil court system.

### **4. Reconsideration by DOHA.**

An individual may have his/her eligibility for a clearance reconsidered at any time by DOHA upon showing newly discovered evidence or other good cause. Normally DOHA does not reconsider clearance eligibility for at least one year.

## **CONTRACTORS RESPONSIBILITIES AFTER CLEARANCE GRANTED**

Once an individual is cleared, we rely on the contractor to assist us in an ongoing assurance that the individual's clearance should be continued. Unfortunately, many people have the mistaken notion that personnel security is simply the conducting of an investigation and the issuance of a clearance. Nothing could be further from the truth. As we have noted, the issuance of a clearance marks the beginning of the process of continuing evaluation that includes the PR.

An important aid in ensuring that the continuing evaluation of the cleared employee remains favorable is the contractor's security education and training, designed to provide the cleared individual with the proper motivation and knowledge necessary to carry out security responsibilities.

Another critical ingredient is the contractor's responsibility to monitor the individual's behavior from a security standpoint and to report in accordance with I-302a, NISPOM, to DISCO whenever information develops that may suggest the individual's continued access to classified information may not be clearly consistent with the national interest. We call such information adverse information. A cleared employee's excessive use of alcohol, illegal use of drugs or controlled substances, psychiatric problems, arrests, and similar changes in behavior are examples of some of the items that should be reported. As a general rule, the 13 clearance eligibility criteria that were applied originally in determining the individual's suitability for a position of trust continue to be the criteria by which an employee's suitability for his or her clearance is assessed.

Contractors should not hesitate to make adverse information reports on individuals who exhibit or are reported as involved in one or more of the 13 conditions. And yet, even though such involvement may be grounds for the suspension or revocation of a security clearance by the government, the involvement is sometimes overlooked or not reported, perhaps from an unwarranted concern that the individual involved will seek legal redress. In fact, contractors are not liable for defamation of an employee because of reports made

to the government. The cases of Becker v. Philco and Taglia v. Philco (389 U.S. 979) addressed this point and established strong case law for contractor immunity from liability.

## **SUMMARY**

The contractor environment differs from the military or government civilian environment with which you are familiar. Because of this, the forms and procedures involved in granting, denying, suspending or revoking an industrial personnel clearance are different. In certain cases, the GCA plays a role in the requesting of clearances. Interim TOP SECRET clearances and limited access authorizations require approval of the GCA. The contractor is also obligated to file certain reports for all cleared personnel.

## REVIEW EXERCISES

Complete the following exercises for review and practice.

1. Eligible non-U.S. Citizens may be granted a L\_\_\_\_\_ A\_\_\_\_\_  
A\_\_\_\_\_.
2. A National Agency Check with LAC and Credit Check is the investigative requirement for a S\_\_\_\_\_ or C\_\_\_\_\_ clearance.
3. The D\_\_\_\_\_ C\_\_\_\_\_ and I\_\_\_\_\_ I\_\_\_\_\_ is the central index of investigative files maintained by the Department of Defense.
4. As part of an SSBI, U.S. birth and citizenship are always verified by an U.S. Government agency, usually DSS for industrial cases.  
  
True  
False
5. The D\_\_\_\_\_ I\_\_\_\_\_ S\_\_\_\_\_ Clearance Office issues the Letter of Consent when a clearance is granted.
6. The P\_\_\_\_\_ Investigations Center receives the clearance request and sends the investigative leads to be conducted to the various DSS Field Offices.
7. The case of \_\_\_\_\_ v. \_\_\_\_\_ addressed the right of an applicant for an industrial security clearance to confront and cross-examine accusers.
8. If the determination has been made to deny the clearance by the Defense Office of Hearing and Appeals the S \_\_\_\_\_ of R \_\_\_\_\_ is sent to the applicant, who must respond within \_\_\_\_\_ days.

## **ANSWERS**

1. *Limited Access Authorization (p. 2-4)*
2. *SECRET, CONFIDENTIAL (pp. 2-5)*
3. *Defense Clearance and Investigations Index (pp. 2-6)*
4. *True (pp. 2-7)*
5. *Defense Industrial Security (p. 2-11)*
6. *Personnel (p. 2-11)*
7. *Greene, McElroy (p. 2-12)*
8. *Statement of Reasons  
20 (pp. 2-14)*