

Department of the Interior Departmental Manual

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Series: Law Enforcement and Security

Part 441: Personnel Security and Suitability Requirements

Chapter 5: Suitability and Security Screening and Adjudication

Originating Office: Office of Law Enforcement and Security

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5.1 General Requirements. The adjudication criteria are applicable to Federal applicants/employees, consultants, contractors, and other classifications of individuals who are subject to a background investigation. Individuals whose conduct and behavior are such that entrusting them with classified information, assigning them to sensitive duties, or assigning them to a position of public trust is clearly consistent with the interests of national security or the efficiency of the Federal service. These individuals: (a) are loyal to the United States; (b) comply with laws; (c) have demonstrated dependability in accepting and discharging responsibilities; (d) demonstrate good social adjustment and emotional stability; and (e) have the ability to exercise sound judgment in meeting adversity.

A. Proper and adequate adjudication begins with a multi-faceted suitability and security screening process that involves suitability and security interviewing to a degree commensurate with the level of background investigation required. The adjudicator is charged with determining whether an individual is loyal, reliable, and trustworthy enough to promote the efficiency of the Federal service and possibly be entrusted with access to classified information or assignment to sensitive duties. 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 are equally applicable in every case. Accordingly, the adjudicative guidelines (*The Office of Law Enforcement and Security (OLEs) has developed a sample interview questionnaire and a set of adjudicative guidelines for positions not requiring access to classified information. These guidelines are considered Controlled Unclassified Information (CUI) and are available by request from the bureau/office Security Officer*) are not intended to be interpreted as inflexible rules of procedure but require dependence on the adjudicator's sound judgment, mature thinking, and careful analysis. Each case must be weighed on its own merits, taking into consideration all relevant circumstances, and prior similar cases.

B. 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 nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, the frequency of the conduct, the recentness of the conduct, the individual's age and maturity at the time of the conduct, voluntary nature of their participation in the conduct, the presence or absence of rehabilitation, the motivation of the conduct, the potential for pressure, coercion, exploitation, or duress (relative to such conduct as has been revealed) and the likelihood of continuation or recurrence of the conduct.

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C. All background investigations that develop material evidence questioning the individual's loyalty to the United States shall be referred to the Federal Bureau of Investigation (FBI) by the Office of Personnel Management (OPM). Similar information developed by the bureau/office shall be forwarded to OLES for submission to the FBI and OPM. The FBI will investigate as necessary and will report the result to OPM who will provide a copy to OLES.

D. Under the provisions of Title 18 United States Code (U.S.C.) Section 922, individuals who have ever been convicted of an offense involving domestic violence shall not be considered for a position that requires possession of firearms and/or ammunition.

5.2 Initial Suitability and Security Screening Adjudication. The first step in determining an individual's suitability for Federal employment or assignment to specific duties by contractor staff or other classification of individuals at any level under the standard of the efficiency of the Federal service is the referral process that involves (a) review by a properly trained (for suitability/security screening or adjudication) Federal official of the person's application and application-related information received or developed by the reviewing office to identify any potentially disqualifying suitability or security issues, and (b) referral of applications in cases involving potentially disqualifying issues to qualified adjudicators for a determination of the individual's employment suitability and, when applicable, potential for being favorably approved for access to classified information. This process occurs prior to initiating an investigation. It occurs during (a) the competitive examining process, or (b) the initial consideration of an application and associated suitability/security material by a Human Resource/Personnel Office and/or management selecting official. In cases of material falsification OPM has the adjudication responsibility. The following chart can be used to assist in the initial adjudication process for issues or potential issues identified during the screening official's or adjudication official's review of the applicable documentation

SUITABILITY CHART		
	I. ISSUES	II. CRITERIA
A.	Other than honorable military discharges: -Any statutory debarment issue -Any loyalty or terrorism issue -Any evidence of dishonesty in the application or examination process (e.g., falsification of application)	Refer for any occurrence regardless of date of occurrence.
B.	Issues relating to: - Pattern or abuse of alcohol - Pattern or abuse of illegal drugs - Rape, sexual assault, or other criminal conduct - Dishonest conduct - Financial irresponsibility pattern - Disruptive or violent behavior - Rioting or violent behavior - Destruction of property	Refer for 1 or more occurrences within 3 years. (NOTE: Referred issue(s) may involve delinquency or misconduct in employment, including military service.)

SUITABILITY CHART	
I. ISSUES	II. CRITERIA
<ul style="list-style-type: none"> - Felony convictions - Illegal use of firearms/weapons 	

The Adjudicative Guidelines for Determining Eligibility for Access to Classified Information will be used for all National Security positions, High Risk Public Trust positions, Public Trust positions requiring regular assignment of a firearm, and any position having regular public contact with minors.

5.3 Suitability Standards. Suitability is the basis for all Federal employment. No person shall be employed or retained in a position in the Federal service unless there is a reasonable expectation that the employment would promote the efficiency of the service. The process involves an assessment of conduct in terms of its nexus impact, or indicated potential impact, on the person's performance in a specific position, including any indicated risk of abuse of the public trust in carrying out specific duties. Conduct paralleling any of the following factors may be considered disqualifying (refer to 5 CFR 731 for additional information):

DISQUALIFYING FACTOR	ADJUDICATIVE APPLICATION
Misconduct or negligence in prior employment which would have a bearing on efficient service in the position in question, or would interfere with or prevent effective performance by the employing agency of its duties and responsibilities.	May or may not have resulted in dismissal from employment. If dismissal resulted, primary emphasis should be placed on the act or conduct which prompted the dismissal rather than on the mere fact of dismissal.

DISQUALIFYING FACTOR	ADJUDICATIVE APPLICATION
<p>Criminal or dishonest conduct related to the duties to be assigned to the applicant or appointee, or to that person's performance or the performance of others.</p>	<p>Criminal - Primary concern should be with the nature of the criminal conduct, evidence of rehabilitation and the effect such conduct may have on the efficiency of the service. The facts and circumstances of the behavior should be considered in all decisions (even where the record has been expunged or a pardon granted).</p> <p>Exception: Presidential or gubernatorial pardon granted on the basis of the person's innocence).</p> <p>Dishonest - Includes an act indicating deliberate disregard for the rights of others (generally through lies, fraud, or deceit) for the benefit of the applicant or employee or other persons (e.g., offer or acceptance of a bribe; falsification of records; willful disregard for the truth; theft; issues relating to non-material falsification; etc.)</p>
<p>Intentional false statement or deception or fraud in examination or appointment.</p>	<p>Examples: Impersonation in examination; collusion in examination; assuming identity of a person who has eligibility; altering the condition of discharge on military discharge documents; altering college transcripts; falsifying an application or appointment document.</p>
<p>Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property/safety of others.</p>	<p>Current, continuing abuse would ordinarily be disqualifying. Abuse may manifest itself in poor employment records, debts, domestic difficulties, or convictions. A clear, lengthy break in a pattern of abuse and strong evidence that the abuse will not occur again is required before the conduct can be considered non-disqualifying.</p>
<p>Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation.</p>	<p>Current or recent use or possession would ordinarily be disqualifying. Any pattern is also disqualifying unless there is a clear, lengthy break since the last occurrence.</p>
<p>Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force.</p>	<p>Traitorous acts are disqualifying. Knowing membership in, with specific intent to further the aims of, an organization which unlawfully practices acts of force or violence to prevent others from exercising their rights under the Constitution or law, or which seeks to overthrow the U.S. Government by unlawful or unconstitutional means is disqualifying. Peaceful protest in and of itself is not disqualifying.</p> <p>Note: In some situations conduct that is disqualifying will also involve statutory bar to employment.</p>

DISQUALIFYING FACTOR	ADJUDICATIVE APPLICATION
Any statutory bar which prevents the lawful employment of the person involved in the position in question.	A statutory or regulatory bar prevents the lawful employment of the person involved in the position in question.

5.4 Additional Considerations. Under the provisions of Presidential Policy Directive 19, “Protecting Whistleblowers with Access to Classified Information” any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee’s Eligibility for Access to Classified Information shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, any action affecting an employee’s Eligibility for Access to Classified Information as a reprisal for a Protected Disclosure.

The higher the level of authority and the more responsibilities associated with the position as evidenced by a position risk/sensitivity designation, the more serious the conduct becomes as a potentially disqualifying issue. Generally, offenses committed as a minor are treated as less serious than are the same offenses committed as an adult, unless the offense is very recent, is part of a pattern, or is particularly heinous. A juvenile offender is one who committed an act in violation of a law, regulation, or ordinance before his or her 18th birthday and the offense for which charged was finally adjudicated in a juvenile court or under a youth offender law. The adjudicator should apply a more flexible standard if the person either: (a) committed an offense prior to the 18th birthday and the offense was adjudicated in a juvenile court, or (b) up to the age of 26 had a conviction set aside under the Federal Youth Correction Act or similar State authority. Contributing societal conditions can be considered in cases involving relatively minor issues.

5.5 Adverse Suitability Determinations. When proposing an adverse suitability action based on the results of a personnel background investigation, the case shall be referred to the bureau/office servicing Human Resources/Personnel Office for Federal employees and applicants for Federal employment. Unfavorable action can be taken under 5 CFR 731, 5 CFR 752, 5 CFR 315, or any other applicable authority. The applicant, appointee, or employee must be accorded such rights as may be specified therein. Adverse suitability determinations on contractors and other classifications of individuals (volunteers, visiting scientists, etc.) will also be referred to the bureau/office Security Officer for action. No specific due process rights currently exist for non-employees but at a minimum, the individual should be given an opportunity to comment on the information upon which the unfavorable suitability determination is based before a final decision is made.

5.6 Security Clearance Criteria. In addition to the suitability criteria, the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (current guidelines are available from OLES) apply to persons being considered for initial or continued eligibility for access to classified information, and are to be used in all final clearance determinations. These criteria (except for foreign influence/preference related criteria) will also be applied to the

adjudication of public trust cases or other cases related to accessing non-classified sensitive data of the Department.

5.7 Agency Authority for Making Security Clearance Determinations. Acting under 5 U.S.C. 7532 and Executive Order (E.O.) 10450, the bureau/office Security Officer may (after following the provisions in the aforementioned U.S.C./E.O. and after consultation with the servicing Human Resources/Personnel Office) suspend an employee without pay before employment is terminated. Under other authorities available to the Department, an employee may be reassigned or detailed temporarily to a Non-Sensitive/Low Risk position, a position with sensitive duties withheld, or a position not requiring a security clearance in which the interests of national security cannot be adversely affected by the employee. In the event of reassignment or detail, the bureau/office Security Officer, after consultation with the servicing Human Resources/Personnel Office may then decide to initiate removal proceedings against the employee as the suspension requirements of the U.S.C. are considered to have been met by the reassignment or detail. Whether the employee is suspended without pay, or reassigned or detailed temporarily to a Non-Sensitive position, the bureau/office must comply with the procedures in this subchapter before terminating the appointment.

5.8 Unfavorable Security Clearance Determination Due (Appeal) Process. Bureaus and offices are responsible for ensuring the records used in making an adjudicative security clearance determination are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual. Bureaus/offices are also responsible for complying with applicable due process requirements, as provided by law, rule, or regulation, when taking an unfavorable action based on information in an investigation case file. The investigation case file consists of all information pertaining to an individual's eligibility for a security clearance. Before being rejected or not selected for a position requiring a security clearance, the individual against whom an unfavorable security determination has been made shall be given an opportunity to explain, refute, and/or mitigate the actionable information that was used in making the unfavorable determination.

A. A Bureau/Office will:

(1) Provide the individual with a written Statement of Reasons (SOR) for the decision. The bureau/office shall prepare a summary from the investigation case file, but will not include information that: (a) is classified (i.e., Top Secret, Secret, or Confidential), even if the subject has a security clearance; (b) would reveal the identity of a source granted confidentiality; (c) is protected sensitive medical information as denoted in 5 CFR 297.205; or (d) is otherwise exempt from release by the Privacy Act;

(2) Provide the individual with an opportunity to respond to the SOR, and to request a review of that determination. The written response must be submitted within 45 days from the date the individual received and signed for the SOR. (Upon written request and approval of the bureau/office Security Officer, if warranted, up to an additional 30 days may be granted.) If the individual does not respond to the SOR, they shall be notified in writing that a timely response was not received, and their security clearance is hereby denied or revoked. The

individual shall also be informed that the decision is final and is not subject to further review by the bureau/office.

(3) Provide within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 522) or the Privacy Act (5 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based. If the decision was based on information contained in a background investigation, the individual shall be provided the investigative agency's address in order to request a copy of the investigation case file.

(4) Review the documentation provided by the individual and make a final bureau/office determination.

(5) Provide the individual with a Letter of Decision (LOD) that shall include:

(a) The reason(s) for the decision;

(b) The identity of the deciding authority;

(c) If the decision is unfavorable, the individual shall be informed of their right to appeal the decision to an Administrative Hearing Examiner or waive a personal appearance and elect to have the case reviewed directly by the DOI Personnel Security Appeals Board (PSAB). The PSAB is a high level panel, appointed by the Assistant Secretary - Policy, Management and Budget and will be comprised of at least three members, two of whom shall be selected from outside the security field. The identity of the members of the PSAB shall not be revealed to the individual.

(d) The individual may file an appeal within 30 calendar days from the date they received and signed for the LOD in one of two ways:

(i) By written appeal directly to the PSAB. A written appeal should include any supporting material not already provided substantiating why the LOD should be overturned in addition to any written statement the individual wishes to make; or

(ii) By requesting a hearing before an Administrative Hearing Examiner, designated by the Department, during which the individual may present relevant documents, materials, and information. The written results of the appearance and all relevant documentation shall then be sent by the Administrative Hearing Examiner to the PSAB. The expenses of the hearing shall be paid by the bureau/office denying eligibility and/or assignment in a sensitive position.

(e) The address to send the appeal or request for a Hearing Examiner is available upon request from OLES; and

(f) If the individual chooses not to appeal to the PSAB, the determination made by the bureau/office Security Officer shall be the final decision and is not subject to further appeal.

B. If requested, the Administrative Hearing Examiner will notify the individual of the time, date, and place for the personal appearance. At the appearance, the individual will have an opportunity to present oral and documentary information on their own behalf. While the personal appearance is designed so that the individual can represent themselves, the individual may obtain legal counsel or other assistance at their own expense to be present at the appearance. Postponement of the personal appearance can be granted only for good cause.

At the Administrative Hearing, the individual should be prepared to address all of the security concerns and supporting adverse information. Also, all supporting documents should be organized and readily accessible for presentation to the Administrative Hearing Examiner presiding at the appearance and for use in answering questions. The Administrative Hearing Examiner presiding at the appearance will have already reviewed the investigation case file. The individual should be prepared to articulate the reason or reasons why they believe that the LOD should be overturned. The hearing provides an opportunity to present additional information and documentation when appropriate. The individual will not have the opportunity to present or cross-examine witnesses. If the individual wants the views of others presented, they should obtain these views in writing (e.g., letters of reference, letters from medical authorities, affidavits, etc.) and present the documents to the Administrative Hearing Examiner. During the appearance, the individual will be allowed to make an oral presentation and submit documentation. They may be asked questions that should be answered clearly, completely, and honestly.

The Administrative Hearing Examiner will review the investigation case file, consider the comments presented and review any additional documentation submitted, and then make a recommendation to the Administrator, PSAB, as to whether the clearance, access, or employment in sensitive duties should be denied, revoked or reinstated. The Administrative Hearing Examiner will provide a written summary or recording of the personal appearance to the Administrator, PSAB.

C. The PSAB will consider the recommendation of the Administrative Hearing Examiner along with the contents of the investigation case file and render a decision. The decision of the PSAB shall be in writing to the individual and is final.

An individual who has been determined ineligible for a security clearance cannot be reconsidered for a security clearance or assignment of sensitive duties for at least 12 months from the date of the final decision of denial or revocation.

5.9 Continuous Evaluation. Individuals who have been found suitable for Federal employment and eligible for a security clearance must continue to meet the loyalty, reliability, and trustworthiness standards while employed by the Federal government. Whenever information is developed or received by the bureau/office regarding an individual that indicates access to classified information and/or retention in employment of that person may not clearly be

consistent with the interests of the national security or efficiency of the Federal service, such information shall be evaluated against the adjudication criteria and if necessary, previously adjudicated information shall be re-adjudicated. A security or suitability adjudicative determination shall be made and the result processed as indicated previously and specified in this chapter. This process must ensure the protection of classified national security information, intelligence sources, and methods. In the event the individual being evaluated claims whistleblower protection, the Office of the Inspector General will be notified to conduct a review and determine whether the action affecting Eligibility for Access to Classified Information violated Presidential Policy Directive 19.