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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



## Examination of the Adjudicative Guidelines

Appendix D

Internal Subject Matter Experts: Focus Group Notes

L E A D I N G I N T E L L I G E N C E I N T E G R A T I O N

March 2011

ONCIX Special Security Directorate Research Program

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*These notes capture the discussion that took place among participants in a research context. They do not necessarily represent the positions of any agency or of the Security Executive Agent.*

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## INTRODUCTION

The *Examination of the Adjudicative Guidelines* Project has three components: reviewing the relevant social science literature, gathering the views of subject matter experts from outside the security community, and soliciting in a formal setting the thoughts and opinions of a body of government personnel security professionals on the substance and structure of the Guidelines. The notes that follow record the results from the third of those components.

Following the clustering model developed for the project, we conducted seven sessions for government experts: two to discuss Cluster I, one each to address Clusters II-V, and a final session devoted to issues relating to the Guidelines as a whole. The sessions varied in detail, but all were meant to capture the views of people who could contribute the perspectives of those actually making access eligibility decisions today. The other components of the project could not provide the insights available only to security professionals active in the field. Hence these sessions were essential.

Participants were selected by their agencies but their charter was to speak as government security professionals, not as bearers of agency positions. Hence all sessions were conducted on the basis of non-attribution. There are no individual or agency attributions in anything that follows.

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(b)(3)  
(b)(6)

## CLUSTER I SESSION 1: GUIDELINES A, B, C, AND L

August 5, 2009

9:15 am—11:15 am

Liberty II, Montgomery Room

- ◆ What are we *really* adjudicating when adjudicating foreign-association issues?
  - Foreign associations that can render a person vulnerable to security compromise.
  - Loyalty to the U.S.
  - Threats from abroad, as well as domestic threat risks (i.e., Oklahoma City).
  - Concerns regarding goals and values counter to those of the U.S.
  - In some cases there is a concern with the unknown: we do not inevitably know what kinds of threat, if any, a person with foreign associations represents.
  - Concerns with the potential efforts on the part of foreign nations to influence U.S. foreign policy through their contacts.
  - The penetration threat: attempts by foreign intelligence services to infiltrate U.S. controlled spaces.
  - Additional observations.
    - Too much information about our personnel security procedures is too readily available over the internet to those who may wish to manipulate it to their advantage.
    - The Guidelines are used for various related but ancillary purposes beyond clearance determinations.
  
- ◆ What concerns do foreign associations raise?
  - Will classified information be compromised?
  - Protection of citizens and of U.S. national interests.
  - Foreign attempts to gain access to advanced technologies and scientific knowledge (e.g., nuclear).
  - The traditional foreign counterintelligence threat and the emerging counterterrorism threat.
  - Manipulation of unwitting U.S. persons.
  - Security concerns related to acquisitions, specifically the role of foreign connections in the acquisition process. (There is a tie-in here with issues of foreign ownership of companies with whom the U.S.-cleared community deals.)
  - Uncertainty regarding the full scope of risk introduced by foreign associations. This uncertainty grows out of the fact that we cannot control the specific nature of peoples' relationships with their foreign associates, nor can we necessarily capture the level of

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sophistication that well intentioned people have regarding the vulnerabilities their foreign associates might pose.

- The changing sense of what it means to emigrate to the U.S. In the past, leaving one country for another meant making a clear break with the country of origin, for practical reasons as much as for any other. Because international communication and travel are now so much more readily available, this need no longer be the case.
  - The increasing importance of diasporas as a characteristic of the U.S. immigrant population introduces a further complication.
  - Additional observations:
    - Security clearance investigations are further complicated by the increased need for native linguists (by definition immigrants).
    - Tribal and other similar sorts of cultural affiliations are also of potential interest.
- ◆ What's the difference between "allegiance," "foreign influence," and "foreign preference?"
- "Allegiance" and "foreign preference."
    - There are similarities between the two: in both cases the claims of one country are accepted over those of any other.
    - However, from another perspective, it may be possible to have *allegiance* to one country while still expressing a *preference* for at least certain elements of another, perhaps by such things as the use of that other country's passport, at least for some purposes.
    - Consider *allegiance* as a core value, whereas *foreign preference* is one possible consequence of an interest in the world at large.
  - Allegiance becomes the core of what we are looking for when adjudicating.
  - "Foreign preference" and "foreign influence."
    - The external nature of *foreign influence*—it is a force acting on a person; the internal nature of *foreign preference*—it arises from a predisposition within a person.
  - "Allegiance" and "loyalty."
    - Allegiance can be temporary: its presence today does not mean that a person will have it tomorrow.
    - Allegiance as a matter of the brain, while loyalty is a matter of the heart.
  - There is a difficulty with all these terms. Regardless of our own understanding of them, we need to be aware of how the people our investigators interview define them, as well as how our investigators themselves define them when conducting investigations.
  - Consider allegiance as a measure of how a person will react under stress. For example, would a person bear arms for the U.S.?
  - Additional observations.
    - The need to recognize, acknowledge, and manage risk.



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- Should mission needs (e.g., for specialized skill sets such as language or knowledge of specific foreign technologies likely to be found in the U.S. only among immigrants) be addressed specifically in the Guidelines?
- While these terms are closely related, there are subtle, nuanced differences between them. They should continue to be treated as separate dimensions of an investigation.

## CLUSTER I SESSION 2: GUIDELINES A, B, C, AND L

August 27, 2009

9:30 am—3:30 pm

Liberty II, Frederick Room

### **PART 1: OVERVIEW BY DR. JERARD KEHOE, EASI CONSULT, OF THE LITERATURE REVIEW FINDINGS**

#### ◆ Questions and Answers

- Q: Do findings relating to dual citizenship depend on the country of origin?  
A: While no research directly examined the question, the country of origin likely had some bearing on findings, based on differences between groups in other similar research areas (e.g. ethnic identity).
- Q: Do results incorporate 2<sup>nd</sup> and 3<sup>rd</sup> generation Americans?  
A: Two studies in particular included them and showed the same patterns of results.
- Q: How has the use of different strategies for individuals to manage multiple identities changed?  
A: Individuals are increasingly less likely to identify with a nation and more likely to identify with cross-national principles. However, a traditionalist perspective best explains dual citizenship behavior in that most individuals favor citizenship to one country.
- Q: The security process can be reactive; the granting of a clearance may, in fact, present a conflict. How do your results address this?  
A: How an individual manages such a conflict depends on individual psychological factors including emotional stability, impulsivity, and conscientiousness.
- Q: What social science research provides evidence that clearance determinations reduce negative security-relevant behaviors?  
A: None. However, inferences can be made from research examining similar phenomena. The review of attachments, similar to what is done in the adjudication process, likely reduces espionage-like security violation behaviors.
- Q: What research, if any, examines allegiance in individuals who were born in a criteria country and then subsequently moved to an allied country?  
A: None. Research has, however, looked at ethnic identity in similar contexts. In these cases the more that individuals maintain their ethnic identity, the less likely they are to develop a strong U.S. national identity. This is especially true for individuals who were members of a disadvantaged group in their home country.

## PART 2: CONTINUATION OF DISCUSSION FROM AUGUST 5, 2009

- ◆ Aligning “expressed concerns” of the Guidelines
  - Guideline A
    - Several participants identified a need to better define “unquestioned allegiance.”
    - A member questioned whether the term could be better defined by a definition through law, as written elsewhere in other policies. A number of participants expressed that this would not be adequate for operational purposes and that IC/DoD has authority to use a differing definition or criteria.
    - Guideline A was not intended as a foreign-oriented Guideline; it is often used in adjudicating both foreign and domestic issues.
    - Guideline A can be used to adjudicate a sympathy, not necessarily behavior.
  - Guideline B
    - Several participants identified a need to better define “divided loyalties.”
    - “Identity of the foreign country.”
      - One participant pointed out that its present form allowed for denial, and was one of the only places within the guideline that *considers* country.
      - Another questioned whether country was relevant to current environment.
      - Participants suggested that as it is written, this may better be listed among mitigators or conditions. Participants responded noting that considering country will only result in greater scrutiny, not denial, and without this consideration it would be difficult to consider other foreign interests.
    - “Foreign financial interests” requires an updated and more detailed definition to address current practices (e.g. owning foreign stocks). Others disagreed pointing to other portions of the guideline (7[e]) that examine this in further detail.
    - “Foreign contacts and interests.”
      - Suggestion to change to “foreign contacts and activities.”
      - Suggestion to change to “foreign financial and political interests.”
  - Guideline C
    - Several participants voiced preference for the 2005 version of Guideline C (opposed to that of ICPG 704.2).
      - This preference stemmed from the perception that the 2005 version provides more latitude to err on the side of national security, whereas the ICPG 704.2 version puts the burden of proof on the adjudicator.
      - Specific concerns related to difficulty denying for dual citizenship and/or traveling on foreign passport.
    - A participant suggested that the “Concerns” language of ICPG 704.2 from “Therefore, a finding that there is a preference” to “foreign citizenship by a U.S. citizen” be included in mitigation section.
  - Guideline L

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- Several participants described this as a “catch-all” guideline that is not exclusive of foreign activities and that enables coverage of other potentially important activities.
  - Many described the flexibility of Guideline L as necessary.
- ◆ Aligning “issues” of the Guidelines
- Guideline A
    - Clarification may be needed of language in 4(c)(3) to ensure that it is understood to address only illegal acts
  - Guideline B
    - There was concern that exclusive focus on *foreign* contacts/influence may not address contacts with other U.S. citizens where there may be reason for concern (e.g. U.S. citizens who work for Foreign Intelligence Services or are security risks).
    - Some participants argued that the phrase “close and continuing contact” needs to be defined more clearly, especially in light of the growing popularity of social technologies (e.g. email, Social Networking Sites, Twitter, etc.). Others suggested that this was not necessarily the case and this phrase is defined elsewhere adequately.
    - A question was raised as to why “regardless of citizenship status” was only used within one condition (7[d]).
    - The phrase “sharing living quarters” (7[d]), because not defined, may suggest too narrow a focus on cohabitation and thus not adequately address variability of other arrangements (e.g. college roommates).
  - Guideline C
    - Preference for the “issues” set out within the 2005 was reiterated.
      - Concern that C.2.B (ICPG 704.2 version) allowing for the possession of foreign passport is not stringent enough.
      - The same paragraph should contain more objective criteria relation to time period (e.g. “within \_\_\_ months/weeks/years).
      - C.2.C (ICPG 704.2 version) should be revised to include language that not only addresses possession but also *renewal* of a foreign passport.
      - The concern was raised that if the Guidelines do not include something about a foreign passport, will investigators then fail to get information about it?
    - One participant suggested that the concerns portion of Guideline C seems to speak more to influence than preference. Another suggested that Guideline C speaks to allegiance—or that which one has an emotional attachment to.
      - The question was raised as to which was the primary target to be evaluated, dual citizenship or foreign preference? One participant suggested that both emerged simultaneously because dual citizenship was a relatively simple strategy used in attempt to assess foreign preference.
      - Guideline C must address the context of *why* one holds a foreign passport. Is there, for example, an instrumental attachment?

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- Guideline L
  - Should “failure to adhere to pre-publication review policies” be included? Several participants suggested that this was covered within Guideline K, “Handling Protected Information.” However, others noted that it would be possible to publish material that, while not meeting any threshold for classification or other restriction on public release, still required pre-publication review. In such a case, no security violation would have occurred, but there still would have been a failure to comply with a requirement of a person’s nondisclosure agreement.
  
- ◆ Aligning “mitigators” of the Guidelines
  - Guideline A
    - 5(b): Concern that guideline may not adequately address problematic behavior disguised as behavior potentially a security risk (e.g. truck driver engaging in humanitarian efforts in support of Hamas).
    - 5(d): The terms “recent,” “unusual circumstances” and “unlikely to recur” need to be defined more clearly.
  - Guideline B
    - 8(a): Concern that “country” does not adequately cover other circumstances of security concern (e.g., an individual moves from Iran to Canada, gets Canadian citizenship, then applies for clearance). A participant noted that this should be addressed on the SF-86.
    - It was noted that mitigators are a way to demonstrate *allegiance*, not necessarily influence.
  - Guideline C
    - ICD 704 mitigators mitigate conditions that many participants perceived to be relatively unimportant.
    - Several participants voiced concern that the mitigators in ICPG 704.2 are not sufficiently specific in that time periods are not provided. The phrase “before” does not distinguish between events occurring last week or decades ago.
    - Para C.3.c (ICPG 704.2 version): It may be preferable to leave risk level descriptors “low” and “high” out of the language altogether.
    - Para C.3.c (ICPG 704.2 version): May be unnecessary to include consideration of the country.
    - Within National Guidelines, language should be incorporated to address the reissuing of passports.
    - A broader concern was expressed by many participants that the Guidelines (especially ICD 704), given that they are publicly available, enable individuals, and potentially those with nefarious motivations, to successfully navigate the system. Anecdotes were provided illustrating candidates use of “buzz” terms and language drawn directly from the guidelines.

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- Guideline L
  - (No Comments)
  
- ◆ Closing Discussion
  - Several participants noted that rarely does one adjudicate a case using solely Guideline A, B or C, suggesting that in a preponderance of cases one of these is accompanied by another.
  - One participant suggested that there seems to be most overlap between Guidelines A and C. Others suggested that A, B, and C represent the consideration of separate domains and should be reflected as such in the Guidelines.
  - Several participants reported openness to a consolidation of one or more of these guidelines as long as all concerns, issues and mitigations were adequately covered. They cited that such a consolidation may simplify adjudicative case work processes.

## CLUSTER II: GUIDELINES I, D (PSYCHOSEXUAL ASPECTS), G, AND H

April 6, 2010

9:30 am—3:30 am

Liberty II, Montgomery Room

### ◆ Guideline I: Psychological Conditions

- Investigative reports do not give enough information to make a decision, investigators do not know what to ask.
  - This places the burden on adjudicators to gather more information, which is time-consuming.
  - Limited information comes from the release form.
  - There may be an investigator training issue, imbalance of resources.
- Consider everything, including the currently exempt marital and family counseling, and find out what's behind a reported behavior; there could be serious issues reflecting on someone's judgment, reliability and trustworthiness.
  - The potential risk involved for not finding out information behind exempted types of counseling.
  - If there are major psychological issues, we will see fall-out in other areas.
  - Understanding that the exemptions were a high-level political decision, it is nonetheless important to have the additional information.
- Add "hospitalization" under Disqualifying Conditions to create a flag for gathering more information.
- Frustrating to rely on opinion of treating professionals 1) in view of their relationship with the patient (as an advocate) and 2) because the mental health community does not know national security to be able to make the determination if someone is a threat or not.
  - In general need for greater communication between adjudicators and mental health professionals.
  - Perhaps there could be more substantive follow-up behavioral questions and *not* the current yes/no question (#3) on the release form.
- It would be helpful to have the medical records before adjudicating the case to get the whole picture.
  - Desirability of more specificity/guidance/proactive language in the Guidelines giving adjudicators permission to get additional information.
- It would be helpful if there were more sharing of ideas/exchange of practices across agencies; some agencies appear less comfortable asking for information.
  - Reciprocity problems arise with adjudicating differently, yet resource issues drive differences in adjudication from agency to agency.

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- Unlike other guidelines, there is a critical problem in getting valid, reliable information.
    - More specificity may be in terms of 1) the type of information and 2) how to collect it. What information do we need? What questions should we be asking?
  - There is a higher CI risk for Axis 2 behaviors than Axis 1; we need to look at interesting behaviors (sub-threshold behaviors) and not just at diagnoses.
    - There should be more language capturing behaviors representative of personality disorders.
- ◆ Guideline D: Sexual Behavior (psychological aspects)
- There should be a clear definition of “high risk” sexual behavior and “compulsive.”
  - Under Mitigators (14[d]), we should add the term “legal” (e.g., prostitution).
  - Sex addiction is a risk to national security, it may not be a formal diagnosis in DSM-IV, but it is a deterioration just like alcoholism.
  - Should Guideline D be absorbed into other guidelines (such as I and J) or continue to stand-alone?
    - Points for absorbing into other guidelines
      - The vulnerability to coercion piece could fall under Foreign Influence, and the rest under Psychological Conditions, Criminal Conduct and Personal Conduct.
      - The material can still be covered, but the language would have to be kept.
    - Points against
      - The coercion concern (13[c]) doesn’t fall under the criminal conduct guideline.
      - We would risk deemphasizing or losing altogether the CI aspects of the issue.
      - The potential for exploitation is great enough to warrant special consideration.
      - Combined into other guidelines, it would get lost and might be missed; keep things simple and in one place instead of separating out into four areas.
      - The removal of Guideline D could lead the public to think we no longer care about those issues; be aware of the audience.
      - If does change, add the term “sexual issues” or “addiction” under Psychological Considerations.
    - The majority of the focus group opposed absorbing the guideline into others.
  - There is a need to look into virtual worlds/social networks (sexual communities); people may be more likely to be free in what they say because of perceived anonymity.
- ◆ Guideline G: Alcohol Consumption
- 22(g): add “treatment recommendations,” or language mirroring 28(c) of Guideline I.
  - 22(e): remove “licensed clinical social worker” and replace with something like “licensed mental health professional”; it is no longer accurate to say that a social worker has the appropriate authority, and physicians are already included in 22(d).
    - There was uncertainty whether “mental health professional” is the appropriate term.



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- Consider providing examples in (e) as in (d); there is no need, though, to be all-inclusive.
- Given that 22(e) was intended to provide a minimum standard, should there be a distinction between 22(d) and 22(e)?
  - Yes, there is a difference between diagnosis by a medical professional and someone entering a recognized alcohol treatment program.
  - We could combine (d) and (e) followed by an enumeration of appropriate professions.
    - Preserve the distinction between (d) and (e) because there is a distinction between who can actually diagnose versus evaluate.
  - If we eliminated both (d) and (e), would we miss anything?
    - Alcoholism is a deteriorating condition; because of progressive nature of disease, a person could have a problem and not recognize it.
    - Summary: Because of the unique problems of alcohol, keep (d) and (e).
  - 22(e) doesn't have to be a "recognized alcohol treatment program."
  - There appears to be a separation between people (e.g., doctors) and entities (e.g., treatment programs). There should be nothing wrong with a letter from an entity; either is acceptable. Alternatively, entry into a program could serve as a trigger to gather more information.
  - The guidance here is more specific than in other guidelines; we should consider weaving some of this same language into other guidelines that we feel are not specific enough.
- ◆ Guideline H: Drug Involvement
  - Concern (24)
    - 24(a) and (b) should state explicitly that if a drug is illegal in the U.S., any use of it by a cleared person/applicant for clearance is of concern even if it takes place in a country where it is legal.
    - 24(b) should include specific reference to prescription medications.
  - Disqualifying Conditions (25)
    - 25(d) and (e): make the same changes as were mentioned for alcohol under 22(d) and (e).
    - Add "use of a drug regardless of location that is otherwise illegal in the U.S."
    - Need clarification/more specificity on difference between "abuse" and "misuse" of prescription drugs; there's a difference between getting high and using in a manner that it was intended, just not your prescription.
  - Mitigators (26)
    - Carve out a niche for medical marijuana by adding "marijuana use done in clear and unambiguous compliance with state law."
    - Remove 26(b)(4) since it short-circuits adjudication.
  - Legality

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- The Guideline should be more specific about use outside the U.S.
- The guideline should mandate following laws consistent with the U.S. when you hold a security clearance.
- To what extent is the drug concern a medical/psychological one and to what extent a legal one? If a given drug (marijuana, but also, for example, heroin or cocaine) were legalized, would a security concern still exist?
  - There is concern regarding use of drug, even if legal and approved.
  - As with alcohol, the legal status of a drug is irrelevant if it impairs judgment.
    - Legality calls for more nuance; *illegal* drug use is unambiguously a judgment issue, same as any other crime.
    - The effects/side effects of a drug need to be evaluated with regards to protecting classified information.
- ◆ Connections between Guidelines / Parsing the Guidelines
  - Would it make sense to combine drugs and alcohol into a single Substance Abuse guideline?
    - It could get cumbersome, it may be too general if we collapsed the two.
    - Having separate guidelines works well with the Drug-Free Workplace.
    - The drug guideline is about “involvement,” not just use or abuse, so it’s much broader than alcohol.
    - The majority of the focus group opposed combining the two guidelines.
  - Need to clarify “compulsive” when referring to addictions because *compulsive* and *addictive* are different.
  - We may want to add other addictive behaviors to the guidelines.
  - In all guidelines discussed today, it could be helpful to parse out attending to maladaptive behaviors over time (e.g., rule breaking, problems with interpersonal relationships), to focus on those elements/behaviors representative of personality disorders rather than just traditional diagnoses.

## CLUSTER III: GUIDELINES J, D (CRIMINAL ASPECTS), AND M

July 27, 2010

9:30 am—3:30 pm

Liberty II, Montgomery Room

- ◆ Guideline J: Criminal Conduct
  - Disqualifying Conditions (31)
    - Suggestion that part of 31(c) (“regardless of whether...”) should be a qualifier for 31(a).
      - People admit to lots of things that they weren’t prosecuted for.
    - Suggestion for more specificity in 31(a).
      - What is “serious”?
      - Consider defining using misdemeanor or felony.
        - There is a risk of being too specific, so chose to be more generic here; besides, what constitutes a felony can vary from jurisdiction to jurisdiction.
        - Adjudicators need more room to maneuver rather than be locked in by the specificity of the language.
    - There is a need to ensure that all adjudicators are interpreting properly and weighing all information; some concern was expressed that details are being missed.
    - Minor traffic violations/tickets:
      - They are a waste of time.
      - They could be security concern because of disregard for the law.
      - The issue is less getting the tickets than what the person does with and because of them.
      - Don’t go after everyone with moving violation, but excessive tickets can be tied to personal conduct.
      - We could add language regarding minor violations under guideline E, but they are still law violations.
      - There was consensus to make no modifications to J to include traffic violations.
    - There was a suggestion to redefine “multiple lesser offenses” because the term includes more than just speeding/traffic offenses.
    - “Allegation” (31[c]).
      - Some dislike this term because it entails no proof.
      - “Confirmed” or “admitted” could be added as modifiers.
      - Any one allegation could be of no interest but multiple ones could be problem.
      - Suggestion to change to “evidence of...” instead of allegation/admission.

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- Using “allegation” may lead adjudicators to have to deal with frivolous hearsay allegations.
    - “Evidence” is too concrete, there is a concern that individual interpretation would preclude valid information from being considered.
    - Everyone agreed that need something more substantive there or a qualifier.
  - Additional suggestions for 31(c):
    - “Confirmed...”
    - “Evidence of...”
    - “Non-frivolous allegations...”
    - “Evidence (including but not limited to allegations, admissions, or official record) of criminal conduct...”
- Mitigating Conditions (32)
  - We need some specificity for 32(a)—how much time is “so much time?”
    - The nature and serious of the crime in question make a difference.
    - We must avoid straightjacketing by specifying times, for drugs as well as crime.
    - Adjudicators bring in biases and personal prejudices that must be dealt with.
    - There are agency specific rules that yield different standards (gray area).
  - The role of age in assessing the importance of a criminal act.
    - Age and maturity should be discussed in mitigators.
    - Age should be considered across all guidelines, even if not explicitly called out; it is an element of the whole person concept.
  - Concern that there are no mitigators to address 31(b) and (d).
    - 31(b) is congressionally mandated, as reiterated in the Bond Amendment; 31(d) is not.
    - Concern that adjudicators look at the concern and, if they see no potential mitigators listed for the specific problem at hand, they may not adjudicate favorably even though a favorable adjudication is appropriate.
    - Suggestion to add language to reflect “compliance with terms of probation/parole.”
  - Question about location of crime making difference (e.g., medical marijuana).
    - Discussion about state legalization and “clear and unambiguous compliance.”
      - The conduct can still be a concern.
      - The act is criminal if criminal in location that it took place, even if legal elsewhere.
  - Suggestion to change language in 32(c) to “no evidence to support.”
    - We should err on side of national security, we shouldn’t grant because there is “no evidence to support,” but because the person didn’t do it—keep the language the way it is.
      - The current language demands proving a negative.

- ◆ Guideline D: Sexual Behavior (criminal aspects)
  - Suggestion to remove 13(a).
    - Consider a cross-reference to Guideline J under the Concern (12).
    - If 13(a) applies, then you have to go to guideline J regardless.
  - Concern with moving sexual criminal activity into Guideline J because we do not always know from the start if the sexual behavior is going to be criminal or psychological.
    - What would happen with the “adolescent” mitigator if we move 13(a) under Guideline J?
    - Concern that parsing out the guideline is a slippery slope—first move some issues to J, then the rest to I, which would eliminate Guideline D altogether.
      - There is utility to Guideline D in correctly categorizing issues involving sexual activity that rises to the level of a security concern.
    - We used to stay away from D if could use E or J instead, but now Guideline D used more.
  
- ◆ Guideline M: Misuse of IT Systems
  - Suggestion to remove “illegal or” under 40(a) and (b).
    - If illegal, then unauthorized; if unauthorized, it may or may not be illegal but still bad judgment.
  - Agreement that there is value in having separate guideline M.
  
- ◆ Retaining Current Structure Despite Any Redundancy.
  - Advantages:
    - Serves to convey importance of certain behaviors.
    - There is no harm in some redundancy—2 or more security concerns versus one.
    - Our reliance and vulnerability of IT systems warrant a separate Guideline M.
    - The current structure spells out areas of specific concern; combining may miss something or lose visibility.
    - It informs applicants of what may raise problems in their security processing.
    - The whole person concept: the current structure ensures that adjudicators are reviewing all guidelines independently.
    - It makes adjudicators job easier; convenient and explicit.
  - Disadvantages:
    - It causes confusion through unnecessary complexity.
    - There is too much redundancy of reporting; senior officials dislike “piling on.”
  
- ◆ Stripping Out Criminal Language from Guidelines D & M
  - Guideline D looks backward (sexual orientation) while Guideline M looks forward (anticipates advances in IT); there may not be equal considerations—removing criminal language in D might kill it while strengthening M.

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- In favor of keeping M vague because we don't know what technological developments will take place during the lifetime of the next version of the Guidelines.
- Advocate removing "illegal or" from M because doing so will strengthen it.
- There is too much emphasis on 13(a) which lends credence for removing it.
  - 13(a) can cover whole person concept; use it to prove behavior is *not* illegal.

## CLUSTER IV: GUIDELINE F

September 16, 2010

9:00 am—noon

Liberty II, Frederick Room

### ◆ Guideline F: Financial Considerations

#### • General Thoughts

- The challenge: what is “financially over-extended” today? It is more common now than before, and debt has become the norm. We have to take financial situation into consideration and be flexible; otherwise, almost no one will qualify for a security clearance if we aren’t careful. We can’t ignore it, but need to consider the reasons for it. Before there may have been clear indicators but today people are losing jobs and there’s more challenges to survive.
- We have to rely on outside experts, because we don’t have expertise in-house.
- We will rarely revoke a clearance based solely on being overextended, unless the individual is unwilling to abide by counseling, etc. The crux of the revocation is not indebtedness, but failure to comply with guidance we’ve provided.
- It’s where the individual is and what he or she is doing about it; not doing anything to get out of the situation is a security concern.
- There is a need to train investigators and adjudicators on financial issues better; financial issues are dynamic, fluid, changing.
- We’ll work with people to keep them cleared, and now we’re following up to see what they’re doing, holding them accountable.
- We say it’s not the amount of debt but how people resolve it, but financial counselors sometimes tell them not to pay and go to foreclosure.
- Banks can’t handle it all, lenders tell people not to pay and modify later. This could be a mitigator.

#### • New Applicant vs On-board Employee

- We do look at a new applicant differently than someone already cleared; this goes back to equity in the person as well as not wanting to create a CI risk. With someone already cleared, we have a history, know the person, and that person has already had access and so the risk of disgruntlement enters into the equation.
- EAP counselors don’t know how to deal with financial issues; we can’t expect adjudicators to be financial experts. Maybe each agency should have a financial expert or team.
- Sometimes adjudicators are making a greater effort to resolve the issue than the individual. Different agencies have different resources.

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- Different agencies also have different thresholds, it's all relative. Maybe evaluations should be based on a calculated percentage, not a fixed dollar amount.
- We've become more credit counselors and hand-holders, basically forcing people to prove good-faith efforts to get out of debt and maintain financial stability. At what point do we quit all the hand holding?
- We look at the pattern—spending or circumstance? It's not that we are necessarily seeing more, just different types.
- Look at the reasons. Thresholds are just a number, meaningless in themselves. Does a short sale mean that someone is going to disclose classified information? Or is it just a responsible individual who is currently facing a hardship? Adjudicators need to analyze the data.
- Most agree that they're seeing proportionately more financial cases.
- Responsibility vs Risk Vulnerability
  - There is a CI utility to gleaning financial information.
  - Using debt-to-income ratio and other such measures, we can put people into risk groups.
  - Put the burden on the employee—point out where to go and then follow up.
  - With employees, there's an investment and an added trust factor, a history of dependability, etc.—a history of not being dependable. Either way you know more about them.
  - Have applicants provide information/proof of what they're doing to resolve their financial issues. Give them a warning letter up front and then follow-up.
  - Look further than payment plans because sometimes people just set them up to please you and not really to follow through.
  - Guidelines are about whether or not someone is trustworthy and reliable. Do people abide by the commitments that they make? Finances fall here and if they cannot handle those obligations, what do they do to fix their problem?
  - Perhaps an element should be added under mitigating conditions about sticking to a payment plan.
  - Some disqualifiers could be brought together with a separate guideline for affluence and gambling.
- The text of Guideline F
  - Concern (18)
    - “engage in illegal acts...”—Is there a better set of words to say this?
      - Suggest “improper acts” or “questionable acts.”
      - Change to “...to engage in illegal *or improper behavior* to generate funds.”
  - Disqualifying Conditions (19)
    - 19(a): add “agree to financial commitment.”
    - 19(a): “inability” and “unwillingness” are so different, they should be separated out.



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- “Inability” is a security concern mitigated by circumstance, it’s more of a risk for coercion or a vulnerability to do something to get out of debt.
- Inability and unwillingness are on different levels—inability is out of control, unwillingness carries more weight.
- 19(b): dislike “frivolous” because it’s too subjective.
  - Could leave the term “frivolous”—not meeting daily necessities but spending money on other things.
  - Keep “irresponsible” and remove “frivolous.”
  - Keep both because they give another layer, extra guidance.
- 19(b): “evidence of…” should fall under 20, this piece ending after “spending.”
- 19(b) seems redundant with 19(e).
- 19(e) could still be spending on necessities whereas 19(b) is showing irresponsibility.
- 19(b): add “and adhere to a realistic plan”—which provides evidence of accountability.
- Consider 19(a) as being predictive, while 19(b) deals with things that have already happened.
- Debt-to-income ratio is not a security issue if you’re paying the bills. How far down the road do you go?
- 19(c): add “recurring pattern of financial difficulties” or “pattern of recurring financial difficulties.”
- There should be something about progressive discipline, failure to follow prescribed X by agency.
- 19(d) is a suitability issue.
  - But it provides overlap, rather have it.
  - There is no intent for guidelines to be mutually exclusive.
- 19(d): consider adding “mortgage fraud.”
- 19(d): anything under 19(d) will go back to Criminal or Personal Conduct, so don’t take it out, we don’t need X number of examples.
- 19(d): perhaps we could include a prompt here to look at J or E.
  - Prompt would be better placed in the ADR.
- 19(f): one addiction closely related and not listed is shopping addiction, or “spending related to addictive behavior.”
  - 19(f): Or “other forms of addictive behavior.”
- 19(f): we can’t capture everything, so keep the catch-all of “other issues of a security concern.”
- 19(f): if we remove 19(f), we don’t lose anything—if we discover the debt is because of drugs, it ceases being a financial issue and becomes drug issue.
  - Good to keep because it serves as a trigger for inexperienced adjudicators.

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- 19(f): are we assuming drugs, alcohol, etc. problems are the Subject's and not a family member's?
- 19(g): a higher proportion of spies blew off taxes even when there was no indication that they couldn't pay. Perhaps they were afraid of reporting because of their unexplained money or because their lives were just so out of order; regardless, there was a relationship. Yet because of small number of espionage cases, it's not a predictor.
- 19(g) is important because it's a direct affront to the employer; we should include federally backed education loans.
- 19(g) could also include court-ordered child support payments.
- 19(h): we don't need "unexplained" at the beginning because it's redundant with the rest ("that cannot be explained.").
- 19(h): FINCEN does two types of checks, criminal and non-criminal inquiry; information found here is for lead purposes and cannot be used in appeals processing.
- 19(h): we will never use this for revocation, it's used for an investigative lead and the unexplainable will fall somewhere else—this piece can be wrapped up under the Concern (18).
- All agree that it is worth keeping unexplained affluence as a flag to search for the reasons for the unexplained affluence.
- 19(i): change to "compulsive or addictive behavior," gambling being an example.
- 19(i) should be kept in; it could stand alone, especially with internet gambling.
- Mitigating Conditions (20)
  - 20(d): "initiated and adhering to..."
  - 20(d): Remove "overdue"—it is implied.

## CLUSTER V: GUIDELINES K AND E

September 30, 2010

9:00 am—3:00 pm

Liberty II, Annapolis Room

### ◆ Guideline K: Handling Protected Information

- Concern (33)
  - The concern is not only government but corporate secrets as well; anyone lax in the private sector will probably be lax elsewhere.
  - Consider including *proprietary*.
  - *Protected* is the broadest term; *classified*, *sensitive*, and *proprietary* are descriptions of what is protected; include all these under the Concern (33). If clearly defined under the Concern, it won't be necessary to repeat them throughout the guideline.
  - We should include *PII* too, people only think of this as dealing with classified information.
    - *PII* is too specific, where do you stop?
    - *Classified* and *sensitive* are good generic terms.
- Disqualifying and Mitigating Conditions (34 and 35)
  - There are problems with photos and other images from combat zones; these need not be classified but can nonetheless cause risk or bring harm by including some sensitive site in the background.
    - 34(c): add “images” after “reports, data...” and “sensitive” after “or otherwise handling...”
      - Remove “palm” (outdated).
      - Remove all examples after “unapproved equipment” and replace with “or other unauthorized media device.”
      - Could also include “manual.”
      - “Information” should be modified by “protected.”
      - We may want to include something about “of a public nature.”
  - May want to include examples on each under 34 so know what is meant
  - The ADR and other reference materials exist for further explanation; the Guidelines should not try to be so very specific.
- Other observations.
  - 34(a) is too long; it should end after “unauthorized persons”—it covers everything.
    - Put additional clarification in ADR specifically for new adjudicator who may not know who falls into this category.

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- Too much specificity can make it difficult to use, but this goes back to foreign threat briefings and is useful.
    - 34(e): replace “copying” with “modifying.”
    - There is a need to keep the evolution of technology in mind; the guideline needs to be broad and flexible to be usable next month and next year.
    - 34(g) and (i): both address a failure to follow rules and regulations; why are they separate?
      - 34(g) relates to security violation, while in 34(i) there was a compromise/loss and so it is harder to mitigate.
      - It is important whether or not someone reported the problem; the behavior is same but the intention is not.
  - Would reporting be a mitigator?
    - Yes, people need to report even when not in their best interest.
      - New adjudicators may not realize the significance self-reporting plays in an incident, especially if it’s the first one.
    - There is a need to take into account the number of instances; a fifth incident of the same behavior may have been reported but by then it would no longer be a mitigator.
    - Pattern is important; 34(h) could be reworded to include pattern since it already mentions habits.
  - Is language in 35(a) sufficient to reflect pattern and prompt reporting?
    - If a mitigator is added, it should include four elements: the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.
    - Suggestion to go back and look at the front-end language (adjudicative process language).
- ◆ Guideline E: Personal Conduct
  - Concern (15)
    - We talk about personnel security in multiple ways, maybe instead of “security clearance process,” the guideline should use “security clearance-related processes.”
    - 15(a) and (b) are separate because they don’t allow the investigative phase to be completed and therefore preclude gathering enough information to make a valid determination.
    - We can’t let individual attitudes about security to become the main focus in investigation when other substantive issues are putting the clearance at risk.
      - It may be acceptable if a mitigator speaks to it, but sometimes adjudicators are doing more work to help people applying for the clearance than they are themselves.
      - We need to decide if someone should hold a clearance by looking at whole person; we may need to take attitude into account that sometimes an individual is

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not fully informed—but if there is still a failure to cooperate after an opportunity to clarify, than the clearance is denied—it is stonealling the process.

- There are often problem getting documentation.
- There is a need to differentiate between refusal and just slow.
- Consider including “sensitive”: “to protect classified and sensitive information.”
  - The Guidelines’ express purpose is to support determinations of eligibility for access to classified information; consistency dictates use of “classified” only here.
- 15(a) might include engaging in countermeasures during the polygraph—it already includes medical and psychological evaluation and not every agency does those, either.
  - If the polygraph is necessary condition for employment, it should be called out.
  - We may need to say “an authorized polygraph”—we have to be careful because a person may be allowed to refuse a polygraph in some instances.
- 15(a): suggest “security processing” should become “personnel security processing.”
  - Disagree: what about failure to complete FDF? That could be CI, not personnel security.
  - Don’t include “personnel” so as to keep it more broad.
- Regarding “full, frank, and truthful” in 15(b): there are always complaints about piece-mealing and having to go back multiple times—the “and” should stay; there needs to be all three. (All agree.)
- Disqualifying/Mitigating Conditions (16 and 17).
  - The “full, frank, and truthful” of 15 are not covered.
    - Merging the language puts things out of context—15(a) and (b) are separated out because they stop the process.
  - 16(a) relates to completing forms, 16(b) to interviews.
  - 16(d)(1): remove “other” in front of “government protected information.”
  - 16(c) and (d): remove “other” before “single guideline” and “guideline.”
  - Combine 16(c) and (d).
    - Disagree: 1-4 following 16(d) is not applicable to 16(c).
  - What is the need of 16(d)?
    - One of the things caught here is sexual fetishes/deviations.
      - Then it should be called out in guideline D.
      - Guideline D focuses on more criminal and psychological aspects.
      - Some CAFs will apply Guidelines D and E—there’s a disconnect
      - If it’s not illegal and not a psychological problem, then it isn’t disqualifying.
  - 16(e) covers prostitution and affairs as well.
    - Prostitution is legal in some places in the U.S.
    - Even if it isn’t illegal, someone still may be vulnerable because of it.
  - Vagueness of 16(e).
    - Yes, it’s vague, but the appeals process should be the checks and balances.

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- It also gives examples, which limits first half.
  - 16(e)(2): why is there the part about “...and may serve as a basis...”?
  - By inverting legal and illegal, it captures concept of judgment.
  - This is invoked only in overseas environment.
  - The limiter is on (2) not on (1) because we care about (1) everywhere but about (2) only in another country.
  - Suggest that the end of (2) should cover both (1) and (2)—the FBI spends lots of time chasing spies here in the U.S.
  - Suggest stopping after “...in the United States”: strike out the rest.
  - Suggest breaking (1) and (2) out for readability.
- 16(g): do we need to expand beyond criminal? Maybe the activity was not illegal.
  - If broadened, where do you stop?
  - “Known” associations could be a mitigator—17(g): “association with persons involved in criminal activities *was unknown*, has ceased...”
- Consider 17(a) and (b).
  - If adding something about the polygraph under 15(a), do we need something here under the mitigators regarding polygraph? A person may have medical documentation to support not being able to undergo a polygraph.
  - 17(b) reads oddly, it needs “the” before omission and concealment.
  - 17(c): if you accept time as a mitigator, then you’re left with it being intrinsically vague.
  - 17(d): how much counseling is required?
    - The point here is the intention is to change behavior, not actually having done it.
    - Don’t forget the caveat “unlikely to recur.”
- Does it make sense to keep Guideline E as is or separate the two parts out?
  - There are advantages to having a separate guideline for failure to cooperate and material falsification: applicants and employees are not providing what adjudicators need.
    - People look at E as suitability; it would be more enlightening if broken out.
    - Security cooperation is important enough to call out as a separate guideline.
    - It is significant enough to call out on its own and doing so would benefit the adjudicative process.
    - It already is basically separated out, and so it wouldn’t be a substantive change, just in presentation.
    - That’s why you break out alcohol and drugs, otherwise everything falls under E.
    - Break it out, especially with the expanded SF86, cooperation part is important.
  - It helps adjudicators to have consistency and continuity; if there’s no compelling reason to change it, then keep as is
    - Keep as is; otherwise, we’ll have many short, independent guidelines.

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- Titles are less important than the disqualifiers and mitigators within them.
  - Breaking it out makes it look like we are punishing people versus showing the nexus between that and the ability to hold national security position.
  - We shouldn't lose track of the whole person concept—we're supposed to be looking at cases holistically.
- ◆ Miscellaneous
- Suitability and security guidelines don't match up—is there a reason why?
    - The investigative model is aligning the two, why not the adjudicative model?
  - There is a disconnect between suitability and security with regards to 17(a)—this may be a mitigator for security but it is *not* for suitability.

## OVERARCHING ISSUES

November 11, 2010  
9:00 am—3:00 pm  
Liberty II, Montgomery Room

- ◆ Consider rearranging the Guidelines into a more functional order.

### Pros

Grouping may make sense  
Logical to group K-L-M after A-B-C

### Cons

There aren't that many guidelines for it to make a difference  
Order isn't important in any event

- All guidelines are important, and order does not imply priority; changing the order calls for a good reason to do so; it is not necessary to weight the guidelines.
  - Moving K-L-M up after A-B-C creates a more logical flow by having, separating CI/security concerns from other factors.
  - Moving and relabeling guidelines could result in more confusion (what is guideline D today becomes guideline G tomorrow—or guideline 7 or some other, new designator) than benefit of moving; there appears to be no compelling need to change the order; keeping consistency has value for adjudicators.
  - One change is going to change all the letters anyway—adding a new guideline, for example; may need to change from letters to numbers
  - The resulting structure would be good instead of a hodge-podge - we do it in the SF86, why is this different?
  - Strawman alternative order: 1-A, B, C, K, L; 2-M; 3-J; 4-I, D, G, H; 5-F; 6-E
    - Too subjective, depends on agency's mission as to what's important
    - Concern E is not seen as important, put that at the bottom and it makes it worse
    - Guideline I should be at the bottom because it requires an outside expert
    - Add a caveat that the guidelines are in no particular order
  - The group did not come to a consensus.
- ◆ Rename Guideline D to “Compulsive Behaviors” and add gambling OR create a separate guideline for gambling.

### Pros

Outside experts' observations regarding risks of gambling

### Cons

Why call out gambling and not other compulsive behaviors?



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- Concerns about creating a separate “compulsive behavior” guideline, since gambling only comes into play when its related to a financial issue.
  - But: gambling that reaches the level of a diagnosable mental health disorder is an issue even if the person should win, break even, or be able to absorb the losses incurred.
  - Gambling is a subset of mental health, so adding a new guideline seems arbitrary; should we change “sexual behavior” to something else such as “Compulsive Behaviors”?
  - Arguments could be made for other areas of concern, such as white-collar crime with its analogues to espionage; the danger is expanding the guidelines into unwieldiness.
  - Move gambling under guideline I or keep in guideline F and add a cross-reference in guideline I
  - “Sexual behavior” is a misnomer and has a negative connotation; keeping in mind the audience, should it be renamed to “high risk behavior?” Then it becomes the new catchall for drugs, crime, etc.
  - Gambling is difficult to define since its cultural—it would have to be diagnosed
  - The group did not come to a consensus.
- ◆ Consider the Concerns-Conditions-Mitigators structure currently used in each guideline. Is there a better way?
- This structure is clear and helps adjudicators organize their thought.
  - Group consensus: The current concerns-conditions-mitigators structure works well and should be retained.
- ◆ Consider including a system of cross-referencing.
- Alternative: add another guideline to address multiple issues.
    - But this is one function of guideline E.
  - Maintain separation between implementation and substance.
  - Guidelines should identify the concern, relevant conditions, and possible mitigators, they should not address how to interpret specifics; nothing is an absolute, these guidelines are not standards.
  - It might be better in training or the ADR.
  - Group consensus: Add language to the preamble encouraging consideration of the relationships between the guidelines.
- ◆ Move “falsification” and “failure to cooperate” from guideline E to K *or* create a separate guideline.
- The Guidelines should be about clearing people and not the ins and outs of security investigation; just leave it as is.

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- Beefing up the language could show the seriousness of falsification and failure to cooperate as unnecessary impediments to informed judgments.
  - Combining falsification and failure to cooperate with anything lessens their importance.
  - Guideline E is seen as a miscellaneous category; K is about more than protection of *classified* information (e.g., handing protected information in prior non-government non-national-security employments), so adding cooperation with security processing to it would be incorrect.
  - It's already highlighted as a showstopper at the top of guideline E.
  - If an applicant sees it out there, it may generate some self-selecting out of people predisposed not to cooperate.
  - It would take away from the strength of K if it was moved there, doesn't fit there, but does as a separate guideline.
  - Group consensus: Separate out as own guideline (N) titled "Falsification and Failure to Cooperate with Security Processing."
- ◆ Resolve how to treat foreign passports in guideline C (disconnect between 2005 guidelines and ICPG 704.2).
- ICPG 704.2 version is more in keeping with current needs and concerns.
  - Group consensus: Adopt ICPG 704.2 approach government-wide.
- ◆ Rename Guideline C "Foreign Activity."
- If the name is changed, elements of guideline L could move under here
  - What about the person who acknowledges foreign preference? Could be an allegiance or attachment issue
  - The conflict of interest issue could move to K (from L), but there's still the domestic component
  - Group consensus: Add "and/or activity" so guideline would read: "Foreign Preference and/or Activity"
- ◆ Consider combining guideline B & C.
- The distinction is useful to maintain.
  - Group consensus: No, should remain separate as they are different enough.
- ◆ Emphasize behavior over sentencing in guideline J.
- Behavior is of greater interest and concern than the fact of conviction or even arrest.
  - That said, there is value in capturing judicial outcomes.
  - Group consensus: Add language emphasizing behavior to the "concern" language of the guideline.

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- ◆ Consider eliminating guideline M.
  - The guideline was added when computers were being integrated into the workplace; there was a need to ensure that adjudicators understood computer-related behavior needed to be considered apart from crime and security violations and other guidelines.
  - Computers are now so thoroughly integrated into the workplace that continuing to call special attention to their use is no longer necessary.
  - Yet computers continue to represent extraordinary potential security vulnerabilities, particularly regarding computer-specific behaviors (e.g., uploading malicious code, security violations that lead to system contamination).
  - While conceptually most if not all of what is at issue in M could be seen as already present in J, it's useful to flag IT use as a separate issue because the speed at which the IT landscape changes makes it difficult for the legal system to keep up.
    - Jurisdictional problems.
    - Problems of applicability of existing law to problems created by technical innovation.
  - Group consensus: Retain a separate guideline dealing with computer-specific issues.