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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



Examination of the Adjudicative Guidelines

Perspectives from the Social Sciences and
Personnel Security Practitioners

LEADING INTELLIGENCE INTEGRATION

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ONCIX Special Security Directorate Research Program

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EXECUTIVE SUMMARY

This paper synthesizes the results of a formal examination of the current *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* of 2005. That examination combined review of relevant social science literature, focus groups of academics and other professionals with expertise in areas of interest but without experience in personnel security, and focus groups of personnel security professionals who, besides their subject-matter expertise, contributed the perspective of those involved day by day in making personnel security decisions.

The review concluded that the structure and content of the Guidelines, while requiring some updating and reworking for greater clarity, are sound. Key recommendations include:

- ◆ Reconceptualizing *allegiance* as applying to the concerns of Guidelines B, C, J, and L, rather than solely to those of Guideline A. *Allegiance* thus becomes a matter for a new preamble to the Guidelines, with the title of Guideline A changed to “Acts against the United States.”
- ◆ Adopting, with recommended modifications, the ICD 704.2 version of Guideline C in place of the version contained in the 2005 version of the Guidelines.
- ◆ Removing from Guideline E the materials relating to failure to cooperate with security processing and reconstituting them as a new Guideline N (“Falsification and Other Failure to Cooperate with Security Processes”).

ACRONYMS AND ABBREVIATIONS USED

DCID	Director of Central Intelligence Directive
DSM	Diagnostic and Statistical Manual of Mental Disorders
DSM-IV-TR	Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision
EO	Executive Order
<i>eSME</i>	used in footnotes to refer to the volume of notes taken during external subject matter expert focus groups and included as Appendix C Part 1 to this report
<i>iSME</i>	used in footnotes to refer to the volume of notes from internal subject matter expert focus groups composed of personnel security professionals and included as appendix D to this report
ICD	Intelligence Community Directive
IT	information technology
ODNI	Office of the director of National Intelligence
SAMHSA NHDUH	used in footnotes to cite results from the 2009 National Survey on Drug Use and Health
U.S.C.	United States Code
SCI	Sensitive Compartmented Information
SSBI	Single Scope Background Investigation
SSD	Special Security Directorate

INTRODUCTION

In simplest terms, *enterprise personnel security* is the process for determining who should have access to information, facilities, and positions considered sensitive or valuable to the enterprise and who should be denied such access. In government enterprises, such determinations are the responsibility of personnel security agents, among whom are *investigators*, who gather personal information on candidates for national security and sensitive positions including those requiring access to classified information, and *adjudicators*, who must determine from the information so gathered whether a person may be permitted such access and, if so, whether exceptions need to be imposed.¹ The overarching criteria for making such determinations are set by executive orders, which have historically specified characteristics required of persons who are to be granted access to classified information or who will occupy sensitive positions. The actual determination process is circumscribed by Adjudicative Guidelines, which call out particular personal attributes and activities that should be considered in the adjudicators' assessments, together with guidance as to how they should be weighed in making those assessments.

The Adjudicative Guidelines in place today were implemented in their basic form in 1997 in response to Executive Order 12968, *Access to Classified Information*, issued in late 1995, which for the first time mandated common Adjudicative Guidelines for the entire government. They were revised in 2005 with a number of small alterations, but their fundamental structure and approach remained unchanged.

The analytical effort described here undertook an in-depth review and analysis of the current Guidelines with the objectives of revalidating what was sound and identifying any changes that might improve their effectiveness as a tool for assuring that adjudication decisions achieve the objectives specified in EO 12968. To this end we organized and commissioned extensive review of social science research for results that might inform our assessment of Guidelines; held working sessions to elicit the relevant perspectives and insights of academics, researchers, and other professionals not involved in personnel security; and held focus groups of persons with extensive professional experience in the area, to elicit issues with the current Guidelines, together with suggestions of ways for dealing with those issues by means of amendments or changes thereto.

We did not expect that this effort would enable a definitive resolution of all issues raised. Rather, we expected it to accomplish a synthesis of the central issues that would create a coherent basis for evaluation of Adjudicative Guidelines from which further policy discussions and decisions could arise.

¹ *Exceptions* are formal decisions to identify that a favorable access eligibility decision was made despite the presence of some residual concern.

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The results from this effort are presented here in six sections:

- ◆ *Background*, which describes the adjudication process, the nature of the problems confronting adjudicators, the role of the Guidelines in facilitating that process, and the motivations for this effort;
- ◆ *Methodology*, which describes the technical approach to and expectations of this research;
- ◆ *Results*, which lists key findings from the three components of the project and for the project as a whole;
- ◆ *Discussion*, which synthesizes issues;
- ◆ *Recommendations*, which presents the specific recommendations for changes in the current Guidelines whose efficacy could be validated as the best interpretation of the available data; and
- ◆ *Options for Restructuring*, which summarizes various possibilities for restructuring the Guidelines with their respective advantages and disadvantages.

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BACKGROUND

Personnel security adjudicators assimilate and review the information on a person derived from background investigations (as well as other relevant sources when available, e.g., incident reports, the results of polygraph examination, psychological assessments), analyze and interpret it, and determine whether a person demonstrates qualities consistent with requirements for access to national security information and sensitive positions. The objective in this process is to produce a well-reasoned assessment of the likelihood that the person being evaluated will become an attractive target for exploitation by foreign intelligence agents, deliberately or inadvertently disclose classified information to persons not authorized to receive it, or otherwise compromise national security.

Adjudication, however, by no means bears the whole burden of guaranteeing national security: those who are granted access eligibility will operate within an environment shaped by multiple security disciplines and by counterintelligence activities, each designed to make its relevant contribution. Indeed, such security in depth is essential, because there can be no reasonable expectation that results of adjudication will always be perfect, admitting only those persons who will not violate the trust placed in them, and excluding all those who will. Rather, the expectation is that adjudicators' assessments will be unbiased, objective, and competent, representing the best possible interpretation of the available data against well-defined criteria for the assessments.

The criteria for such assessments are stipulated by executive orders formulated after judicious study of experience with personnel handling of classified information and occupying sensitive positions. Executive Order 10450, *Security Requirements for Government Employees*, issued in 1953, articulated exclusionary criteria in the form of factors that raise doubts about a person's fitness for a national security position to be used under the presumption that the absence of those factors in a person's background would be understood as providing the necessary evidence to establish fitness. Executive Order 12968, *Access to Classified Information*, issued in late 1995 (and administratively updated in 2008 by Executive Order 13467), calls for evidence that "affirmatively indicates" the person in question possesses ten positive qualities: United States citizenship, loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, sound judgment, freedom from conflicting loyalties and potential for coercion, and willingness and ability to abide by security regulations.

Only the first of these can be verified directly; the others must be inferred from observable conduct presumed to reflect a manifestation of a particular quality. Accordingly, Executive Order 12968 stipulated that judgment of their satisfaction would be based on a set of Guidelines for data collection and interpretation that would be uniformly understood and followed by the entire government. The response was the publication of *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* in 1997. These Guidelines included a "whole person concept," invoking a need to consider favorable as well as unfavorable

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information, but were structured in a way that continued the approach to personnel security based on a determination of whether factors existed in the subjects' background that would exclude them from being granted access. The revision of the Guidelines in 2005 made a handful of small alterations designed to deemphasize where possible the focus on negatives, but their fundamental structure and approach remained largely unchanged.

In reviewing the criteria stipulated in the executive orders and associated Guidelines, two features become apparent:

1. The criteria as expressed in the executive orders are laudable personal characteristics, but are, in fact, abstract constructs admitting a wide range of subjective assessments as to whether they accurately describe elements in the personality make-up of any given person; and
2. The intent of the Adjudicative Guidelines is to replace determination of those abstract, subjectively defined qualities with observation of concrete behaviors presumed to manifest those qualities.

Since at least 1986 there has been an effort to establish and develop a dispassionate research foundation for personnel security. In 1986 the Department of Defense established the Personnel Security Research and Education Center—a name since shortened to Personnel Security Research Center, although the acronym, PERSEREC, remains. The Intelligence Community created the Personnel Security Managers' Research Program in 1999, which became the Research Program of the Special Security Center (now Directorate) shortly after its activation in 2003. Both organizations have been involved from their beginnings in research meant to place adjudication on a firmer research footing. PERSEREC played an important role in the development of the 1997 Guidelines, and both organizations contributed to the 2005 revision, but in neither case was there a comprehensive review that included holistically a consideration of the underlying rationale for the Guidelines.

The present project was designed to complement the kinds of research previously undertaken by pursuing an operational approach to Guideline refinement based on identification and analysis of issues that are commonly reported to impede adjudicators' effective use of the Guidelines in their day-to-day application. Specifically, its objective was to undertake a systematic review of the Adjudicative Guidelines that would take into account advancements in the professional and scientific thinking about issues of concern to personnel security, but would also pay due regard to the experience of adjudicators' decision-making without the benefit of results from research that would support scientifically definitive conclusions.

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METHODOLOGY

Project Formulation

To pursue our objective, we adopted as the overarching goal for this effort generation of answers to three basic questions with respect to the current Adjudicative Guidelines:

1. What should we be aware of or looking at generically in terms of each of the Guidelines while not thwarting other national security interests?
2. What are we not thinking about that we should be in this regard?
3. What are we thinking about that we should be considering differently?

The current Guidelines address 13 behaviors presumed to manifest personal qualities of concern to adjudication. To organize and facilitate the examination of issues, we grouped these Guidelines into five “clusters,” representing sets of Guidelines likely to be informed by the same kinds of information. The clusters so defined are displayed in Table 1.

Table 1: Organization of Adjudicative Guideline Clusters

<i>Cluster</i>	<i>Cluster Name</i>	<i>Guidelines</i>
I	National Conflict	A - Allegiance B - Foreign Influence C - Foreign Preference L - Outside Activities
II	Psychosocial Considerations	G - Alcohol Consumption H - Drug Involvement I - Psychological Conditions D - Sexual Behavior (mental health component)
III	Criminal Behavior	J - Criminal Conduct M - Use of IT Systems (criminal component) D - Sexual Behavior (criminal component)
IV	Financial Considerations	F - Financial Considerations
V	Miscellaneous	E - Personal Conduct K - Handling Protected Information M - Use of IT Systems (non-criminal component)

To create resources for answering the overarching questions, we designed and commissioned three data collection efforts:

- ◆ *An extensive review of relevant literature*, the purpose of which was to collect and organize the results from social and behavioral science research on topics relevant

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to understanding the relationship between personal behaviors and attributes called out in EO 12968 and their relationship to behaviors of security concern;

- ◆ *Consultation with external subject matter experts (academics, researchers and other professionals not involved in personnel security), to elicit informed perspectives and insights on the relationship between observable behaviors and personal attributes that might not be available in the published literature; and*
- ◆ *Structured discussions among experienced personnel security professionals, to elicit information on issues with the current Guidelines, identify frequent/common problems, and generate suggestions of desired or necessary changes that might improve their utility in day-to-day adjudication efforts.*

The structure and conduct of each of these efforts are detailed in the following subsections (see Appendix A for a more detailed account of the methodology used).

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Literature Review

For the literature review, we commissioned a consulting firm that specializes in organizational consulting with a strong industrial-organizational psychology focus. We tasked them to locate and summarize relevant literature for clusters I through IV.² For each subject area they were asked to locate, summarize, and report relevant material as falling into one of three categories:

- ◆ *Level 1 evidence*, which addresses specific adverse security acts, ranging from security violations to espionage;
- ◆ *Level 2 evidence*, which addresses adverse behaviors in some way analogous with adverse security practices, such as counterproductive job performance; and
- ◆ *Level 3 evidence*, which addresses other factors of interest, such as the extent to which a personality inventory might predict future undesirable outcomes.

The compendia of results from this effort for each cluster make up the multiple sections Appendix B of this report.

² There was no literature review for Cluster V. Guideline E is too diffuse, and any material relevant to its many concerns surfaced in other clusters; Guideline K would result in searches for the security relevance of security infractions; and the specific aspect of Guideline M addressed in the context of Cluster V is a policy matter irrelevant to social science findings.

Consultation with External Subject Matter Experts

External subject matter experts were selected for their expertise in areas relevant to given Guidelines, not for any background they might have had in national security matters. Their envisioned role in the project, while complementing the literature review by allowing for discussion among experts in relevant disciplines to take place where—unlike in the literature—the focus was explicitly on the Guidelines, was to provide the perspective of people who did *not* necessarily have a national security perspective and so could see issues unencumbered by the assumptions and experiences of those who do.

The data collection was organized and conducted in two ways:

- ◆ Academic and professional experts were organized into focus groups conducted for Clusters I, II, and III. These focus groups comprised all day-sessions plus a half-day day follow-up session for Cluster II, led by a contracted professional facilitator and supported by a senior government security professional whose role was to provide context whenever appropriate and to ensure that the discussions did not stray into areas irrelevant to our interests.
- ◆ For Cluster IV, we interviewed individually academics who had an interest in the relationship between financial behavior and access eligibility.³

Both the focus groups and participants in individual sessions were asked to address the three overarching questions described earlier, to provide general comments and specific recommendations for things to be considered when determining access eligibility not currently reflected in the Guidelines, to identify anything superfluous in the Guidelines, and to correct any errors of emphasis or obsolete terminology, thereby ensuring that the Guidelines address social science issues in a way that is consistent with current practices and conventional theories.

The minutes from these sessions and biographical sketches of the participants constitute Appendix C of this report.

³ There were no outside expert focus groups for Cluster V for the same reason that there was no literature review.

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Internal Subject Matter Expert Discussions

Internal subject matter experts were senior personnel security practitioners from agencies representing the intelligence, defense, and nuclear communities, as well as civilian agencies.⁴ All discussions were conducted on a non-attribution basis so as to extract expert opinion through guided discussion, not solicit agency positions. This means that the minutes of the sessions, while capturing the points raised, do not record the contributions of individual participants.

The inputs from these internal subject matter experts were elicited in focus groups led by the same contracted professional facilitator who supported the external sessions; the officer who advised the outside experts also chaired the internal sessions. These internal focus group sessions comprised individual sessions addressing each of the five clusters, and an additional session to consider overarching issues such as sequence and structure: whether to change the order of the Guidelines to facilitate their logical flow, whether to combine some and divide others, whether to move elements of one into another, and so on. The organization of the internal focus groups paralleled that used for the external: the same three questions structured each session.

Whereas consultations with the external experts were meant to elicit insights unencumbered by day-to-day experience of the practical side of making national security access eligibility decisions, the opposite was true of the internal experts. They better than anyone else understand what it means to make such a decision and what the consequences are of making a mistake, and their inputs were therefore expected to provide the essential national security perspective as operational *users* of the Guidelines. The answers to the three overarching questions from these groups were thus expected to reflect problems and concerns anchored in the realities of the task of determining who can and who cannot be entrusted with operating in a national security environment or with handling classified information.

The minutes from these sessions and a list of participants constitute Appendix D of this report.

⁴ Agencies sending participants: Central Intelligence Agency, Department of Homeland Security, Defense Intelligence Agency, Department of Defense, Department of Energy, Department of Justice, Department of State, Federal Bureau of Investigation, Department of Health and Human Services, National Geospatial-Intelligence Agency, National Reconnaissance Office, National Security Agency, Nuclear Regulatory Commission, Office of the Director of National Intelligence, Office of the National Counterintelligence Executive, Office of Personnel Management, and Department of the Treasury.

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Synthesis

As just described, these different data collection efforts were envisioned to generate relevant information as to the relationship between Guidelines and EO objectives comprising in totality:

- ◆ Results of research supporting scientifically defensible conclusions as to the relationships among behaviors identified in the Guidelines, the attributes they are thought to reflect, and behaviors of security concern;
- ◆ Informed, professional wisdom as to such relationships;
- ◆ Real-world experience in use of the Guidelines; and
- ◆ Expressions of issues, concerns, or problems with attempting to use the Guidelines from persons with extensive experience in personnel security.

In a few instances members of the Research Program conducted follow-on searches to find documentary substantiation for assertions made by subject matter experts during focus group sessions. In exploiting this mass of data for purposes of generating recommendations for changes in the Guidelines, we conceived the role of the Adjudicative Guidelines as describing *indicators* of the personal attributes called out in the EO 12968 presumed to underlie an individual's willingness and ability to operate successfully in a national security environment. In the technical sense of the word as it is used in the Intelligence Community, an *indicator* of an unobserved or unobservable phenomenon, X, is a pattern in observable data whose occurrence would be highly unlikely absent X. Hypothetical indicators of this kind may be validated:

- ◆ *Statistically*, by generation and analysis of empirical data that produce a scientifically defensible validation of the relationship hypothesized;
- ◆ *Experientially*, by aggregation of a body of experience large enough to suggest the validity of indicators; or
- ◆ *Axiomatically*, by descriptions of the relationship between the indicator and the phenomenon indicated that are basic enough to be self-evident and logically imply the validity of the proposed indicator.

In analyzing the issues with the current Guidelines raised in the internal focus groups, we formulated the analysis of a change as a problem of formulating and validating indicators, first searching for bases for statistical validation in the relevant reports of studies surfaced in the literature review, then, failing that, by analyzing the experience base for adequacy, and finally, failing that, by axiomatic argument.

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RESULTS

Literature Review

The principal finding of the literature review was that there is a paucity of Level 1 evidence (i.e., relating to specific adverse security acts) that might be used to validate the relationship between the Guidelines and national security concerns “to identify personal history behaviors that are antecedents to later security behavior.”⁵ It thus follows that validation of the operational significance of Guideline criteria and mitigating factors must be based on other than quantitative reasoning applied to empirical evidence of causal relationships between specific behaviors and conditions on the one hand and adverse security behaviors of various kinds on the other.

In addition, the literature review identified several findings supported by synthesis of the material sifted out of the behavioral and social science literature. These are quoted here in Tables 2-5 by cluster. The evidence and reasoning supporting these conclusions are described in detail in reports themselves, which are reproduced as Appendix B.

Table 2: Key Findings for Cluster I (Guidelines A, B, C, L)

- ◆ Evidence supports the general approach of these Guidelines to evaluate security risk based on potential conflicts between U.S. and foreign attachments.
- ◆ Identity-based forms of attachment are likely to be most predictive of security violation behavior.
- ◆ Dual citizenship is associated with lower levels of U.S. national identity (but this may be due to language).
- ◆ People can manage multiple identity attachments by shifting from one identity to another based on the situation without experiencing the conflict assumed in the Guidelines’ approach.
- ◆ The Guidelines’ evidence that focuses on indicators of risk for security violations does not capture, with some exceptions, the personal attributes leading to acceptable security behavior.

Table 3: Key Findings for Cluster II (Guidelines G, H, I, D [mental health issues])

- ◆ Patterns of persistent binge drinking have similar weight to evidence of alcohol dependency.
- ◆ Weight given to a history of problem drinking or drug involvement should be given increasing weight with
 - Evidence of financial problems or other personal stressors.
 - History of persistent solitary drinking.
 - Histories of work injuries, work absence/tardiness, arrest records.
 - Association with heavy drinkers or those tolerant of heavy drinking.
 - Family history of problem drinking.
 - History of impulsive behavior in response to distressors.
- ◆ Adolescent drug use without continuation into adulthood is not a risk.
- ◆ Clinical evidence of psychopathy will have few, if any, mitigators.
- ◆ Cognitive-behavioral treatment for psychological treatment of compulsive or addictive conditions warrants significant consideration as a mitigator where participation has been continuous for an extended period of time.

⁵ Jerard F. Kehoe, et al., *Foundations for Literature Review of Adjudicative Guidelines*, 2009, 9. (See Appendix B Part 1.)

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- ◆ Young age at which problematic sexual behavior took place, without continuation into adulthood mitigates against early history of disordered sexual behavior.
- ◆ Evidence of disordered sexual behavior increases in importance where there is companion evidence of substance abuse, problems with impulse control, and evidence of other problems caused by sexual behavior such as Internet pornography use.

Table 4: Key Findings for Cluster III (Guidelines J, M, D [criminal issues])

- ◆ Evidence across a range of types of workplace behavior shows that past criminal behavior is a predictor of future counter-normative behavior. There is no direct experimental evidence, however, showing the magnitude of this effect on security violation behavior.
- ◆ Considerable evidence shows that criminal behavior is a function of, among other things, a core set of psychological attributes, the most important of which appear to be Self-Control, Excitement Seeking, Neuroticism, Conscientiousness, and Agreeableness.
- ◆ Evidence suggests that people high in Neuroticism (especially Aggressive Hostility), low in Self-Control, and low in Conscientiousness and Agreeableness are most likely to engage in criminal behavior and analogs to security violation behaviors such as counterproductive work behavior.
- ◆ Considerable recidivism data about criminal behavior has been gathered indicating that demographics and lifestyle of the offender, associations with others, and characteristics of the offenses influence the likelihood that offenders will repeat. For example, recency of last offense and number of previous offenses both predict future offenses. But these influences are complex and interactive.
- ◆ Generally, adjudicators are trained to decrease the weight placed on criminal history to the extent there is companion evidence indicating decreased likelihood of repeat offenses. The apparent underlying assumption is that those less likely to reoffend are also less likely to commit future security violations. No direct evidence was found that evaluated this assumption.

Table 5: Key Findings for Cluster IV (Guideline F)

- ◆ Evidence supports the general conclusion that problematic financial conditions are antecedents of security violations as well as other analogs of security violations, such as counterproductive work behavior and white collar crime.
- ◆ Problematic financial conditions may be antecedents of security violation behavior in at least two ways:
 - Financial problems create motives and incentives for engaging in security violations as a way of making money.
 - People who are prone to financial problems tend to have dysfunctional personality attributes that also increase the risk of security violations.
- ◆ Dysfunctional personality attributes shown to be characteristic of people who exhibit problematic behaviors and who exhibit security violations as analogous behaviors include:
 - Low emotional stability (high neuroticism).
 - Low self-control/high impulsivity/high risk taking/high excitement seeking.
 - Low conscientiousness.
 - External focus of control.
 - Competitiveness.

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External Subject Matter Experts

The external subject matter expert sessions were structured to stimulate discussions of the Guidelines in light of the current state of the art in the principals' areas of interest, with the objective of eliciting insights that might inform their examination. These sessions led to two types of findings:

- ◆ *Recommendations for wording* that might better align the descriptions of concerns and mitigating factors in the Guidelines with current thinking and argot in the behavioral and social sciences; and
- ◆ *Perspectives* representing outsiders' eyes views of adjudication problems and processes.

The various specific wording recommendations elicited are summarized in Table 6, together with an indication of how those recommendations are reflected in the ones presented in this report. As seen there not all of the expert recommendations were considered to be consonant with the objectives of the Guidelines, but a number of them were adopted outright.

Table 6: Wording Changes Recommended by Behavioral and Social Science Professionals

<i>Recommended Change:</i>	<i>Location</i>	<i>Adopted?</i>
Remove "personality or emotional disorder."	D(12)	Yes
End after "unable to stop."	D(13b)	Yes, but in an equivalent fashion
Weave in language regarding loss of control despite negative consequences.	D(13b)	Yes.
Include "past or present" sexual behavior.	D(13c)	Yes
Remove "of a public nature."	D(13d)	Yes
Remove language about "debt-to-income ratio"; too specific, insufficiently predictive.	F(19e)	Yes
Include something about "in a timely fashion."	F	Yes. Added "late payments" F(19e)
Remove paragraph 25(e) to eliminate references to "licensed clinical social workers."	H(25e)	Yes
Remove "emotionally unstable" and "dysfunctional."	I(28a)	Yes
List some of the behaviors that describe a psychopath, which include: pathological lying, cunning/manipulation, failure to accept responsibility for one's own actions, impulsivity, irresponsibility, grandiose sense of self-worth, poor behavior control, glibness/superficial charm, lack of remorse/guilt, lack of realistic long-term goals, and promiscuous sexual behavior.	I(28a)	No
Include "exploitative" or "extortionate."	I(28a)	Yes
Avoid "delusional" and "psychotic." Some additional examples could be "manipulative," "impulsive," "irresponsible," "chronic lying" or "deceitful."	I(28a)	No, this suggestion conflicted with others
Include something reflecting "course" and future risk, possible monitoring system.	I(28b)	No, redundant with descriptions in 29e
Change "advice" to "plan."	I(28c)	Yes
Change "emotional, mental or personality condition" to "psychiatric condition."	I(28c)	Yes

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<i>Recommended Change:</i>	<i>Location</i>	<i>Adopted?</i>
Remove the example of failure to take prescribed medications and replace it with “failure to follow treatment plan or treatment recommendation.”	I(28c)	Yes
Add language to capture “persistent and recurring” illness.	I(28c)	No. Captured in 29e reference to absence of recurrence
Remove “emotional instability” and replace it with “psychiatric impairment.”	I(29d)	Partially. Used more generic “psychological/psychiatric condition
Add language addressing “course.”	I(29e)	No. Taken under advisement

Tables 7-10 summarize the salient perspectives of the external subject matter experts on four central topics:

- ◆ Objectives of adjudication,
- ◆ Problems of adjudication,
- ◆ Validity of Guideline indicators, and
- ◆ Possibilities for improvement.

The quotations displayed there are taken from the notes on the focus sessions and are therefore indirect and unattributed. They are organized by relevance to the issue, so what is displayed represents a mix of extracts from different sessions, with no concern for temporal order of the discussions. These perspectives are not intended to represent resolution of the issues addressed. Their value derives not from the answers given, but from the questions they stimulate.

Table 7: External SME Perspectives on the Objectives of Adjudication

<ul style="list-style-type: none"> ◆ We are looking to predict security threats. The purpose is to prevent unauthorized disclosures. ◆ There is a need to focus on a model of the act of revealing secrets, which would involve an individual’s self-concept, the norms for the group, affect, the consequences of the behavior, and the ease of getting caught. “Is this the sort of person who reveals secrets?” then becomes the relevant question. ◆ It’s not just about selection for the job, it’s about job performance and trustworthiness in that job. ◆ Don’t we want people who will perform their duties even in the face of conflict? ◆ The real question about the individual in question is, when a choice needs to be made, where will they stand? ◆ In that case the real question is their trustworthiness. ◆ All this boils down to an issue of trust. How can we best measure trust? ◆ The real question is whether or not we trust someone and how do we catch those who we should not trust.
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Table 8: External SME Perspectives on the Problems of Adjudication

<ul style="list-style-type: none"> ◆ We don’t want to discriminate against people who may be able to provide a unique perspective. ◆ If we had good evidence that a particular configuration of attachments is problematic, should we not exclude people exhibiting that configuration? Is it worse to keep a good person out or to let in someone who will do you harm? ◆ It’s a risk prediction exercise—you can’t do it until you know what you are trying to predict. What are the base rates and what is the level of comfort with error rates?

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- ◆ You also need to know what you want to predict. Using the wrong tool because you don't know what you want to predict can lead to poor judgment.
- ◆ (In other words the problem is) how to distinguish between someone with a condition who is a threat and someone with the same condition who is not a threat.
- ◆ The guiding question here is "What should we be looking at?" This begs the unanswered question of why should we be concerned. What kind of breaches are we concerned about? What is the threat? Otherwise this is unanswerable.
- ◆ (For example, in some instances) we are in fact looking for people who are loyal to the institution. (However,) it's not a question of loyalty but conflicted attachment. We want the people who will give up instrumental attachments elsewhere as a consequence of the sentiments they hold for the United States. All of the subparts under Guideline C, para 10(a) may be valuable as flags but should not be exclusionary on their own. Guideline C, para 10(a)'s list of concerns as sufficiently compelling to single these out as risk factors. There could be another 20 things that are equally compelling.
- ◆ Adjudicators need constant feedback, (and) feedback isn't there because the cases of spying are so low.
- ◆ Consensus opinion: *The criteria should not be treated in isolation and that the issues identified in the Foreign Preference Guideline shouldn't be seen alone as cause for disqualification/exclusion.*

Table 9: External SME Perspectives on the Validity of Guideline Indicators

- ◆ We need to rethink authority, it's not necessarily nation-based.
- ◆ There are no instances in which dual citizenship has played a role in committing espionage. The number of dual citizens is increasing. Most countries allow citizens obtaining U.S. citizenship to maintain their foreign citizenship.
- ◆ Most important when looking at foreign influence and preference is the potential for coercion and duress.
- ◆ There is (an) assumption of a correlation between crime and other types of workplace deviance.
- ◆ We might be thinking of geography in a limited way in terms of risk. Something could take place within the community (ethnic relations) that could increase risk, creating a fertile ground for ideology to take root.
- ◆ (Talking about psychological factors) The nexus to security clearance considerations appears when there are failures of judgment. The word missing is "delusional," which captures the capacity to lose one's judgment; it is also necessary to think about a sense of grandiosity, the feeling that one's judgment is so good, so superior, that one is outside the rules.

Table 10: External SME Perspectives on Possibilities for Improvement**On possibilities for improvement**

- ◆ The best direction is to train the adjudicators in a number of ways to learn about the clues they should be looking for.
- ◆ The Guidelines should talk about symptoms independent of diagnoses. The problem is that these Guidelines are for lay interviewers rather than clinicians and so need lay language; if you get over-specific or over-detailed, it becomes unworkable.
- ◆ Let's hear more about grievance psychology. Some spies did what they did because of grievances. A set of questions regarding reaction to unfair treatment on the job would be useful.
- ◆ (*Talking about addictions*) Perhaps the Guideline should emphasize the inability to stop as a behavior: something on the order of "loss of control" or "inability to stop regardless of adverse consequences." The inability to stop despite consequences is a useful criterion.
- ◆ There is also a sociodynamic perspective to consider. These areas that we have been looking at are related to an ability of the individual to compartmentalize, live separate lives. We see this in the case of long-term affairs, or long time addictions. This I would see as a risk factor for espionage.
- ◆ There needs to be greater recognition in the Guidelines of the value of delusional behavior: "Any pervasive pattern of lying, manipulation, lack of remorse, coercion, irresponsibility, impulsivity, or failure to accept responsibility for own action."
- ◆ I would say a history of misappropriation of funds, misfiling, etc, may not be criminal but would still consider them to be risk factors. Other correlates would be cheating on exams, a history of pushing the line, being suspended by the SEC.

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Internal Subject Matter Experts

As with the external groups, the sessions for internal subject matter experts focused on eliciting perspectives, not on establishing consensus. Yet consensus did emerge in a number of areas, encapsulated in Table 11.

Table 11: Issues Resolved in Internal Subject Matter Expert Sessions

<i>Issue/Question</i>	<i>Consensus Opinion</i>
Is there a better presentation structure than the Concerns-Conditions-Mitigators format in the current Guidelines?	This structure is clear and helps adjudicators organize their thought. It works well and should be retained.
Should the Guidelines be supplemented with a system for cross-referencing?	No. Instead add language to the preamble encouraging consideration of the relationships between the Guidelines.
Should “falsification” and “failure to cooperate” be moved from Guideline E to K <i>or</i> become the basis for a separate Guideline?	Separate out as own Guideline (N) titled “Falsification and Failure to Cooperate with Security Processing.”
How should we treat foreign passports in Guideline C to resolve the disconnect between 2005 Guidelines and ICPG 704.2?	Adopt the ICPG 704.2 approach government-wide.
Should Guidelines B and C be combined?	No. They should remain separate as they are different enough.
Should behavior be emphasized over sentencing in Guideline J?	Behavior is primary. Add language emphasizing behavior to the “concern” language of the Guideline.
Should Guideline M be eliminated?	No. We need to retain a separate Guideline dealing with computer-specific behaviors.
Should traffic violations be explicitly addressed in Guideline J?	No. We need to preserve adjudicators latitude in deciding how much consideration should be given to them as evidence.

That such large and diverse groups of participants could arrive at agreement of issues like those shown in Table 11 speaks to the experiential endorsement of their validity. This conclusion is amplified by the nature of issues and suggestions for which the focus groups could *not* reach a consensus. These are illustrated in Table 12, which describes some of these, together with the factors considered in their deliberation, and in Table 13, which lists some of the numerous suggestions for wording changes which were not accepted by all participants.

Table 12: Some Issues for Which No Consensus was Reached

<i>Issue/Suggestion</i>	<i>Discussion Points</i>
Should the Guidelines be rearranged into a more functional order?	<ul style="list-style-type: none"> ◆ 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

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<i>Issue/Suggestion</i>	<i>Discussion Points</i>
	<p>SF86, why is this different?</p> <ul style="list-style-type: none"> ◆ 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.
Rename Guideline D to "Compulsive Behaviors" and add gambling OR create a separate Guideline for gambling.	<ul style="list-style-type: none"> ◆ 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
Should Guidelines A, B, and C be consolidated?	<ul style="list-style-type: none"> ◆ 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. ◆ 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.
Should language in Guideline J para. 32(c) change to "no evidence to support?"	<ul style="list-style-type: none"> ◆ 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.

Table 13: Concerns with Wording Not Resolved with a Group Consensus

<i>Statement of Concern</i>	<i>Ref.</i>	<i>Discussion Points and Suggested Changes</i>	<i>Recommended Resolution</i>
"engage in illegal acts..."—Is there a better set of words to say this?	F(18)	<ul style="list-style-type: none"> ◆ Suggest "improper acts" or "questionable acts." ◆ Change to "...to engage in illegal or improper behavior to generate funds." 	change to "Illegal or otherwise questionable acts"
"Foreign financial interests" requires an updated and more detailed definition	B(6)	<ul style="list-style-type: none"> ◆ None 	paragraph rewritten
"Foreign contacts and interests."	B	<ul style="list-style-type: none"> ◆ Suggestion to change to "foreign contacts and activities." ◆ Suggestion to change to "foreign financial and political interests." 	original language retained but clarified in the rewrite of para 6

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<i>Statement of Concern</i>	<i>Ref.</i>	<i>Discussion Points and Suggested Changes</i>	<i>Recommended Resolution</i>
"Allegation" entails no proof	J(31c)	<ul style="list-style-type: none"> ◆ "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. ◆ 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: ◆ "Confirmed..." ◆ "Evidence of..." ◆ "Non-frivolous allegations..." ◆ "Evidence (including but not limited to allegations, admissions, or official record) of criminal conduct..." 	change to "evidence (including but not limited to a credible allegation...)"
Term "licensed clinical social worker" needs to be replaced	G(22e)	<ul style="list-style-type: none"> ◆ It is no longer accurate to say that a social worker has the appropriate authority ◆ Physicians are already included in 22(d). ◆ Suggest replacement with something like "licensed mental health professional" 	deleted term based on the recommendation of external experts

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DISCUSSION

Three Overarching Questions for Eligibility Determinations

These analyses are predicated on the presumption of three overarching questions to be answered when assessing the eligibility of a person for access to classified information or for holding a sensitive position:

- ◆ *Involvement in Acts against the United States.* Has the person committed or been accused of committing or being involved in acts against the United States, such as espionage, sabotage, or terrorism?
- ◆ *Foreign Associations.* Do the person's foreign associations create, or create the possibility of, a conflict of interest with U.S. national security?
- ◆ *Other Factors.* Irrespective of these first two, has the person committed acts or does the person have conditions otherwise suggesting compromised reliability, trustworthiness, or judgment?

These three questions will be addressed in turn in the following sections. Before doing so, however, it is useful to set their context by consideration of broader notions that stimulate their formulation. Principal among these is the historical focus on *loyalty* as a concern in personnel security matters and the distinctions that must be made in using that attribute as a guiding principle.

President Truman's Executive Order 9835, signed in 1947, established an "Employees Loyalty Program in the Executive Branch" calling for "complete and unswerving loyalty to the United States."⁶ The order, however, provided no definition of *loyalty* nor any guidance for identifying it; we might assume that its drafters thought it self-evident. In 1953 President Eisenhower issued Executive Order 10450, which, although it revoked the earlier order, used the identical phrase in creating security requirements for government employment.⁷ It did not explicitly define *loyalty*, either, but rested content with implying that anyone who met its criteria was loyal and anyone else was not. In 1995 President Clinton's Executive Order 12968 reaffirmed "loyalty to the United States"⁸ as a requirement for a clearance, again without

⁶ EO 9835, *Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government*, <http://www.presidency.ucsb.edu/ws/index.php?pid=75524>

⁷ EO 10450, *Security Requirements for Government Employment*, <http://www.presidency.ucsb.edu/ws/index.php?pid=59216>

⁸ By 1995 the words "complete and unswerving" could be seen as unnecessary. Loyalty, certainly in the national security context, is not a concept that admits of degrees. For example, the person who has committed a single act of espionage, even though perfectly loyal both before it and after, is nonetheless simply disloyal, not "incompletely" or "swervingly" loyal. Thus if there is no point in admitting the notion of incomplete or swerving loyalty, there can be no point in speaking of complete, unswerving loyalty either.

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definition or description. Thus loyalty has played a role in personnel security for a long time, but it has never been treated as a technical term with a formal legal definition.

However, the term *loyalty*, while still appearing in the text of the Guidelines, ceased being a title of one of them in 1994, at which time it was replaced by *allegiance*. *Allegiance* is a more precise term, referring as it does to that type of loyalty pertaining to the relationship between individuals and their government.⁹ While *loyalty* itself can have this narrower meaning—and, as the three executive orders cited suggest, whenever it has been used it has been used with a qualifier making explicit that it was not loyalty in general that was meant, but loyalty to country—it is more broadly applicable than is *allegiance* to a considerable range of relationships: besides a country, one can be loyal to a spouse, to an employer, to a religious organization, to a political party, to a sports team, to a brand of soda, to a style of running shoes. None of these can claim allegiance, only loyalty. Merchants use loyalty (not allegiance) programs to induce customers into patronizing them in preference to their competitors. This broader scope of *loyalty*, to say nothing of any discredit it may retain through the abuses of so-called “loyalty oaths” or “loyalty hearings,” suggests that *allegiance* is the preferable term for use in matters of personnel security, even if, in everyday usage, the two terms are taken to be interchangeable. The relevance of allegiance to national security access decisions is a consequence of its definition: individuals with defective allegiance are people who by that definition lack the ability or willingness to honor obligations to the U.S. government, one of which is of course to protect any classified information entrusted to them.

If it is clear that allegiance is essential for national security eligibility decisions, the current Guidelines introduce a potential misunderstanding of it by restricting its applicability to a fixed set of extreme acts—those addressed in the next section, “Acts against the United States.” Allegiance, given its definition, is not as restrictive as that, so that anything that calls into question in a substantive way a person’s ability or willingness to honor his or her obligations to the U.S. raises a concern about it.¹⁰ When, for example, a person’s attachment to another country is such that it is by no means clear whether, if forced to choose, it would be reasonable to expect that the choice would be consistent with U.S. national security interests, then an allegiance issue is raised, yet preferring the welfare of another country over that of the United States, even if it should mean weakening U.S. national security, is not criminal but it does raise concerns about allegiance to the United States. Allegiance is thus not a matter for a single Guideline, but is a quality that is relevant across Guidelines: certainly crimes such as espionage and terrorism provide overwhelming evidence of lack of allegiance, but also the specific nature of a person’s foreign connections *could* raise a question about allegiance, as could any act that calls into serious question a person’s willingness and ability to conform to the obligations of citizenship.

⁹ “Allegiance” is “the tie or obligation of a subject to his sovereign, or government.” while “loyalty,” while it can be used in the sense of “faithful adherence to the sovereign or lawful government,” more generally means “Faithful adherence to one's promise, oath, word of honour.” “Allegiance” and “Loyalty,” *Oxford English Dictionary*, <http://dictionary.oed.com/>. Hereafter cited as *OED*.

¹⁰ *eSME*, 3-5.

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Involvement in Acts against the United States

The first question is addressed in Guideline A, Allegiance to the United States. It requires an unequivocal answer, restricting itself as it does to evidence of egregious acts counter to national security that have already taken place or that are contemplated, any of which render a person unfit to function in the national security environment and to have access to classified information or occupy a sensitive position.

Acts against the United States

Safeguarding classified material is important not as an end in itself, but because the failure to safeguard it impacts national security adversely.¹¹ The personnel security process strives to ensure that only individuals whose activities will not adversely impact national security are given access to classified material or occupy a sensitive position. For the most part, this involves assessing what breaches of reliability and trustworthiness in one area of life imply for reliability and trustworthiness in the national security realm. Yet those who involve themselves in certain acts that are extreme and unambiguously related to national security—participation in or support for sabotage, espionage, treason, terrorism, sedition, the use of violence against the government, and any acts meant to deprive others of their constitutional rights—have already done that. Those actively involved have done so directly, those lending support have done so indirectly. Each of these activities is not a marker of a potential concern but a consequence to be avoided. It makes no difference that, hypothetically, a given terrorist might have scruples that preclude his giving away a secret, even to benefit the terrorist cause claiming his true allegiance, and so could be counted on to protect classified information; he has already proven himself a threat to national security by involving himself in terrorism and is for that reason unclearable.

That said, it may be possible and reasonable to mitigate certain kinds of prior tangential associations: those that were unwitting or incidental and have long since been abandoned. However, mitigation of *current* associations would rarely be appropriate because current association implies current support.

Charities as a Special Case

The uses that organizations hostile to U.S. national security make of charities are complex and raise questions about accepting as mitigating a person's involvement with such an organization's benevolent activities in the absence of involvement with its malevolent ones, for the line between the two is by no means always clear. Sometimes there is an actual charity doing actual humanitarian work, operating hospitals and orphanages and distributing food; where this is so, people are in fact benefitted, yet the organization is at the same time recruiting popular

¹¹ See EO 13526, *Classified National Security Information*, which defines each of the three levels of classified information solely in terms of the relative damage to national security if compromised.

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support for its strategic agenda through good works.¹² Other times the charity may exist solely as a front, as a means for eliciting funds under cover, with little if any actual benevolent work being done. Yet in either case a benefit accrues to a hostile organization, whether by supporting, even if indirectly, part of its public relations and recruitment programs or by direct, even if unwitting, support to its anti-U.S. mission. The Department of the Treasury maintains a current, publically available listing of charities and other organizations known to provide support to terrorist activities.¹³

¹² See, for example, Daniel Klaidman, Kevin Peraino, and Eve Conant, "The Riddle of Hizbullah," *Newsweek*, March 21, 2005, 37; also "U.S. Treasury, Muslim Charities Intensify Dialogue on Safe Giving," *America.gov*, Aug 21, 2008, http://www.america.gov/st/develop-english/2008/August/20080821110439saikceinawz_0.1633417.html. An example of the use of a charitable organization as a terrorist front occurs in the case of *Boim v. Quranic Literacy Institute and Holy Land Foundation for Relief and Development*. For a review of the case, see Laura B. Rowe, "Ending Terrorism with Civil Remedies: *Boim v. Holy Land Foundation* and the Proper Framework of Liability," *Seventh Circuit Review*, 4:2 (Spring 2009), 372-427, esp. 376, (<http://www.kentlaw.edu/7cr/v4-2/rowe.pdf>).

¹³ <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/protecting-fto.aspx>

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Foreign Associations

Foreign Associations Creating a Potential Conflict of Interest

Acts against the United States can, but need not, be committed on behalf of a foreign country or organization. Sabotage, for example, is still sabotage whether in support of a foreign enemy or of a domestic one or, as might be the case with an anarchist, in support of no one at all: from the point of view of personnel security, what matters is the act of betrayal, not the nationality of the intended beneficiary.

But that does not mean that foreign relationships are without their own interest. It does mean that their relevance goes beyond any potential nexus with acts against the United States. It is true that people with foreign connections of some kind are overrepresented, in comparison to their numbers in the population as a whole, in at least one category of those crimes: in the espionage cases against the United States reported by open sources between 1947 and 2007, naturalized citizens account for 22 percent of the total; for more recent cases, those between 1990 and 2007, the figure is 35 percent.¹⁴ However, because espionage is such a rare event—173 cases resulting in prosecution or conviction or both against the millions of people who have had a clearance at some time during the same period—that suggesting a meaningful connection between it and something as common as holding naturalized citizenship is insupportable.¹⁵

The more immediate if less dramatic concern is that individuals' foreign connections may have the *potential* to influence them, consciously or otherwise and irrespective of their desires and intentions, to behave in various ways harmful to national security that do not rise to the level of espionage.¹⁶ This concern, as currently formulated, does not require actual behavior; there is no need to have done anything at all in order to run afoul of the foreign *influence* Guideline (Guideline B); it is enough to have a foreign relative or business interest. The separate foreign *preference* Guideline (Guideline C) does address acts, but acts that are rarely if ever meant to be harmful to the United States; rather they are consequences of foreign associations and point to a level of attachment that goes beyond the simple fact of a connection with a country other than the United States. *Act* here is understood in its broadest possible sense, including things requiring no more effort than holding a foreign passport. A separate Guideline (Guideline L), capturing involvement in a variety of activities that could result in conflicts of interest with a person's national security responsibilities, overlaps foreign preference, because for the most part the activities it lists are on behalf of foreign countries or organizations. Domestic activities are relevant to Guideline L, but only when they relate to areas of national security interest and when the classified information available to a cleared participant could benefit them.

¹⁴ Katherine L. Herbig, *Changes in Espionage by Americans: 1947-2007*, PERSEREC, 2008, 4, 10. Government-wide data concerning the percentage of the cleared workforce consisting of naturalized citizens have proven elusive. However, as a point of reference, 3.5 percent of OPM's FY 09 SSIBs were conducted on naturalized citizens; for the first half of FY 10, the number rose to 5.9 percent. (Data provided by OPM, May 5, 2010.)

¹⁵ Herbig, 1, 4.

¹⁶ *iSME*, 4.

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Foreign Influence and Preference; Outside Activities

The Adjudicative Guidelines neither codify nor strive to create a fixed and universal standard. They are adjusted from time to time, not in the hope of coming closer to some ineluctable truth, but in order to continue to provide the means for making pragmatic and informed access eligibility decisions as the environment in which those decisions must be made evolves and as understanding of the issues at hand becomes more informed. In the past modifications have arisen out of everything from shifts in the understanding of homosexuality to the wholesale penetration of information technology into the workplace. Today the environment in which the Guidelines operate has changed in ways relevant to the assessment of foreign associations in at least three ways.

Contemporary Factors Impacting Assessment of Foreign Association

First is the gradual shift occurring in the relative size of immigrant communities in the population as a whole; other things equal, with each passing year it becomes more likely that a given applicant for a clearance will have a background that includes foreign family members and other foreign associations.¹⁷ Some simple measures suggest as much: In 1910 14.7 percent of American *residents* (i.e., the total population of native citizens, naturalized citizens, and non-citizens) were foreign born. This number shrank to 4.73 percent by 1970.¹⁸ For the past forty years, however, it has again been growing: by 1996 it had reached 6.29 percent and 12.46 percent by 2008. Again in 1996, 3.19 percent of all American *citizens* had been naturalized; by 2008 this figure had risen to 5.44 percent. Furthermore, by 2008 another 11.74 percent of all citizens were second generation—native citizens one or both of whose parents are foreign born.¹⁹ Thus today more than one in every six U.S. citizens is either foreign born or the son or daughter of someone who is.

Whether these trends have any deeper significance for the geopolitical fortunes of the United States may be an important question, but one of no interest to personnel security, for the government inevitably must draw upon the people who constitute its citizenry to perform its classified work. What does matter a great deal to personnel security, however, is their impact on a philosophy of adjudication that assumes foreign associations, particularly foreign family relationships, are problematic in the absence of evidence to the contrary.

Second is a fundamental shift in the nature of the principal challenges to national security. The United States no longer faces the univocal threat of the Soviet Bloc that once shaped both its national security challenges and its thinking about what personnel security should entail; instead the country must now deal simultaneously with multiple threats from networks of

¹⁷ M.S. Krause, *Divided National Loyalties: A Primer for Personnel Security Staff*, DCI Special Security Center, 2002, 7-9.

¹⁸ U.S. Census Bureau, *Statistical Abstract of the United States: 2003*, Table HS-10: Native and Foreign-Born Population by Place of Birth: 1900 to 2000, <http://www.census.gov/statab/hist/HS-10.pdf>

¹⁹ U.S. Census Bureau, "United States Foreign-Born Population," Annual Data Tables: Population by Sex, Age, and Citizenship Status for 1996 and 2008, <http://www.census.gov/population/www/socdemo/foreign/datatb1s.html>

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third-world terrorists and with additional threats of varying degrees from other countries. This shift in the threat has generated new mission requirements for skills and expertise that exist primarily among immigrants and among the sons and daughters of immigrants. As the then-Director of National Intelligence remarked in May 2008:

[T]he threat we face today is very different than it was when we struggled against fascism or when we struggled against communism. Today we have a very diverse, dynamic, different threat. . . . [W]e have to have skills and cultural understanding and language and abilities that are very different from what you would find on the streets of New York or down in Miami or out in Oklahoma or in Nebraska. It's the very people who wish us harm we have to understand. So having the service and the benefit of heritage Americans who speak the language, who understand the culture, that can allow us to understand the motivations and the intentions and the cultural aspects is absolutely essential for us to be successful.²⁰

Third is the evolution of communications capabilities that enable immigrants today to keep in rapid, easy, and inexpensive contact with those they left behind. Specifically, international telephoning, once exotic, is now trivially simple, and the multiplicity of options for rapid, easy, and inexpensive communication offered by the Internet are unprecedented. International travel, once a luxury available only to the few or an ordeal not to be repeated and sometimes both, is now routine. All of this creates an environment that enables immigrants, although living in the United States, to retain substantive, continuing ties to their countries of origin to whatever extent they wish. It can also make it more difficult for them to sever ties they do not wish to maintain: the lines of communication run both ways. A level of contact with an immigrant's—or immigrant parent's—country of origin that even a generation ago might have engendered concerns if for no other reason than its unusualness is now routine.

Conceptualizing Foreign Connections: Assimilation or Attachment

When considering foreign connections, the personnel security system implicitly has recognized two categories of person: the first consists of those who, because their U.S.-citizen antecedents stretch back a sufficient number of generations, no longer have any connections with their origins outside the United States; the second consists of those who, typically but not necessarily of the first or second generation,²¹ still do have such connections. Assimilation for

²⁰ “Director of National Intelligence Mike McConnell Delivers Remarks at the Second Annual Intelligence Community and Heritage Community Summit,” *Political/Congressional Transcript Wire*, 30 May 2008. General/ One File <http://find.galegroup.com/gtx/infomark.do?&contentSet=IACDocuments&type=retrieve&tabID=T004&prodId=ITOF&docId=A179539200&source=gale&srprod=ITOF&userGroupName=wash80453&version=1.0>

²¹ For purposes of this report, “first generation” refers to individuals who are not U.S. citizens by birth and who immigrate to the United States; “second generation” refers to U.S. citizens one or both of whose parents is a first-generation American.

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the first is presumed complete; for the second, it is presumed not.²² Despite the fact that assimilation is conceptualized as a process, as a practical matter, people have been seen as falling into one or the other of these two categories by virtue of their answers to questions, asked at the beginning of the investigative process, about citizenship and naturalization status, the presence or absence of dual citizenship, citizenship of present spouse (or cohabitant), citizenship of any past spouses, and citizenship of multiple—currently 16—sorts of relatives.²³ Individuals in both categories face scrutiny regarding any foreign educational, business, professional, or social associations—all of which are also meant to be collected by various items on the questionnaire—as well as regarding any conduct overseas that brings them unwelcome official attention. Those in the second category, however, can expect additional scrutiny, because factors exist that by definition cannot exist for those in the first. Table 14 sets forth seven categories of concern.

Table 14: Foreign Connections by Category of Concern

Concern	Fully assimilated	Foreign-born, or otherwise not fully assimilated	Guideline
Foreign spouse and/or family		x	B
Foreign friends/associates	x	x	B
Foreign professional involvement	x	x	B,C,L
Foreign business/financial involvement	x	x	B,L
Foreign citizenship activities		x	C
Untoward conduct overseas	x	x	B
Foreign national identity		x	C,L

Given this perspective, the first and most obvious issue when assessing foreign connections has been taken to be the matter of connections by blood: people who are themselves foreign born and those who, even if native U.S. citizens, have foreign family members or who marry non-citizens or people having non-citizen relatives. Here the expressed concern is the potential for “heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.”²⁴ Those risks also can exist with other sorts of relationships and their attendant activities: friendships, business and financial arrangements, other professional activities (such as membership in the bar) that establish more than a casual connection between the individual and some governmental or quasi-governmental authority, and the complex of relationships hinted at by dual citizenship. Yet even if none of these apply, a concern with foreign connections can still be relevant if a person behaves in potentially compromising ways when overseas: here the risk is one of coming to the attention of a country’s intelligence service or its police. Finally, if the

²² Traditionally understood as “a largely linear process by which immigrants give up past languages, identities, cultural practices, and loyalties to ‘become American.’” (Irene Bloemradd, Anna Korteweg, and Gökçe Yurdakul, “Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State,” *American Review of Sociology*, 2008:34, 162.)

²³ Specifically, questions 9, 10, 17, and 18 on the current (July 2008) Standard Form 86, Questionnaire for National Security Positions.

²⁴ “Adjudicative Guidelines for Determining Eligibility for Access to Classified Information,” December 29, 2005, para 6.

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direct concern throughout is the vulnerability of the individual to some form of pressure from a foreign power, the indirect concern is the perceived potential for a lack of sufficient rigor in a person's self-identification as an American.²⁵

It is one thing to identify and to categorize a person's foreign connections, but it is another to assess their meaning. The extreme conservative position would reflexively call for taking evidence of any foreign connection as sufficient to call into question the prudence of granting access eligibility. The extreme liberal position would just as reflexively assert the irrelevance of any such evidence short of involvement with a foreign intelligence service or terrorist organization. Both positions are extreme, invoked here merely to stake out the borders between which discussion needs to occur. The raw fact that a given type of connection exists of itself means little, but at the same time any such connection could serve to point to an issue of concern.

Within the context of personnel security, to say that individuals are *assimilated* implies the absence of any substantive emotional force binding them to a foreign country. Underlying the current Guidelines is an assumption that, when considering foreign associations, assimilation is the optimum condition for anyone to be in: not only do the fully-assimilated have no foreign family relationships or lingering affection for a country other than the United States that might be exploited or that might create crises of conscience under certain conditions of stress, but that very lack makes any foreign educational, business, professional, or social associations they do have simpler to assess. Thus the junior year spent abroad, for example, becomes easier to see and dismiss as a simple educational opportunity when not clouded by concerns that it also represents a desire to return to one's roots with the attendant weakening of one's American identity. The question, however, is whether making assessments of assimilation provides the best means for assessing risk:²⁶ on the one hand changing demographics make it increasingly unrealistic as any kind of standard, while on the other it has the potential of overemphasizing family ties and immigrant status at the expense of other less obvious but nonetheless interesting and perhaps more relevant relationships. *Attachment*, on the other hand, a broader concept, suggests a more holistic way of thinking about foreign associations based on what those associations actually represent for the person.²⁷ While *assimilation* demands a zero-sum calculation, *attachment* does not: one can be attached to the United States without renouncing one's heritage. The long-standing requirement in the Intelligence Community, codified in DCID 6/4 and in DCID 1/14 before it, that, absent a waiver, individuals with immediate family who were not U.S. citizens were ineligible for SCI access was a consequence of thinking in terms of assimilation; deleting the requirement in ICD 704 was a consequence of thinking in terms of attachment. Introducing the concept of attachment here seeks to focus the discussion of access eligibility onto a complex of questions meant to help identify in a realistic way the risk

²⁵ *iSME*, 4-5, 9.

²⁶ *eSME*, 3.

²⁷ *eSME*, 2-8, 16.

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represented by a person's foreign connections and, if there is risk, to help make sense of it and either point the way to mitigating strategies or provide the basis for determining that mitigation cannot be sustained. At the same time it seeks to focus the discussion *away* from whatever more subjective elements might come into play when a given set of facts is assessed through the lens of whether or not the person is truly Americanized.

Dual Citizenship

Dual citizenship, where it is a choice, raises the question of attachment. The question of choice arises because countries vary in how and under what circumstances their citizenship can be renounced.²⁸ This means that, in a given case, a person can hold dual citizenship despite the desire to be rid of it. Regardless of how easy or difficult it may be to renounce citizenship in a given country, however, the legal status adhering to it is the same. A further nuance arises when individuals consider themselves dual citizens despite the fact that, by the laws of their country of origin, accepting citizenship elsewhere automatically deprives them of it there.²⁹

A commonly-used model posits the term *traditional* to describe the way of understanding dual citizenship as a marker of divided commitment. This is the zero-sum view, in which an attachment to a second country of necessity lessens attachment to the United States, thereby calling it into question altogether. This view had once been reflected in U.S. law; the United States Nationality Act of 1940, while not proscribing dual citizenship, made, alongside acts of treason, a dual citizen's exercise of non-U.S.-citizen rights such as voting in a foreign election grounds for revocation of U.S. citizenship.³⁰

Near the other end of the spectrum of how to regard dual citizenship the notion of *transnationalism* has arisen. *Transnational* describes individuals who "take actions, make decisions, and develop subjectivities and identities embedded in networks of relationships that connect them simultaneously to two or more nation-states."³¹ From this perspective, dual citizenship becomes just one more interesting fact about a person—as an issue, it is understood as all but moot. Since the Supreme Court's 1967 decision in *Afroyim v. Rusk*, which found no constitutional provision for statutory revocation of U.S. citizenship, no effective legal barrier to

²⁸ Iran is the extreme example. According to the International Organization for Migration, a "[p]erson seeking to voluntarily renounce Iranian citizenship must have reached the age of 25, have performed military service, have settled all affairs in the country, and acquired the permission of the Council of Ministers. Though the rules for renunciation of citizenship are stated in Iranian Law, practical experiences have shown that Council permission is difficult to obtain, thus hindering legal renunciation of Iranian citizenship." <http://www.iomdublin.org/DORAS%20Iran%20Citizenship.html>

²⁹ For example, Jeffrey K. Stanton, Robert A. Jackson, and Damarys Canache, "Dual Nationality Among Latinos: What Are the Implications for Political Connectedness?" *The Journal of Politics*, 69:2, May 2007, 475, note that 43 percent of the first-generation U.S. citizens from Cuba in their survey data reported dual citizenship with Cuba notwithstanding that such a status is legally impossible.

³⁰ 54 Stat. 1169, §§401(e) and (h).

³¹ Linda Basch, Nina Glick Schiller, and Cristina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States*, London: Routledge, 2003, 7.

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dual citizenship in the United States has existed.³² Current law, therefore, does not invite dual citizenship, but neither does it proscribe it. While the transnational worldview is by no means universally embraced, there is no longer a legally based objection to it.³³

Dual citizenship is becoming more common.³⁴ As the United States has moved to an official stance of benign indifference to it,³⁵ other nations have embraced dual citizenship, which has facilitated the ability of first-generation Americans to retain citizenship in their countries of origin.³⁶ Currently, nearly two-thirds of all people becoming naturalized Americans have emigrated from one of 20 countries, and of those only three—China, South Korea, and Cuba—do not permit dual citizenship.³⁷ A fourth, Mexico, technically does not recognize dual citizenship, but has created the accommodation of dual *nationality*, whereby Mexicans accepting citizenship elsewhere retain virtually all the rights of Mexican citizenship.³⁸ It is a distinction without a difference.

While it can be argued that dual citizenship *as a matter of law* has no appreciable bearing on access eligibility,³⁹ dual citizenship *as a matter of self-perception* is less straightforward. The literature review uncovered evidence to suggest that, among those who self-report dual citizenship, there is a negative correlation with U.S. political connectedness, measured by such things as voting and whether individuals identify the U.S. or their country of birth as their “homeland.” However, in the one study reporting this result explicitly,⁴⁰ self-identified dual citizens were also likelier to have less command of English, so it remains an open question how

³² 387 U.S. 253.

³³ For the traditional—transnational distinction, see Stanton, Jackson, and Canache, 471f. A third view, the “postnational,” also exists, which sees the rights of citizenship being replaced by individual human rights. Here, in the strict sense, dual citizenship becomes irrelevant because citizenship itself is irrelevant. See Irene Bloemraad, “Who Claims Dual Citizenship? The Limits of Postnationalism, the Possibilities of Transnationalism, and the Persistence of Traditional Citizenship,” *IMR*, 38:2, Summer 2004, 389-426, esp. 396f, 401-03.

³⁴ Georgie Ann Geyer, *Americans No More: The Death of Citizenship*, New York: Atlantic Monthly Press, 1996, 68.

³⁵ See, for example, “U.S. State Department Services: Dual Nationality,” http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html#

³⁶ Stanley A. Renshon, *Dual Citizenship and American National Identity*, Washington, DC: Center for Immigration Studies, 2001, 11.

³⁷ James Lee, “Naturalizations in the United States: 2009,” Office of Immigration Statistics, Department of Homeland Security, April 2010, Table 1.

³⁸ “As of March 20, 1998, Mexican law recognizes dual nationality for Mexicans by birth, meaning those born in Mexico or born abroad to Mexican parents. U.S. citizens who are also Mexican nationals are considered Mexican by local authorities. Their dual nationality status could therefore hamper U.S. government efforts to provide consular protection. Dual nationals are not, however, subject to compulsory military service.” “Mexico—Consular Information Sheet,” June 8, 1999, http://www.pueblo.gsa.gov/cic_text/state/mexico.html

³⁹ Its legal relevance is confined to the problems individuals can face if and when they travel to their countries of origin: whenever they do, even if to perform official duties on behalf of the United States, they will be treated as citizens with both the associated rights and, of greater concern from the point of personnel security, the obligations that status entails. Dual citizenship thus does create an assignment constraint which, apart from any security consideration, would be relevant to hiring decisions when service in the country of origin cannot be excluded.

⁴⁰ Stanton, Jackson, and Canache, who studied first-generation Latinos in the United States who claimed dual citizenship. Bloemraad, working with Canadian data, notes that dual citizens there are more likely than others to “speak a household language other than English or French,” but does not address the question of fluency. (Bloemraad, 392)

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much of the result stems from dual citizenship itself and how much from the impediment to full participation and identification caused by lack of fluency, on the part of a subset of the dual-citizen population, in the language in which political and civic discourse is conducted—an impediment, of course, that also serves as a disincentive to seeking and obtaining a national security position where English language fluency is expected. Self-reported dual citizenship does appear to be consistent with developing transnational attitudes,⁴¹ but again, no available data suggest that transnational attitudes are any less conducive to the protection of classified information and the ability to perform national-security related responsibilities than are traditional ones.

Where contrary arguments are made, they are made from a much broader philosophical perspective, addressing a concern with dual citizenship's effects on American political culture.⁴²

If nuance is required when assessing typical personnel security cases involving dual citizenship, that need vanishes as soon as it becomes clear that dual citizenship flags active involvement in the government of the second country. Here the issue is not dual citizenship *per se*, but the conflict of interest generated by service to two states.

Passports

Possession of a foreign passport is less a separate matter of interest than evidence of dual citizenship. For dual citizens wishing to visit their country of origin, it is a necessity: in normal practice a country, including the United States, requires its citizens to present its passport when entering and leaving the country.⁴³ Once overseas, dual citizens may legally use either their American or their foreign passport to move among third countries; in certain cases, depending on the nature of the diplomatic relations between the United States and the third country, the non-U.S. passport can facilitate entry.

Foreign Family, Foreign Friends, Foreign Associates

It is presumed that foreign family members create security vulnerabilities to the extent that such family members constitute a vulnerability for a person to act against the interests of the United States. The same presumption is applied to foreign friends and other associates with whom people have established relationships that are meaningful to them. Ultimately, however, it is not the fact that a person has foreign relatives and associates, *per se*, that constitutes a personnel security interest, but the circumstances surrounding those relationships. In other words, merely remarking the existence of a foreign tie of whatever kind in the absence of

⁴¹ Staton, Jackson, and Canache, 480.

⁴² See in particular two works by Stanley A. Renshon: *Dual Citizenship and American National Identity*, Washington, DC: Center for Immigration Studies, 2001, and "Dual Citizenship and American Democracy: Patriotism, National Attachment, and National Identity," *Social Philosophy and Policy*, 21:1, 2004, 100-120.

⁴³ See, for example, "U.S. State Department Services: Dual Nationality," http://travel.state.gov/travel/cis_pa_tw/cis/cis_1753.html#

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context, or where the context is solely a set of general rules of consanguinity, says nothing about whether it represents a threat and, if it does represent one, what that threat is and how much attention needs to be paid to it.

Any potential concern raised by the presence of foreign relatives, friends, and associates falls into one of two broad categories: 1) a cleared person might disclose, intentionally or unintentionally but without malicious intent, national security information to them; and 2) a cleared person might already be a spy or be recruited or coerced to become one or otherwise act as an agent of influence. The first relates to the sorts of disclosures any cleared person might make to anyone; the potential for making such disclosures to non-U.S. citizens is more worrisome than the equally likely potential for making them to Americans only because there is a greater degree of uncertainty regarding the consequences: what happens to the information once the security violation has occurred? This means that, when the potential recipient of a hypothetical unauthorized disclosure is a foreign government official of some kind or otherwise connected in such a way that the information might find its way into the hands of someone who could use it against U.S. interests, then a heightened degree of concern is warranted, but when on the other hand the potential recipient is a private citizen with no such connections, then the potential for harm may be scarcely greater than it would be if the unauthorized disclosure were made to a similarly placed American citizen. In either case, the counterintelligence assessments of the nature of the relationship involved provide the best means for addressing it and categorizing the risk.

Foreign Business and Financial Interests

Foreign business and financial interests can be artifacts of having been born in a foreign country, or they can indicate a continuing and substantive involvement in the public life of the country involved, or they can be the result of decisions made solely on the basis of economic advantage. Regardless, such interests create for anyone having them at least an implicit concern for the welfare of the country they exist in—whether they are trivial in the form of foreign bank accounts maintained by frequent travelers to facilitate their time abroad, or substantial in the form of extensive foreign property holdings or investments in foreign markets. When evaluating the relevance of any such assets to access eligibility decisions, especially as they become more substantial, the relevant issue is the conflict of interest that they can create.⁴⁴ Involvement in the economic life of the country may cloud practical judgment in ways that less concrete ties do not. If assets are vulnerable to confiscation or can be made subject to punitive taxation, then those affected may be further placed in an untenable position regardless of their attitude toward the country and its government.

⁴⁴ *iSME*, 4.

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Multiple National Identities

Whether individuals are native-born or naturalized citizens; whether their parents were native-born or naturalized; whether they have foreign family, social, and business connections and, if they do, their breadth and depth; whether they have foreign economic interests; whether they participate in the public life of a country other than the United States, and if so to what degree—all of these are matters of ascertainable fact, but by themselves go not much further than pointing out whether the individuals concerned have interests and personal attachments beyond the limits of America and American citizenship and, perhaps, that connections exist that are potentially harmful to the U.S. The task of determining the significance of foreign associations for access eligibility decisions, however, goes beyond those considerations outlined thus far. Drawing largely from research in the social sciences, additional factors have been identified that may contribute to understanding individuals' foreign attachments, and the extent to which foreign attachments may pose a conflict with U.S. interests. These include contextual factors related to the nature of the attachment itself, and an individual's management of multiple attachments.

THE NATURE OF NATIONAL ATTACHMENTS. The social and behavioral sciences suggest that considerations of foreign attachment may inform personnel security determinations.⁴⁵ Two types of attachment are of particular note: instrumental attachments and identity-based attachments. Instrumental attachments are those a person maintains as the means for acquiring or maintaining some benefit only incidentally related to its being located outside the U.S.: a partnership in a foreign business, for example, or membership in an international or foreign-based organization for professional reasons, or dual citizenship maintained because the laws of the country preclude non-citizens from inheriting. In other words, these attachments take the form, "Through membership, I get ____ as a benefit." The strength of instrumental attachments depends on the value of the outcome or reward, and therefore, may be context dependent. For example, an individual may maintain an instrumental attachment through citizenship for the sole purpose of enabling the future inheritance of a property. If in fact the citizenship was maintained for this and only this reason, should the individual learn that they will no longer inherit such property, there may be no further desire to maintain citizenship and the instrumental attachment may dissolve.

From the perspective of adjudication, instrumental attachments themselves raise concerns in two instances. First, an instrumental attachment may serve as a means for a government to exercise untoward control over the person, such as through credible threats of confiscation of the person's business interests, or when the person perceives such a threat even if it does not in fact exist. Second, an instrumental attachment may bias the execution of tasks that may impact the

⁴⁵ Jerard F. Kehoe and Katherine Ryan, *Adjudicative Guidelines Literature Review: The "National Conflict" Cluster*, 2009, 60-61. (See Appendix B Part 2.)

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ability of the individual to obtain the benefit. For example, a linguist with instrumental attachments to a foreign country may bias his analysis, either intentionally or unknowingly, so as to maximize his ability to reap that benefit in which the attachment is based.⁴⁶ Assessments of instrumental attachments can therefore be informed by investigative information relevant to the subject's motivation for acquiring or maintaining foreign associations.

Identity-based attachments, on the other hand, are those characterized by the way in which people identify themselves through group membership. Most relevant to the context of adjudication is the extent to which individuals self-categorize themselves as a member of a nation state (e.g., American, Bolivian, etc.) and the importance of that group membership to that individual.⁴⁷ These take the form of, "I am a ____ and being a member of that group is important to me." These attachments may be motivated by the degree to which the group identification provides individuals with a sense of value, uniqueness, belongingness, as well as certainty about their environment.⁴⁸ The next section will highlight ways in which these attachments may manifest.⁴⁹⁻⁵⁰

MANAGING MULTIPLE IDENTITY-BASED ATTACHMENTS. Evidence from the psychological literature shows that individuals are capable of simultaneously defining themselves in terms of multiple identities.⁵¹ Studies of U.S. immigrants, for example, show that people can and do sustain multiple identities that, from an external point of view, appear to conflict.⁵² Of particular relevance to the discussion of social identity with respect to the Adjudicative Guidelines is the question of how an individual with multiple national identities manages the potential demands of competing identities and the relevance, if any, to adjudication or risk-management of the management strategy used. No studies have directly examined how specific management strategies affect allegiance issues or potential conflicts of interest relevant to adjudication; however, *categories* of strategies have been identified that may have utility in conceptualizing multiple national attachments for the purposes of adjudication. The following

⁴⁶ Richards J. Heuer, Jr., *The Psychology of Intelligence Analysis*, Center for the Study of Intelligence, 1999.

⁴⁷ This discussion is constrained to synthesizing the most relevant findings. The interested reader should refer to the literature review in Appendix B for a more thorough discussion of the relevance of the attachment literature to the adjudication process.

⁴⁸ Cynthia L. Pickett and Yanine D. Hess, *Assessing Predictors of U.S. National Identification and Allegiance*, 2009, 1-4

⁴⁹ Kehoe and Ryan, *National Conflict*, 60. (See Appendix B Part 2.)

⁵⁰ Recent research illustrates the relationship between foreign national identity-based attachments and engagement in government activities. In one experiment participants were tasked to rate the performance of others under the auspices of conducting research to help determine whether funding should be given to foreign or American students. Participants with a foreign national identity rated more leniently the performance of individuals with whom they shared a foreign group membership. Further, for all participants those that identified more strongly with their group showed a stronger leniency in their ratings of those in their group. While the mere presence of a foreign national identity did not independently account for variations in lenient scoring, the results of this laboratory-based experiment do show that a person's foreign national identity can color judgment in ways relevant to a government activity. See Pickett and Hess.

⁵¹ Tom Postmes and Jolanda Jetten, "Individuality and the group: Advances in social identity," in Postmes and Jetten (eds.), *Individuality and the Group: Advances in Social Identity*, Thousand Oaks, CA: Sage Publications, Inc, 2006

⁵² Postmes and Jetten.

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describes four empirically-derived strategies that individuals may use to manage multiple identities.⁵³

Merger, as a management strategy, acknowledges multiple identities simultaneously, combining and integrating features of both. Here national identity is transcended, replaced by a new, different, global identity. The individual adopting this strategy may think of him- or herself as a citizen of the world rather than a person of a given nationality, American or otherwise. Individuals may sever connections with their home country and at the same time may fail to develop an identity rooted in the country they have immigrated into, thus in a sense becoming stateless, even when holding the passport of one nation or another. Axiomatically, it would seem that there is no conflicting national attachment in either case that could potentially interfere with the orderly execution of national security duties including the protection of classified information—the foreign identity is of no more influence than the American one—yet the very absence of any national connection whatsoever, particularly a U.S. national connection, may become troublesome. The void may suggest an inability to meet the requirement of Executive Order 12968 for a history that “affirmatively indicates loyalty to the United States,” regardless of the definition of loyalty used.⁵⁴

Intersection, as a management strategy, is characterized by an identity rooted in the intersection of multiple groups where a new functional hybrid identity is formed. These are the “hyphenated Americans,” those who have pulled parts from their American and foreign identity to form a new identity. The task here for personnel security does *not* consist of developing and deploying some test of “Americanness” that goes beyond the requirement of EO 12968 for U.S. citizenship and that in any case would collapse under the lack of defensible criteria, but rather of identifying whether any elements of a person’s foreign identity raise substantive concerns about the ability and willingness to function within a national security environment and to protect classified information. If any do, the question then becomes whether a reasonable risk management strategy is available to address whatever concern exists and is appropriate to employ.⁵⁵

Compartmentalization as a strategy for managing multiple identities acknowledges both national attachments by keeping them separate and switching between identities based on context: the American identity in an American context, the foreign identity in a foreign one. Here there is a solid American national identity; the issue for personnel security to consider is

⁵³ Roccas and Marilynn B. Brewer, “Social Identity Complexity,” *Personality and Social Psychology Review*, 6:2, 2002, 88-106, esp. 89-92.

⁵⁴ See the discussion of *loyalty* and *allegiance*, above.

⁵⁵ Recent research has examined how multiple identities are integrated within the intersection strategy. Results suggest that the integration can be described according to how the individual perceives identities in terms of blendedness (vs. distance) and harmoniousness (vs. conflictual). Interestingly, perceptions of conflict between the integrated identities is associated with poorer psychological adjustment, interpersonal strains, and less. See V. Benet-Martinez, & J. Haritatos, “Bicultural Identity Integration (BII): Components and Psychosocial Antecedents,” *Journal of Personality*, 73, 2005, 1015-49, and Verónica Benet-Martínez and Que-Lam Huynh, *Adaptive and Maladaptive Biculturalism: Measurement, Validity, and Psycho-Social Correlates of Bicultural Identity Integration (BII)*, 2009.

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whether the foreign identity is in anyway problematic. This is less a matter of considering whether those with compartmentalized attachments would take proper precautions with national security information in an American context: in these contexts the American identity is dominant. Rather it is a matter of considering whether an individual relying on this strategy will protect sensitive U.S. national security information once in a foreign context, especially when *not* protecting it would prove beneficial to the group in which this identity is based—in this case, the foreign country.

Dominance as a management strategy is indicated with individuals adopting one or more primary group identification. The dominance strategy, in other words, assumes that one identity dominates the other. For example, when using this strategy, a Chinese immigrant's simultaneous identification with "Chinese" and "American" cannot be sustained, one of these identities will dominate the other. Persons seeking a security clearance who have adopted this strategy and reject their American identity are unlikely to be attached to the United States or be motivated to maintain its interests. On the other hand, those electing their American identity over another national identity may be motivated to do so.

Evaluating Foreign Associations

In an increasingly interconnected world with increasing ease of international travel and communication facilitated by cascading technological advances, in a country whose population increasingly consists of immigrants and the children of immigrants, in a government with increasing needs for people with skills found in those immigrant communities, the questions raised by a person's foreign associations—connectedness to people, institutions, and authorities outside the United States—assume a greater urgency than they have had heretofore. In the past the pragmatic approach was to play it safe by excluding from access, absent a compelling reason to do otherwise, anyone having substantive foreign connections; today's pragmatic approach, on the other hand, arises from the need simultaneously to meet changing mission requirements and to acknowledge changing national demographics but to do so without introducing self-defeating security risks.

Two Key Questions regarding Foreign Associations

When assessing foreign associations, their types (e.g., foreign spouse or foreign bank account or dual citizenship) by themselves say little. Thus any adjudicative strategy based on a preset hierarchical schema—in which, for example, dual citizenship would always be more noteworthy than having a foreign spouse, while having a foreign spouse would always be more noteworthy than having a foreign bank account—would be unrealistic. The important element in these cases is not the presence or absence of given markers, but what those markers, whenever they are present, mean within the life of the person involved.⁵⁶

⁵⁶ *eSME*, 10.

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In this regard concerns with foreign associations devolve to two central questions: (1) Do those associations provide a realistic path for intelligence targeting or for exercising influence against the interests of the U.S. and (2) Do they flag an attachment to a foreign country so important to the person that it has the potential to interfere with forming an attachment to the U.S. sufficiently robust to preclude acting against U.S. national security interests? If so, the issue is one of allegiance.

THE FIRST QUESTION. Determining whether a realistic path for espionage or harmful influence exists—and *realistic* is the key term—first requires identification of a threat, then, if one exists, an assessment of the individual's vulnerability to it. The first task is a counterintelligence matter, the second is one of weighing, in light of whatever information counterintelligence has been able to provide, not only the person's attachment to the country in question (that is, answering the second question, below), but also all other factors that, although having nothing to do with foreign associations themselves, nonetheless have a bearing on vulnerability to the threat identified, such things as mental health and financial issues. Here the general question of reliability and trustworthiness that the personnel security process asks of everyone acquires a specific focus: Can the person be relied upon successfully to resist attempts, if and when they are made by the identified threat, to solicit information or exercise harmful influence? The presence of the threat thus need not preclude access eligibility, but this question must be answered satisfactorily to establish the prudence of granting it.

THE SECOND QUESTION. The traditional model of assimilation assumes that the more a person identifies with another country the less he or she will identify with the U.S.; assimilation is complete only when there is no second country to identify with. Following this model, *any* person with *any* degree of foreign association possesses some substantive risk. But as suggested by this research effort, people with foreign attachments need not exercise them at the expense of the U.S.⁵⁷ For adjudication the important issue is to ascertain the absence of any reason to suspect that whatever foreign associations exist would create an impediment to a person's willingness and ability to operate successfully in a national security environment in general and in particular to protect classified information. In other words, from the perspective of adjudication, the critical question is not whether foreign identity-based attachments exist, but, where they do exist, the nature and the extent of the attachment. This determination is informed by an understanding of the context of these associations and the nature of the attachments they may signify. Because it is clear that individuals can adaptively manage multiple identities without experiencing them as conflictual, and because attachments are dynamic and can therefore change over time, it is less often a decision of granting access eligibility than how to manage the risks potentially associated with foreign attachments.

⁵⁷ *eSME*, 3, 8-9, 16.

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Other Factors Relating to Reliability and Trustworthiness

When developing Guidelines for factors other than involvement in acts against the U.S. and foreign associations, it is necessary to take into account a contradiction of sorts. On the one hand, to make any sense of an issue it is necessary to examine it in isolation: mental health and alcohol and finances, to cite three examples, are separate and require separate attention in order to be understood. On the other hand, while issues often do arise in isolation in people's lives, they can just as easily be linked in ways that require them to be assessed together—comorbidity, to borrow a term from medical practice. For example, if a person's depression has led to attempts at self-medication with alcohol which have led to an alcohol problem which has created financial stress, then treating the issues in isolation can result in missing the main point and, more importantly, reaching the wrong conclusion about the person's ability to hold a sensitive position or to safeguard classified information. Further, there is the *intrinsic* overlapping of some elements of some Guidelines. While alcohol misuse may or may not be related to a mental-health issue and may or may not lead to financial problems, nearly everything considered as a misuse of drugs is by definition a criminal activity in addition to a practice raising concerns about potential adverse psychological or physiological effects on the user's reliability and trustworthiness; thus it is a matter for the current Criminal Conduct Guideline as well as for the Drug Involvement one. In the same way, problematic sexual matters (Sexual Behavior Guideline) involve either a psychosexual disorder of some kind (Psychological Conditions Guideline) or criminal activity (Criminal Conduct Guideline) or both. Other examples are possible. An attempt to anticipate all the relationships among multiple issues in anything like a systematic manner would soon break down under its own weight. Accordingly, the following discussion looks at issues discretely, although it does so with the understanding that at least some of the time a given problem will be mitigated or exacerbated by the fact that it occurs in conjunction with something else.

The question next arises about the best way to organize for examination the material currently covered by Guidelines D, E, F, G, H, I, J, K, and M. One way, of course, would be to address each Guideline in turn, and that is in fact the approach to be used in the Recommendations section of this report. However, in the discussion that follows, a different arrangement has proven desirable in order simultaneously to address the respective concerns of interest, to allow the discussion to move in a more orderly way from one topic to another, and at the same time to address to the extent possible questions of comorbidity among issues identified. This arrangement yields six sections: Psychosocial Factors, Crime, Financial Issues, Personal Judgment and Behavior, Security Practices, and a final section dealing with Information Technology.

Psychosocial Factors

Psychosocial factors encompass those behaviors and conditions that are psychological or psychiatric in nature, whether diagnosable mental health disorders or conditions short of being

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diagnosable but still of concern. They are *psychosocial* in recognition of their psychological or psychiatric basis and are *psychosocial* because they include considerations that play out in social environments and have consequences there. They include material currently in five Guidelines. Besides Psychological Conditions (Guideline I), these are the portion of Financial Considerations (F) dealing with pathological or compulsive gambling, Sexual Behavior (D), Alcohol Consumption (G), and Drug Involvement (H).

Mental Health Conditions—General⁵⁸

Psychiatrists and psychologists have the knowledge and the clinical skills to make informed judgments about an individual's mental condition, to prescribe and supervise courses of treatment when warranted and to judge their success, and to assess in at least a general way how a given condition is likely to affect a patient's behavior; they do not, however, have the expertise to make national security assessments. On the other hand, personnel security professionals, while lacking the skills of psychiatrists and psychologists, do have that expertise. Thus determining the relevance of a given mental health issue to a person's eligibility for classified access is a matter of experts in one field (mental health) providing information to experts in another (personnel security) in a form that enables the latter to use it in their work to support informed decisions.⁵⁹ However, in other than those places where sufficient in-house mental health resources are available to personnel security practitioners, adequate information has not always been forthcoming, due both to constraints on investigation and to concerns by practitioners with releasing sensitive information on their patients to third parties, even with consent. Indeed, the investigative constraints, meant to be sensitive to the stigma too often associated with seeking psychiatric and psychological treatment, have too often been self-defeating, enforcing rather than erasing taboos by suggesting that there is in fact something about a condition relating to mental health shameful enough that it deserves to be hidden.⁶⁰

Mental health conditions may first be suspected because of some behavior; the behavior can but need not be of any interest on its own accord to personnel security. For example, in a given case compulsive activity of some kind might indicate an underlying disorder, or it might not, but regardless the activity *itself* has no meaning from a personnel security point of view; on the other hand an arrest for shoplifting, which could have—but need not have—occurred because the person involved in it is suffering from kleptomania, is itself an issue in any case: the personnel security process will have to assess the theft whether or not some mental health

⁵⁸ 50 U.S.C. 435c establishes a statutory clearance exclusion for anyone who is "mentally incompetent." This exclusion applies only to Restricted Data and to special access programs (including SCI), not to other access eligibility determinations. "Mentally incompetent" is a legal, rather than a clinical term: courts find individuals mentally incompetent, not psychiatrists or psychologists.

⁵⁹ *iSME*, 12-13; *eSME*, 19.

⁶⁰ *iSME*, 12.

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disorder contributed to it. In either case, however, determining whether a mental health condition in fact exists demands the intervention of a psychologist or psychiatrist.⁶¹

DIAGNOSES AND BEHAVIORS. A diagnosis is a determination by a psychiatrist or psychologist that an individual has a condition catalogued and described in the *Diagnostic and Statistical Manual*.⁶² While specific diagnoses relating to certain disorders can provide overwhelming support for a decision to deny or revoke access eligibility, the presence of a diagnosis *per se*, while always a relevant fact, does not necessarily provide grounds for such a decision. The question is not the presence of some given mental health disorder, but how that disorder manifests itself behaviorally, whether it is ameliorable by treatment, and what its long-term prognosis is. Conversely, the absence of a formally diagnosable condition does not, in the face of questionable and problematic behavior, mean that no personnel security issue exists. It is possible for sub-clinical or otherwise non-diagnosed conditions to manifest in ways that call into question the appropriateness of granting or maintaining eligibility for access to classified information.⁶³

Some agencies have established favorable psychological screening as a criterion for employment. For determining clearance eligibility across government, on the other hand, the primary concern lies with identifying and assessing any conditions that could adversely impact reliability and trustworthiness, with the presence of anything suggesting impaired judgment being particularly troublesome. Impaired judgment adversely impacts a person's ability to make the sorts of decisions necessary to function securely in a national security environment and to protect classified information and accordingly merits careful scrutiny.

The complex nature of psychological functioning makes establishing straightforward Guidelines in the form of *if x then y* for making access eligibility decisions problematic. For example, current psychiatric hospitalization would be evidence of access ineligibility; however, prior psychiatric hospitalization is of interest only if there is a persistent or recurring condition. In that case the hospitalization would serve not as a disqualifier but as an indicator of the underlying condition.

Pathological Gambling

Pathological gambling, most often diagnosed as an impulse control disorder, is of special significance for access eligibility decisions.⁶⁴ Gamblers are people who take risks with objects of value; for most this is no more of an issue than is any other recreational activity with some degree of risk, and recreational gamblers tend to wager the sorts of sums that can be equated with

⁶¹ *eSME*, 19.

⁶² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (Washington, DC: American Psychiatric Association), 2000. Cited henceforward as DSM-IV-TR.

⁶³ *eSME*, 19-20

⁶⁴ *eSME*, 32-33.

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the costs involved in participating in other activities. However, gambling that reaches the level of an impulse control disorder differs meaningfully. The underlying issue relates less to the amount of money placed at risk than to the controlling, compulsive nature of the disorder, although financial distress can be and typically is a consequence. It is, moreover, an *exacerbating* consequence, because financial distress from pathological gambling increases the likelihood of crime: pathological gamblers are two and a half times as likely to have committed a crime within the previous 12 months than are recreational gamblers.⁶⁵ Crime appears at the confluence of the mental health disorder and financial distress: as legitimate sources of gambling funds vanish, they may be replaced by illegitimate ones in the form of various types of theft, in particular embezzlement and fraud. The compulsive nature of the gambling excludes quitting as an alternative. Embezzlement, to the extent that it is a rough analogue of espionage, is particularly worrisome for national security decisions, with as many as one in five pathological gamblers engaging in it.⁶⁶

Psychosexual Issues

Paraphilias are diagnosable disorders relating to sexual imagining or behaviors that focus on non-human objects, suffering or humiliation, children, or any other non-consenting person.⁶⁷ To be diagnosable, they must have lasted at least six months and must cause distress or social impairment.⁶⁸ Paraphilias in general are the extremes of sexual behaviors that in milder forms are more or less psychologically unexceptionable; however, those such as pedophilia that depend upon the non-consensual participation of another person are never unexceptionable and, irrespective of any mental health assessment, require being assessed as crimes.

Pornography is not a paraphilia, although paraphiliacs can consume pornography that speaks to their particular disorder. Pornography itself becomes a concern when its use rises to the level that it can be diagnosed, a possibility facilitated by the ease of access to quantities of pornography of all types on the Internet.⁶⁹ While there is some correlation between early continued use of violent pornography and psychopathology in adult sexual offenders, there appears to be no correlation with regular adult pornography consumption and psychopathology.⁷⁰

⁶⁵ Gerhard Meyer and Michael A. Stadler, "Criminal Behavior Associated with Pathological Gambling," *Journal of Gambling Studies* 15:1, Spring 1999, 34. In the cases studied, 51.8 percent of pathological gamblers had committed one or more crimes within the past year; 89.3 percent had done so at some point in their lives.

⁶⁶ Meyer and Stadler, 36. 21.7 percent of pathological gamblers had engaged in embezzlement, compared with 1.1 percent of recreational gamblers.

⁶⁷ "BehaveNet Clinical Capsule: Paraphilias," <http://www.behavenet.com/capsules/disorders/paraphilias.htm>

⁶⁸ Forensic Psychiatry.ca, "Paraphilias," <http://www.forensicpsychiatry.ca/paraphilia/overview.htm>

⁶⁹ *eSME*, 26. Typically compulsive use of pornography is diagnosed as an Impulse Control Disorder—Not Otherwise Specified. There is no separate DSM-IV-TR diagnosis for it *per se*.

⁷⁰ Thomas J. Tiefenwerth, *Criminal Sexuality and Psychopathology: Pornography as a Contributory Risk Factor in the Psycho-Social Development of Violent Sex Offenders*, diss. The University of Southern Mississippi, 2007, 88.

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*Alcohol and Drug Issues*⁷¹

In one sense, alcohol and drugs are simply two categories of the same thing: substances, the use of which can alter mood, mind, and physiology. In another sense, however, alcohol and drugs could not be more different. Whenever personnel security takes an interest in someone's involvement with drugs, it is almost always, in addition to any psychophysiological effects, because the substance being used is illegal or, if legal itself, because it is being used illegally; only in limited cases is there no legal issue. For personnel security then, drug use is normally *illegal* drug use. At the same time, except for minimum age limitations and a handful of other restrictions such as open container laws, neither the possession nor the use of alcohol is a crime. Its use might be a *component* of a crime—driving while intoxicated, for example—but by itself it remains beyond the interest of the law. To put it concretely, possession of cocaine, even if the person possessing it does nothing but look at it, is always a personnel security issue; possession of a bottle of scotch, at least for an adult, never is and leads to one only if its possessor meets the criteria of alcohol abuse or dependence or commits an alcohol-related crime or otherwise demonstrates that alcohol is becoming a problem.

The discussion following ignores any direct consideration of criminality; that finds its place in the section, below, dealing with crime. The concern here is with the potential and actual effects of drugs and alcohol and what those effects mean for reliability and trustworthiness. The relevant question is: Irrespective of legal considerations, are there reasons to consider drug and alcohol use of personnel security concern? At the same time, the discussion does touch upon the relationships of drugs and alcohol with other crime, looking both at how certain acts (again, driving is the best example) become crimes when performed under their influence and at the ways that their use may lead to increased crime of various kinds.

ABUSE AND DEPENDENCE. Any exploration of how the use of drugs and alcohol affects reliability and trustworthiness needs to begin by defining a few key terms. The DSM uses the term *substance* to speak of any of 11 classes of chemicals—the things commonly subsumed under the heading of drugs and alcohol.⁷² Some of these have valid medical purposes, others have been used medically in the past but no longer are, still others have never had any medical purpose. Some can be used in moderation with few or no ill effects, others create damage with their first use.

The DSM uses two terms to describe levels of involvement with substances sufficient for diagnosis: *abuse* and *dependence*, which together constitute *substance-related disorders*. First abuse:

⁷¹ 50 U.S.C. 435c establishes a statutory clearance exclusion for anyone “who is an unlawful user of a controlled substance or an addict.” This exclusion applies to all clearance levels, not just Restricted Data and special access programs, including SCI.

⁷² DSM-IV-TR, 191. The 11 classes are: “alcohol; amphetamine or similarly acting sympathomimetics; caffeine; cannabis; cocaine; hallucinogens; inhalants; nicotine; opioids; phencyclidine (PCP) or similarly acting arylcyclohexylamines; and sedatives, hypnotics, or anxiolytics.”

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The essential feature of *Substance Abuse* is a maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of substances. In order for an Abuse criterion to be met, the substance-related problem must have occurred repeatedly during the same 12-month period or been persistent. There may be repeated failure to fulfill major role obligations, repeated use in situations in which it is physically hazardous, multiple legal problems, and recurrent social and interpersonal problems.⁷³

The presence of any one of the four indicators listed in the last sentence is sufficient to support a diagnosis of substance abuse. Dependence presents a different set of problems:

The essential feature of *Substance Dependence* is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues use of the substance despite significant substance-related problems. There is a pattern of repeated self-administration that can result in tolerance, withdrawal, and compulsive drug-taking behavior.⁷⁴

Diagnoses of abuse and dependence require repeated use over time; a single event, no matter how serious, does not meet the criteria for either. Yet the diagnostic criteria are inclusive of a number of variations of problematic substance or alcohol use. A weekend binge-drinker whose drinking leads to frequent Monday morning absences from work is failing to meet a major role obligation, just as the person who insists on driving after drinking is engaging in a hazardous situation whether or not arrests result; both may meet the criteria for abuse. The key question that determines abuse is whether the person's involvement with drugs or alcohol has resulted in a pattern of irresponsible or problematic behavior.

The DSM identifies four subtypes of remission of dependence, all of which require the absence of *all* abuse and dependence criteria for one month. Those who remain free of all abuse and dependence criteria for the next eleven months are in *early full remission*; *sustained full remission* describes those who remain free beyond that period. *Early partial remission* and *sustained partial remission* describe people who relapse into one or more of the abuse or dependence criteria but do not reach the level required for a diagnosis of abuse or dependence.⁷⁵ Early full remission is a predictor but not a guarantee of sustained full remission.⁷⁶

From the perspective of adjudication, the patterns of irresponsible behavior sufficient to support an Abuse or Dependence diagnosis themselves provide some evidence of diminished reliability and trustworthiness potentially sufficient to call into question a person's ability to operate within national security environments. By definition, such a person persists in a behavior that has on multiple occasions led to some significant, otherwise avoidable problem; he or she

⁷³ DSM-IV-TR, 198.

⁷⁴ DSM-IV-TR, 192.

⁷⁵ DSM-IV-TR, 195-97.

⁷⁶ See, for example, Stephen A. Maisto, Patrick R. Clifford, Richard Longabaugh, and Martha Beattie, "The Relationship between Abstinence for One Year Following Pretreatment Assessment and Alcohol Use and Other Functioning at Two Years in Individuals Presenting for Alcohol Treatment," *Journal of Studies on Alcohol*, LXIII (2002), 397ff. Maisto and his colleagues examined the drinking patterns of individuals who had passed through two alcohol treatment programs for the two years following treatment, comparing those who abstained for the first 12 months with those who did not.

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has failed, with or without intention, to exercise sound judgment. Given the complexity of issues underlying abuse and dependence, however, such determinations should consider the specifics of each case and, if possible, be informed by mental health professionals familiar with substance misuse.

In cases of remission, one must consider the relevance of prior problematic use to a person's present and future reliability and trustworthiness. This determination first entails a judgment that the dependence is truly a matter of the past, and unlikely to recur. Secondly, the determination requires a judgment as to whether the past abuse or dependence in and of itself raises sufficient uncertainty about reliability and trustworthiness to consider precluding access eligibility. In fact, some evidence suggests that substance abuse may serve as a more general indicator of dispositional deviance proneness.^{77, 78} The issue here is not the possibility of relapse but whether the history of involvement was part of a larger pattern of diminished reliability and trustworthiness that still persists.

SUBSTANCE USE. The *National Survey on Drug Use and Health* for 2009 reported that approximately 130.6 million people in the United States—51.9 percent of the population over age 12—are current users of alcohol; the drug-using population is much smaller, with 21.8 million current users.⁷⁹ (In both cases the *Survey* considers a current user to be someone who used a substance within the past month.) The numbers of people who have used alcohol or drugs at some point in their lives are higher—208.5 million for alcohol and 118.7 million for illicit drugs (including 104.4 for marijuana and hashish).⁸⁰ This means that nearly half of all people in the U.S. 12 and older have tried illicit drugs and 4 out of every 5 have used alcohol. It also means that, while nearly two-thirds of those who have used alcohol at any time in their lives are current users, less than one-fifth of those who have used illicit drugs do so currently.

Most people who involve themselves with substances, whether legal or not, do not rise to the level of having a substance-related disorder. The *Survey* reported 22.5 million people with substance abuse or dependence, 15.4 million for alcohol only, 3.9 for drugs only, and 3.2 for both alcohol and drugs.⁸¹ Table 15 provides data.

⁷⁷ Normand et al., 1994.

⁷⁸ Jerard F. Kehoe, Kimberly Perry, and Monica Schnick, *Adjudicative Guidelines Literature Review: The "Psychological Considerations" Cluster*, 2010, 29. (See Appendix B Part 3.)

⁷⁹ Substance Abuse and Mental Health Services Administration, *Results from the 2009 National Survey on Drug Use and Health: Volume I: Summary of National Findings* (Office of Applied Studies, NSDUH Series H-38A, HHS Publication No. SMA 10-4586Findings), Rockville, MD, 2002, 13, 29. Cited henceforward as 2009 SAMHSA NSDUH.

⁸⁰ Substance Abuse and Mental Health Services Administration, *Results from the 2009 National Survey on Drug Use and Health: Detailed Tables*, Tt 1.1a, 1.1b, 2.1a, 2.1b, downloaded 2 November 2010 from www.oas.samhsa.gov/NSDUH/2k9NSDUH/tabs/Sect1peTabs1to10.pdf and [.../Sect2peTabs1to10.pdf](http://www.oas.samhsa.gov/NSDUH/2k9NSDUH/tabs/Sect2peTabs1to10.pdf)

⁸¹ 2009 SAMHSA NSDUH, 73.

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Table 15: 2009 Drug and Alcohol Use and Abuse/Dependence among Persons 12 Years Old and Older

Substance	Users (n)	% Users in Total Pop	Abuse/Dep (n)	% Abuse/Dep in Total Pop	% Abuse/Dep in User Pop
Alcohol	130.6 m	51.9%	19.3 m*	7.7%	14.8%
Drugs	21.8 m	8.7%	7.1 m*	2.8%	32.6%

*Includes 3.2 m with both drug and alcohol abuse/dependence Source: 2009 SAMHSA NSDUH

The use of drugs and alcohol short of abuse and dependence raises questions in five areas. Three first three—(1) expectable behavior under the influence of the substance used, (2) the addictive properties of the substance used and the likelihood that use will escalate, and (3) the relationship between use of the substance and other issues of concern—relate to the substance itself; the remaining two—(4) the pattern, timing, and frequency of use and (5) the motivations for use—are specific to the user. We consider them in turn.

(1) *Expectable behavior under the influence of the substance used.* What effects does the substance have on people while they are using it? By way of example, one common characteristic of someone using one of the amphetamines is talkativeness, which, particularly when combined with the impaired judgment inherent in the use of the drug, raises concerns that a cleared person could, under the influence of the drug, include classified material among the things talked about. On the other hand, the sorts of euphoric effects marijuana produces, even combined with the drug's typical mental confusion, probably create less of a risk. Once the effects themselves are understood, a second question arises: Do those effects change with the amount used? The person who has drunk one bottle of beer behaves very differently than a person who has drunk eight. The person who has drunk enough to have achieved a blood alcohol content of 0.2 percent will probably remember nothing of what happened and is in a more likely position to be manipulated by the unscrupulous.

(2) *The addictive properties of the substance used and the likelihood that use will escalate.* Is someone who uses a given substance more or less likely to abuse it sooner or later? Fewer than two in ten people who drink abuse alcohol; the fact that a person drinks at all carries with it some risk of eventual alcohol abuse, but that risk is small enough to play at most a trivial role in access eligibility decisions. For the occasional cocaine user, however, because of the way the substance works, the risk of becoming an abuser is higher. The personnel security process, although looking at what has happened, does so in order to determine what is reasonable to expect in the future.

(3) *The relationship between use of the substance and other issues of concern.* People do not normally drink or take drugs because they see it as the means to get into other trouble, but that is often enough the result. For example, people are unlikely to drink out of the desire and intent to drive while intoxicated, but the lack of intent cannot be relied on to keep them from doing so: in 2009 alone there were nationwide 1.4 million arrests for driving under the

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influence.⁸² Approximately a quarter of the violent crimes that lead to incarceration in either federal or state prison are committed by persons under the influence of drugs at the time.⁸³ Such events often serve as the evidence that a drug or alcohol problem exists—matters of comorbidity, in other words—but even where no event has yet occurred, personnel security, in assessing reliability and trustworthiness, must make judgments about whether a person’s use of a given substance increases the likelihood of problems developing out of that use. More specific to the workplace, and as uncovered in the literature review, there is also evidence to suggest a robust link between alcohol and drug use and deviant counterproductive work behaviors, including verbal and workplace aggression.^{84, 85} For the use of illegal substances, the question must also be asked about the person’s contact with the source of the drug, to assess whether that association itself, apart from any legal questions, creates a vulnerability.

(4) *The pattern, timing, and frequency of use.* The person who drinks 14 glasses of wine in two weeks, one each day with dinner, presents a different order of risk than does the person who, while also drinking 14 glasses of wine in the same two weeks, drinks them all in a two-hour period on one day. A common pattern of cocaine involvement involves episodic use, so the “infrequent cocaine user” may nonetheless have a very large problem. Thus it is important to know not only how much of a given substance a person consumes, but how. Most collegiate binge drinking occurs on weekends, away from classes;⁸⁶ the “weekend alcoholic” has long been a fixture of the adult world. Both might claim that their drinking does not interfere with meeting their responsibilities, which may or may not be true, but it is certainly true that their intoxication is no less worrisome than that of the person who drinks heavily every night—it simply occurs less often.

(5) *The motivations for use.* Those who drink or use drugs when alone and are not substance dependant may simply *choose* a glass of scotch over non-alcoholic beverages because they prefer the taste, or a bit of marijuana over chocolates because they don’t want to gain weight—but they make the choice free from the compulsion of abuse or dependence. Those who drink or use drugs in social situations deal with additional motivations, including attempts to conform to the expectations of their peers. Conformity against better sense calls into question the person’s ability to make reliable and trustworthy judgments and marks something short of maturity. Maturity at the time of use plays a role in making personnel security evaluations: we do not expect 18-year-olds to exhibit the same mature judgment that we expect from 28-year-olds, and thus it becomes easier to find mitigation, for example, for the person who used a drug

⁸² Federal Bureau of Investigation, *Crime in the United States: 2009*, Table 29 “Estimated Number of Arrests”, http://www2.fbi.gov/ucr/cius2009/data/table_29.html

⁸³ Christopher J. Mumola and Jennifer C. Karberg, “Drug Use and Dependence, State and Federal Prisoners, 2004,” U.S. Department of Justice, Bureau of Justice Statistics, Oct 2006 (rev. Jan 2007), 5.

⁸⁴ McFarlin et al. 2001

⁸⁵ Ames et al. 1997

⁸⁶ John D. Clapp, Audrey M. Shillington, and Lance B. Segars, “Deconstructing Contexts of Binge Drinking among College Students, *American Journal of Drug and Alcohol Abuse*, February 2000, 139ff.

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at a party when 18 than for the one who used the same drug at the same party for the same reason but who was 28 at the time. But beyond simple preference and social conformity lies a more basic and more difficult question. For millennia people have used drugs and alcohol in order to affect conscious states, in order, at least in the short term, to make them feel better than they would have felt if they had not used them.⁸⁷ If a person's substance use is motivated only by simple hedonism, then the only question is one of judgment: Do the certain, the probable, and the potential consequences of using the substance outweigh the value of the desired pleasurable effect? If they do, then the person exercised poor judgment and must be assessed accordingly. If they do not, then the person exercised reasonable judgment and the behavior can be seen as irrelevant. Here the question of even occasional use of illegal drugs arises: irrespective of the fact that, as a case in point, a person who uses an illegal substance no more than twice a year is unlikely to suffer an adverse *medical* effect as a result, the potential adverse consequences of the *criminal* act are such that ignoring them suggests at least a degree of impaired judgment. Once the motivation goes beyond a simple hedonism, if the substance use turns out to be an attempt to find a coping mechanism for some other problem, then, whatever else it may be, it takes on the character of a pointer to other things of likely personnel security significance.

Crime⁸⁸

Criminal activity in its various forms conflicts with at least five of the ten criteria EO 12968 establishes for access eligibility: trustworthiness, honesty, reliability, discretion, and sound judgment. Three more—strength of character, freedom from conflicting loyalties and potential for coercion, and willingness and ability to abide by security regulations—might plausibly also belong on the list. Consideration of criminal activity, in fact, helps clarify the larger context for making personnel security decisions: the criteria of the EO are not generic ideas but are tied to national security. The fact that a member of a gang, for example, displays reliability and trustworthiness in the context of the gang's criminal endeavors exacerbates rather than mitigates concerns, because the clearance context is always allegiance to the United States, and allegiance to the United States includes respect for its laws.

The Scope of the Issue

In broadest terms, societies distinguish between two types of unacceptable behaviors: those that are formally adjudicated and punished through the legal system and those that may result in greater or lesser expressions of disapproval but that lie beneath the interest of the formal

⁸⁷ Jean-Pierre Changeux, "Drug Abuse," *Dædalus*, Spring 1998, 145ff.

⁸⁸ 50 U.S.C. 435c establishes statutory clearance exclusions for anyone convicted of a crime who served a sentence greater than one year or who was dishonorably discharged or dismissed from the Armed Forces. Unlike the exclusion for current drug use but like the one for mental incompetence in the same statute, the exclusions here apply only to Restricted Data and to special access programs (including SCI).

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system of punishments. Although the line between the two is not always clear and indeed changes from time to time and from jurisdiction to jurisdiction,⁸⁹ here we concern ourselves only with the former; the latter find their place in the discussion of problematic behavior, below. For the present our interest is in people who break the law, whatever the law happens to be at the particular time and place in question.

This leaves an enormous range of behaviors, everything from parking violations to premeditated murder. According to the FBI's *Crime in the United States*, the rate of property and violent crime in the United States was approximately 3,465 instances per 100,000 inhabitants in 2009; violent crime (murder, forcible rape, robbery, aggravated assault) accounted for just over 14 percent of these, occurring at a rate of approximately 429 instances per 100,000 inhabitants.⁹⁰ But those are just the most serious offenses, omitting misdemeanors and even some felonies, including drug crimes. In California, taken as a typical case, in 2007 there were approximately 3,358 misdemeanor *arrests* and 486 felony drug *arrests* per 100,000 population⁹¹ By another measure, 9.0 percent of men and 1.1 percent of women—5.1 percent of the U.S. population overall—will at some point in their lives be incarcerated in state or federal prison.⁹² This says nothing about the people who spend time in municipal and county jails. These figures give a rough idea of the order of magnitude of criminal activity in the United States, although the actual number of criminal offenses and the actual number of people who would have spent time in prison if only they had been apprehended is doubtless larger. One statistic can help us get some sense of how much larger the population of perpetrators is than the number of arrestees: 18.6 percent of property crimes reported in *Crime in the United States* are cleared, whether by arrest or other means—meaning that in more than four cases out of five the offender is never apprehended, at least for that particular offense; the clearance rate for violent crimes is higher, but still less than half: 47.1 percent⁹³ The absence of an arrest record does not ensure the absence of criminal, even serious criminal, activity. When the people who commit these offenses apply for access eligibility, the personnel security system must decide how what they have done impacts their reliability and trustworthiness.

⁸⁹ *eSME*, 40.

⁹⁰ Federal Bureau of Investigation, *Crime in the United States 2009*, Table 1. http://www2.fbi.gov/ucr/cius2009/data/table_01.html

⁹¹ California Criminal Justice Profiles, Table 4A, http://stats.doj.ca.gov/cjsc_stats/prof07/00/4A.htm; Table 3A http://stats.doj.ca.gov/cjsc_stats/prof07/00/3A.htm The rates of actual offenses are presumably higher, but no good statistics are available as many of the crimes come to the attention of the police, not as a result of complaints, but only in the course of their routine duties. For example, the nearly 12,000 arrests for prostitution are unlikely to represent the sum of prostitution in California, since much of that activity would occur with no one reporting that a crime had been committed and thus would not result in arrest.

⁹² Thomas P. Bonczar and Allen J. Beck, *Lifetime Likelihood of Going to State or Federal Prison*, (U.S. Department of Justice, Bureau of Justice Statistics Special Report NCJ-160092, March 1997), 2.

⁹³ *Crime in the United States 2009*, Table 25, http://www2.fbi.gov/ucr/cius2009/data/table_25.html

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Crime and Criminals

With regard to serious breaches of law, there are criminals and then there are people who at some point in their lives commit a crime. The former act repeatedly;⁹⁴ some of them perpetrate hundreds of offenses in their lifetimes, while others act only sporadically—the only difference is frequency. The latter, on the other hand, commit one single serious violation. They have been law-abiding up to the time of their crime and will, whether they are caught or not, almost certainly be law-abiding afterwards.⁹⁵ Their crimes occur at the confluence of circumstances; they are crimes of anomalous opportunity. What can be said of serious crimes—meaning the sorts of offenses dealt with in the FBI’s annual report *Crime in the United States*—can also be said of lesser offenses: some people commit them routinely, others occasionally, and still others only once.

Criminologists offer variously nuanced definitions of crime. Some focus on objective criteria; seen this way, crime is “an act that violates the criminal law and is punishable by the state. Criminal *laws* are formalized or codified *norms*, which are rules that make explicit certain social expectations about what is appropriate behavior for particular people in specific situations.”⁹⁶ Such a definition says nothing of the criminal’s motivation or anything else that might provide some degree of qualification: if the legislature has proscribed an act and has provided for the punishment of anyone who commits it, then it is a crime; conversely, if the legislature has not proscribed an act, then it is not a crime. This definition is a good place to begin; however, it provides little to help delineate *why* committing a crime might have a bearing on a person’s subsequent reliability and trustworthiness. For that, we need to turn to an approach that views crimes as “acts of force or fraud undertaken in pursuit of self-interest.”⁹⁷ The notion of *self-interest*⁹⁸ *pursued by coercive means* points to a critical element in understanding why past criminal behavior raises concerns about future reliability and trustworthiness. Those who have committed crimes have demonstrated a willingness to violate the implicit trust that is necessary between people for society to work, and, absent evidence to the contrary, they have done so for selfish purposes. When confronted with a choice of acting either according to “the rules that make explicit certain social expectations about what is appropriate behavior” or according to the dictates of their own appetites, they have acted according to the latter. The key is *have acted*. The issue is not the presence of some thought, obscure or explicit, about doing something, nor even a predisposition to crime however determined, but the *demonstrated*

⁹⁴ For example, 6.4 percent of 272,111 persons released from prison in 1994 were responsible for 45 or more crimes each. Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994* (Washington, DC: Bureau of Justice Statistics, 2002, report NCJ 193427), Table 4.

⁹⁵ *eSME*, 40.

⁹⁶ John E. Conklin, *Criminology*, 7th ed. (Boston: Allyn and Bacon, 2001), 6.

⁹⁷ Michael R. Gottfredson and Travis Hirschi, *A General Theory of Crime* (Stanford, CA: Stanford University Press, 1990), 15. Conklin, 5.

⁹⁸ “Regard to, or pursuit of, one’s own advantage or welfare, *esp. to the exclusion of regard for others.*” *OED*, emphasis added.

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willingness and ability to commit a crime. Nor, for that matter, is the character of the *act* changed by the presence, when crime occurs, of extenuating circumstances, even factors that make of a person a passive agent for crime rather than someone who acts volitionally. Such circumstances may well exist in any given case, but they play a role, not in turning the crime in question into something benign, but in demonstrating why in the case at hand it may be possible or even necessary to overlook the implications usually arising out of an instance of criminal behavior. They provide matters of mitigation, in other words, but the fact of the crime that they mitigate and what it says about the person's willingness to violate other established rules of conduct such as those for protecting national security information still must be dealt with.

Recidivism

Crimes are breaches of trust, and someone who has committed one has demonstrated untrustworthiness. However, the fact of having committed a crime is troublesome from a more mundane, more practical perspective: people who involve themselves with crime once are likely to do so again. As a case in point, of 272,111 persons released from prison in 1994, 67.5 percent had been rearrested within three years, 46.9 percent reconvicted, and 25.4 percent sent back to jail. These 272,111 people had committed a recorded 4,132,174 offenses up to 1994 and added 744,480 more in the three years after their release—an average of 17.9 crimes each.⁹⁹ Of course, a lack of arrests and convictions does not guarantee that a person will remain crime-free—after all, each of those quarter-million-plus people at some point had to commit a first crime. Conversely, the presence of prior arrests and convictions does not guarantee that a person will reoffend—at least some of the people released from prison in 1994 had *not* been rearrested after three years, and the longer individuals go without reoffending, the less likely it becomes that they will reoffend.¹⁰⁰ In fact, depending on age at arrest and the crime involved, those who do not reoffend for a number of years reach a point at which their likelihood of criminal involvement becomes no greater than that of the population at large. Thus, for example, a person arrested for robbery at age 18 who engages in no criminal activity for the next 8 years has reached the point where he is no more likely to commit a crime of any kind than any peer in the general population.¹⁰¹ Likewise, the person who has committed a crime of anomalous opportunity is unlikely to reoffend: the crime, regardless of seriousness, grew out of a set of circumstances rather than any criminal disposition. Criminologists have done important work

⁹⁹ Langan and Levin, 3-4. The study surveys prisoners from 15 states accounting for two-thirds of all releases from prison in 1994.

¹⁰⁰ The figure, of course, would be 32.5 percent *if* we could assume that *every* arrest were reported to and recorded by the state and FBI records repositories Langan and Levin used as the sources of their information. The authors take care to note (p. 2) that no such assumption is possible. The 67.5 percent rearrest rate may well be higher, to say nothing of the possibility of persons reoffending but not getting caught.

¹⁰¹ Alfred Blumenstein and Kiminori Nakamura, "'Redemption' in an Era of Widespread Criminal Background Checks," *NIJ Journal*, 263 2009, 13, <http://www.ojp.usdoj.gov/nij/journals/263/redemption.htm>

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examining predictors of recidivism besides time since the last offense, but time since the last offense appears to be the most significant.¹⁰²

Age and the Likelihood of Crime

While most juvenile offenders do not become adult criminals, most adult criminals started out as juvenile offenders.¹⁰³ Crime is disproportionately an activity of the young and of men and boys; persons of either sex between the ages of 10 and 34, while constituting 34.1 percent of the population, committed 68.2 percent of the over 10.7 million crimes reported in *Crime in the United States* for 2008, and males regardless of age committed 75.4 percent of the offenses. Figure 1 compares the percentage of arrests in 2008 by age group with the percentage of the U.S. population as a whole by age group. It further shows the percentage of arrests of males.¹⁰⁴ At the same time, most young men do not commit crimes, at least ones for which they suffer arrest. In 2008, the number of arrests of men between 20 and 24 (1.6 million) equals 15.4

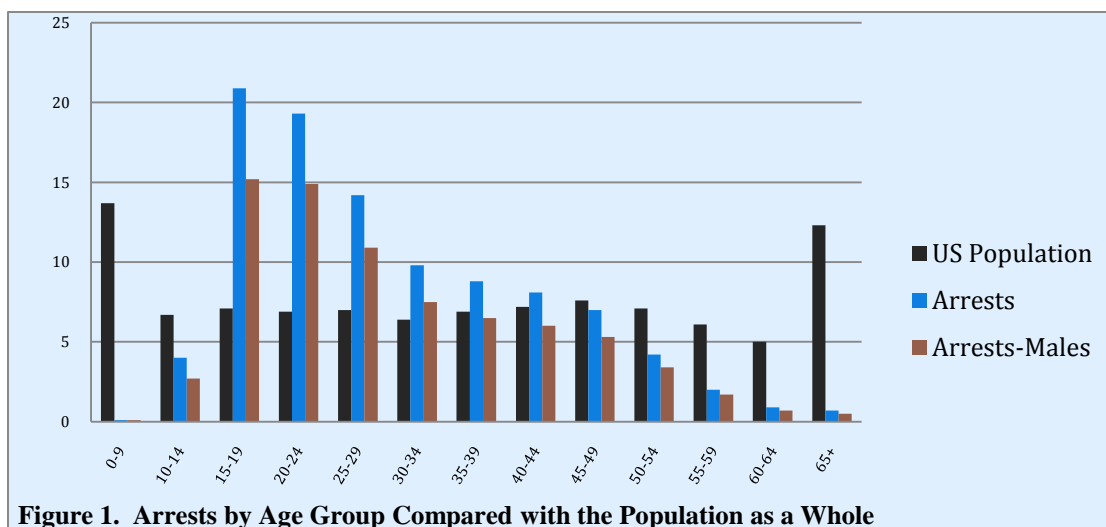


Figure 1. Arrests by Age Group Compared with the Population as a Whole

percent of the male population (10.4 million) of the same age. All of these numbers, of course, have inherent instabilities, created on the one hand by multiple arrests of the same person and on the other by crimes for which no arrest is ever made; however, they do suggest an order of magnitude. Age is a risk factor, but it neither causes nor in any real sense predicts whether a specific individual will succumb to crime.

¹⁰² See, for example, Paul Gendreau, Tracy Little, and Claire Goggin, "A meta-analysis of the predictors of adult offender recidivism: What works?" *Criminology* (34:4, Nov 1996), 575-607.

¹⁰³ *eSME*, 39.

¹⁰⁴ Crime data developed from *Crime in the United States 2008*, Tables 38-39; population data from U.S. Census Bureau, *Current Population Survey, Annual Social and Economic Supplement 2008*, Table 1. This table uses 2008 because, while crime data for both 2008 and 2009 was available at the time of writing, the most recent population data available was from 2008.

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Alcohol, Drugs, and Crime

The examination of alcohol and drugs above deferred consideration of the legal aspects of their possession and use to the present discussion of crime. We take them up now.

The possession of alcohol, other than by minors or in specific circumstances (e.g., in violation of laws that prohibit open containers of alcohol in motor vehicles), faces no legal prohibition, nor does its use (again, except by minors). Alcohol becomes an issue of crime either as a necessary component of certain offenses or as a contributing cause to an offense that also can and does occur in the absence of alcohol—assault, for example. In 2008, 19.0 percent of the victims of violent crime noted that their attackers had been drinking beforehand.¹⁰⁵ That does not mean that alcohol caused those crimes, although it would be fair to assume that, in some number of them, had the perpetrator not been drinking, the crime would not have taken place. Thus alcohol can be and often is a contributing factor to crime, but it is by no means a precondition for crime nor is crime a likely result of using alcohol.

Over half—52.4 percent—of federal prisoners are incarcerated for drug offenses.¹⁰⁶ Nationwide, in 2009 drug offenses accounted for 12.2 percent of all arrests—12.5 percent in 2004.¹⁰⁷ These are “drug-defined” offenses, activities indistinguishable from drug involvement: drug *possession*, drug *use*, drug *distribution*, things that, were the drugs in question themselves legalized, would cease to be crimes. The more important question is the relationship between drugs and other types of crime—“drug-related” offenses—anything *but* possession, use, distribution, and their variants, meaning crimes that are committed while under the influence of drugs and that would remain crimes whether drugs were involved or not.¹⁰⁸ It is a truism that “drug addicts and heavy drug users have a high likelihood of being involved in violent criminal behaviors.”¹⁰⁹ Throughout the 10 jurisdictions surveyed by the Office of National Drug Control Policy’s Arrestee Drug Abuse Monitoring Program, substantial numbers of arrestees—and at rates much higher than those for the population in general—test positive for drug use at the time of arrest; Table 16 records 2008 figures for arrestees testing positive for marijuana and cocaine and compares them with current use in the 12-and-over population at large.

¹⁰⁵ Bureau of Justice Statistics, “Alcohol and Crime: Data from 2002 to 2008,” http://bjs.ojp.usdoj.gov/content/acf/apt1_crimes_by_type.cfm

¹⁰⁶ U.S. Department of Justice, Federal Bureau of Prisons, *State of the Bureau 2008*, 61.

¹⁰⁷ *Crime in the United States 2009*, Table 29; *Crime in the United States 2004*, Table 29.

¹⁰⁸ See “Fact Sheet: Drug-Related Crime” (Rockville, MD: ONDCP Drug & Crime Clearinghouse, September 1994) for definitions.

¹⁰⁹ Jiang Yu and William R. Williford, “Alcohol, Other Drugs, and Criminality: A Structural Analysis,” *American Journal of Drug and Alcohol Abuse* (20:3, August 1994).

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Table 16: Marijuana and Cocaine Use at Time of Arrest 2008¹¹⁰

Drug	Current Use Gen'l Pop	Arrestees Testing Positive	
		Low	High
Marijuana	6.1%	30.8%*	48.8%‡
Cocaine	0.7%	17.2%†	43.8%‡

*Washington, DC †Sacramento, CA ‡Chicago, IL

Regardless of the actual psychological and physiological effects of drug use, current drug users are involved in criminal activity out of proportion with their numbers in the population at large. It may be that among those willing to break the taboos associated with drug use are disproportionately individuals also less inclined to honor other taboos such as prohibitions against crime, and at least some people commit their crimes to obtain the wherewithal to purchase more drugs. While substance abuse is by no means a necessary precondition for crime, nor is criminal activity proof of substance abuse, the relationship between the two is suggestive of a nexus sufficiently worrisome from the point of view of assessing reliability and trustworthiness: other things equal, drug users are at greater risk of being or becoming criminals than are those who abstain.

SEXUAL CRIME. Paraphilias may or may not involve criminal activity: fetishism probably will not, pedophilia invariably will. Similarly, criminal sexual activity may or may not involve a paraphilia: a mental health disorder is not a precondition for the rapist to attack, although he of course may have one. Thus while any given sexual crime may raise the question of an underlying paraphilia, the answer to that question is not always yes.

Contemporary society views sexual crimes differently than it does other violations of law. The FBI sponsors the National Sex Offender Registry¹¹¹ as a means of accessing the separate registries of sex offenders maintained by the states, yet there are no similar publically available registries for other offenders such as car thieves or housebreakers. Its existence reinforces the perception that perpetrators of sexual crimes are more troubling, more dangerous, more worthy of being shunned once they reemerge from custody, than are the perpetrators of other crimes involving a comparable or even greater level of violence. The nature of sexual crime—the violation of trust, the violation of person, and at least in some cases the possible effects on a human life created as a consequence of the crime—all contribute to this perception. Yet the most authoritative work to date suggests that sex offenders are *less* likely to be rearrested for a crime of any kind within three years of leaving prison than are non-sex offenders: 43 percent compared with 68 percent of individuals released from state prisons in 1994. At the same time, 5.3 percent of the sex offenders did commit another sex offense within three years of release, and of the subgroup of child molesters, 3.3 percent reoffended with another child.

¹¹⁰ Office of National Drug Control Policy, *ADAM II: 2008 Annual Report*, Washington, DC, April 2009, Table 3.3; 2009 SAMHSA NSDUH, 14-15.

¹¹¹ <http://www.fbi.gov/scams-safety/registry>

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Unlike with other criminals, the age of the offender played no role in the probability of recidivism.¹¹² The numbers, however, suggest nothing more than a sense of the probability of recidivism; they say nothing about the nature of the crime committed: and if 43 percent is significantly less than 68 percent, it is still worrisome. In the end it is this nature of sexual crime itself that places it in a different category than other, otherwise comparable, crime.

But not all sexual crimes are assaults; some involve no violence at all and, as in the case of prostitution, can even be consensual, so-called victimless crimes. Yet even if we were to agree that prostitution itself is an unobjectionable transaction between consenting adults, there remains that fact that involvement in prostitution wherever it has been criminalized inevitably associates participants with criminals and thus opens up a potential channel for exploitation that otherwise would not exist. There, more than in the nature of the act itself, lies any personnel security concern.¹¹³ On the other hand, some instances of statutory rape, those in which partners are of substantially the same age but one above and one below the age of consent, can raise problematic issues. Although the legal case is clear, and offenders do make their way onto sex offender registers, it is by no means clear that their crimes raise the same concerns as do those of other sexual offenders.¹¹⁴

WHITE COLLAR CRIME. White collar crime¹¹⁵ differs from other forms by virtue of its veneer of gentility. Yet that veneer is only that, for all elements of the definition of crime alluded to above—a punishable violation of law committed for reasons of self-interest—are present. It may in fact be more pernicious, for it typically demands a degree of premeditation and planning and functioning over time unlikely in much street crime.¹¹⁶ There is no such thing as a “white collar crime of passion,” even if emotions can play a part in the decision to initiate one, just as they can with espionage.¹¹⁷ The activities of white collar criminals are no more anomalous than those of street criminals: 43 percent of the individuals included in the Yale White Collar Crime Project had prior arrests; 12 percent had four or more.¹¹⁸ Taking the embezzler and the bank robber as

¹¹² Patrick A. Langan, Erica L. Schmitt, Matthew R. Durose, *Recidivism of Sex Offenders Released from Prison in 1994*, U.S. Department of Justice, Bureau of Justice Statistics, 2003.

¹¹³ *iSME*, 26.

¹¹⁴ *eSME*, 44.

¹¹⁵ There has been considerable debate about what precisely constitutes white collar crime, with various scholars including and excluding given types of behavior in formulating definitions. See M.S. Krause, *Contemporary White Collar Crime Research: A Survey of Findings Relevant to Personnel Security Research*, PSMRP, 2002, 6-9. Here the term is being used conceptually in the sense of crimes committed against employers (e.g., embezzlement, theft of goods, time-card fraud), against the public (e.g., fraudulent advertising), and against the government (e.g., tax evasion). This is consistent with Krause’s conclusion that what J.W. Coleman (*The Criminal Elite: The Sociology of White Collar Crime*, New York, St. Martin’s Press, 1989) calls “occupational crime” best suits what is relevant to personnel security in any understanding of white collar crime.

¹¹⁶ *eSME*, 40.

¹¹⁷ Gary Harris, Terence J. Thompson, and Nicholas J. Ciccarello, *Anger and Espionage: Report of an Interview with Earl Edwin Pitts, 28-29 August 2002*, PSMRP, 2002 discusses the role Pitts’ anger against the FBI played in his decision to spy for the Soviet Union.

¹¹⁸ Krause, 28.

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examples of white collar and street criminals (who, in this case moreover, want to steal the same thing), the difference between them is that the former is in a trusted position, steals by the subtle manipulation of records, and eschews overt violence; the latter is an outsider, makes demands that are anything but subtle, and often threatens and sometimes exercises violence. Yet of the two, the embezzler's offense more closely matches the actual criminal threat against national security information: the spy is a trusted insider who copies and removes information and does so without the need to resort to violence. Espionage is a white collar crime.¹¹⁹

Financial Issues

Financial Distress and Unexplained Affluence

Financial issues are among the most frequently encountered by the personnel security process.¹²⁰ Whether this is so because they are in fact at the forefront of the problems present in the cleared and would-be-cleared populations or because the data identifying them are relatively easy to collect compared to those relevant to other issues is a separate and for the moment unanswerable question. Regardless of their frequency relative to other matters of interest, however, financial issues merit scrutiny. They are of two orders:

(1) *Financial distress.* Traditionally, financial distress has been seen both as a possible indicator of lack of reliability and trustworthiness and as a potential vulnerability. On the one hand, the analogy could be made that the person who is careless with something as important as meeting financial responsibilities is apt to be just as careless in meeting national security responsibilities; on the other, financial distress could lead a person to take excessive risk—the extreme being espionage for pay—in an attempt to secure the resources necessary to resolve the problem. While both of these are legitimate as far as they go, they overlook three important points.¹²¹ First, people can be and often are subjected to financial stresses, even extreme ones, for reasons having nothing to do with their degree of reliability and trustworthiness: unanticipated losses of employment, serious illnesses, natural disasters, and deteriorated national or global economic conditions they are powerless to control can all create them. Second, the vulnerability to extreme measures to resolve issues, while real, depends too much on other factors to be anything more than a possibility to be considered. Third, perceptions can be as important as facts: someone with a sound credit profile and who other measures of financial well-being suggest is in a satisfactory position may nonetheless fear being on the brink of financial ruin, whether because of unrealistic expectations or out of some concern about possible future financial drains. A credit bureau report will be silent about these concerns, but they can be at least as debilitating as actual financial distress, at least regarding the question of vulnerability. However, while identifying objective financial difficulties involves nothing more than a few

¹¹⁹ *eSME*, 45.

¹²⁰ *iSME*, 21.

¹²¹ *eSME*, 52.

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calculations, identifying perceptions of financial difficulty requires subtle analysis of hints contained in a background investigation, a more complex and less certain task.

(2) *Unexplained affluence.* The issue with unexplained affluence is not wealth, but its unknown source. Once the source has been identified as legitimate—e.g., an inheritance or a legal settlement—the concern evaporates. At the same time, if the source is identified as illegitimate—e.g., criminal earnings or payment for espionage—the concern shifts to whatever has been uncovered. In either case, unexplained affluence is never an issue in itself, but always a symptom that requires resolution: denying or revoking access eligibility for “unexplained affluence” is illegitimate, while denying or revoking it for what the process of resolving its cause has revealed is not. That much is simple, but determining what levels and types of affluence require explaining is another matter. It is one thing to identify retrospectively assets that a person acquired from an illicit source and see them as “unexplained,” but another to determine prospectively the difference between pointers to criminal activities that call for investigation and pointers to good financial planning or good fortune.

Just as unexplained affluence serves as a marker rather than an issue, something that may point to something else that is the actual concern, financial distress can perform the same function. This happens when the cause of the financial problem is itself an issue of concern such as pathological gambling or drug use. It can even be a pointer indirectly: this happens when the financial problem that appears on a credit report results from extortion or blackmail resulting from the desire to hide some criminal involvement or anything else the victim considers too shameful to be revealed. No investigation of financial issues is complete until the underlying cause has been determined.

Finances and Espionage

Money has fluctuated as an incentive for espionage; it was the sole or primary motivation for 45.5 percent of the 66 spies between 1947 and 1979, for 67.1 percent of the 70 between 1980 and 1989, but for only 27.0 percent of the 37 between 1990 and 2007.¹²² Thus not everyone who spies does so for money; and even among those who do, financial considerations are often only one of several motivators. Indeed, in the group from 1990 to 2007 only one, Shaaban Shaaban, claimed money as his sole reason for spying.¹²³ Nonetheless, money does play a role in espionage, and even those whose motivation was elsewhere often have been paid for their spying. Furthermore, convicted spies have been shown to be more likely than similar individuals who never committed espionage to have had financial issues: an examination of 40 recent spies found that 19 of them—47.5 percent—had had substantive financial issues while only 4 of the 40 demographically matched individuals—10.0 percent—with whom they were compared did.¹²⁴

¹²² Herbig, *Changes in Espionage*, Table 10.

¹²³ Herbig, 63.

¹²⁴ Terry Thompson, *A Study of Vulnerability Factors in Espionage by the Trusted Insider*. diss, Union Institute, 2003, 190.

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Finally, both financial distress and unexplained affluence can appear in the same case, as can be seen by the fact that the former played a role at the start of Aldrich Ames's espionage, while the latter became relevant as it progressed.

Certainly, foreign intelligence services use money as a lure for potential spies, and potential spies understand that they will be paid for their espionage. Yet if the relevance of finances to espionage is clear, defining the financial indicators of espionage remains problematic. Financial need, real or perceived, may be one of several precursors to espionage, yet only rarely do cleared people with money difficulties involve themselves in it. Greed is, perhaps at bottom, an even greater motivator than need, but greed can at best be measured indirectly—and, of course, even when identified, it provides no prima facie proof of a willingness to spy. The most that any financial data can *predict* is a slightly increased susceptibility to espionage.

Financial indicators of espionage once it begins, however, can provide a more productive line of inquiry. Certain financial activities, such as the large cash transactions monitored under the Bank Secrecy Act and significant shifts in a person's credit profile, may provide the first clues that lead to uncovering a spy, or they may provide additional, supporting evidence in cases where suspicions of espionage have been raised in some other way.

Finances and General Questions of Reliability and Trustworthiness

When financial distress has not resulted from some activity that is in itself a concern in making determinations of access eligibility, there remains the question of its meaning, if any, for the assessment of an individual's reliability and trustworthiness. There is at least some evidence to suggest that prior financial issues increase the likelihood of future counterproductive work behaviors, at least on those touching in some sense on monetary matters—not only the failure to pay debts, but theft and illegally soliciting items of value. Among Bureau of Prison employees studied in 2008, 33.1 percent of those who had answered one or more of the financial concerns questions “yes” on the Questionnaire for Public Trust Positions had subsequently been involved in a counterproductive work behavior as opposed to 18.1 percent of those who had answered “no” to all the questions.¹²⁵

Yet, as already noted, financial distress need not suggest irresponsibility. *Self-inflicted financial distress* describes situations where unsupportable indebtedness arises from decisions that reflect irresponsibility in the use of money: spending beyond one's means for no necessary purpose. *Imposed financial distress*, on the other hand, describes situations where it arises despite all reasonable efforts to avert it: legitimate and unavoidable expenses outrun income, or unforeseeable events destroy a heretofore carefully managed financial plan. Both types of financial difficulties have in common the need of the person involved for additional money to satisfy creditors, and they look the same on a credit report. Where they differ is in the question

¹²⁵ Edward S. Oppler, Brian D. Lyons, Debora A. Ricks, Scott H. Oppler, “The Relationship Between Financial History and Counterproductive Work Behavior,” *International Journal of Selection and Assessment* 16:4, December 2008, 417f.

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of responsibility: self-inflicted unmanageable indebtedness may be evidence for irresponsibility, imposed indebtedness is not.¹²⁶

Financial Distress and Irresponsibility

Financial distress that can be shown to be the consequence of irresponsible behavior suggests an unwillingness or inability to manage money, but also an unwillingness or inability to consider the possible adverse effects of one's actions on others. The financial distress itself is less worrisome than the irresponsibility that caused it. The issue is in fact not even whether financial irresponsibility correlates meaningfully with any other specific forms of irresponsibility, because it is a component of irresponsibility as such and thus its presence provides evidence worthy of skeptical consideration. That said, there is no unambiguous border where responsible behavior ceases and irresponsibility begins. Even the various tests of creditworthiness used by the financial industry offer little help, for their purpose is the more narrow one of determining the probability of a person's being able to manage an additional debt—a mortgage or car payment or line of credit—successfully.¹²⁷ High debt-to-income ratios, for example, say nothing about how a person is managing debt, they say nothing about the circumstances of the debt, they say only that the margin for accepting much more of it is small. There is no reason to believe that a person who is debt-free is any more or less reliable and trustworthy than someone with a mortgage and a car payment who is also repaying a student loan.

In some cases “distress” may be too strong a term to describe what is happening: a person might establish a pattern of late payments, for example, not because of any shortage of funds, but simply from lack of attention, lack of care, or lack of competence—in which case the issue is in fact not financial at all, but one of poor judgment.

Financial Difficulties from Causes Other than Irresponsibility

It is one thing to be financially irresponsible, it is another to find oneself in a financially precarious position. Of those in the latter category, it is one thing to be there because of financial difficulties generated by unforeseen and unforeseeable circumstances, it is another to be there because of a certain naïveté.¹²⁸ As an example, the drop in housing prices affects both these groups. With the exception of one year, median housing prices in the United States increased annually from 1963 to 2007.¹²⁹ Thus individuals buying houses in 2007 could reasonably expect, based on long-term data, that their investments would continue to appreciate; making financial decisions based on those expectations appeared a sound thing to do. Yet by 2009 median housing

¹²⁶ *eSME*, 55.

¹²⁷ *eSME*, 53, 55.

¹²⁸ *eSME*, 52.

¹²⁹ The one exception, 1991, saw a 2.4 percent decrease, which was reversed in 1992 and erased before the end of 1993.

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prices had decreased by 12.6 percent.¹³⁰ Reasonable calculations based on reasonable expectations can and do go awry. The difference between those who were caught up in circumstances despite having made reasonable decisions and the naïve is that the latter's decisions were not reasonable to begin with; for them the collapse of the housing market did not cause their financial stress but merely exacerbated the financial distress that would have developed in any case. Their unreasonable assumptions (e.g., that they would still be able to afford their balloon mortgages when the interest rate increased) had already marked them out for difficulties.

When there is no reason to expect irresponsibility as its cause, the steps taken by a person to address and resolve financial distress are critical.¹³¹ If the response is reasonable and responsible, even if it includes something as worrisome as bankruptcy or default, if the evidence suggests that the person is working to resolve issues in the best way available, then any concerns about reliability and trustworthiness lessen. Taking financial counseling and education are important positive indicators. Thus, as a matter of moral judgment, good faith efforts to resolve problems mitigate them.¹³² However, national security decisions are not moral decisions, but pragmatic ones. To the extent that they assess an *attitude*, the pragmatic and moral judgments are identical; to the extent they measure a *vulnerability*, the pragmatic judgment must be to examine the specific circumstances of a person's financial difficulties critically. "Vulnerability" here refers not just to egregious breaches of security such as espionage or other crime, but to the question whether the financial difficulties of a responsible person interfere with the ability to function in a secure environment. That, if anything, is a psychological question; it is certainly not a financial one. The financial record raises it, but it cannot answer it.

Security Practices

Demonstrated Failure to Safeguard Protected Information

Protected information refers to material with established formal limitations on unrestricted exposure. Inside government it is anything covered by the exemptions to the Freedom of Information Act (5 U.S.C. 552[b]), which include classified information, but also such things as personnel and medical files. Outside government it would include among other things a company's proprietary information, a bank's account data, and a police department's files relating to ongoing investigations.

¹³⁰ U.S. Census Bureau, "Median and Average Sale Prices of New Homes Sold in the United States," downloaded Dec 2, 2010 from <http://www.census.gov/const/uspriceann.pdf>

¹³¹ See, for example, Angela C. Lyons, Tommye White, Shawn Howard, "The Effect of Bankruptcy Counseling and Education on Debtors' Financial Well-Being: Evidence from the Front Lines," Money Management International and The University of Illinois at Urbana/Champaign, 2008, http://www.cefe.illinois.edu/research/reports/The%20Effect%20of%20Bankruptcy%20Counseling%20and%20Education_122008.pdf

¹³² *eSME*, 54, 56.

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Those granted access to classified or any other form of protected information are expected to safeguard it from unauthorized disclosure. Intrinsic to the value of anything properly classified is its secret character: its value is diminished, destroyed, or even turned into a liability through exposure. The various security regulations and procedures identify the tools and practices necessary for protecting classified information; they require compliance on the part of those entrusted with access to it. Any breach of security requirements opens the potential for compromise whether one takes place in fact or not.

Every other matter of personnel security interest is mediated through a general concern for reliability and trustworthiness. Here, however, the connection is more direct: failure to safeguard classified information is a specific behavior the personnel security program exists to help prevent. When a failure is inadvertent or occurs under extenuating circumstances then denial or revocation of access eligibility is almost certainly uncalled for—much as revoking the driver's license of every person who has been at fault in an automobile accident regardless of the circumstances is inappropriate. However, *patterns* of unintentional disclosures or intentional disclosures of any kind are a different matter.¹³³ A person with multiple instances of failing to safeguard protected information may be demonstrating an inability to grasp and to act on relevant security practices or may be acting out of an unwillingness to give them due heed; in either case the behavior that the personnel security program is intended to preclude is in evidence and can no longer be attributed to benign or anomalous causes. Intentional unauthorized disclosures place individual views about what does and does not merit safeguarding ahead of a formal decision that the information in question requires protection. As long as that decision is legitimate and made according to established rules, the person who has intentionally circumvented it by releasing the information has called his or her reliability and trustworthiness, and thus eligibility for continued access to classified information, into question. To resume the analogy with driving, the person who intentionally releases protected information is no longer equivalent to the driver who causes an accident through negligent or inadvertent circumstance but with no intention of doing so, but rather to the driver who chooses to use an automobile as a weapon.

Failure to Cooperate with the Personnel Security Process, Material Falsification

In order to make informed and fair judgments about granting access eligibility, it is important for adjudicators to have accurate and complete information. That information comes from several sources exploited during the background investigation, but by far the richest is the person being investigated.¹³⁴ It follows that the completeness of a background investigation is

¹³³ *iSME*, 25.

¹³⁴ In Ralph M. Carney's 1996 study of issue cases, *SSBI Source Yield: An Examination of Sources Contacted during the SSBI* (Monterey, CA: PERSEREC), 81 percent of issue information came from the subject in the form of answers to the questions on the personnel security questionnaire and responses to those asked during the subject interview (see Table 3, p. 4). subsequent studies of various aspects of investigative productivity have confirmed the relative richness of the subject as a source. Gary

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degraded when its subject refuses to provide necessary information, or provides false information, or refuses to execute the releases that permit the government to collect it, or refuses to participate in procedures meant to resolve issues of concern. A failure to cooperate—whether by omitting or misrepresenting facts or by impeding the efficient collection of potentially relevant information—thus would reduce the likelihood that the information necessary to make a valid decision would be available. If in the face of such a refusal an investigation were nonetheless to go forward, it might ultimately develop all relevant information despite the subject's lack of candor and cooperation, but it would almost certainly require more intensive investigative work and take more time than it otherwise would have, thus increasing costs and diverting investigative resources from other requirements. Seen in this light, refusal to cooperate with security screening can only be understood as an attempt to undermine the process itself and as such calls into question the person's willingness to abide by the security regimen necessary to protect classified information.¹³⁵

Problematic Behavior

Behaviors may raise concerns about granting a person eligibility for access to classified information without touching upon psychosocial matters, or criminal activity, or questionable finances, or unsound security practices; they may have nothing to do with foreign associations and be innocent of any connection with acts against the United States. These could involve either activities that increase a person's vulnerability to blackmail, or rulebreaking that does not rise to the level of a criminal offense, or associations with criminals that engender concerns about their degree of influence, or anything that otherwise suggests that placing a person into a national security environment would be disruptive to the point of adversely impacting the ability to safeguard classified information. The relevant question when confronting any of these is: Does a particular event or condition or trait, whatever it might be, adversely impact the person's reliability and trustworthiness and, if so, to what degree?

Information Technology

If there is any single attribute that distinguishes the twenty-first century from its predecessors, it is the nearly ubiquitous use of microcomputers and digital networks. Such cyber capabilities today serve as the preferred means of information management in nearly every workplace, no matter how small, and in private homes, where information handling and communications capabilities that were once too expensive or too esoteric for personal use have become the preferred medium for discovering and retrieving, creating, storing, and exchanging information, together with other uses, ranging from on-line shopping to payment of bills to

Harris and Bryan A. Castelda, *Applying Phasing to the Single Scope Background Investigation* (Washington, DC: DNI Special Security Center, 2008) found that the subject interview alone accounted for 82.8 percent of all issues identified (Table 2).

¹³⁵ *iSME*, 26.

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submission of income tax returns and other government forms, that would have been unimaginable as little as thirty years ago.

While the explosion of use of such capabilities has largely been a boon to productivity and convenience, the cyber revolution is not without its deleterious consequences. Of particular relevance to personnel security are three effects of this kind:

- ◆ The creation, storage, and communication of classified information by computer and computer networks have altered in significant ways what it means to have access to, and to handle, classified information.
- ◆ The near universal reliance on digital communications has created new vulnerabilities to espionage and sabotage, in the form of “cyber-attacks” that, while they may be launched from the outside, may also be launched from the inside by cleared personnel.
- ◆ A new, on-line culture of discourse has arisen in which concerns with, and restraints on, disclosure of personal information have been reduced by the illusion of privacy created as a consequence of the solipsistic nature of communications by means of an inanimate computer screen and keyboard.

The Adjudicative Guidelines issued in 1997 were the first to include language addressing information technology. The creation of an IT Guideline did not enjoy universal support at the time among personnel security professionals, some of whom argued that anything rising to the level of a concern that had been done with IT would already be captured by an existing Guideline: using a computer to commit a crime did not alter the fact that it was still a crime, a security violation was a security violation whether it involved a computer or a hard-copy document, and so on. The argument was never that IT-based activities were irrelevant, rather that calling them out as a special category of concern was redundant. The counterargument, persuasive at the time, was that IT was becoming so integrated into the business model of the classified community and was so important and would only become more important, that calling special attention to it by creating a separate Guideline for it was worth any redundancy it might involve. Furthermore, a separate Guideline would serve as a means for conveying to anyone inclined to think otherwise that there was no special dispensation for on-line activities, that the way people interacted with their computers was just as important as the way they interacted with anything else.

Today the very ubiquity of computers in both public and private life revives the question of the relevance of a separate Guideline for IT: an argument can now be made that information technology in all its forms has become *so* ubiquitous, *so* much a part of what we do and who we are that it no longer makes sense to continue to single it out. After all, there are no separate Guidelines for other tools in daily use, for the telephone or the automobile. The counterargument is much as it was in 1997: it may or may not be true that a separate IT Guideline is redundant; even if it is, however, that fact is beside the point, for the essential purpose of a separate Guideline is to ensure that behaviors that directly and adversely affect

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information technology systems, for the very reason of their criticality, are properly considered.¹³⁶

Problematic IT Behaviors

A behavior that raises a concern when it does *not* involve the use of IT raises *at least* as much of a concern when it does. The use of IT may help explain a behavior's circumstances, but it never ameliorates it and may aggravate it. An embezzler commits the same crime whether manipulating a pen-and-paper ledger or a data base, and someone commits a security violation when providing classified information to an uncleared person whether in a letter or in a posting to a social networking site. In the first example, the crime will appear identical regardless of how committed, but in the second the use of IT compounds the problem because of the easy availability of the information to far more people than just its intended recipient. IT may have made both the crime and the security violation easier to commit, its availability may even have been the deciding factor in bringing them about, but neither of those considerations is mitigating.

More to the point, however, is the fact that the nature of IT has created vulnerabilities whose repercussions can be far-reaching. Acts, whatever their immediate motivation, that adversely affect the confidentiality, integrity, and availability of a system—acts that, in a pre-computer world, would have been either trivial or impossible—become the primary point of interest in assessing a person's IT use.

From the point of view of personnel security, there are three *levels* of problematic IT use and six *characterizations*. Table 17 provides an overview.

Table 17: 2009 IT Levels and Characterizations

Level	Characterization	Where	
		Work	Outside
Time Mgt	Nonproductive	x	
	Counterproductive	x	
Harmful	OPSEC and Failure to Protect	x	x
Malicious	Criminal Result	x	x
	Criminal	x	x
	National Security Threat	x	x

In this schema, *time management* issues are anything that is not work-related that occurs when work should be taking place; *harmful* issues are those that, without intending malice, nonetheless create security concerns; and *malicious* issues are those that are in fact intended to do damage, whether to another person or to the United States, for the benefit of another.

Nonproductive and *counterproductive* IT behaviors differ in degree.¹³⁷ They are by their definitions both exclusively workplace behaviors. The former involves any otherwise

¹³⁶ *iSME*, 32.

¹³⁷ Paul M. Mastrangelo, Wendi Everton, and Jeffrey A. Jolton, "Personal Use of Work Computers: Distraction versus Destruction," *CyberPsychology & Behavior*, 9:6, 2006, 730-41.

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unexceptionable act (e.g., sending and receiving personal email, web surfing) conducted at but not related to work. Fair-use policies can render some or all of this behavior outside consideration, and at any rate it is of personnel security interest only when it begins to interfere with the ability of an individual to meet his or her national security responsibilities. The latter is more problematic, because by definition it *does* meet that threshold, or at the very least has a reasonable potential for disruptiveness: downloading and displaying pornography or partisan political materials, for example.

Individuals using information technology can engage in *violations of operational security discipline* or other *failures to protect classified information* that can result in its unauthorized disclosure. Unlike nonproductive and counterproductive behaviors, these can take place anywhere. Violating protocols by writing a letter home from the front that talks about a forthcoming operation into enemy territory risks exposure of protected information to the recipient of the letter; sending the same information in an email exposes it to anyone with the equipment necessary to intercept it, including the enemy; posting it on a website or social networking page gives it to the world.¹³⁸ The concern, however, not only is relevant to matters of communication, but also is a function of the ease of storing considerable quantities of data on very small media. The inadvertent loss of a classified package might compromise one document, the inadvertent loss of a thumb drive might compromise hundreds, even thousands, of them. Absent malice, violations of IT security policies and regulations are problems of this type.

The difference between *criminal* behavior and behavior with *criminal result* is the ability to prosecute. The latter recognizes that the online environment has created and continues to create circumstances that the more slowly moving legal processes spread across the world's jurisdictions sometimes find difficult to keep pace with. Thus an activity may be conducted in such a way that, strictly speaking, it violates no laws, or it may be conducted from safe havens in which case the question of the ability to prosecute despite criminality is moot, but its result is indistinguishable from that of a crime that results in a trial and conviction.¹³⁹ *National security threats* are those targeting the IT infrastructure of the government, whether from within or without. They also are crimes, but crimes against the United States.

The borders are fluid. Sending an email to a friend from a work computer is a nonproductive behavior but, from the point of personnel security, trivial. However, if the email contains something classified, then it becomes a failure to protect and is no longer trivial. Unauthorized copying of classified material onto removable media is a security violation—another failure to protect whether the information is compromised or not—if the purpose is to provide data to a co-worker who needs it; it is a national security threat if the purpose is to provide it to a foreign intelligence service or the press.

¹³⁸ *iSME*, 24.

¹³⁹ *iSME*, 32.

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The Personnel Security Focus

Security management of today's classified workspace faces multiple challenges presented by the ubiquity and central operational role of IT. It must focus not only all classical security problems—unauthorized removal of information, breaches of physical integrity, and so on—but also on ensuring that IT systems maintain confidentiality, integrity, and availability. Anything done by an individual that compromises the IT system raises an issue, irrespective of motive. So, besides high-end hostile attacks that could take any form and use any tools, mundane infractions from sharing a password to introducing unauthorized software or hardware to manipulating data to making unauthorized engineering changes are all matters of concern. Those are not personnel security issues in the narrow sense, yet personnel security cannot be indifferent to them, and those who do them, even the least of them, are demonstrating shortcomings in reliability and trustworthiness that call for assessment.

Internal Threats to Critical Systems

Cleared individuals with legitimate system access may, if they possess the requisite computer skills, disrupt or destroy operations or manipulate systems for malicious purposes. Although all such threats violate the integrity of systems, they may nonetheless be placed on a scale of roughly increasing concern:¹⁴⁰

- ◆ Explorers, who manipulate systems for curiosity and without malicious intent;
- ◆ Good Samaritans, who take unauthorized actions in an attempt to improve systems;
- ◆ Hackers, who gain self-satisfaction from defeating system safeguards;
- ◆ Machiavellians, who sabotage systems for personal advancement;
- ◆ Exceptions, who misuse systems with impunity because their unique knowledge and skills make them essentially irreplaceable;
- ◆ Avengers, who attack systems in retaliation for perceived injustices against them;
- ◆ Career Thieves, who use government or company IT to commit crime;
- ◆ Moles, who use government or company IT to commit espionage.

These are all IT-specific, and in all but the last two the essential element is an attack against the IT system itself in some way. They are, in other words, except for the last two, acts for which realistic non-IT equivalents with the potential to generate commensurate damage would be difficult to find. The last two may or may not attack the integrity of the systems they use, but they certainly manipulate them.

¹⁴⁰ This taxonomy is from Eric D. Shaw, Jerrold M. Post, and Kevin G. Ruby, *Insider Threat to Critical Systems: Typology of Perpetrators, Security Vulnerabilities, Recommendations*. Bethesda, MD: Political Psychology Associates, 1999.

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RECOMMENDATIONS

The following moves through the current nationally approved Adjudicative Guidelines, dated December 29, 2005, except that the version published as Intelligence Community Policy Guidance 704.2 on October 2, 2008, is used as the basis for the discussion of Guideline C. There are both substantive and editorial recommendations; the former are addressed in a “rationale” following the proposed changes for each Guideline, the latter are left to speak for themselves. Not every paragraph or subparagraph of every Guideline contains a change; only those sections or subsections with proposed changes are shown. The recommendations in this section are made without reference to any reorganization of the Guidelines and would not be affected by it.

Preamble

add PREAMBLE PROPOSED: A clear precondition for eligibility for access to classified information is allegiance to the United States, *allegiance* meaning here having acted and continuing to act in consonance with the obligations to constitutional government acquired through citizenship. There is no positive test for allegiance, but there are negative indicators. These include participation in or support for acts against the United States, which is where Guideline A is relevant. Another negative indicator is placing the welfare or interests of another country above those of the United States, which is where Guidelines B and C are relevant, as well as Guideline L insofar as the outside activity is counter to U.S. interests. Finally, failing to adhere to the laws of the United States can make Guideline J relevant if the violation of law is harmful to stated U.S. interests.

Rationale

Allegiance in the context of access eligibility decisions is “the tie or obligation of a subject to his sovereign, or government” or “the fidelity owed by a subject or citizen to a sovereign or government.”¹⁴¹ Thus it applies not only to issues raised in Guideline A; the person need not have committed or contemplated a crime against the United States, but simply be so placed as to face the real possibility of having to choose between continuing to maintain his or her obligations to the United States and acting against U.S. interests in favor of another country. Furthermore, allegiance is an appropriate concern with someone who is involved in any criminal activities that do not rise to the level of the offenses specified in Guideline A but that are nonetheless meant to harm U.S. interests.

¹⁴¹ “Allegiance,” *OED*; “Allegiance,” *Merriam-Webster Unabridged*, <http://www.merriam-webster.com/dictionary/allegiance>

Guideline A

title current: Allegiance to the United States

title proposed: Acts against the United States

para 3 current: 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.

para 3 proposed: An individual who engages in acts against the United States or provides support or encouragement to those who do, has already demonstrated willingness to compromise national security. Reasonable suspicions that an individual has engaged in such acts must be resolved in favor of national security.

subpara 5(b) current: the individual's involvement was only with the lawful or humanitarian aspects of such an organization;

subpara 5(b) proposed: the individual's involvement was humanitarian and permitted under U.S. law;

Rationale

Title and para 3: The material in the Guideline is sound as written; however, it addresses allegiance only in terms of the most egregious violations of it, acts better characterized as "Acts against the United States."

Para 5: Even superficially benign involvement in organizations hostile to the U.S. can be problematic. Establishing the twin tests of "humanitarian" and "permitted under U.S. law" help ameliorate any concern.

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Guideline B

para 6 current: Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

para 6 proposed: Foreign contacts and interests, including business, financial, and property interests, are a security concern if they result in divided allegiance; furthermore, they may be a security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether it is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

subpara 7(c) current: counterintelligence information, that may be classified indicates that the individual's access to protected information may involve unacceptable risk to national security;

subpara 7(c) proposed: counterintelligence information, whether classified or unclassified, indicating that the individual's access to protected information may involve unacceptable risk to national security;

subpara 7(i) current: conduct, especially while traveling outside the U.S. which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

subpara 7(i) proposed: conduct while traveling or residing outside the U.S. which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

Rationale

The one change going beyond the editorial is the introduction of a distinction between, on the one hand, foreign contacts and interests that indicate divided allegiance—given the centrality of allegiance, any such relationships *do* indicate a security concern that must be dealt with—and, on the other hand, other relationships that do not reach this threshold and which *may* indicate a security concern but also *may* be benign. The relevant concern being addressed in subpara 7(i) is

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behavior outside the United States that gives local authorities an at least superficially plausible excuse, usually based on local law or custom, to exploit the cleared U.S. citizen involved in some way counter to U.S. national security interests. That can happen whether the person involved is traveling or residing overseas, but it must happen overseas.

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Guideline C

There have existed since October 2008 two incompatible versions of Guideline C: one contained in the Adjudicative Guidelines of December 2005 and the other in Intelligence Community Policy Guidance (ICPG) 704.2. This has created a situation inconsistent with the requirement of Executive Order 12968 for a “common set of adjudicative guidelines,”¹⁴² an inconsistency made more troublesome by the fact that the version used by the government at large is more restrictive than the one used for the granting of SCI access eligibility. The ICPG version of the Guideline, which is more in keeping with the findings of this report and which was endorsed in principle by the Security Executive Agent Advisory Committee at its April 2010 session, is used as the basis for the comments below, with reference to the 2005 version as appropriate in the remarks.

title current: Foreign Preference

title proposed: Foreign Involvement

para C1 current: When an individual acts in such a way as to establish a preference for a foreign country over the United States, he or she may provide information or make decisions that are harmful to the interests of the United States. The principal goal of the Foreign Preference assessment is to determine the risk based on foreign associations that information may be compromised if access is approved; it is not a measurement of how loyal a subject is to the United States. Therefore, a finding that there is a preference must be established by adequate evidence of heightened risks related to national security. Furthermore, the fact that a U.S. citizen is or has become a citizen of another country does not establish a preference for a foreign country. Being a U.S. citizen and a citizen of another country is not prohibited or disqualifying absent a showing of heightened risks related to national security. The same is true for the exercise of any right, privilege or obligation of foreign citizenship or action to acquire or obtain recognition of a foreign citizenship by a U.S. citizen.

para C1 proposed: Foreign involvement can be of two types: *official* involvement includes, although it is not limited to, seeking, acquiring, or exercising the rights and obligations of foreign citizenship; *prejudicial* involvement consists of performing acts for the benefit of some foreign entity. Foreign involvement of either type raises concerns about an individual's reliability and trustworthiness to protect classified information when it is in conflict with U.S. national interests or when the individual acts to conceal it. *By itself* the fact that a U.S. citizen is a citizen of another country, or has exercised some of the rights of that citizenship, is not disqualifying without an objective showing of such conflict or attempt at concealment.

¹⁴² §3.1.

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subpara C2b current: Failure to disclose to an appropriate security official the acquisition of citizenship in any other country;

subpara C2b proposed: the application for and/or acquisition of citizenship in any other country;

subpara C2c current: failure to report to an appropriate security official the possession of a passport issued by any other country;

subpara C2c proposed: failure to report to an appropriate security official the possession of a passport issued by any country other than the United States;

subpara C2e current. Performing or attempting to perform duties, or otherwise acting so as to serve the interests of a foreign person, group, organization, or government in conflict with U.S. national security interests;

subpara C2e proposed. Participation in foreign official activities, including but not limited to: (1) assuming or attempting to assume any type of employment, position, or political office in a foreign government, international entity (but excluding those in which the United States is a member), or military organization; (2) willingness to bear arms for other than the United States; (3) voluntary participation in foreign political or electoral activities; and (4) otherwise acting so as to serve the interests of a foreign person, group, organization, or government in any way that conflicts with U.S. national security interests;

subpara C2f current: intentional act of expatriation from the United States such as declaration of intent to renounce United States citizenship or renunciation of U.S. citizenship, with the exception of routine oaths associated with citizenship in another country;

subpara C2f proposed: an intentional act of expatriation from the United States such as declaration of intent to renounce United States citizenship or taking up arms or engaging in acts of transnational terrorism against the United States or its allies.

subpara C2g current: seeking or holding political office in a foreign country; or

subpara C2g proposed: *delete; seeking or holding political office outside the U.S. is subsumed within the recommended language for para C2e.*

subpara C2h current: military service or a willingness to bear arms for a foreign country.

subpara C2h proposed: *delete; military service and the willingness to bear arms for other than the U.S. are subsumed within the recommended language for para C2e.*

subpara C3a current: Any of the potentially disqualifying activities noted in paragraph two above occurred before the initial request for a security clearance granting access to SCI;

subpara C3a proposed: the application for and acquisition of citizenship in a foreign country occurred before the initial request for access eligibility;

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subpara C3b current: any of the potentially disqualifying activities noted in paragraph two above that occurred after the initial request for a security clearance granting access to SCI were sanctioned by a cognizant security authority.

subpara C3b proposed: any potentially disqualifying activity took place after receiving the approval of an appropriate security official.

subpara C3c current: The perceived foreign preference involves a foreign country, entity, or association that poses a low security risk.

subpara C3c proposed: The perceived foreign preference involves a foreign person, entity, or government that poses a low security risk.

Rationale

Title: *Preference* is a vague term, easy enough to speak of in a generic sense, difficult to isolate when addressing a person's national relationships outside the United States. "In any dispute between the U.S. and X, I'm on the side of X" is not a statement of preference, but a declaration of allegiance and as such disqualifying, yet statements less categorical than that—"I like the way X handles that issue better" or "I always root for X at the Olympics," which *are* preferences—have nothing to do with national security. What is actually at issue in Guideline C are those things people do that identify themselves with another country (or international organization), or that attempt to obscure that identity, especially to those responsible for making access eligibility determinations, or that benefit a foreign entity at the expense of U.S. national security interests. Hence calling the Guideline "Foreign Involvement" better captures what is of concern.

Para C1 (para 9 in the 2005 version): The 2008 wording was preoccupied with making the point that holding dual citizenship and acting in ways consistent with it need not be disqualifying, thus it continues at some length to say what it is *not* interested in. The same point can be made more succinctly, which is what the recommended language attempts to do. It makes explicit the two circumstances in which foreign official activity becomes disqualifying: when it conflicts with U.S. national interests and when it is concealed. If the former approaches tautology, it does so with the purpose of providing some basis for grounding a decision: if the U.S. is on good terms with country X, if country X is not a threat to U.S. interests, then, other things equal, someone's dual citizenship with X is of less consequence than it would be if the U.S. and X had incompatible objectives or, worse, were hostile. The latter is a specific, serious variant of behavior otherwise captured in the proposed Guideline N—deliberate concealment of relevant information from the security process.

Para C2 (para 10 in the 2005 version): The 2008 version legitimized the seeking and obtaining of foreign citizenship. Yet it is one thing for persons to hold citizenship in another country because of birth or parentage or because the laws of the country bestow it on them despite their having done nothing to seek it, it is another to apply for and accept such citizenship as an act of volition. In the former circumstances the dual citizenship may be problematic or—

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more likely—benign, depending upon the specifics of the case; in the latter, however, the dual citizenship always raises concerns regarding national attachment. Thus in the former the onus lies with those arguing against eligibility, in the latter it is with those arguing for it. The 2005 version makes holding a foreign passport a potentially disqualifying issue and goes so far as to suggest its destruction. Yet a passport is nothing more than a document that confirms citizenship: the real concern is not the document, but the fact that it supports. If a person's dual citizenship is not a concern, the possession of a passport is unlikely to be; if, on the other hand, the dual citizenship *is* a concern, whether there is also a passport involved makes no difference.

Para C3 (para 11 in the 2005 version): If a given activity is a concern, it makes no difference whether it began before or after the person applied for a clearance; the one possible exception is acquiring a second citizenship, which could well have happened in ignorance of any national security implications.

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Guideline D

para 12 current: Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion. . . .

para 12 proposed: Sexual behavior that involves a criminal offense, reflects lack of judgment or discretion. . . .

subpara 13(b) current: a pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

subpara 13(b) proposed: a pattern of compulsive, self-destructive, or high-risk sexual behavior, including cybersex, that the person is unable to stop despite negative consequences;

subpara 13(c) current: sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

subpara 13(c) proposed: past or present sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

subpara 13(d) current: sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

subpara 13(d) proposed: sexual behavior that reflects lack of discretion or judgment.

add new subpara 14(e) proposed: where there is an underlying mental disorder, it is readily controllable with treatment, and the individual has either successfully completed an appropriate program of treatment or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and has received a favorable prognosis from the attending duly qualified mental health professional.

Rationale

Para 12: The relevant issue for this Guideline is sexual behavior, irrespective of any underlying diagnosable condition. Where such a condition is present it is relevant and requires treatment, but without acting out it is moot: and a diagnosis absent behavior is unlikely.

Para 13: Cybersex—in the sense of simulating sexual intercourse by exchanging messages with another person over the Internet—merits being called out in the Guideline to underscore the point that it is behavior relevant to its concerns even though it does not involve the physical contact that other behaviors do. Cybersex is a matter of concern on its own because of its relationship to sexual addiction,¹⁴³ but also because it is a means of sexual predation, particularly involving minors.

¹⁴³ *eSME*, 24

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Para 14: There has heretofore been no mitigation when there is an underlying psychiatric/psychological disorder that can be and is being successfully managed. The recommended language provides that mitigation.

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<i>Current</i>	<i>Proposed</i>
<p>competent medical authority, or other official government representative;</p> <p>(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single Guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;</p> <p>(d) credible adverse information that is not explicitly covered under any other Guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:</p> <p>(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;</p> <p>(2) disruptive, violent, or other inappropriate behavior in the workplace;</p> <p>(3) a pattern of dishonesty or rule violations;</p> <p>(4) evidence of significant misuse of Government or other employer's time or resources;</p> <p>(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as</p> <p>(1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or</p> <p>(2) while in another country, engaging in</p>	<p>(a) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any single Guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;</p> <p>(b) credible adverse information that is not explicitly covered under any other Guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:</p> <p>(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;</p> <p>(2) disruptive, violent, or other inappropriate behavior in the workplace;</p> <p>(3) a pattern of dishonesty or rule violations;</p> <p>(4) evidence of significant misuse of Government or other employer's time or resources;</p> <p>(c) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign security or intelligence service or other group; such conduct includes:</p> <p>(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;</p> <p>(2) while in another country, engaging in</p>

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<i>Current</i>	<i>Proposed</i>
<p>any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;</p>	<p>any activity that is illegal in that country or that is legal in that country, whether or not it is illegal in the United States;</p>
<p>(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;</p>	<p>(3) while in another country, engaging in activity that, while legal there, is illegal in the United States.</p>
<p>(g) association with persons involved in criminal activity.</p>	<p>(d) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;</p>
<p>17. <i>Conditions that could mitigate security concerns include:</i></p>	<p>(e) association with persons involved in criminal activity.</p>
<p>(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;</p>	<p>17. <i>Conditions that could mitigate security concerns include:</i></p>
<p>(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;</p>	<p>(a) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;</p>
<p>(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;</p>	<p>(b) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;</p>
<p>(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;</p>	<p>(c) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;</p>
<p>(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;</p>	<p>(d) the information was unsubstantiated or from a source of questionable reliability;</p>
<p>(f) the information was unsubstantiated or from a source of questionable reliability;</p>	<p>(e) association with persons involved in</p>
<p>(g) association with persons involved in</p>	

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<i>Current</i>	<i>Proposed</i>
criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.	criminal activities was unwitting or has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Rationale

Regarding the removal of material relating to security processing, see Guideline N below.

Para 17: Adding not being witting of association with persons engaged in crime as a mitigator acknowledges that it is possible in good faith to form relationships with individuals without knowing or having reason to suspect any criminal involvement on their part.

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Guideline F

para 18 current: *The Concern*. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

para 18 proposed: *The Concern*. Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

subpara 19(a) current: inability or unwillingness to satisfy debts;

subpara 19(a) proposed: inability to satisfy debts;

subpara 19(b) current: indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

subpara 19(b) proposed: unwillingness to satisfy debts regardless of the ability to do so;

subpara 19(d) current: deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan

subpara 19(d) proposed: deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan

subpara 19(e) current: consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

subpara 19(e) proposed: consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, and/or other financial analysis;

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subpara 19(f) current: financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

subpara 19(f) proposed: *delete.*

subpara 19(h) current: unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;

subpara 19(h) proposed: unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income;

subpara 19(i) current: compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

subpara 19(i) proposed: *move to Guideline I*

subpara 20(b) current: the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

subpara 20(b) proposed: the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by illegal predatory lending practices), and the individual acted responsibly under the circumstances;

subpara 20(c) current: the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

subpara 20(c) proposed: the person has received or is receiving counseling for the problem from a legitimate and credible source such as a service associated with the National Foundation for Credit Counseling and/or there are clear indications that the problem is being resolved or is under control;

subpara 20(d) current: the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

subpara 20(d) proposed: the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

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Rationale

Para 18: The recommended additional language makes explicit the role of financial matters as potential flags for other issues. (This replaces language currently in para 19.) A financially overextended person may resort to solutions that are strictly speaking legal but nonetheless questionable and likely to exacerbate rather than solve the long-term problem: gambling, acquiescing to predatory lending, and the like. Move “compulsive gambling” to Guideline I (see discussion there).

Para 19: Splitting out *inability* and *unwillingness* into separate subparagraphs acknowledges that they are different things representing different problems: both result in a failure to pay, but in the latter the ability to pay, even if with considerable discomfort, exists but the person chooses not to do so; it is the more serious problem from the point of view of assessing reliability and trustworthiness. The language regarding “frivolous or irresponsible spending” is too subjective to be meaningful. “Income tax evasion” can be deleted from subpara (d) because it is already contained in the more general subpara (g). The language regarding financial problems related to other Guidelines appears redundant in a discussion of “conditions that could raise a security concern and may be disqualifying”; for example, a drug-related financial problem—subpara (f)—is at the same time something else, whether “inability to satisfy debts” because all the person’s money is going to drugs, or a “deceptive or illegal financial practice” because the person is embezzling funds to pay for drugs, etc. The thought is better served by moving it to the introductory “concern” paragraph. Debt-to-income ratio is not as much a measure of financial stress relevant to access eligibility as it is an indicator to loan officers of how much additional debt a person may safely absorb

Para 20: Predatory lending has become an issue of some concern which has caught up many acting in good faith, thus identifying it as a possible mitigator is a matter of practical necessity. Adding “and is adhering to” in subpara (d) closes a loophole: it is one thing to enter into a payment plan, it is another to adhere to it.

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Guideline G

subpara 22(a) current: alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

subpara 22(a) proposed: alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent and regardless of whether formal charges were filed;

subpara 22(b) current: alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

subpara 22(b) proposed: alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

subpara 22(d) current: diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

subpara 22(d) proposed: diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

add new subpara in para 22: the failure to follow treatment advice once diagnosed;

subpara 22(e) current: evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

subpara 22(e) proposed: *delete*.

subpara 23(c) current: the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

subpara 23(c) proposed: the individual is a current employee, has no previous history of treatment and relapse, who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress in a treatment program;

subpara 23(d) current: the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and

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established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

subpara 23(d) proposed: the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Rationale

Para 22: The issue of concern is the alcohol-related incident, which does not change even if formal charges were dropped or never made. The added language in subpara (a) makes this explicit. It is one thing for someone's performance to be diminished because of intoxication, another when that diminished performance places others at risk; hence the addition to subpara (b). The addition to subpara (d) preserves the intent of subpara (e), while deleting the latter removes reference to licensed clinical social workers.

Para 23: Effective treatment programs can take multiple forms; "inpatient or outpatient counseling or rehabilitation" is unnecessarily restrictive. The remainder of subpara (d) is redundant.

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Guideline H

para 24 current: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. (a) Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

para 24 proposed: The illegal use of controlled substances, the misuse of prescription and non-prescription drugs, and the use of other substances in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. (a) *Controlled substance* means any drug, material, or other chemical compound identified and listed in 21 U.S.C. 802; (b) *Substance misuse* is the generic term adopted in this Guideline to describe any of the behaviors listed above.

subpara 25(a) current: Any drug abuse (see above definition);

subpara 25(a) proposed: Any substance misuse (see above definition);

subpara 25(b) current: testing positive for illegal drug use;

subpara 25(b) proposed: testing positive for illegal use of a controlled substance;

subpara 25(c) current: illegal drug possession,

subpara 25(c) proposed: illegal possession of a controlled substance,

subpara 25(e) current: evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

subpara 25(e) proposed: *delete*

subpara 25(g) current: any illegal drug use after being granted a security clearance;

subpara 25(g) proposed: *delete (see first proposed new subpara in para 26, below)*

subpara 25(h) current: expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

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subpara 25(h) proposed: expressed intent to continue substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

subpara 26(b) current: a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) providing a signed statement of intent with automatic revocation of clearance for any violation.

subpara 26(b) proposed: the individual acknowledges his or her substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) providing a signed statement of intent to abstain from all substance misuse, acknowledging that any future misuse is grounds for revocation of access eligibility.

add new subpara in para 26: Substance misuse after being granted a security clearance is normally not mitigatable.

add new subpara in para 26: All use of marijuana was for medical purposes, took place in a jurisdiction permitting such use, was prescribed by a physician or other person authorized by the jurisdiction to do so, and was in clear and unambiguous compliance with the then-applicable state laws providing for medical use of marijuana.

Rationale

Para 24: The recommended changes restate more completely the actual concern of the Guideline. There is an attempt at greater precision of terminology. *Controlled substance* has the advantage over *illegal drug* of being the term used in statute; illegal use of a controlled substance thus becomes any use proscribed by the Controlled Substances Act of 1970, as amended. *Drug abuse* is potentially misleading, suggesting as it does *substance abuse*, which is not strictly speaking a legal term but a diagnostic one indicating a specific level of involvement; a person can easily run afoul of the law by using a substance in a way that no psychiatrist or psychologist would characterize as abuse, and a diagnosis of abuse is not necessary for adverse psychophysiological effects to begin to manifest themselves in behavior. *Substance misuse* avoids this potential source of confusion as a general term for all behaviors relevant to the Guideline: illegal use of controlled substances (not just “illegal drugs,” as only those on Schedule I are illegal in all cases), use of prescription drugs in ways not approved by a physician (overdosing on one’s own medications or using another’s without medical warrant), overdosing or otherwise misusing over-the-counter drugs, and use of other substances, chiefly but by no means exclusively inhalants such as airplane glue and “canned air,” the consequences of which can be of the same order of harm brought about by illegal substances.

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Para 25: Besides following through with use of *substance misuse* in place of *drug abuse*, the recommended revisions here include consistent use of *controlled substance* when referring specifically to illegal acts. Deleting subpara (e) removes the reference to licensed clinical social worker and is thus consistent with the same change in Guideline G. Subpara (g) is in form if not in intent redundant, since formally it says nothing not already said in subpara (a). However, the larger point—which is that, although any substance misuse (drug abuse in the current Guideline) is an issue, it is *more of* an issue if it happens once a clearance has been granted—should not be lost. Accordingly, comparable language is added to para 26 that says substance misuse once a clearance has been granted will not normally be mitigated.

Para 26: A “demonstrated intent not to abuse any drug” is vague; the recommended language attempts to provide some specific shape to what is required: the person’s acknowledgement of the misuse, evidence that he or she is doing something that will put it in the past (e.g., has enrolled in a drug rehabilitation program or is otherwise obtaining and following through with counseling), and the emergence of a pattern of abstinence. Included in that pattern of abstinence is a statement of intent to abstain. The present language goes too far in attempting to decide the result of any relapse in advance. Saying instead that it is grounds for revocation is in line with actual practice, but also allows for the admittedly unlikely possibility of mitigating circumstances for the relapse. Adding an explicit acknowledgement of medical marijuana removes an ambiguity in the current Guidelines. The wording both is consistent with current legal practice and is meant to be flexible to accommodate future shifts in policy.

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Guideline I

subpara 28(a) current: behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other Guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

subpara 28(a) proposed: behavior that casts doubt on an individual's judgment, reliability, or trustworthiness, including but not limited to irresponsible, violent, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behavior;

subpara 28(b) current: an opinion, by a duly qualified mental health professional that the individual has a condition not covered under any other Guideline that may impair judgment, reliability, or trustworthiness;

subpara 28(b) proposed: an opinion, including a prognosis regarding long-term recovery, by a duly qualified mental health professional that the individual has a condition that may impair judgment, reliability, or trustworthiness;

subpara 28(c) current: the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g. failure to take prescribed medication.

subpara 28(c) proposed: the individual has failed to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition.

add new subpara in para 28: pathological gambling, the associated behaviors of which may include unsuccessful attempts to stop gambling; gambling for increasingly higher stakes, usually in an attempt to cover losses; concealing gambling losses; borrowing or stealing money to fund gambling or pay gambling debts; and family conflict.

subpara 29(d) current: the past emotional instability was a temporary condition (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

subpara 29(d) proposed: the past psychological/psychiatric condition was temporary (e.g., one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

subpara 29(e) current: there is no indication of a current problem.

subpara 29(e) proposed: there is no indication of a current problem and the condition is such that recurrence is unlikely.

Rationale

This Guideline covers *conditions* of psychological and psychiatric interest that adversely impact a person's reliability and trustworthiness. These are conditions that are serious enough to

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interfere in a demonstrable way with the exercise of judgment. They often do manifest in problematic behaviors (yet the reverse need not be true, for problematic behaviors do not require an underlying psychological disorder: for example, a person does not have to have one to commit a crime or to fall into financial disorder, although the presence of one might lead to either event). Nonetheless, like Guideline B but unlike any other, it is not necessary for a person to *do* anything for there to be a concern here: that is the consequence of the emphasis on conditions. Diagnoses are important and relevant, but neither the presence nor the absence of one in a given case determines the personnel security outcome: there are diagnosable conditions that, when properly managed, do not preclude access eligibility, just as there are subclinical conditions that call eligibility into question.

An up-to-date Psychological Conditions Guideline is one thing, and that is what has been attempted with the proposed revisions here; however, a Guideline that is broadly effective is a matter of coming to terms with four key challenges, all of which adversely affect the ability of the personnel security process to acquire and properly evaluate the relevant facts relating to a person's mental health. This is not a matter of seeking to make more denials and revocations based on psychological conditions, but rather one of seeking to make more informed decisions, including decisions regarding mitigation, based on accurate, complete, and properly understood information. First, by policy the government itself excludes the reporting of potentially relevant facts: it is certainly true that most—even nearly all—marital, family, and grief counseling is irrelevant to access eligibility, but the presence of such counseling can, at least in conjunction with other issues (e.g. financial stress, alcohol-related incidents, drug use, criminal activity), be relevant in some number of cases. Second, the decision to exclude requiring such reporting itself grows out of the more far-reaching problem of the stigma still attached to *any* mental health counseling or treatment in the view of many.¹⁴⁴ Third, there is the issue of mental health professionals' concerns for patient privacy that may be violated when conveying sensitive information to third parties, particularly in government, who are not themselves mental health professionals.¹⁴⁵ Finally, and related to the third, is the lack in many agencies of a clear and easily accessible line of communication between those making access eligibility determinations and mental health professionals who have a good understanding of the personnel security process, its concerns, and the criteria it uses in its decision-making.¹⁴⁶

Paras 28 and 29: This Guideline is not a catch-all, nor is it a Guideline of last resort; therefore, focusing it on issues “not covered under any other Guideline” is inappropriate. In fact, issues relevant here *can* be related to other Guidelines: the person whose mental health disorder is related to his shoplifting, for example, or whose problem drinking stems from depression. Recovery is an important consideration when considering someone with a mental health

¹⁴⁴ Paul Y. Kim, Thomas W. White, Robert P. Klocko, Lyndon A. Riviere, and Amy B. Adler, “Stigma, Negative Attitudes About Treatment, and Utilization of Mental Health Care Among Soldiers,” *Military Psychology*, 23:1, 2011, 65-81.

¹⁴⁵ *iSME*, 12.

¹⁴⁶ *iSME*, 12.

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disorder, including an understanding of the likelihood of recurrence. Treatment plans are more concrete and easier to measure progress against than the more nebulous “advice.” The relevant issue is any psychological/psychiatric condition, “emotional, mental, or personality condition” being imprecise and vague.

Para 28 Pathological Gambling: Currently Guideline F includes “compulsive or addictive” gambling as an issue of concern. Pathological gambling is currently classified as an impulse control disorder and is diagnosable as such. It is thus not a financial problem, but a mental health problem, albeit one that almost invariably manifests itself by creating financial stress, and so moving it to Guideline I better reflects what is of concern with it. The disorder would not evaporate if the pathological gambler were to win more than lose and thus raise no financial issue. While the Guideline calls out no other specific diagnosis, the nature of pathological gambling—as a disorder the central feature of which is placing objects of high value (money) at risk—warrants special mention; the personnel security process, after all, seeks assiduously to weed out those who would place objects of high value (classified material) at risk.

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Guideline J

subpara 31(a) current: a single serious crime or multiple lesser offenses;

subpara 31(a) proposed: any criminal conduct resulting in prosecution;

subpara 31(b) current: discharge or dismissal from the Armed Forces under dishonorable conditions;

subpara 31(b) proposed: *renumber as 31(d)*

subpara 31(c) current: allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted;

subpara 31(c) proposed: evidence (including but not limited to a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, prosecuted, or convicted;

subpara 31(d) current: individual is currently on parole or probation;

subpara 31(d) proposed: *delete*

subpara 31(e) current: violation of parole or probation, or failure to complete a court-mandated rehabilitation program;

subpara 31(e) proposed: violation of parole, revocation of parole or probation, or failure to complete a court-mandated rehabilitation program;

add new subpara 31(b): a pattern of minor offenses any one of which on its own would be unlikely to affect an access eligibility decision;

subpara 32(c) current: evidence that the person did not commit the offense;

subpara 32(c) proposed: no reliable evidence to support that the person committed the offense;

subpara 32(d) current: there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

subpara 32(d) proposed: there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

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Rationale

Para 31: The recommended changes are an attempt to remove some of the vagueness of the existing language, recognizing that considerable vagueness nonetheless remains. That is an inevitable consequence of the complexity of evaluating acts that range from the all-but-trivial such as a parking ticket to the most serious such as murder and attempting to calibrate their degree of relevance to personnel security decisions. Variations from jurisdiction to jurisdiction in the United States in what constitutes what kind of crime, what is and is not prosecuted, and what does and does not result in a given level of punishment add another degree of complexity. Yet the attitude of a particular jurisdiction about a particular act's seriousness is relevant here, although it is not the main concern: the act itself—what it means for the reliability and trustworthiness of the person who did it—is. The recommended language creates three broad categories. First are acts, no matter what, that were in fact prosecuted; this captures everything that, in a certain place and at a certain time, was thought serious enough to warrant bringing it to court. Second are patterns of minor infractions that by themselves have little significance but that in concert begin to suggest that the person may have a problem with rule-following. Finally are any other criminal acts irrespective of what the judicial system may have done with them or, for that matter, irrespective of whether the judicial system was aware of them. Here the question to be answered is whether a given act, which is also a violation of law, performed by an individual raises doubt about his or her reliability and trustworthiness serious enough to contribute to a denial or revocation of access eligibility.

Para 31 Parole and Probation: The current language identifies parole and probation as issues of concern. As such, however, they are superfluous: neither can occur without some act already relevant to an access eligibility determination being under review. More to the point, parole and probation are not exacerbating conditions, but at worst neutral and at best mitigating: they represent a decision by the judicial system that the person need not be in confinement in order to keep from reoffending. Parole and probation are, in other words, conditions of trust, not issues that increase concern.

Para 32: The present mitigator calling for evidence of innocence in fact requires the proving of a negative, which places innocent people at risk of *unfounded* accusations. *Credible* accusations are already included in the understanding of *evidence* given in para 31. Compliance with the terms of parole or probation suggests rehabilitation. Remorse, on the other hand, is subjective, uncertain, and easy to counterfeit.

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Guideline K

para 33 current: Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

para 33 proposed: Deliberate or negligent failure to comply with rules and regulations for handling protected information—which includes classified and other sensitive government information, but also proprietary information—raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

subpara 34(c) current: loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information, including images, on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, "palm" or pocket device or other adjunct equipment;

subpara 34(c) proposed: loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified or other protected information, including images, on any unapproved equipment or medium;

subpara 34(e) current: copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

subpara 34(e) proposed: copying or modifying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

add new subpara in para 35: the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

Rationale

Para 33: The intent of the Guideline is to enable assessment of a person's history of handling any information that requires protection, classified in the first instance, but also other kinds of sensitive materials, including the information belonging to organizations outside government that they have determined warrants protection or are under legal mandate to protect. Thus, for example, a person's failures as a bank clerk to protect the account information of the bank's customers would be considered under this Guideline if he or she subsequently required a clearance. The recommended change attempts to make this clear while at the same time trying to remain sufficiently general to be usable.

Para 34: The current list of examples in subpara (c) contains by now obsolete or nearly obsolete technologies; any revised list would almost certainly be out of date in a short time.

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Thus it appears best to dispense with any list of examples, the general statement covering any eventuality.

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Guideline L

title current: Outside Activities

title proposed: Conflicts of Interest

Rationale

The Guideline does not concern itself with outside activities *per se*, but only with those specific outside activities likely to raise the question of a conflict of interest with a cleared person's national security responsibilities. Hence "Conflicts of Interest" is a more accurate title.

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Guideline M

para 39 current: Noncompliance with rules, procedures, Guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

para 39 proposed: Failure to comply with rules, procedures, Guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. For the purposes of this Guideline, an Information Technology System is any computer-based device, including any mobile or wireless device, used to create, store, access, process, manipulate, protect, or move information; this includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

subpara 40(a) current: illegal or unauthorized entry into any information technology system or component thereof;

subpara 40(a) proposed: unauthorized entry into any information technology system;

subpara 40(b) current: illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

subpara 40(b) proposed: unauthorized modification, destruction, or manipulation of, or denial of access to, an information technology system or any data in such a system;

subpara 40(d) current: downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

subpara 40(d) proposed: downloading, storing, or transmitting classified or other protected information on or to any unauthorized information technology system;

subpara 40(e) current: unauthorized use of a government or other information technology system;

subpara 40(e) proposed: unauthorized use of any information technology system;

subpara 40(f) current: introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, Guidelines or regulations.

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subpara 40(f) proposed: introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, Guidelines or regulations or when otherwise not authorized.

Rationale

The modified definition of *information technology system* permits using the term throughout the Guideline without the need to keep qualifying it. The Guideline remains focused on actual misuse of IT: misuse of government systems (or of those of a non-governmental employer), including attacks from within, are covered by all provisions of the Guideline; attacks from without are covered by in 40(a), (b), and (c); the transmittal of classified or other protected information to unauthorized systems is covered by in 40(d).

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Guideline N

Guideline N is constructed out of language moved from Guideline E, amended as noted. The following reproduces first the complete text of the current Guideline E, then the complete text of the recommended Guideline N.

<i>Current Guideline E</i>	<i>Proposed Guideline N</i>
<p>15. <i>The Concern.</i> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:</p> <p>(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;</p> <p>(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.</p> <p>16. <i>Conditions that could raise a security concern and may be disqualifying also include:</i></p> <p>(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness,</p>	<p>Falsification and Other Failure to Cooperate with Security Processes</p> <p>42. <i>The Concern.</i> Any failure to provide truthful and candid answers during security processes or any other failure to cooperate with it raises questions about an individual's reliability, trustworthiness, and willingness to protect classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for access eligibility:</p> <p>(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation or polygraph examination if authorized and required;</p> <p>(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.</p> <p>43. <i>Conditions that could raise a security concern and may be disqualifying also include:</i></p> <p>(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness,</p>

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<i>Current Guideline E</i>	<i>Proposed Guideline N</i>
<p>or award fiduciary responsibilities;</p> <p>(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;</p> <p>(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single Guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;</p> <p>(d) credible adverse information that is not explicitly covered under any other Guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:</p> <p>(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;</p> <p>(2) disruptive, violent, or other inappropriate behavior in the workplace;</p> <p>(3) a pattern of dishonesty or rule violations;</p> <p>(4) evidence of significant misuse of Government or other employer's time or resources;</p> <p>(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as</p> <p>(1) engaging in activities which, if</p>	<p>or award fiduciary responsibilities;</p> <p>(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, mental health professional involved in making a recommendation relevant to access eligibility, or other official government representative.</p>

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<i>Current Guideline E</i>	<i>Proposed Guideline N</i>
<p>known, may affect the person's personal, professional, or community standing, or</p> <p>(2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;</p> <p>(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;</p> <p>(g) association with persons involved in criminal activity.</p> <p>17. <i>Conditions that could mitigate security concerns include:</i></p> <p>(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;</p> <p>(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;</p> <p>(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;</p> <p>(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;</p> <p>(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;</p> <p>(f) the information was unsubstantiated or</p>	<p>44. <i>Conditions that could mitigate security concerns include:</i></p> <p>(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;</p> <p>(b) the refusal or failure to cooperate, the omission, or the concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.</p>

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<i>Current Guideline E</i>	<i>Proposed Guideline N</i>
<p>from a source of questionable reliability;</p> <p>(g) association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.</p>	

Rationale

The Intelligence Community in 1980 included “obscur[ing] pertinent or significant facts by falsifying data, i.e. on the Personnel History Statement by either omission or false entry” as one example of behavior relevant to what it called “Undesirable Character Traits.”¹⁴⁷ In 1992 a separate Guideline was created, “Failure to Cooperate,” which addressed instances where a person refused to submit forms or undergo processing.¹⁴⁸ Both falsification and refusal were combined and included as part of “Personal Conduct” in the 1994 revision that served as one basis for the 1997 national Adjudicative Guidelines. However, even by that time it was clear that obstructing the security process in whatever way was not simply one example of some generic problem, but itself an act that struck at the integrity of the personnel security process. Segregating it into a separate Guideline helps underscore its seriousness and make clear its status as a separate issue for which access eligibility can be denied or revoked.

Para 43: The use of “competent medical authority” raises questions that obscure what is sought. There are no physical qualifications for access eligibility; however, an assessment of mental health can be relevant, hence the recommended change. Agencies, of course, may establish physical standards for applicants and even conduct their own examinations, and someone lying about a relevant physical condition would be a concern. But that concern relates to qualifications for employment.

Para 44: When a person initially refuses to cooperate with processing based on advice, a judgment about its quality (“improper or inadequate”) or about the person giving it (“authorized”) is irrelevant. The mitigator applies regardless.

¹⁴⁷ Annex A to DCID 1/14, 19 March 1980, 11.

¹⁴⁸ Annex A to DCID 1/14, 12 August 1994, n.p.

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OPTIONS FOR RESTRUCTURING

Guidelines are not discrete, they contain overlapping elements, and the presence of these elements raises the question whether the Guidelines might not be parsed differently, in a way that better associates like with like and thus simplifies their use. While thinking of DUIs, for example, we might conclude that Alcohol Consumption should be folded into Criminal Conduct, until recalling that a good deal of what is covered in Alcohol Consumption has nothing to do with crime, that in fact Psychological Conditions might be a better fit, but then recalling that problem drinking is properly a mental health issue only when it approaches or meets certain diagnostic criteria. Yet, even before a diagnosis of alcohol abuse or dependence is appropriate, examining alcohol-related incidents through a psychological filter might prove valuable, so moving Guideline G into Guideline I might make sense after all. Then again, it might not: it all depends on whether doing so better informs personnel security decisionmaking, and “better informs” is a slippery concept.

If any attempt to create an arrangement of Guidelines in such a way that they follow some clear and logical pattern will at best be approximate, there are nonetheless familial relationships among Guidelines that can prove useful, at least under certain circumstances and for certain purposes. As a case in point, to facilitate the literature review and focus groups for this project, we developed clusters of Guidelines: National Conflict (A, B, C, L), Psychosocial Considerations (the part of D dealing with psychosexual disorders, G, H, I), Criminal Behavior (the part of D dealing with sexual crime, J, M), Financial Considerations (F), and Other Considerations (E, K). The organization of this report is a variation on that scheme, chosen with a view to supporting the policy discussions meant to ensue while remaining agnostic on the issue of whether the Guidelines themselves would be better organized that way. Thus the relevant question remains whether such arrangements, however useful for study, would do anything to make them more useful to those who have to work with them every day. The following explores options, several for combining Guidelines and one for rearranging the set as a whole; it makes no recommendations but briefly lays out advantages and disadvantages in a way meant to encourage discussion. Nothing here, if adopted, would affect the substance of any of the recommendations made above.

Potential Pairings

There are several subsets of Guidelines similar enough to warrant exploring whether combining them might prove advantageous.

B and C

Both Guidelines B and C address foreign associations: questions of exposure to foreigners and foreign environments, business, and travel in B, questions of status as a person with formal foreign ties in C. Conceptually they could be combined into a single “Foreign Associations” Guideline, creating a single place to look whenever *any* foreign connection arose. If it is difficult to imagine someone who meets any of the criteria of C for whom B is not also relevant, the opposite is not true. Whether or not to preserve separate Guidelines depends on the value of having a separate Guideline to deal with people whose foreign associations cross the line of having an official status in a foreign country.

C and L

Both Guidelines C and L deal with circumstances in which individuals have made a decision to identify themselves in some way with a foreign interest. It is more formal and official with C than with L (and it is possible, although unlikely, for the interest *not* to be foreign with L), but in both Guidelines, in most cases, a relationship exists that is voluntary and—although problematic in some cases of dual citizenship, as we have seen—severable. It is this element of choice that draws the two Guidelines together.

G and H

The misuse of alcohol and the misuse of drugs create the same types of problems, both take the clinical forms of abuse and dependence when they get that far, and their ancillary consequences are part of the same spectrum. Only social convention and legal status distinguish the two. Combining the two into a single Guideline would underscore their similarity, placing them on the same footing, and making it more difficult to justify any tendency to apply different levels of tolerance to similar behaviors. Yet social convention and legal status are not trivial matters and have a place when considering otherwise identical cases. Even the casual user of drugs is committing a crime of the type for which others are in federal penitentiary; no casual user of alcohol is, at least for that reason alone.¹⁴⁹

¹⁴⁹ *eSME*, 30.

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D and I; D and J

Guideline D applies in part to psychosexual disorders (whether or not criminal conduct is involved) and in part to sexual crimes (whether or not a psychosexual disorder is present). Whether to sever these two halves and incorporate them respectively into the Psychological Conditions and Criminal Conduct Guidelines depends on the importance to personnel security decisions of separately identifying problematic sexual behavior irrespective of its type. The Guideline itself evolved out of the long since obsolete practice of excluding homosexuals from access eligibility.¹⁵⁰ Arguing in favor of retaining the Guideline is the ability to call out a few extreme forms of otherwise irrelevant behavior as of concern; arguing against it is its implication that the personnel security system considers itself entitled to examine the sexual life of anyone being considered for access eligibility irrespective of its relevance to the question at hand.

K and N

The recommendations call for creating a separate Guideline N, “Falsification and Other Failure to Cooperate with Security Processes” out of material currently contained in Guideline E. An alternative would be instead to add that material to Guideline K, thus placing both violating security rules and creating impediments to security under a single heading. This has the advantage of placing similar things together, but works against one of the perceived advantages of a separate Guideline N, which is to underscore the seriousness of attempts to short-circuit security processes.

¹⁵⁰ Theodore R. Sarbin, *Homosexuality and Personnel Security*, PERSEREC, 1991, 5 and passim.

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Potential Rearrangement

The Guidelines as they now exist are arranged in only a rough semblance of order: direct assaults against the U.S. at the front, followed by the at least implicitly related foreign associations (except for the foreign associations in Guideline L, which owes its place to its not having been created until 1986); drugs and alcohol are together—and next to the related psychological conditions—but sex is close to neither of its two components, the rest appear haphazardly placed. While there may be no foolproof arrangement, at least one potential reordering does go some way toward creating a more logical structure. Whether any advantages created by adopting it (or some variant of it) would outweigh the costs of abandoning the by now familiar and comfortable series of alphabetical designators is a separate—but perhaps the decisive—matter. This arrangement establishes eight classes of issues, arranged in rough order of their *direct* relevance to national security matters. Security matters come forward, finances and personal behavior move down. Five of the classes deal with a single Guideline topic: each of these is then its own Guideline. Three, however, contain multiple Guidelines. Crime is placed next to psychosocial issues to acknowledge the criminal aspects of some of the behavior in that class. What is now Guideline L is considered a foreign associations issue.

Table 18 lays out the arrangement.

Table 18: Guidelines Reordered

Class		Guideline	
I	Crimes against the U.S.	A	Crimes against the U.S.
II	Foreign associations	B	Influence
		C	Official activity
		L	Conflict of interest
III	Security matters	K	Violations
		N	Falsification and Noncooperation
IV	Misuse of IT Systems	M	Misuse of IT Systems
V	Crime	J	Crime
VI	Psychosocial issues	I	Psychological
		G	Alcohol
		H	Drugs
		D	Sex
VII	Finances	F	Finances
VIII	Personal behavior	E	Personal behavior

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APPENDIX A: DETAILED METHODOLOGY

The following describes the methodology undertaken for each of the three components—the literature review, the focus groups with experts in domains relevant to the Guidelines but who are not personnel security experts, and focus groups with senior security professionals.

Independent Literature Review

To encourage an independent review of the research literature the ODNI SSD Research Program sought out an external consulting firm to conduct a review of scholarly literature relevant to the Adjudicative Guidelines. The ODNI SSD research program solicited sample reports from several industrial/organizational consulting companies, familiarized themselves with the qualifications and educational background of staff researchers, and reviewed the companies' clientele. When possible, research program staff consulted with other government agencies who had utilized company services. Based on this review, the ODNI Research Program selected a company specializing in organizational consulting with a strong industrial-organizational psychology focus and experienced in translating research literature to operational personnel selection and assessment issues.

The ODNI Research Program provided instruction to the consultant to review the social and behavioral sciences literature, both empirical and conceptual, deemed pertinent to the association of indicators noted in the Adjudicative Guideline (Clusters I-IV) and an individual's ability to safeguard classified national security information.¹⁵¹ In their review the consultant was asked to further identify any emerging factors not currently considered within the Adjudicative Guidelines but may be associated with security risk. Consistent with the "whole person concept," this included associations between both positive and negative indicators.

Throughout the review the consultant conferred with ODNI SSD Research Program staff to ensure appropriate scope of the literature reviewed. Because of this ongoing and iterative process, the literature search was not constrained to a set number of keyword searches or pre-determined databases. In addition to academic research articles, the ODNI SSD Research Program provided a number of Unclassified government reports.¹⁵²

The consultant structured resultant literature into a three—tiered system: Level 1 evidence, which contained resources examining the association of behaviors noted in the Guidelines with specific adverse security acts, ranging from security violations to espionage. Level 2 evidence included resources that examined behaviors noted in the Guidelines and their

¹⁵¹ There was no literature review for Cluster V, Miscellaneous. It was determined that Guideline E is diffuse, and material relevant to its many concerns was likely to surface in other clusters. Further, Guideline K would yield little to inform the security relevance of security violations.

¹⁵² To encourage a better understanding of the prevalence of indicators noted in the Guidelines, the ODNI SSD Research Program also provided the consultant with anonymized background investigation data.

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association to behaviors analogous with adverse security practices, such as counterproductive work behaviors, workplace deviance, workplace aggression, workplace safety, organizational citizenship, and white collar crime. Level 3 evidence included research examining factors assumed to be *underlying* the behaviors noted in the Guidelines, and their association to analogous adverse security practices. For example, the extent to which a personality attribute predicts counter-productive work behavior.

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Focus Groups with External Subject Matter Experts

To identify potential participants ODNI SSD Research Program reviewed the relevant literature, conferred solicited recommendations from colleagues, and when possible contacted candidates directly to learn more about their knowledge base in a particular domain. Candidates were ranked by the ODNI SSD Research Program staff according to demonstrated expertise and the perceived value of contributions (to include representation of diverse viewpoints on major issues). In rank order, candidates were contacted by email with a formal invitation to participate as a subject matter expert in a one-day focus group to contribute to discussions surrounding their area of expertise and its relevance to the policy that governs the way an individual is vetted for a security clearance. Participants were offered reimbursement for travel, lodging, and a *per diem* allowance for food and incidentals. 52 percent of those invited declined participation.¹⁵³

Based on recommendations by the focus group facilitator, groups were constrained to no more than 12 individuals. All participants were provided with the Adjudicative Guidelines and list of discussion questions in preparation for the focus group. A list of those who participated appears in Appendix B.

To encourage impartiality, the ODNI SSD Research Program contracted with an experienced professional facilitator to lead all External Subject Matter Focus Groups. The focus groups were all day-sessions (Cluster II included a half-day follow-up session), led by the facilitator. The ODNI SSD research program reviewed, and if necessary revised the agenda prior to each focus group. During the focus groups the facilitator further consulted with the ODNI SSD Research Program staff to ensure that the discussion adequately covered areas of interest. The ODNI SSD Research Program invited a senior security professional well acquainted with the Adjudicative Guidelines and the adjudications process not affiliated with the ODNI SSD Research Program to chair focus group meetings whose role was to provide context whenever appropriate.

Participants were told that discussions would be recorded by note takers and were instructed to notify the facilitator if they preferred any comment or comments to be recorded without attribution. The focus groups and individual sessions were structured around the three questions posited earlier:

1. What should we be aware of or looking at generically in terms of each of the Guidelines while not thwarting other national security interests?
2. What are we not thinking about that we should be in this regard?
3. What are we thinking about that we should be considering differently?

¹⁵³ Focus groups of academic and professional experts were conducted for Clusters I, II, and III; for Cluster IV, we interviewed academics individually who had an interest in the relationship between financial behavior and access eligibility.

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At least two note-takers attended each focus group. A minutes document was compiled using these notes and reviewed by ODNI SSD Research Program staff in attendance. Minutes documents were then distributed to participants for revision or clarification.

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Focus Groups with Personnel Security Professionals

Email invitations were sent to Personnel Security Directors of intelligence, defense, and nuclear communities, as well as civilian agencies. Based on recommendations by the focus group facilitator, groups were constrained to no more than 12 individuals. All participants were provided with the list of discussion questions in preparation for the focus group. A list of those who participated appears in Appendix C.¹⁵⁴

Internal focus group sessions addressed all five clusters, with an additional sixth session to consider overarching issues such as sequence and structure: whether to change the order of the Guidelines to facilitate their logical flow, whether to combine some and divide others, whether to move elements of one into another, and so on. The organization of the internal focus groups paralleled that used for the external: the facilitator consulted with the ODNI SSD Research program prior to and during the focus group and the same three questions structured each session. The facilitator for the external groups led the internal ones, and the same senior security professional chaired these groups, providing context whenever appropriate.

All internal focus groups were conducted on a non-attribution basis because their intent was to extract expert opinion through guided discussion, not solicit agency positions. This means that the minutes of the sessions while capturing the points raised, do not record the contributions of individual participants. Similar to the focus groups with external subject matter experts, at least two note-takers attended each focus group. A minutes document was compiled using these notes.

¹⁵⁴ Agencies sending participants: Central Intelligence Agency, Department of Homeland Security, Defense Intelligence Agency, Department of Defense, Department of Energy, Department of Justice, Department of State, Federal Bureau of Investigation, Department of Health and Human Services, National Geospatial-Intelligence Agency, National Reconnaissance Office, National Security Agency, Office of the Director of National Intelligence, Office of the National Counterintelligence Executive, Office of Personnel Management, and Department of the Treasury.

APPENDICES B, C, D

Appendices B, C, and D appear as separate volumes, as follows:

Appendix B – Literature Review

- Part 1 – Foundations for Literature Review of Adjudicative Guidelines
- Part 2 – The National Conflict Cluster
- Part 3 – The Psychosocial Considerations Cluster
- Part 4 – The Criminal Behavior Cluster
- Part 5 – The Financial Considerations Cluster
- Part 6 – Adjudicative Guidelines Literature Review: Preliminary Recommendations

Appendix C – External Subject Matter Experts

- Part 1 – Focus Group and Interview Session Notes
- Part 2 – Biographical Sketches of Participants

Appendix D – Internal Subject Matter Experts Focus Group Session Notes