



# Due Process Procedures for Civilian Employees and Military Members

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Note: SCI due process procedures will be conducted in accordance with DoDI 5210.45 and Intelligence Community Policy Guidance Number 704.3



The first stage involves the delivery of the Statement of Reasons (SOR) package, which contains a comprehensive and detailed written explanation of the basis for the unfavorable determination. It also includes an explanation of the subject's rights and a detailed statement explaining the intent (Letter of Intent (LOI)) to deny or revoke a security clearance eligibility by the DCSA CAS.

The second stage is the decision made by the subject as to whether they wish to refute the preliminary adjudicative determination, by responding with information or explanation which they wish the DCSA CAS to consider prior to making the final national security eligibility determination.

The third stage is the DCSA CAS's final national security eligibility determination and subsequent notification to the subject as to whether the reply mitigates all the adjudicative security concerns addressed in the SOR. The DCSA CAS will make a favorable or unfavorable determination. If they make an unfavorable determination, they will send a Letter of Denial (LOD) or a Letter of Revocation (LOR) to the subject.

The fourth stage is the subject's formal appeal of the DCSA CAS's final national security eligibility denial or revocation determination to the PSAB and/or DOHA.

Chart 1 depicts an approximate overview of the process.

Deliver	Decide	Submit	Appeal
<ul style="list-style-type: none"> <li>Statement of Reasons package received</li> </ul>	<ul style="list-style-type: none"> <li>Notification of intent to submit a response</li> </ul>	<ul style="list-style-type: none"> <li>DCSA CAS reviews response</li> <li>Subject receives notification of decision</li> </ul>	<ul style="list-style-type: none"> <li>Request to appeal DCSA CAS LOD or LOR</li> <li>Submission of Appeal packet to PSAB or DOHA</li> </ul>

## Role of the Security Professional

As a Security Professional (SP), you have an important role in the due process procedure. The process begins when the adjudicative facility, usually the DCSA Consolidated Adjudication Services (CAS), provides the subject a Statement of Reasons (SOR) package, via their organization's Security Management Office (SMO). The SOR contains a notification of intent to deny or revoke a subject's national security eligibility determination addressed to the head of the organization. The SOR package includes the following:

- A summary of the security concerns and supporting adverse information.
- Instructions for responding to the SOR.
- A copy of the relevant adjudicative guidelines.

(d) A list of pertinent documents relied upon to render the proposed unfavorable determination.

As an SP, you will serve as an advisor to the head of your organization in this process. Upon receipt of the notice of intent to revoke or deny security clearance eligibility, which is usually received electronically, the SP must advise the organization head as to whether the subject's access to classified information and/or assignment to a sensitive position should be suspended. This decision should not be taken lightly, as it can impact the organization's mission, the subject's ability to work, and our national security. The SP should take the following actions:

- Review responsibilities associated with the SOR package with the organization head.
- Provide a recommendation to the organization head to suspend or not to suspend access using a risk management approach. The recommendation should be weighed more heavily on protecting national security.
- Promptly brief the subject regarding the response or appeals process and provide the SOR package to the subject.

The SOR is written by a National Security Adjudicator and explains in detail the reason(s) behind the intent to deny or revoke the subject's national security eligibility and the security concerns the subject must address if they choose to refute the preliminary determination. The subject has 10 days to sign the Statement of Intent (SOI). The SP must notify the adjudicative facility of the subject's intent by forwarding the notification to reflect subject's intent to respond. The subject's reply must be submitted no later than thirty 30 calendar days from the receipt of the date of the LOI and SOR. Subjects are not permitted to communicate directly with the DCSA CAS.

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The subject should be advised of the following:

- The right to be represented by counsel or other representative at their own expense, and if a military service member they may contact their Judge Advocate General's office, if eligible, for general guidance.
- The SP's advice should not be perceived as legal advice; however, the subject must understand the consequences and serious impact on their career if found ineligible for access to classified information and/or assignment to a national security sensitive position.
- An extension may be granted by their SMO. However, additional extensions may only be granted by the adjudication facility when factors beyond their control (e.g., failure of the DCSA CAS or the Investigative Service Provider (ISP) to provide records in a timely manner) warrant granting additional time.
- The SP should assist the subject in obtaining and providing pertinent documentation by the suspense date that supports the subject's mitigating response to the SOR. The SP should ensure the response to the SOR is promptly endorsed by the appropriate authority and immediately forwarded to the DCSA CAS. If the subject is currently deployed or other operational circumstances prevent the organization from initiating this due process action, the SP should immediately contact the DCSA CAS. The SP must make sure the subject fully understands that if they do not wish to respond to the SOR, or the DCSA CAS does not receive a response within the designated or agreed upon timeframe, the preliminary DCSA CAS denial or revocation determination will become final as the adjudicator's determination can only be based on the merits of the currently available information.



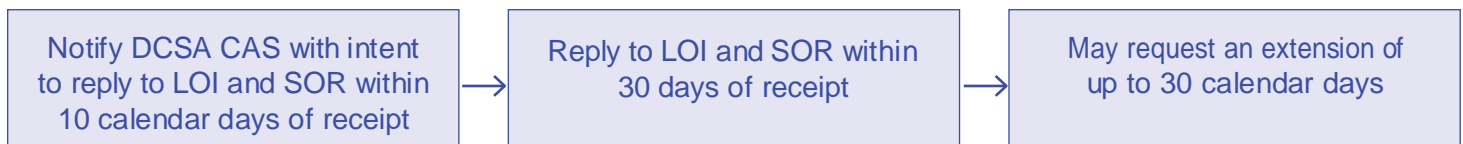
## The Subject's Responsibility

If you receive a Statement of Reasons (SOR) package, it is recommended you take the time to carefully review all of its documents. If you currently have access to classified information, your access may be suspended by your organization's Security Management Office (SMO).

You have the right to respond to the DCSA CAS's preliminary decision by responding in writing with an explanation and providing any supporting documentation that you want the DCSA CAS to consider prior to rendering a final determination.

- You also may request your investigative records from the ISP via a Freedom of Information Act request. These are the records reviewed by the DCSA CAS as part of the national security eligibility determination process.
- Additionally you can obtain legal counsel, or other assistance, to aid in preparing your response. If you desire assistance from legal counsel, it is recommended that arrangements are made promptly after receipt of the SOR. It should be noted that civilian counsel is at your own expense.
- To initiate the response process, you must complete the SOR Receipt and Statement of Intent (SOI) and forward it to the DCSA CAS via your organization's SMO within 10 calendar days of receipt of the SOR package. Contact your SMO for help in preparing and forwarding this form. If your intent to respond is not received at the DCSA CAS by the established timeframes, it is presumed you do not intend to submit a response; the process to deny or revoke national security eligibility will then proceed.

### Individual's Timelines for Letter of Intent



- If you choose the option to respond, your written response must be submitted through your SMO within 30 days from the date you acknowledged receipt of the SOR package. Your SMO will then forward your response to the DCSA CAS. Your employing organization may, upon your written request and prior to the expiration of the original deadline, grant an extension of an additional 30 days to respond. To request an additional extension, you must provide a written request, with justification, to your SMO prior to the current deadline. Your SMO will then submit your request to the DCSA CAS for review/approval. The DCSA CAS must first approve the request before you are granted the extension.
- It is important to realize that if your response is not received by the DCSA CAS within the specified time, the preliminary decision will become the final national security eligibility determination as it will be based only on the merits of the available information, regardless if you intended to respond or not.

## Preparing Your Response

The process is designed so subjects can represent themselves. You may obtain legal counsel or other assistance in preparing your response; however, if you obtain private assistance, it is normally at your own expense. Remember it is up to you to decide whether to respond or not respond. You are ultimately responsible for the quality and substance of your response and it must bear your signature. You should reach out to your local civilian or military SMO if you need assistance regarding the response process.

In preparing your response first ask yourself, are the security concerns listed in the SOR accurate or no longer relevant?

If the findings are not accurate, have been resolved, or if you think there are mitigating conditions, you need to gather documentation. The documentation should support mitigation of all the issues stated in the SOR package and submitted through your SMO to the DCSA CAS. Depending upon the security concerns addressed in the SOR, acceptable documentation to gather and provide copies of include court records (to include details and dispositions of arrests and status of probation); transcripts of court testimony taken under oath; probation reports; copies of negotiated plea bargains; releases from judgments or wage garnishments; account statements or letters from creditors verifying the status of delinquent accounts; receipts or copies of canceled checks regarding debt payments; verification of successful completion of alcohol/drug abuse rehabilitation programs; etc.

When writing the response, ensure you address all the specific security concerns and issues identified in the SOR.

- If you think it is beneficial, you may provide statements from co-workers, supervisors, commanders, friends, or others regarding your judgment, reliability, and trustworthiness, and other information you want the DCSA CAS to consider when making the final national security eligibility determination.
- Attach all available supporting documentation that explains, refutes, corrects, extenuates, mitigates, or updates each security concern cited in the SOR.
- Organize supporting documents in the order they are cited and enclose copies with your response; you may use dividers or tabs to help you assemble the supporting documentation. The impact of your response depends on the extent to which you adequately and specifically refute, correct, extenuate, mitigate, or update all of the security concerns cited in the SOR.
- If you believe the unfavorable information in the SOR presents an incomplete or inaccurate picture of the situation or circumstances, provide information and source documentation that explains and supports your case. Bear in mind the information you provide will be considered by the adjudicator, but it is also subject to verification through additional investigation.



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As previously stated, it is important you meet the stringent timelines listed in the SOR package. When you have completed your written response, ensure that you sign and date your response. Place your response and supporting documents in a single envelope or package and forward them to the DCSA CAS via your organization's SMO. The SMO will usually submit the documentation electronically to the DCSA CAS via the current DOD IT system of record.



The DCSA CAS will review the provided supporting information and make their final security eligibility determination. If the decision is favorable, your security eligibility will be granted or restored. If not, you have the option of appealing the decision to the next level appeals authority such as the Personnel Security Appeals Board or to the Defense Office of Hearings and Appeals (DOHA). To learn more about the entire appeals process, review DODM 5200.02, Procedures for the DOD Personnel Security Program (PSP), Section 10.

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