

Basic Adjudications Overview Webinar December 19, 2012

Thank you for standing by and welcome to today's conference. At this time all participants are in a listen only mode. Today's call is being recorded, if you have any objections you may disconnect. I will now introduce your conference host for today's call, Ms. Kim Knobel. Ma'am you may begin.

Hello and welcome to the first Personnel Security webinar offered by CDSE. Thank you for taking the time to join us today. My name is Kim Knobel and I am the CDSE Personnel Security Adjudications Curriculum manager. I will be your host today for the overview of Basic Adjudications webinar. My producer today is Steve Fowler. Steve is an Instructional Systems Designer here at CDSE. Before we get started, Steve will provide you the ground rules for today's webinar, and some instructions on how to use the tools you will need to participate. Take it away Steve.

Thank you Kim. If you draw your attention to the green arrow at the bottom there under notes, you'll see that we have the conference call number and participant passcode in case you get disconnected you can dial back in. To the upper right if you click on full screen, the screen will get larger. If you click it again, it will go back to normal size. During the webinar, we do have poll questions and you need to be at the normal size screen in order to participate in the poll questions. To the right of the blue box is the questions and answers if you have any questions to the presenter. Below we have put the Basic Adjudications verview briefing in a pdf slide that you can download to your desktop. As I said, we will have 5 poll questions throughout the webinar there on your screen and you'll have a couple seconds to answer. Our host today is Ms. Kimberly Knobel, she's the Personnel Security Curriculum Manager for CDSE. She's been responsible for the management content and development of all CDSE personnel security courses and products. She served over 27 years in the Defense Security Service, and has held positions in Personnel Security Management Operations and Training. Kim, back to you.

Okay let's get started. First of all, what exactly is adjudication? During adjudication trusted government personnel evaluate the reliable and relevant information from background investigations and other reliable sources in order to make security related determinations, suitability/fitness determinations, or determinations related to a person's ability to access government facilities or information systems. Now the three main types of Adjudications within DoD are National Security, suitability/fitness, and HSPD-12 Common Access Card, commonly called the CAC. Now before we go into more detail regarding each of the three types of adjudications, let's take a little poll. Now there's no pressure on this if you don't know the answer, just guess. Poll question 1:

National Security adjudications ensure that only individuals who are loyal, trustworthy, and reliable are granted eligibility for access to classified information or eligibility to hold a non-

sensitive position. True or False? Hey—it looks like the trues are winning. Poll looks like it's about to close out. The answer to this is false. And this is somewhat of a trick question because 99% of that statement is correct, except for the word non-sensitive, it should say hold a sensitive position. Non-sensitive positions do not require access to classified information or the performance of sensitive duties. You can close the poll out Steve.

National Security adjudications apply primarily to individuals who hold positions requiring access to classified information. In some cases, however, these adjudications determine whether an individual is eligible to perform sensitive duties that could have an unacceptable adverse impact on National Security, but do not require the need for access to classified information. Please note that National Security Adjudications determine whether an individual is eligible to access classified information. The National Security determination does not actually grant access to classified info. That is primarily done by the security manager or the Facilities Security Officer (FSO) or the local command.

National Security adjudicators apply 13 adjudicative guidelines when making determinations. The first 7 are listed here. As you can see they cover a variety of conduct and behaviors. Here are the remaining 6 adjudicative guidelines. Each guideline has a potential security concern, disqualifiers, and possible mitigators. By mitigator, I mean something that may reduce the severity or relieve the security concern of a disqualifying condition. Additionally, National Security adjudicators employ the whole person concept and use 9 adjudicative factors when making determinations. Whole person means they evaluate the favorable and unfavorable information in the individual's background. They take the good and the bad and they weigh it.

They don't just focus let's say on those 3 DUIs or that bankruptcy, they take everything in account in someone's background. In order to take that whole person into account, non-security adjudicators, National Security adjudicators also use 9 specific factors in addition to the 13 adjudicative guidelines. These factors include nature, extent, and seriousness. Was it a traffic event or was the individual arrested for murder? They also include circumstances and knowledgeable participation—was the individual just in the wrong place at the wrong time? And the motivation for the behavior conduct. Was peer pressure involved, were they coerced in any way? The frequency and recency—if someone has arrests that occurred a year ago, how much more bearing than something that happened ten years ago. And voluntary participation—did the individual knowingly participate, or were they unaware of what was happening until later? And age and maturity—if someone is arrested for smoking pot at fifty years old, it might be quite different if they were arrested when they were seventeen years old. And the likelihood of continuation and reoccurrence—how likely is it that the conduct will be repeated? And also comes into play rehabilitation and permanent behavioral change. Did the individual attend successful rehabilitation; was that rehabilitation voluntary or ordered? And lastly, is there any potential for pressure, coercion, exploitation or duress? Is the subject vulnerable in any way or susceptible to blackmail? Are they trying to hide something?

Now we can't cover the concern, disqualifiers, and mitigators for all of the 13 adjudicative guidelines during this 30 minute webinar, but let's take a look at financial considerations. Now the concern is that failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to follow rules and regulations. And all of these could raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. And it may also provide motivation for espionage or illegal activities, as sometimes desperate people do desperate things. But this qualifying condition under financial considerations include inability or unwillingness to satisfy debts, delinquent debts from frivolous or irresponsible spending with no willingness or intent to repay or at least establish a realistic payment plan—the history or a pattern of not meeting financial obligations. And additionally, this includes deceptive or illegal practices such as embezzlement, employee theft, check fraud, income tax evasion, expense count fraud, things like that. And if there's a consistent spending beyond one's means, a significant negative cash flow or indebtedness, that could be a concern also. And financial problems linked to drug abuse, alcoholism, gambling problems, or other issues of a security concern. And failure to pay Uncle Sam, not filing your annual Federal, state, or local income tax returns or fraudulent filing can also be a disqualifying condition.

Now on the flip side, adjudicators under the financial consideration are not just focusing on bad debts, financial problems, things like that. They also look at something that we call unexplained affluence. An unexplained affluence is basically a fancy term for living above your means, where the individual is living a lifestyle which does not seem to be supported by their income level. Now what are some mitigating conditions for finances? Okay, the behavior happened so long ago was isolated or occurred under such circumstances that it's unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment. Or the financial problems were largely beyond the person's control. They lost a job, there was a business economic downturn, they had unexpected medical bills, or a death, divorce, or separation occurred, but the individual acted responsibly under the circumstances. Or they've received counseling, and the problem is being resolved or is currently under control. Or they've made a good faith effort to repay a past debt or resolve debt. Or if it's a disputed debt, they've provided reasonable basis to provide with documented proof that the debt does not belong to them, or that it has been paid. And on that flip side, they've shown proof that the affluent lifestyle or sudden change in fortune resulted from a legal source of income. Maybe Aunt Sally passed away, and they inherited a lot of money, or possibly they won the lottery. Now, remember, the adjudicator would also employ the whole person concept and apply the 9 adjudicative factors previously discussed when making their determination. Now we're going to move into our next poll question which is related to suitability.

Determining if an individual has the necessary qualifications to perform the job is part of the Suitability assessment. Yes or No? If you don't know, like I said, just take a guess. Okay, a lot

of people have responded and the no seems to be winning here. Alright, the answer is no. It is distinctly separate. Can you close out the poll please, Steve?

Suitability determinations are different from an individual's job qualifications. And although an individual may have the necessary skills to perform the job, they may not demonstrate appropriate character traits and conduct that indicate they are likely to carry out the duties of a Federal job with integrity, efficiency, and effectiveness. So always keep in mind, that a favorable suitability determination does not mean that the individual is automatically eligible for a job, nor is a person who is qualified for a job automatically suitable for employment. Suitability applies to Federal government applicants, appointees, which, who are those employees with less than one year and employees of the Federal service, competitive service.

But most important, suitability adjudications are not "security determinations"—a favorable suitability determination does not mean that an individual is automatically eligible to hold a National Security sensitive position or eligible for access to classified information. Suitability adjudications, as we will learn, are based on a different set of standards and criteria. Now as you see here, suitability investigations apply only to individuals in covered positions. That is—Competitive service positions, SES, and excepted service positions which can be non-competitively converted to a competitive service position. Those positions are somewhat rare.

Now the Office of Personnel Management, or OPM, has overall responsibility for suitability and overseas agency adjudications. However, OPM may delegate suitability authority to an agency. Section 5 of the Code of Federal Regulations, Part 731 establishes and maintains OPM's policies and procedures governing suitability investigations and adjudications, to include the procedures for taking suitability actions and the general process for appealing a suitability action. OPM policy outlines 8 suitability factors and 7 additional considerations when making suitability determinations. And in August 2012, a new DoD instruction—what we call a DoDI, was issued which established and implemented policy for suitability and fitness adjudications for DoD civilian employees. We will discuss fitness a little later. The directive establishes procedures, provides guidelines and model programs, delegates authority, and assigns responsibilities regarding suitability and fitness adjudications within the DoD.

Now DoD adjudicates the suitability of all DoD covered positions unless there is evidence of material intentional false statement, deception, or fraud in examination or appointment, or evidence of a refusal to furnish testimony. Those types of issues are adjudicated by OPM. And even though OPM has delegated authority to DoD, it is important to remember that DoD is still required to adhere to OPM procedural and reporting requirements, inform OPM of cases requiring OPM adjudication, keep records of DoD suitability determinations and actions. DoD suitability adjudicators use the 8 suitability factors and 7 additional considerations outlined in 5CFR 731 and also use the OPM suitability processing handbook when making determinations.

Okay, now we have our next poll question. In suitability adjudications is misconduct or negligence in employment a suitability factor or an additional consideration? Okay, we're seeing that the suitability factor appears to be winning and that is the correct answer. And if you'll close out the poll, we will now go over the 8 suitability factors.

Alright, now here are the first suitability factors. Note that you do not see anything related to financial concerns, however look at the second bullet Criminal or Dishonest Conduct. For suitability adjudications deliberate disregard for debt is considered to fall under the dishonest conduct category. Now here are the next 4. As you can see though similar to the 13 adjudicative guidelines they are different. For example foreign influence, foreign preference, and psychological conditions unlike National Security adjudications are not considered factors in the suitability review. Now listed here and on the next slide are the 7 additional considerations which are used along with the 8 suitability factors. Again there are somewhat similar to the 9 adjudicative factors used in National Security adjudications, but there are differences. For instance, suitability adjudicators take in account the nature of the position applied for. For example, if someone is applying for a job as a pharmacy technician at the National Institute of Health and has a history of prescription drug abuse or arrests for forging prescriptions, the fact that they are applying for that type of job rather than let's say an administrative assistant position with the IRS, would also be taken into consideration when making the suitability determination. Now here are the last 3 additional considerations and we see the age and the conduct and also the absence or presence of rehabilitation as we did a National Security adjudication, but we have something here called Contributing Societal Conditions. And some examples of possible mitigating societal conditions would be someone has financial delinquencies and that could be contributed to loss of their job during a widespread economic downturn. Or an individual who grew up in extreme poverty, and had to maybe shoplift for food to survive and has an arrest for shoplifting from a grocery store.

As promised, let's briefly introduce fitness adjudications, they are similar to suitability, but the difference is to whom they apply. Remember 5 CFR 731 which governs suitability only applies to those covered positions we talked about previously. Those competitive service positions, SES, and those excepted service positions that can be non-competitively converted to a competitive service position. Fitness adjudications apply to contractors and Federal employees in excepted service positions which cannot convert non-competitively. These positions fall outside the requirements of OPM's suitability program, as they are not covered under 5 CFR 731, which governs suitability. However, within DoD agencies and components have been strongly advised to follow the suitability criteria in their fitness determinations.

Okay, now let's move on to HSPD-12 credentialing adjudications. Common access cards commonly known as CACs, not only allow physical access to DoD facilities, but also logical access to DoD information technology, or information systems as well. CAC adjudication ensures that personnel who are issued CACs are not known or suspected to be terrorists. Only individuals whose identity can be verified, and who do not pose an unacceptable risk, may be

issued a CAC. The fundamental purpose of HSPD-12 CAC adjudications is to ensure that all personnel who are issued credentials for long term access to Federal facilities and information systems meet certain security requirements and do not pose an unacceptable risk. Now what type of unacceptable risk are we talking about? It could be a risk to the life, safety, or health of employees, contractors, vendors, or even visitors. Or a risk to DoD's physical assets or information systems, or personal property, or records, to include classified, privileged, proprietary, financial, medical records, or also the privacy of data subjects. This adjudication applies to any employee who is eligible to receive a CAC, including contractor personnel.

Okay, now we have another poll question related to HSPD-12 CAC credentialing. HSPD-12 CAC credentialing adjudications has the most stringent requirements. True or False? It looks like the false is winning. And the answer is false. They have the least stringent requirements. Could you close out the poll, Steve? As indicated in the poll question, HSPD-12 adjudications have the least stringent requirements. The minimum investigative requirement for the issuance of a CAC is a favorably adjudicated National Agency Check with inquiries, or NACI. Note: If an applicant also requires a suitability or National Security determination, a separate HSPD-12 adjudication is not required, as the CAC determination is considered to be inherent decision in either the suitability or National Security determination as those adjudications have higher level investigative standards.

In 2008 OPM issued the final credentialing standards for issuing personnel identity verification cards, commonly known as PIVS, under HSPD-12. And PIV is the Federal non-DoD equivalent to a CAC. This document describes the standards for HSPD-12 adjudications. DoD components have been instructed to use this as a guide until further DoD level guidance is established. Here are the six basic credentialing standards. A CAC will not be issued to a person if the individual is known or reasonably suspected of being a terrorist, if the employer is unable to verify the individuals claimed identity, if there is reasonable basis to believe the individual has submitted fraudulent information concerning his or her identity, or if there is a reasonable basis to believe the individual will attempt to gain unauthorized access to classified documents, privacy act information, information that is proprietary in nature, other sensitive or protected information. And if there is a reasonable basis to believe the individual will use an identity credential outside the workplace unlawfully or inappropriately.

And lastly, there is a reasonable basis to believe the individual will use Federally controlled information systems unlawfully, make unauthorized modifications, corrupt or destroy or engage in inappropriate uses of such systems. Now note that a reasonable basis to believe occurs when a disinterested observer with knowledge of the same facts and circumstances would reasonably reach the same conclusion.

Here are the seven supplemental credentialing standards which agencies components have the flexibility to apply in addition to the six basic standards when making HSPD-12 determinations. A CAC will not be issued if there is a reasonable basis to believe that an individual's misconduct

or negligence in employment, criminal or dishonest conduct, material intentional false statement, deception, or fraud in connection with Federal or contract employment, alcohol abuse or illegal drug use without evidence of substantial rehabilitation poses an unacceptable risk. Or if a statutory or regulatory bar prevents the individual's contract employment or would prevent Federal employment under circumstances that furnish a reasonable basis to believe the issuance of a CAC poses an unacceptable risk. And lastly, the individual has knowingly and willfully engaged in acts or activities designed to overthrow the U.S. government by force.

DoD currently has a directive in the pre-signatory phase which will provide specific DoD investigative and adjudicative guidance for issuing the CAC. It is anticipated to be posted to the Federal Registrar in approximately one year. Now I'm going to post some resources in this page and the next one, please note that although these links aren't live, you have the ability to print out the presentation and then you can just copy to your browser. And I want to point out we have the Suitability Employee and Supervisor Guide which are available on CDSE's websites—they are full of great information about suitability. And on the next slide I'd also like to point out the CDSE 13 adjudicative guideline shorts. This is part of our short eLearning format—they're about 15 minutes long and they cover each of the 13 National adjudication guidelines that we just went over. And in these shorts they're scenario-based, and you play the role as of a National Security adjudicator and you basically make the determination and it goes over each concern disqualifying mitigator for each of those National Security guidelines.

Okay, and we have some time for some questions that I received. And the first question is kind of, three questions in one. What is the process for an HSPD-12 CAC credentialing? Is it available for industry who have travelers that need access to several military facilities? Is the favorable adjudication of an SF 85 enough of a background check for a CAC?

Okay, let's answer that. A CAC is for long term access to Federal facilities and information systems, not for convenience when traveling or for sporadic visits. The criteria for CAC issuance are eligibility, verification of DoD affiliation, completion of background vetting requirements, and verification of claimed identity. The National Agency Check with inquiries is the minimum investigative requirement to be issued a CAC. It contains data base checks and written inquiries and requires the completion and submission of an SF 85.

Okay, now on to our next question. Is there a standard process for reciprocity when an individual has completed a NACLC and required approval of the HSPD-12 process without the need to complete a new SF85?

Answer: The sponsoring activity should not re-adjudicate CAC determinations for individuals transferring from another Federal department or agency provided. Provided a possession of a valid PIV or CAC can be verified by the individual's former department or agency, the individual has undergone the required NACI or other equivalent or greater suitability or National Security investigation, and received favorable adjudication from the former agency. And there is

no break in service greater than 24 months, and the individual has no actionable information since the date of the last completed investigation.

And here is our third and final question. With all the foreclosures and financial difficulties across the U.S. over the past 6 years, how much are bankruptcies and foreclosures held against individuals who are being investigated? As discussed during the webinar, each of the 13 adjudicative guidelines for National Security adjudications to include financial consideration, have possible mitigating conditions. As we learned, National Security adjudicators use the whole person concept when making determination and also employ the 9 adjudicative factors, which take into account things like the nature circumstances, likelihood of continuation, and recurrence. Also, depending on the individual's specific situation, a bankruptcy may be viewed as an indicator that the individual has resolved or is repaying, for instance if they filed a Chapter 13 bankruptcy or has their financial situation now under control. And for suitability determination, adjudicators also employ societal conditions as an additional factor when making suitability determinations.

And these are some recommended eLearning courses available through CDSE and our website. And I'm really excited to mention these courses in development. We have the Introduction to DoD HSPD-12 CAC Credentialing, anticipated release is February 2013, and this is a much needed course by the community and CDSE is very proud to release it. And we also are working on the Introduction to Suitability Adjudications for the DoD with anticipated release of May 2013.

Hey, we have our last poll question. I understand the basics of the three types of adjudications. Please hit how you actually feel? Much appreciated. It looks like most people agree, I know I had to cover a lot of information in all one sitting.

So I want to thank you all very much for attending this webinar, and check back on the Personnel Security webinar page for the next topic. And have a great day and Happy Holidays to everyone. Thank you.