



DEPUTY SECRETARY OF DEFENSE

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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN JOINT CHIEFS OF STAFF
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Restrictions on the Granting or Renewal of Security
Clearances as Mandated by the Floyd D. Spence National Defense
Authorization Act for Fiscal Year 2001

This memorandum provides policy guidance for the implementation of Section 1071 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended Title 10, United States Code, to add a new section that precludes the initial granting or renewal of a security clearance by the Department of Defense under the four specific circumstances set forth below. The attached revised adjudication guidelines implement this provision and supplement the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information within DoD. They shall be applied uniformly to all security clearance and access determinations made by DoD and its Components.

The statutory mandate applies to any DoD officer or employee, officer, director, or employee of a DoD contractor, or member of the Army, Navy, Air Force, or Marine Corps on active duty or in an active status, who is under consideration for the issuance or continuation of eligibility for access to classified information and who falls under one or more of the following provisions of the statute:

- (1) has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year;

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- (2) is an unlawful user of, or is addicted to, a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (3) is mentally incompetent, as determined by a mental health professional approved by the Department of Defense; or
- (4) has been discharged or dismissed from the Armed Forces under dishonorable conditions.

The statute also provides that the Secretary of Defense and the Secretary of the Military Department concerned may authorize a waiver of the prohibitions concerning convictions, dismissals and dishonorable discharges from the armed forces in meritorious cases. Within 60 days from the date of this memorandum, all addressees with the responsibility for granting or denying security clearances or other classified accesses in DoD shall submit to the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD(C3I)), procedures for considering meritorious cases and for submitting them to the Secretary concerned. The ASD(C3I) shall coordinate with all addressees to ensure uniform procedures and will be the lead agency for implementation of this policy within DoD.

Attachment 1 is general guidance for implementing this statute within DoD. Attachments 2, 3, and 4 represent revised copies of the adjudication guidelines, promulgated by the Special Assistant to the President for National Security Affairs in March 1997 pursuant to Executive Order 12968, pertaining to criminal conduct, drug involvement and emotional, mental and personality disorders. The guideline for criminal conduct applies to convictions in both State and Federal courts, including courts-martial.

This policy in this memorandum constitutes a change to DoD 5200.2-R and will be included in the next revision.

Attachments:
As stated



CRITERIA FOR IMPLEMENTING THE PROVISIONS OF 10 U.S.C. 986 IN ALL DOD DETERMINATIONS FOR ACCESS TO CLASSIFIED INFORMATION

- The following applies when implementing the revised DoD adjudication guidelines at Attachments 2, 3 & 4:
 - Provision (1) disqualifies persons with convictions in both State and Federal courts, including UCMJ offenses, with sentences imposed of more than one year, regardless of the amount of time actually served;
 - Provision (2) does not change the substance of the existing adjudication guidelines relative to current drug involvement. Anyone who is currently an unlawful user of, or addicted to, a controlled substance is not considered eligible for a security clearance;
 - Provision (3) does not change the substance of the adjudication guidelines for emotional, mental, or personality disorders. Anyone who is found to be mentally incompetent (incapable of safeguarding classified information) by a credentialed mental health professional approved by DoD is not considered eligible for a security clearance;
 - Provision (4) disqualifies persons who have been discharged or dismissed from the Armed Forces under dishonorable conditions. This provision has been incorporated in the criminal conduct guideline;
- The statute provides that the Secretary of Defense or the Secretary of the Military Department concerned may authorize a waiver to provisions (1) and (4) in a meritorious case and that such waiver cases shall be reported to the Committees on Armed Services no later than February 1 each year for those granted during the prior year. This waiver authority may not be delegated and does not apply to provisions (2) and (3);
- All military members, active duty, reserve, or national guard are considered to be covered by this policy for the purpose of implementing the statute within DoD;
- The decision as to whether a particular case involves a meritorious case that would justify pursuing a request for waiver shall be the province of the DoD Component concerned (i.e. all Components authorized to grant, deny or revoke access to classified information) beginning with the Director of the Component Central Adjudication Facility (CAF), the Component appellate authority or other appropriate senior Component official;
- Persons with existing clearances or accesses for whom a periodic reinvestigation or request for investigation may reveal a previous, favorably resolved issue involving one or more of the four statutory provisions, regardless of the presence or absence of subsequent disqualifying issues, are subject to the provisions of this statute;

- Because of the need to develop a complete record upon which to evaluate whether a case is covered by provisions (2) or (3) and whether a waiver of provisions (1) or (4) of the statutory provisions is meritorious, all cases potentially covered by the statute shall be fully investigated and adjudicated in accordance with current Executive Order and DoD Directive and Regulatory guidance, including applicable due process procedures;
- When a decision is issued (statement of reasons (SOR)) by a CAF denying or revoking a security clearance in a case involving provisions (1 & 4) of the statute where a waiver is allowed in meritorious cases, the SOR must inform the subject of the waiver provision, provide a copy of the statute, and advise that any appeal to the applicable appellate authority may include information which would support consideration of a waiver under the statute;
- If the result of the current process, without consideration of the statute, would be to grant or renew the security clearance of someone covered by provisions (1) and (4), the authority responsible for making that decision may recommend to the Secretary of Defense or the Secretary of the Military Department concerned, that the case merits a waiver;
- A brief summary of all waivers submitted to the Secretary of Defense or the Secretaries of the Military Departments will be provided to the DASD(S&IO), OASD(C3I) on a quarterly basis, to arrive by the 15th of the month following the end of each quarter of the calendar year. Each summary, as a minimum, should include reference to the provision involved ((1) or (4)), the nature and date of the offense, the sentence imposed, the meritorious circumstance cited in support of the waiver and the result of the request. OASD(C3I) will compile the final report to Congress by February 1 for the previous calendar year in coordination with General Counsel of the Department of Defense. Quarterly reporting will be effective for the first full calendar year quarter following the date of this memorandum;
- The quarterly summary shall also include the number of cases which, under normal circumstances, would have otherwise resulted in a favorable adjudicative outcome but did not due to the imposition of the statutory provisions;
- This policy does not apply to conversions/transfers/reinstatements of current DoD security clearances, including transfers of clearances of employees within the Department of Defense, clearances of employees who fall under the National Industrial Security Program, and transfers of clearances to the Department of Defense of employees coming from other Federal agencies. The policy does apply to all initial determinations to grant clearances or accesses and determinations to continue clearances/accesses following a reinvestigation, including both periodic reinvestigations and investigations initiated for other reasons;
- The policies contained in this memorandum apply to all pending cases in which a final decision has not been issued as of the date of this memorandum.