



# Ready to Serve Webinar Series

Tips for Aspiring Political Appointees: Security Clearances and Background Investigations

**Session Two**  
October 7, 2020



PARTNERSHIP FOR PUBLIC SERVICE  
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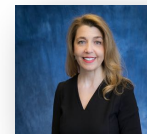
[Link](https://www.ready-to-serve.org): Ready-To-Serve.org

# Today's Agenda

Welcome and introductions

**Kristine Simmons**

*Vice President, Government Affairs,  
Partnership for Public Service*



Security clearance process overview

**Robert Rizzi**

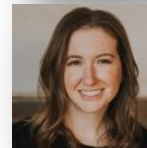
*Partner, Steptoe & Johnson LLP*



Lifestyle elements of security clearances

**Heather Samuelson**

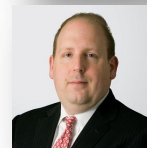
*Former Assistant White House Counsel  
Former State Dept. White House Liaison*



Foreign connections

**Charles Borden**

*Partner, Holland & Knight LLP*



Financial and tax issues

**Dianna Mullis**

*Political Law Attorney  
Former Associate, Steptoe & Johnson LLP*



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## **Session 1: Wednesday, September 30**

An Overview of Vetting Forms: What Aspiring Political Appointees Should Know

## **Session 2: Wednesday, October 7**

Tips for Aspiring Political Appointees: Security Clearances and Background Investigations

## **Session 3: Wednesday, October 21**

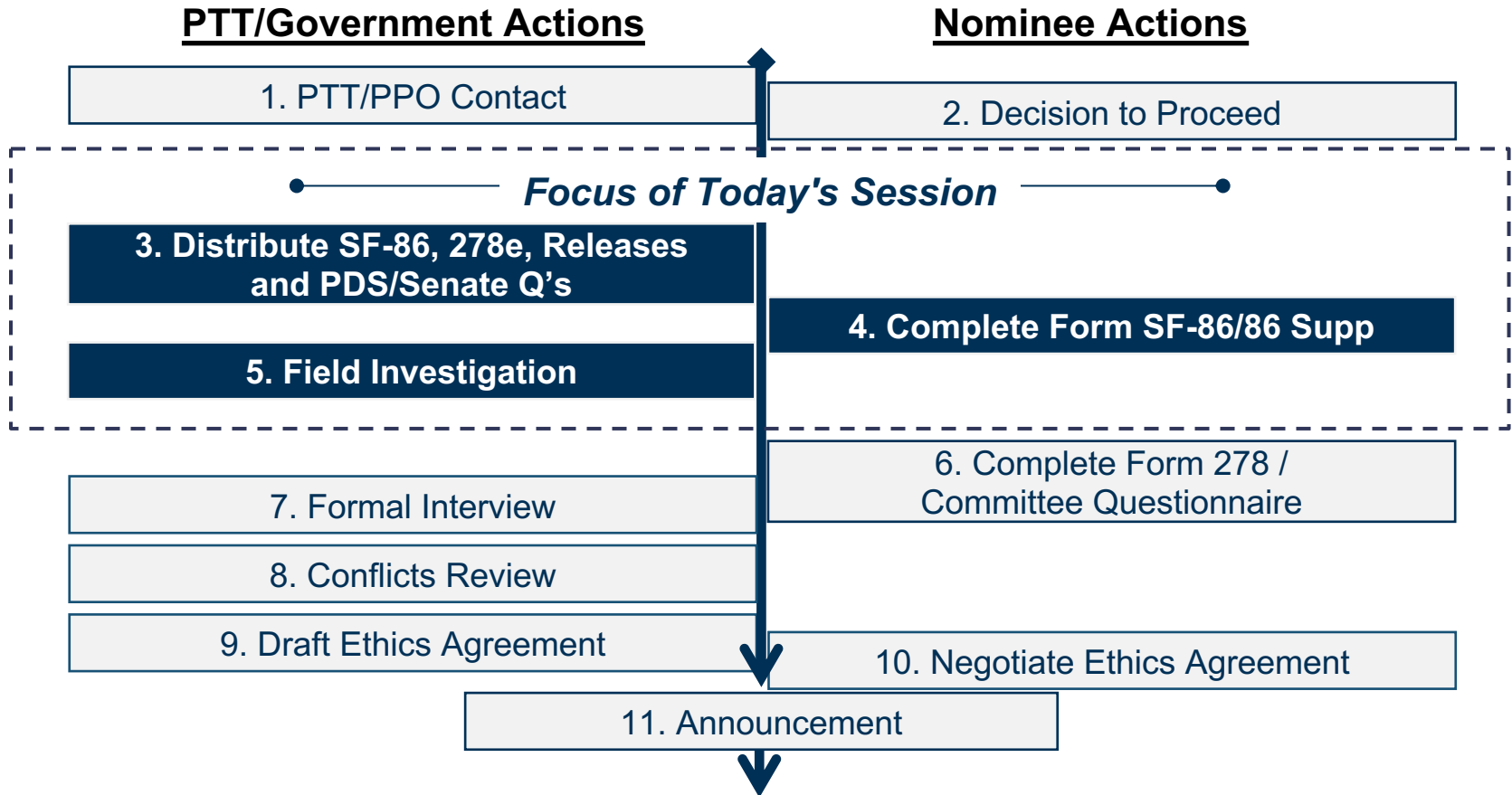
Tips for Aspiring Political Appointees: Financial Disclosure, Taxes and Conflicts of Interest

# Questions for Session Two

- Why is there a security clearance process?
- What are the responsibilities of prospective appointees?
- What does the process accomplish?
- What forms do I need to complete?



# Steps in Full Vetting of PAS Appointees Up to White House Announcement





# SF-86 & Field Investigations

## Key Forms

- SF-86 on e-QIP (hard copy with Session #2 invitation)
- SF-86 Supplement (“86 Supp”)

## Field Investigation

- Once form is submitted, used for “Field Investigation”
- SF-86 used as “road map” for questions
- Field Investigation: in-person interviews, including references and “derivative” interviews

## Adjudication

- Information consolidated in “report” for “adjudication”
- Possibility of “appeal” of “tentative adverse decision”

# The Players



## Security Agencies

Includes FBI, DCSA, DSS, and others

- Most security clearances operated by DCSA
- Most political appointees vetted by FBI and DSS
- Agencies (and WH) have security clearance units

## Intelligence Community

CIA and IC have their own systems

## Private Contractors

Actual background investigations run by private contractors

# “Lifestyle” Elements of Security Clearance



**Original EO provided that investigations “shall relate, but shall not be limited” to:**

*“any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy,” “any deliberate misrepresentations, falsifications, or omissions of material facts,” “any criminal, infamous dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, sexual perversion,” “any illness, including any mental condition . . .”*

**EO 10450, §8(1)**

- Security clearance criteria have changed



# Sensitive Questions: Psychological & Emotional Health

SF 86 is clear that mental health diagnosis, treatment, and counseling, in and of itself, **is NOT a reason** to deny or revoke a security clearance.

In fact, the form now specifically states that: *“seeking mental health care for personal wellness and recovery may contribute favorably to decisions about your eligibility.”*

## Example Questions on SF-86

**21D** Have you **EVER** been diagnosed by a physician or other health professional (for example, a psychiatrist, psychologist, licensed clinical social worker, or nurse practitioner) with psychotic disorder, schizophrenia, schizoaffective disorder, delusional disorder, bipolar mood disorder, borderline personality disorder, or antisocial personality disorder?  YES  NO (If NO, proceed to Section 21E)

**21E** Do you have a mental health or other health condition that **substantially adversely** affects your judgment, reliability, or trustworthiness even if you are not experiencing such symptoms today?  YES  NO

*(Note: If your judgment, reliability, or trustworthiness is not substantially adversely affected by a mental health or other condition, then you should answer “no” even if you have a mental health or other condition requiring treatment. For example, if you are in need of emotional or mental health counseling as a result of service as a first responder, service in a military combat environment, having been sexually assaulted or a victim of domestic violence, or marital issues, but your judgment, reliability or trustworthiness is not substantially adversely affected, then answer “no.”)*

# Other Sensitive Questions

## Illegal Drug Use

**23.1** In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.  YES  NO (if NO, proceed to 23.2)

Complete the following if you answered "Yes" to in the last seven (7) years having illegally used a drug or controlled substance.

## Misuse of Prescription Drugs

**23.5** In the last seven (7) years have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?  YES  NO (if NO, proceed to 23.6)

Complete the following if you responded "Yes" to in the last seven (7) years having intentionally engaged in the misuse of prescription drugs, regardless of whether the drugs were prescribed for you or someone else.

## Workplace Misconduct

Allegations of sexual harassment, racial discrimination, and other workplace misconduct issues

## Family / Relationships

List all immediate family members (including in-laws), domestic partners, ex-spouses  
Close family members with security clearances  
Co-habitants / Roommates,  
Connections with non-U.S. family members

# When Answering Sensitive Questions...

- Be truthful. Intentionally lying on the forms will disqualify you.
- You will have an opportunity to explain your answers during clearance investigation.
- There are evolving views on mental health and drug use.
- Consult an outside counsel if you have concerns on completing the form.

# Foreign Connections

## Significant focus in security clearance process on foreign connections

- Concern in this area is on dual loyalty and potential for coercion by foreign power
- Challenge with answering foreign connection questions on SF-86 and SF-86 Supplement is that questions come from different era

## Adjudicative guidelines for security clearances have 3 standards that are principally focused on foreign connections (32 CFR Part 147):

### Foreign Influence (Guideline B)



A security risk may exist when an individual's immediate family, including cohabitants and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. . . . Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

### Foreign Preference (Guideline C)



When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

### Outside Activities (Guideline L)



Involvement in certain types of outside employment or activities is of security concern if it poses a conflict with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

- Outside activities about which they are concerned is work for or representations of foreign interests

# Five Key SF-86 Foreign Connections Questions

## 1 | Section 10 (Dual/Multiple Citizenship and Foreign Passport Information)

## 2 | Section 19 (Foreign Contacts)

- Close and/or continuing contacts with foreign nationals to whom you or spouse/partner “bound by affection, influence, common interests, and/or obligation”

## 3 | Section 20A (Foreign Activities)

- Foreign financial interests – ownership interests in foreign businesses, foreign bank accounts, real estate holdings (excludes assets publicly-traded on US exchanges)
- Also includes rights to foreign government benefits and provision of financial support to foreign nationals
- Inquiry extends to spouse/partner and dependent children

## 4 | Section 20B (Foreign Business, Professional Activities, & Foreign Government Contacts)

- Focus on foreign business activities and relationships, with emphasis on foreign gov't links
- Private foreign parties - Need to disclose foreign employers, foreign clients, job offers from foreign employers, “business ventures” with foreign partners
- Foreign governments - Need to disclose if you have been asked to advise/consult on behalf of a foreign government, meetings with foreign governments, whether you have ever held foreign public office
- Need to disclose conferences, trade shows, seminars, or meetings you have attended outside the US
- Need to disclose whether you have sponsored anyone for a visa or a green card
- Can generally exclude activity undertaken as part of official U.S. Government business

## 5 | Section 20C (Foreign Travel)

- Focus on non-governmental travel during covered period
- Can be challenging for individuals who travel regularly for business

***SF-86 Supplement often includes additional foreign connection questions regarding representational activities (e.g., registered as a lobbyist or foreign agent, representational activities for foreign governments or foreign political parties)***

# Financial Record

SF-86 includes questions about:

- ✓ Bankruptcy
- ✓ Gambling problems
- ✓ Delinquent alimony or child support
- ✓ Judgments entered against you
- ✓ Liens placed against your property
- ✓ Repossessed property
- ✓ Bills turned over to a collection agency
- ✓ Delinquent federal debt
  - When you are the sole debtor, as well as debt for which you are a cosigner or guarantor

*Generally,  
a seven  
year look  
back  
period*

# Taxes

**26.3** In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?  YES  NO (if NO, proceed to 26.4)

Complete the following if you responded "Yes" to having failed to file or pay Federal, state, or other taxes when required by law or ordinance.

Entry #1		
Did you fail to file, pay as required, or both? <input type="checkbox"/> File <input type="checkbox"/> Pay <input type="checkbox"/> Both	Provide the year you failed to file or pay your Federal, state, or other taxes.	<input type="checkbox"/> Est.
Provide the reason(s) for your failure to file or pay required taxes.	Provide the Federal, state, or other agency to which you failed to file or pay taxes.	Provide the type of taxes you failed to file or pay (such as property, income, sales, etc.).
Provide the amount (in U.S. dollars) of the taxes. <input type="checkbox"/> Est.	Provide date satisfied. (Month/Year)	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Est.
Provide a description of any action(s) you have taken to satisfy this debt (such as withholdings, frequency and amount of payments, etc.). If you have not taken any action(s) provide explanation.		



Investigators do inquire into taxes and get transcripts of payments and filing dates of returns from IRS

# Common Tax Issues

- Unpaid taxes for household employees (i.e., nanny taxes)
- Tax “penalties” for prior years, including penalties related to estimated taxes
- Foreign bank accounts, offshore holdings & income
- Schedule C (trade or business) income & expenses
- Charitable deductions and substantiation
- Fringe benefits and executive compensation
- Car and private airplane related expenses
- Reportable transactions relating to alleged tax shelters



# Nanny Taxes

## ➤ Nanny/Household employee taxes

*Do I have a household employee?*

- If you hire someone to work in your home and you can control what work is done and how it is done, you have a household employee
- In general, a baby-sitter who takes care of your children in her own home is not your employee; a lawn-care worker who brings her own tools and controls how she cuts your grass is not your employee; a baby-sitter or nanny who works at your home and follows your instructions is an employee

It doesn't matter if nanny is part-time or full-time, if you hired nanny on your own or through an agency, or if you pay hourly or on salary

## ➤ Ancillary issue - undocumented household employees

# Litigation

Have you been a party to any public record civil court action?

10 year  
look back

**Section 26 - Involvement in Non-Criminal Court Actions**

In the last ten (10) years, have you been a party to any public record civil court action not listed elsewhere on this form?  YES  NO (If NO, proceed to Section 29)

Complete the following if you responded "Yes" to having been a party to any public record civil court action(s) not listed elsewhere on this form in the last ten (10) years.

**Entry #1**

Provide the date of the civil action. (Month/Year)  Provide the court name.   
 Est.

Provide the address of the court. (Provide City and Country if outside the United States; otherwise, provide City, State and Zip Code)

Street  City  State  Zip Code  Country

Provide details of the nature of the action.  Provide a description of the results of the action.  Provide the name(s) of the principal parties involved in the court action.

Details of the  
nature of the action

Description of  
the results



Prep Tip: Consider running a PACER search

# What Should You Do Now?

- **Prepare vetting “package” by gathering required SF-86 data now:**
  - Foreign travel information (including calendars and current and expired passports), on spreadsheet using data fields from SF-86
  - Prior addresses (especially when look-back period is 15 years)
  - Contact information for personal references and extended family members
  - Legal documents for lawsuits or other legal matters
  - Tax documents
- **Raise with private counsel any “ambiguous” areas (e.g., arrests, past drug use) before filling out form**
- **Always include full, complete and truthful responses to all questions**

# Resources

See *Ready to Serve Background Checks & Security Clearances*

The image shows a screenshot of the webpage titled "Background Checks and Security Clearances". The page includes an introductory paragraph, a section for "Familiarize yourself with the forms" with three blue buttons for SF-86, SF-85P, and SF-85P-5, and a navigation bar with "Purpose of Background Investigations", "Top Tips", and "Background Investigation Process". On the right, there are sections for "FROM THE PODCAST" (two episodes by Robert Rizzi), "ON THE BLOG" (two posts), and "WEBINAR" (a recording titled "AN OVERVIEW OF VETTING FORMS: WHAT ASPIRING POLITICAL APPOINTEES SHOULD KNOW" with a video player and a "Download the slide deck" link). Callout boxes on the right point to the podcast episodes, the blog posts, the webinar recording, and the slide deck link. Callout boxes at the bottom point to the "Top Tips" and "Background Investigation Process" links, and a larger box at the bottom left points to the form buttons.

**Background Checks and Security Clearances**

Every person hired for a federal job must undergo a background investigation to ensure that they are "reliable, trustworthy, of good conduct and character, and loyal to the United States." This is an important and lengthy part of the process. Find out what questions you will need to answer here.

**Familiarize yourself with the forms**

To initiate a background investigation, your sponsoring agency will ask you to complete one or more of these forms. Most nominees will be asked to submit the Questionnaire for National Security Positions (SF-86) and other nominees to submit the Questionnaire for Public Trust Positions (SF-85P). It may take weeks to gather your records and complete, and longer if you have significant foreign travel. Get started early!

- Questionnaire for National Security Positions (SF-86)
- Questionnaire for Public Trust Positions (SF-85P)
- Supplemental Questionnaire for Selected Positions (SF-85P-5)

Purpose of Background Investigations | Top Tips | Background Investigation Process

**FROM THE PODCAST**

- Robert Rizzi on Honesty and Nominations
- Robert Rizzi on Disqualification Rules Regarding Plaintiffs

**ON THE BLOG**

- Advice for prospective political appointees: Get an early start filling out security and financial disclosure forms
- Demystifying the presidential appointee vetting process

**WEBINAR**

AN OVERVIEW OF VETTING FORMS: WHAT ASPIRING POLITICAL APPOINTEES SHOULD KNOW

Download the slide deck

**Podcasts by expert panelist Robert Rizzi**

**Blog posts on completing forms & vetting process**

**Recording of today's webinar**

**Link to today's slide deck**

**Links to Forms including SF-86**

**Top Tips from experts**

**Process steps**

[Link: presidentialtransition.org/readytoserve/background-checks-and-security-clearances/](https://presidentialtransition.org/readytoserve/background-checks-and-security-clearances/)

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