Ready to Serve Webinar Series
Tips for Aspiring Political Appointees: Security Clearances and Background Investigations

Session Two
October 7, 2020

Link: 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
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

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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

**PTT/Government Actions**
- 1. PTT/PPO Contact
- 3. Distribute SF-86, 278e, Releases and PDS/Senate Q’s
- 5. Field Investigation
- 7. Formal Interview
- 8. Conflicts Review
- 9. Draft Ethics Agreement

**Nominee Actions**
- 2. Decision to Proceed
- 4. Complete Form SF-86/86 Supp
- 6. Complete Form 278 / Committee Questionnaire
- 10. Negotiate Ethics Agreement
- 11. Announcement

**Focus of Today’s Session**
- 3. Distribute SF-86, 278e, Releases and PDS/Senate Q’s
- 5. Field Investigation
- 7. Formal Interview
- 8. Conflicts Review
- 9. Draft Ethics Agreement
- 11. Announcement
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
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
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 condition that substantially adversely affects your judgment, reliability, or trustworthiness even if you are not experiencing such symptoms today? (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.”) □ YES □ NO
Other Sensitive Questions

Illegal Drug Use

Misuse of Prescription Drugs

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

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

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<thead>
<tr>
<th>Guideline</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Foreign Influence</strong> (Guideline B)</td>
<td>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. Controls 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.</td>
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<tr>
<td><strong>Foreign Preference</strong> (Guideline C)</td>
<td>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.</td>
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| **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)
Gambling problems

Delinquent alimony or child support

Judgments entered against you

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

Financial Record

SF-86 includes questions about:

- Bankruptcy
- Generally, a seven year look back period
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

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
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 include 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!

Links to Forms including SF-86
Top Tips from experts
Process steps

Podcasts by expert panelist Robert Rizzi
Blog posts on completing forms & vetting process
Recording of today's webinar
Link to today's slide deck

Link: presidentialtransition.org/readytoserve/background-checks-and-security-clearances/
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