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U.S. Office of Personnel Management
Suitability Executive Agent Programs
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Comment on FR Doc #2022-25566: Personnel Vetting Questionnaire (PVQ)

To Whom It May Concern:

The Intelligence and National Security Alliance (INSA) welcomes the opportunity to provide insights on the proposed Personnel Vetting Questionnaire (PVQ), particularly in the context of broader personnel security reform undertaken by the government's Trusted Workforce 2.0 initiative (TW 2.0).

INSA is a non-partisan, non-profit association of more than 160 corporations, academic institutions, and non-profit organizations – as well as approximately 3,000 individuals from government, industry, and academia – dedicated to promoting effective public-private collaboration on national security issues. The U.S. Intelligence Community (IC), Department of Defense (DOD), Department of Homeland Security (DHS), and other agencies depend upon these organizations to develop and apply innovative technologies, provide critical expertise, and fill gaps in the government's in-house capabilities. Effective partnerships between government and the private sector are essential to keep the nation safe.

To execute critical national security missions, government agencies and their industry partners depend on a reliable, vetted, trusted workforce operating at all levels of Public Trust and clearance levels. Regardless of whether an individual works for a government agency or a cleared contractor, he or she goes through the same personnel security investigation and adjudication process to secure the Public Trust determination or security clearance required to perform a job. The personnel security process must therefore operate effectively and efficiently in both government and commercial settings. It must also adapt to changing social mores and demographics, evolving market forces that provide highly remunerative alternative career paths to candidates with in-demand technical skills, and the increased speed at which many organizations hire new employees.

INSA welcomes changes to the Standard Form 86 (SF-86) and related personnel security questionnaires into one comprehensive information collection initiative. The investigation process will be made more efficient through the use of a single common form used for making trust determinations associated with an individual's initial and ongoing suitability or fitness for Federal employment, fitness for contract employment, eligibility to hold a sensitive position or

for access to classified information, or eligibility for physical and logical access to federally controlled facilities or information systems. Streamlining multiple existing questionnaires into parts that build upon one another according to the risk and sensitivity of the position will allow for greater efficiency in vetting processes and reduce the burden on individuals who move to positions of greater risk or sensitivity.

INSA would like to offer the following specific insights on the proposed PVQ:

1. INSA commends the government for its efforts to make the language in the PVQ plainer and clearer than in the SF-86 and related national security questionnaires. This will undoubtedly lead to more accurate responses and fewer incongruous responses that require time-consuming review.
2. The government's decision to address marijuana use as a separate issue from use of other drugs on the federal schedule is welcome and long overdue. It will enable applicants for sensitive positions to be specific about their history, and it will enable government adjudicators to more accurately assess whether an applicant's use of drugs poses a security risk.

The government must take a more nuanced and flexible approach to pre-employment marijuana use if it is to continue recruiting top talent into the trusted workforce. Twenty-one states plus Guam and the District of Columbia have legalized recreational use of marijuana, and 38 states plus the District of Columbia have legalized its use for medical purposes.¹ As a result of state-level legalization and evolving social mores, more than 40 percent of college students² and 35 percent of adults aged 18-25³ – a significant share of potential candidates for cleared employment – report having used marijuana recreationally in the previous 12 months. In December 2021, the Director of National Intelligence (DNI), as the government's Security Executive Agent, issued clarifying guidance⁴ that prior recreational marijuana use shall be considered relevant to adjudications but not determinative, and that agencies should use a "whole person

¹ Jeremy Berke, Shayanne Gal, and Yeji Jesse Lee, "2 new states voted to legalize marijuana in the 2022 elections," *Business Insider*, November 9, 2022. At <https://www.businessinsider.com/legal-marijuana-states-2018-1>.

² Marina Pitofsky, "Rate of U.S. College Students Using Marijuana Reaches 35-Year High," *The Hill*, September 5, 2019. At <https://thehill.com/blogs/blog-briefing-room/news/460188-study-shows-highest-use-of-marijuana-by-college-students-in-35/>.

³ e Substance Abuse and Mental Health Services Administration (SAMHSA), *U.S. Department of Health and Human Services (HHS), Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, August 2019, p. 14. At <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf>.

⁴ See Director of National Intelligence, "Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position," Memo ES-2021-01529, December 21, 2021. At https://www.dni.gov/files/NCSC/documents/Regulations/12-21-21_Memo_SecEA_Clarifying_Guidance_re_Marijuana_21-01529_U_SIGNED-FINAL.pdf.

concept” to assess whether an individual’s behavior raises security concerns. Despite this directive, individual agencies maintain discretion to apply their own unwritten standards to individual cases. The confusion caused by inconsistent policies across the government deters people from applying for cleared positions and causes others to pursue employment only to be disqualified after they and the government have invested considerable time and effort. Revisions to the PVQ will help advance the DNI’s guidance to all government agencies that recreational pre-employment marijuana use should not disqualify an applicant from a position of trust.

Adjudicative guidelines are unclear regarding use of cannabidiol (CBD), a marijuana derivative which is present (consistent with federal and state law) in many widely available commercially available products. To make clear distinctions between use of marijuana and use of marijuana-derived products like CBD, the PVQ should (1) specifically ask applicants whether they have used CBD products and (2) state on the form that while pre-employment CBD use is not itself disqualifying, it could result in a positive drug test that could disqualify a candidate from a position of trust.

3. The PVQ rightly poses questions about involvement in, or support for, politically motivated violence. However, questions about political violence should be clarified so they elicit factual information that is uninfluenced by an applicant’s own interpretation of whether his/her activities qualify as “extremist” or as “terrorism.” The PVQ must clearly define terms for applicants and adjudicators alike; questions must be carefully worded to elicit factually accurate answers regardless of an applicant’s motivations and/or justifications for violent speech or actions.

Questions about anti-government affiliations in section 29 of the SF-86 have been insufficient or too vague to elicit information about participation in, or affiliation with, violent anti-government activities. For example, questions about “membership” in “organizations” are less relevant in the Internet era, when loosely affiliated groups of individuals hiding behind fictitious screen names organize violence on chat boards and social media sites; unlike the American Communist Party of the 1950s, online hate groups advocating violence do not provide individuals with membership cards in exchange for payment of annual dues.

4. The PVQ should be formatted to facilitate electronic adjudication (e-adjudication) of information provided by applicants and automated sharing of information among agencies. Currently, many answers on the SF-86 and related questionnaires can be provided in narrative form rather than by checking a box or selecting an answer from a drop-down menu. While the option to provide free text answers can provide context, free text answers often provide non-controversial content; in such cases, a human adjudicator must review questionnaires, causing time-consuming delays while adding little value. Drop-down options and consistent formatting will facilitate prompt,

automated reviews of responses that invite free text responses and engage adjudicators only when necessary.

The PVQ could use answers to initial drop-down responses to elicit free text answers that are likely to be informative and to eliminate free text answers that are unlikely to provide adjudicatively relevant details. For example, if an applicant indicates in drop-down answers to questions regarding drug use that they used marijuana one time more than a year ago, the PVQ could provide no free text option; however, if the respondent indicates that they used marijuana multiple times within the past six months, the form could provide a box in which he/she could enter additional details in free text.

Consistent formatting of responses and minimal reliance on free text will help cleared personnel move more easily between agencies and contracts. A common format relying principally upon standardized answers will make it easier for agencies to “pass” individuals’ clearances based on automated reviews rather than on time-consuming human assessments.

Inconsistencies in data collection have complicated efforts to identify behavioral trends and patterns that are relevant to the Intelligence Community’s recruitment and retention efforts. Greater reliance on standardized drop-down responses rather than free text input would also help agencies identify trends and improve data analytics regarding applicants’ behaviors.

An effective personnel mobility process is important for government and industry. Personnel mobility is particularly critical for contractors, who support multiple contracts at multiple agencies simultaneously. If the personnel security vetting process takes too long, or deters too many applicants, then industry can’t provide enough people – or the right people – to support government sponsors. Although the Trusted Workforce 2.0 initiative’s “transfer of trust” reforms have streamlined bureaucratic procedures, it can take anywhere from a few days to several months to get an agency to accept as valid a security clearance granted by another agency. Such delays prevent contractors from starting work on a new contract in a timely manner and hinder companies’ ability to support their government sponsors. Delays will surely be reduced if all agencies’ personnel security systems and procedures are set up to handle common data categories from the PVQ.

5. The government should drop new language on “routine use” of information provided in the PVQ that seems to narrow the conditions under which the government can share PVQ data with contractors. Industry security officers need such information to assess their trusted employees’ activities as part of government-mandated insider threat programs.

Cleared government contractors are required under the National Industrial Security Program Operating Manual (NISPOM) to “establish and maintain an insider threat

program to gather, integrate, and report relevant and available information indicative of a potential or actual insider threat.”⁵ To implement the mandated insider threat programs, cleared contractors need access to information that their employees provide to the government as part of their application for a position of trust.

When an applicant submits the SF-86 form, he/she consents to the disclosure of the information contained therein under one of 27 “routine uses” deemed permissible under the Privacy Act. One of these routine uses, listed as item (g) on the form’s instructions, is “To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.” This prior consent authorizes the government to provide a company employing a cleared individual with information from his/her SF-86.

The PVQ seems to add conditions that could limit such information sharing. The PVQ’s equivalent section on “disclosure information” refers applicants to the list of routine uses published by DCSA in the Federal Register.⁶ This section, printed at 83 Fed. Reg. 52424 as section (h), reads slightly differently, stating that information may be disclosed “to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government, *when necessary to accomplish an agency function related to this system of records.*” [Italics added.]

This additional caveat, which narrows the routine use conditions under which the government can share relevant security information, is counterproductive. It is also unmerited, particularly given two important developments that argue for greater information sharing:

(1) The NISPOM mandate that cleared contractors establish insider threat programs – imposed after the last revision to the SF-86 form – adds to the necessity to share PVQ information with contractors rather than narrows the conditions meriting such sharing; and

(2) In its Fiscal Year 2022 Intelligence Authorization Act, Congress directed that the government proactively share adjudicatively relevant insider threat information with contractors.⁷ The legislation states clearly that “Not later than 90 days after December 20, 2019, the Security Executive Agent and the Suitability and Credentialing Executive Agent shall establish and implement a

⁵ 60 Fed. Reg. 83322 (December 21, 2020). Specifically, according to a Defense Department letter to industry, the program must gather, integrate, and report relevant and credible information covered by any of the 13 personnel security adjudicative guidelines that is indicative of a potential or actual insider threat to deter cleared employees from becoming insider threats; detect insiders who pose a risk to classified information; and mitigate the risk of an insider threat. See Defense Security Service, Industrial Security Letter, ISL 2016-02, May 21, 2016, revised June 29, 2017. At <https://www.dcsa.mil/Portals/91/Documents/CTP/tools/ISL2016-02.pdf>.

⁶ See 83 Fed. Reg. 52420-52426.

⁷ See Fiscal Year 2022 Intelligence Authorization Act, Sec. 806, “Federal Policy on Sharing of Covered Insider Threat Information Pertaining to Contractor Employees in the Trusted Workforce,” 50 USC 3352f note. See also related technical correction in sec. 6606 of the FY2023 Intelligence Authorization Act (P.L. 117-263).

program to share between and among agencies of the Federal Government and industry partners of the Federal Government relevant background information regarding individuals applying for and currently occupying national security positions and positions of trust, in order to ensure the Federal Government maintains a trusted workforce.” Given Congress’s clear intent that the government should more proactively share relevant personnel security information with industry, the PVQ should not narrow the conditions under which it shares information on applicants for positions of trust with cleared contractors.

INSA has previously advocated for the issuance of government-wide policy guidance that directs maximum transparency and information-sharing regarding potential insider threats. In an October 2021 white paper, INSA argued that agencies should “share as much [personnel security] information as possible, as maximum transparency is needed to enable companies to implement the NISPOM-mandated insider threat programs designed to reduce national security risks.”⁸ INSA thus recommends that the caveat added to DCSA’s published routine uses [“when necessary to accomplish an agency function related to this system of records,” at 83 Fed. Reg. 52424, section (h)] should be deleted.

Thank you for the opportunity to provide these insights.

Intelligence and National Security Alliance

⁸ Intelligence and National Security Alliance (INSA), *The Need for Transparency on Insider Threats: Improving Information Sharing Between Government and Industry*, October 2021, p. 9. At <https://www.insonline.org/docs/default-source/uploadedfiles/2021/10/insa-wp-infosharing-final.pdf>.