



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 --- ) ISCR Case No. 19-02451  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

03/04/2020

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**Decision**  
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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On April 3, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 28, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 4, 2019, Applicant responded to the SOR, and she elected to have her case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on December 19, 2019, and she was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on January 6, 2020. Her response was due on February 5, 2020. Applicant timely submitted a four-page statement to the FORM with 13 attachments which were accepted without objection. The case was assigned to me on February 21, 2020. The record closed on February 21, 2020.

### **Findings of Fact**

In her response to the SOR, Applicant denied, with very brief comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.i.). Applicant's comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

### **Background**

Applicant is a 61-year-old employee of a defense contractor. She has been serving as a technical publications delivery specialist with her current employer since September 2018. She has a blemished employment history involving voluntary and involuntary terminations separated by periods of unemployment: she had full-time employment as an appliance manager for a major retailer from November 2006 until April 2011, when she was fired; was unemployed from April 2011 until September 2011; had full-time employment as an assistant branch manager and eventually branch manager for a finance company from September 2011 until April 2017, when she voluntarily quit because of her brother's death; was unemployed from April 2017 until September 2017; had full-time employment as a security officer from September 2017 until November 2017, when she voluntarily quit because she was made to feel old; was unemployed from December 2017 until January 2018; had full-time employment as a credit counselor from January 2018 until April 2018, when she quit because of a "lack of leadership"; and was self-employed as an independent contractor from May 2018 until September 2018. (Item 3, at 15-22)

A 1977 high school graduate, Applicant earned additional credits from a university but no degree. She has never served with the U.S. military. She has never held a security clearance. She was married in 1983, and divorced in 1987. She remarried in 2001, and

divorced in 2016. She has two adult children from her first marriage, born in 1983, and 1985.

## **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 17, 2019); Item 3 (SF 86, dated April 3, 2019); Item 4 (Enhanced Subject Interview, dated June 7, 2018); Item 2 (Applicant's Answer to SOR, dated November 4, 2019); and Applicant's Response to the FORM, dated February 4, 2020, with relevant attachments).

Applicant reported her periods of unemployment, but she did not specifically include them as factors that led to her financial problems. Instead, she attributed those problems to the following factors: her creditors kept increasing her credit limits on her accounts that had been open for over ten years; because she was unable to assist her children with the costs of their education, she opened some accounts to assist them with the purchase of their homes; for most of her life she worked in jobs that did not pay "great," but gave her the flexibility to put her children first; she became overconfident as to her financial abilities; her brother passed away in January 2017; because her brother left no last will and testament, she was named the administrator of his estate, requiring flexibility to handle the varied requirements of being an administrator; as the estate administrator, she engaged in a two-year legal battle with her brother's fiancée; and Applicant quit her job and cashed in her 401k to spend significant time to perform her duties as administrator. (Response to the FORM) Another possible factor was that at one unspecified point, her ex-husband, the father of her two children, had child-support arrearages of over \$200,000, and his social security was garnished. (Item 3, at 25) It is unclear if those arrearages have been resolved.

In her SF 86, Applicant acknowledged having four delinquent accounts. (Item 3 at 46-52) She also acknowledged that she had taken "several" Caribbean cruises, but only identified one such cruise from 2015. (Item 3, at 35-41) When she was interviewed by an investigator with the U.S. Office of Personnel Management (OPM) on May 2, 2019, Applicant initially contended that all of her accounts were paid in full and current. She was confronted with a number of delinquent accounts, and claimed to be unaware that several of those identified were her accounts or that several of the other accounts were delinquent. She discussed various accounts, and she denied having more than one account with one particular creditor, although three separate accounts were revealed. She later acknowledged that after her brother passed away, she stopped making payments on all accounts but for her car and a bed. She admitted that she willingly "prioritized her family" – over her bills. She felt that it was a one-time situation, and that she got overwhelmed when everything got out of control. She claimed that she was working on paying off her debt. She promised to resolve her debts if she is satisfied that they are her debts and she has the means to pay them. When given the opportunity to furnish the investigator with documents associated with her financial debts, she indicated that she had no such documents. (Item 4, at 4)

In November 2016, Applicant made an initial contact with a law firm to discuss the possibility of filing for bankruptcy. No other contacts were made until October 1, 2019 – one month after the SOR was issued. (Letter, dated January 27, 2020, attached to Applicant's Response to the FORM) On November 4, 2019, Applicant filed a petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, listing \$50,765 in debts. Although the bankruptcy trustee report had been filed in December 2019, no decision by the bankruptcy judge regarding discharge of any debts had been made by the time the record closed. (Item 6 (Bankruptcy History))

The SOR alleged nine delinquent accounts totaling approximately \$29,338, set forth as follows: SOR ¶ 1.a. is a credit-card account with an unpaid balance of \$7,501 that was placed for collection and charged off in April 2017 (Item 5, at 6; Item 4, at 4). SOR ¶ 1.b. is an unsecured loan with an unpaid balance of \$4,054 that was placed for collection and charged off in April 2017. The unpaid balance increased to \$4,488 as of July 2018. (Item 5, at 6; Item 4, at 4; Letter, dated July 30, 2018, attached to Applicant's Response to the FORM). SOR ¶ 1.c. is a credit-card account with a past due and unpaid balance of \$3,315 that was placed for collection and sold to a debt purchaser. (Item 5, at 6; Item 4, at 1; Item 3, at 47-48) SOR ¶ 1.d. is an unspecified type of account with an unpaid balance of \$2,619 that was placed for collection and charged off in May 2017. The unpaid balance increased to \$3,089 as of July 2018. (Item 5, at 7; Item 4, at 4; Letter, dated July 30, 2018, attached to Applicant's Response to the FORM) SOR ¶ 1.e. is a credit-card account with a past due and unpaid balance of \$3,188. (Item 5, at 7; Item 4, at 4) SOR ¶ 1.f. is a credit-card account with a past due and unpaid balance of \$2,149 that was placed for collection. (Item 5, at 7; Item 4, at 4) SOR ¶ 1.g. is a charge account with an unpaid balance of \$325 that was placed for collection and charged off in May 2017. (Item 5, at 7; Item 4, at 1-2; Item 3, at 49-50) SOR ¶ 1.h. is a cable account for which equipment was not returned leaving an unpaid balance of \$187 that was placed for collection. (Item 5, at 11; Item 4, at 2, 4; Item 3, at 50) SOR ¶ 1.i. is an unspecified type of account with an unpaid balance of approximately \$6,000. (Item 3, at 48-49; Item 4, at 1) Although Applicant contends that her financial problems started in January 2017, a review of her credit report reveals that her delinquent accounts started experiencing late or non-payments as early as October-November 2016.

Other than Applicant's 2016 initial contact with her bankruptcy attorney, and her July 2018 inquiry of a creditor as to the status of three of her delinquent accounts, which have been confirmed by documents, she has offered only unverified contentions regarding her efforts to resolve the remaining delinquent accounts, for there is no documentary evidence, such as repayment plans, cancelled checks, bank account registers, receipts from creditors, or other material correspondence between her and her creditors to support her positions. On November 4, 2019, she denied that all of the accounts alleged in the SOR remained delinquent. That denial was false, for while she may have filed her petition for bankruptcy on that date, the simple filing of a bankruptcy petition does not automatically eliminate the standing account delinquencies.

It is not known what Applicant's current financial resources may be because she did not report her current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no

evidence of a budget. There is evidence of financial counseling associated with the filing for bankruptcy. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than she had been, or if her focus on her family's financial desires are still given priority over her own finances.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The

burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has nine delinquent accounts totaling approximately \$29,338. Several of those debts became delinquent as early as October or November 2016, and by the time the record closed in February 2020, none of them had been addressed by contacts with creditors or efforts to enter into payments of any amount. Instead, on the same day that she submitted her Answer to the SOR – about one month after the SOR was issued – her attorney filed for bankruptcy on her behalf under Chapter 7 of the U.S. Bankruptcy Code. That bankruptcy still has not been resolved. Applicant acknowledged that when it came time for her to address her various accounts, she prioritized her family over her bills. AG ¶¶ 19(a) and 19(c) have been established. Because she prioritized her family desires, not necessarily their needs, it appears that Applicant simply diverted her available funds to her family’s desires, and was unwilling to satisfy her debts regardless of an ability to do so. Accordingly, AG ¶ 19(b) has also been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(b), 20(c), and 20(d) all minimally apply, but AG ¶ 20(a) does not apply. Applicant attributed her financial problems to a cornucopia of factors: her creditors kept increasing her credit limits on her accounts that had been open for over ten years; because she was unable to assist her children with the costs of their education, she opened some accounts to assist them with the purchase of their homes; for most of her life she worked in jobs that did not pay “great,” but gave her the flexibility to put her children first; she became overconfident as to her financial abilities; her brother passed

away in January 2017; because her brother left no last will and testament, she was named the administrator of his estate, requiring flexibility to handle the varied requirements of being an administrator; as the estate administrator, she engaged in a two-year legal battle with her brother's fiancée; and Applicant quit her job and cashed in her 401k to spend significant time to perform her duties as administrator. Applicant acknowledged that flexibility was a priority for her employment, so that she could spend more time with her children, at the same time voluntarily working in lower-paying positions to maintain that flexibility. Her intentions have resulted in a blemished employment history involving voluntary and involuntary terminations separated by periods of unemployment.

Applicant's involuntary loss of employment and the unexpected death of her brother were clearly conditions that were largely beyond her control. Her repeated voluntary quitting of jobs that resulted in periods of unemployment; taking advantage of increased credit limits from creditors; prioritizing family desires over maintaining her accounts in a current status; and allowing accounts to become delinquent in late 2016 – months before the unexpected death of her brother in January 2017 – were not largely beyond her control. The significant factor that cannot be overlooked is when the issues arose over which she had little control, did she act responsibly under the circumstances. A "maybe" response, without substantial explanations by Applicant, is insufficient to support such a decision. While bankruptcy is a legal means of liquidating past debts, the significance of the bankruptcy proceeding depends on what the bankruptcy shows about an individual's judgment and reliability in dealing with financial obligations. The cause of the financial problems and what efforts the individual made to solve the problems short of bankruptcy are more significant than the amount of the debt. Essentially ignoring her delinquent accounts, including two relatively minor accounts with unpaid balances of \$187 and \$325, until after she received the SOR, Applicant's first real effort to address them occurred on the same date that she filed her petition for bankruptcy.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

The nature, frequency, and recency of Applicant's continuing financial difficulties, and her failure to voluntarily and timely resolve her delinquent accounts for several years, is sufficient to conclude that her financial difficulties were not infrequent and they are likely to remain unchanged. Applicant completed her SF 86 in April 2019; underwent her OPM interview in May 2019, when she was offered the opportunity to submit documentation regarding her delinquent accounts; and the SOR was issued in August 2019. Each step of the security clearance review process placed her on notice of the significance of the financial issues confronting her. In May 2019, she promised to resolve her debts if she is satisfied that they are her debts and she has the means to pay them. As of the closing of the record, other than filing for bankruptcy, she has taken no actions to address, much less resolve, any of her delinquent accounts.



An applicant who begins to resolve financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018)).

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

Furthermore, Applicant filed for bankruptcy on November 4, 2019, and, as of the date the record of this security clearance eligibility process closed, there has not yet been a decision as to whether or not the bankruptcy judge will discharge her debts. In the absence of the potential bankruptcy discharge, and any period following that potential discharge, it is simply too recent for Applicant to establish a track record of debt resolution, or to determine her post-bankruptcy behavior. In the absence of Applicant's current net monthly income; monthly expenses; any monthly remainder that might be available for discretionary spending or savings; evidence of a budget; or positive activity by Applicant, other than her filing for bankruptcy, it remains difficult to determine if she is currently in a better position financially than she had been. Applicant's actions, delayed action, or inaction, under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010); see *a/so* ISCR Case No. 18-01762 at 2 (App. Bd. Jun. 26, 2019)

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 61-year-old employee of a defense contractor. She has been serving as a technical publications delivery specialist with her current employer since September 2018. A 1977 high school graduate, Applicant earned additional credits from a university but no degree. On November 4, 2019, Applicant filed a petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, listing \$50,765 in debts.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has nine delinquent accounts totaling approximately \$29,338. Several of those debts became delinquent as early as October or November 2016, and by the time the record closed in February 2020, none of them had been addressed by contacts with creditors or efforts to enter into payments of any amount. Instead, on the same day that she submitted her Answer to the SOR – about one month after the SOR was issued – her attorney filed for bankruptcy on her behalf under Chapter 7 of the U.S. Bankruptcy Code. That bankruptcy still has not been resolved. Her repeated voluntary quitting of jobs that resulted in periods of unemployment; taking advantage of increased credit limits from creditors; prioritizing family desires over maintaining her accounts in a current status; and allowing accounts to become delinquent in late 2016 – months before the unexpected death of her brother in January 2017 – were not largely beyond her control. In addition, taking Caribbean cruises instead of paying one's bills is not a positive characteristic of an individual's current reliability, trustworthiness, and good judgment.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather,

