



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF WAR
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

FEB 06 2026

**MEMORANDUM FOR UNDER SECRETARY OF WAR FOR INTELLIGENCE AND
SECURITY
DIRECTOR, DEFENSE COUNTERINTELLIGENCE AND
SECURITY AGENCY**

**SUBJECT: Legal Determination – Defense Counterintelligence and Security Agency Personal
Appearance Program**

- References:
- (a) Deputy General Counsel for Intelligence and Security and Director for Defense Intelligence for Counterintelligence, Law Enforcement, and Security Memorandum, “Department of Defense Due Process and Appeals Reform Implementation” regarding DCSA, October 23, 2024 (cancelled)
 - (b) United States Code, Title 10, section 140
 - (c) DoD Directive (DoDD) 5145.01, “General Counsel of the Department of Defense,” January 17, 2025
 - (d) DoDD 5145.03, “Oversight of the DoD Personnel Security Program,” January 10, 2013, incorporating Change 1, June 19, 2020
 - (e) Executive Order 12968, “Access to Classified Information,” August 5, 1995, as amended
 - (f) Executive Order 13467, “Reforming Processes Related to Suitability for Government Employees, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information,” June 30, 2008, as amended
 - (g) Under Secretary of Defense for Intelligence and Security memorandum, “Department of Defense Due Process and Appeals Reform Implementation,” April 6, 2023
 - (h) DoD Manual 5200.02, “Procedures for the DoD Personnel Security Program (DoD PSP),” effective April 3, 2017, incorporating Change 1 on October 29, 2020
 - (i) United States Constitution, Article II, section 2

Reference (a) is hereby rescinded, effective October 23, 2024. Pursuant to the authority in references (b) and (c) and in accordance with my responsibility “to verify that the rights of individuals are being protected consistent with the Constitution, laws of the United States, Executive orders, and [DoW] policy,” reference (d), and upon review of references (e) through (i), I have determined that reference (a) was legally deficient at the time of its issuance.

Section 5.2(a)(7) of reference (e) requires that the Department afford Service members and Department of War (DoW) civilians whose national security eligibility has been proposed

for denial or revocation “an opportunity to appear personally” and present evidence supporting their fitness for such eligibility. This personal appearance must occur before an “authority[] other than the investigating entity.” Reference (e).

In 2019, President Trump designated Defense Counterintelligence and Security Agency (DCSA) “the primary Federal entity for conducting background investigations for the U.S. Government.” Reference (f). Having been so designated, DCSA is “the investigating entity” identified in section 5.2(a)(7) of reference (e). Accordingly, DCSA is disqualified from performing the personal appearances required by that section. Because DCSA’s role may be transferred only to “another Department of [War] component,” pursuant to section 2.6(b)(i) of reference (f), this legal deficiency may not be cured by delegating DCSA’s investigative responsibilities to an agency subcomponent.

Given this insuperable legal barrier, reference (a) was issued in error. Moreover, DCSA has failed to abide by the terms of its own implementation. Its personal appearance program fails to satisfy the express terms of that plan and other critical program requirements, including:

- Use of the standard statement of reasons (SOR) template in accordance with reference (g).
- Permitting individuals the right to counsel in accordance with section 5.2(a)(3) of reference (e) and paragraph 10.2.b of reference (h).
- Permitting individuals to present witness testimony supporting their proposed national security eligibility in accordance with paragraph 10.2.f of reference (h).
- Timely providing affected individuals with the evidence underlying the Government's proposed revocation or denial decision in accordance with section 5.2(a)(3) of reference (e).
- Restricting issuance of post-SOR national security eligibility determinations to duly appointed officers of the United States in accordance with reference (i).

In accordance with reference (g), the Director, DCSA, must suspend all personal appearance hearing functions, effective immediately, and refer all cases to the Director, Defense Office of Hearings and Appeals (DOHA) for further processing. DCSA Office of General Counsel (OGC) personnel are directed to cease participation in all DCSA personal appearance hearing functions.

Consistent with my determination that reference (a) was issued in error, and as a result of DCSA's failure to comply with the appointment requirement imposed by reference (i), any

decision issued by DCSA based on the record of its own personal appearance hearing is void. The General Counsel, DCSA, will identify and refer to Director, DOHA, all such cases for further review. The Director, DOHA, will review:

- Cases resolved in the individual's favor for legal or other error that may impair the national security. If the Director, DOHA, determines that there is a reasonable likelihood the national security has been impaired, he will convene a new hearing based on the original SOR.
- Cases resolved against the individual for a denial of due process. If the Director, DOHA, determines that an individual has been denied due process pursuant to references (e), (g), (h), or other applicable authority, he will identify an appropriate remedy and notify the affected individual of its availability.

Nothing in this memorandum diminishes or otherwise affects a Component head's authority to deny or suspend access to classified information or Special Access Programs, including SCI, at any time, should the agency determine that initial or continued access of a covered individual is inconsistent with protecting the national security.



Earl G. Matthews
General Counsel