Press Briefing - New Interim Guidance Question 21 on the Standard Form 86, “Questionnaire for National Security Positions”

PRESS BRIEFING

New Interim Guidance

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The Director of National Intelligence James R. Clapper issued Friday, April 5 new guidance to support victims of sexual assault who hold or wish to hold a government security clearance, but may be reluctant to seek mental health counseling for fear they may have to disclose the counseling on their security clearance questionnaire. The guidance applies to all executive branch departments and
agencies.

April 5, 2013; 9 a.m. EDT

Briefer: Mr. Charles Sowell, Deputy Assistant Director for Special Security in the Office of the Director of National Intelligence.

Michael Birmingham: Good morning. This is Michael Birmingham for the Office of Director of National Intelligence. I’d like to thank everybody for joining us early on a Friday morning. I have with us today Mr. Charles Sowell. I’ll let him introduce himself, identify himself and his title. This is an on the record briefing so you may use Charles Sowell’s name and duty title for attribution in your writing. So without further delay let me turn this over to Charlie.

Charles Sowell: Hi, good morning. This is Charles Sowell -- S-O-W-E-L-L. I’m the Deputy Assistant Director for Special Security in the Office of the Director of National Intelligence. And I’m very pleased to be with you this morning and to announce that Director Clapper has worked with the Office of Personnel Management, the Department of Defense and the Office of Management and Budget to issue very important interim guidance for completing the security clearance questionnaire. And this affects all executive branch departments and agencies.And the reason we’re issuing this interim guidance is to encourage victims of sexual assault to seek the mental health services that they may need.

The interim guidance instructs everyone who’s completing the questionnaire for national security positions -- which is commonly known as the SF-86 -- the Standard Form 86 -- who are victims of sexual assault that have received or intend to receive mental health counseling strictly related to the sexual assault to answer no on Question 21. We believe this is very important because certainly the U.S. government recognizes the critical importance of mental health and supports proactive management of mental health conditions encouraging wellness and

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recovery.

Now currently Question 21 on the SF 86 asks if in the last seven years an individual has consulted a health care professional regarding an emotional or mental health condition or if they were similarly hospitalized. There are currently exemptions for this question if an individual received family, grief or marital counseling that was unrelated to violence by them or if they received counseling for post - excuse me for combat-related military service.

What we understood through communications from the Department of Defense and several congressional members was that victims of sexual assault, some number of them were not seeking mental health counseling because they were concerned that they might lose their security clearance. Now, while the data shows that this was not the case, the problem is that the perception had become very broadly understood throughout particularly DoD and in an urban legend kind of way that you can’t report mental health counseling or you’ll lose your clearance.

So, by creating this exemption we believe that it has two important fold impact immediately. First, it allows victims of sexual assault to get the help that they may need and get mental health counseling without fear of losing their clearance. Second, we believe that it significantly enhances national security because people that were in cleared positions and may not have been getting the help that they need can now do so, and we think that this is a great outcome.

Director Clapper issued this interim guidance under his designated authority as the security executive agent as outlined in Executive Order 13467. Effective immediately we’re adding the following language to Question 21 in the Standard Form 86. The language will read, “Please respond to this question with the following additional instruction. Victims of sexual assault who have consulted with a health care professional regarding an emotional or mental health condition during this period strictly in relation to the sexual assault are instructed to answer, No.”

Immediately, the Electronic Questionnaires for Investigations Processing system commonly known as eQIP -- which is managed by the Office of Personnel Management -- will have a pop-up window so that if an applicant goes in to fill out the SF-86, when they get to Question 21, a pop-up window will come up with this guidance and that broadly gets this information out about this change.

The DNI is also issuing a memorandum to all executive agencies and departments highlighting this change and we will be working with our partners throughout government, Congress and the advocacy groups that have partnered with us on this to get the information out to constituents and stakeholders that have contacted them informally. So we’ll be getting the word out through

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a number of different forum and we believe that your assistance in this is critical as well. So we thank you for your interest in this issue and your help in getting the word out.

The interim guidance reaffirms existing policy -- which says seeking health care alone should not adversely impact the individual's ability to obtain or maintain
eligibility to hold a national security sensitive position or eligibility for access to classified information.

You know, we also reiterate that a person's decision to seek personal wellness and recovery should not be perceived to jeopardize an individual's security clearance. It actually may favorably affect a person's eligibility determination by showing that they recognize that there is an issue and taking proactive steps to address that issue. So we want to encourage individuals to get the help that they may need.

We also highlight protections for individuals who answer "yes" to the question. There are a number of individuals that answer "yes" to Question 21 that they have had mental health counseling and in the vast, vast majority of these cases there is no adverse impact on their ability to hold a clearance. In some cases as you may understand the underlying issues are so severe that it could result in a change to a person's eligibility to hold a clearance. But that's important part of the security clearance process to determine that.

For the vast majority of sexual assault victims, that's not the case. Sexual assault victims are simply wanting to get the help that they feel that they need, the counseling that will help them get through this traumatic process. And again as we stated earlier we see this as a very good thing and want to encourage it.

We worked very closely with individuals in the mental health community, security professionals, civil rights and civil liberties professionals and legal counsel to ensure that we got the interim guidance right. And so I'm very pleased that they've participated in this and helped us in that regard.

I'd also like to say that we could not have made these changes without the support of the Service Women's Action Network -- SWAN -- and Protect Our Defenders organizations whose advocacy on behalf of victims of sexual assault was absolutely integral to this process. Through our combined efforts victims of sexual assault will be encouraged to seek the mental health services they may need while feeling safe that their privacy protections are strictly enforced.

We'd also like to thank Senator Tester, Congresswoman Pingree and Congresswoman Tsongas for the oversight and support of victims of sexual assault who may benefit from mental

health treatment but may not have otherwise sought treatment out of concern for their career security clearance. They and their staffs have been absolutely magnificent throughout this process.

And lastly I’d like to highlight our strong partnership with the Office of Personnel Management, the Department of Defense, the Office of Management and Budget and the Office of the Vice President -- specifically Lynn Rosenthal, the White House advisor on violence against women. Their support was absolutely critical to delivering this interim guidance and we’d like to thank them for their support and their hard work on this important issue.

And with that I’d like to close and open it up for questions.

Operator: Thank you. At this time if you’d like to ask a question, please press star 1. To withdraw your request, press star 2. Once again to ask a question, please press star 1. One moment please for the first question. Once again to ask a question, please press star 1.

Josh Gerstein, you may ask your question.

Josh Gerstein: Hi this is Josh Gerstein at Politico. I noticed some allusion to these changes appeared in the Federal Register a few weeks ago. There was also a discussion of changing another question on the questionnaire regarding drug use. Can you tell me if that is going forward and what the rationale is for that change?

Charles Sowell: At this point happy to answer the questions about Question 21. But at this point we’re not prepared to address the drug use question proposed change on the 86.

Michael Birmingham: Josh, if you have something specific on Question 21, you can ask that at this time.

Josh Gerstein: Okay. I’ll pass. Thank you.

Michael Birmingham: Okay.

Operator: Pam Benson, you may ask your question.

Pam Benson: Yes I was just wondering. You had mentioned that the people that did respond yes to Question 21 the vast majority were not in any way, whatever you want to refer to it, discriminated against, adversely affected. Do you have any numbers or percentages that you can give with that?

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Charles Sowell: Yes. When we looked at specifically at all of the Department of Defense cases -- which, you know, Department of Defense represents about 85% of all of the cleared and eligible population -- whether it's service members, civilian personnel or contractors -- .002% -- .002% -- of all individuals that answered "yes" to the question solely for that question because you have to remember there are a number of other issues on the SF 86 but for those folks that said I went and got mental health counseling .002% had what we would term an adverse action that was applied to their case.

They could have been suspended from access. They could have had their eligibility removed and at which point they could go through the due process procedures that give folks a chance to address the concerns that the government might have had. But very, very small numbers.

But, you know, the challenge is even though that data is out there and even though we've talked to groups about it, just the perception out there is completely the opposite and there's really despite our best efforts no way to turn that perception around without taking concrete action. So that's why we believe that this step is so important.

Pam Benson: If I could just follow up quickly, do you have any indication of how many people maybe didn't seek, you know, gave up seeking a security clearance or maybe even in the course of filling out the questionnaire gave up because of that issue? I mean is there any way of knowing that?

Charles Sowell: I don't have what I would call solid empirical data for you. But I can tell you that Congresswoman Pingree's staff in particular would send me sanitized - I'd have no idea who it was or where they were, what service they were in, but they would send e-mails that were from victims of sexual assault saying, "When's the government going to do something about this? I'm not getting the help that I need." So I've got anecdotes.

From what I understand those numbers were probably in the tens of people. But beyond that I don't have any real empirical data on how many people might not have answered yes to the question. I know that the advocacy groups -- in particular SWAN and Protect Our Defenders -- routinely here from their constituents and the people that participate in their conferences that there is a widespread belief that victims of sexual assault in general are not comfortable answering the question. So I just don't know how many are not getting counseling as a result of that.

Operator: JJ Green, you may ask your question.

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JJ Green: Yes good morning. Thank you for taking my question. Thank you for doing this. Just one short question, when did you realize you had to do something to take this action or some action?

Charles Sowell: Sure. The Department of the Army actually surfaced this issue a few years back. It was probably 2011. And we tried through the normal policy process to look at what the root cause of the issue was. In some cases throughout government despite the policies that are out there individuals will fail to follow policy, they'll do their own thing if you will and so we tried to look at what we could do to ensure that all departments and agencies were following the proper procedures. So that was our first step.

Once we took that step we took a real solid look at Question 21 -- which by the way has changed about ten times since the 1950s. As society has evolved, as the mental health profession has evolved, we've changed that question repeatedly to keep up with the times. The current version of the question is problematic for a couple of reasons. It combines a couple of different things like have you been hospitalized for a mental health condition -- which is certainly far more severe an issue than simply getting mental health counseling -- and it specifically asks about mental health counseling.

Well frankly when we put a working group together of mental health professionals, legal experts, civil rights, civil liberties professionals, security professionals and lawyers together and looked at that question specifically, we really are trying to get away from asking about the fact of mental health counseling and getting to a question that focuses on an individual's ability to function appropriately at the workplace or at home or social settings. That's really what we care about. Can you protect national security information, can you function appropriately. Whether or not you've had counseling really isn't the issue.

So I'm sorry for a long answer to the question, but I wanted to take you through the steps we were looking at. It became very clear I would say late last year that revising Question 21 in its entirety -- which is I should say is Director Clapper's absolute goal here -- is going to take some time to get that wording right. And so as a result it became clear that we had the opportunity to in the short term to add this guidance that will allow victims of sexual assault to answer "no" to whether or not they've had mental health counseling while we completely revise the question.

But the longer this went on the more clear it was that we needed to do something to create relief for the victims of sexual assault. So it has taken a while. We wanted to makes sure we got the wording right while protecting national security on the one hand and encouraging victims of sexual assault to get the help they need on the other.

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Director Clapper his guidance on this throughout the whole process has been we need to take care of the victims of sexual assault, we need to protect national security but I also want a version of the question that eliminates the need for additional exemptions by refocusing it. And he has been a staunch advocate of this and his leadership throughout the entire process has been critical to driving this change.

Operator: David Lerman, you may ask your question.

David Lerman: Hi thanks. Can you tell me roughly how many people are filling out this form every year and how many people are answering yes to Question 21 roughly? And can we get a text of Question 21 sent to us?

Michael Birmingham: Yes.

Charles Sowell: Yes absolutely we can get you the text of Question 21 as it exists today and as with this particular change. We just sent our latest report on the number of cleared people. There are about 4.9 million cleared or eligible employees throughout government, military and contractors. That's a pretty large number, but given, you know, the importance of national security and the types of missions that we carry out and it's stayed fairly consistent over the past five years.

David Lerman: What does that mean? Does that mean 4.9 million people have been cleared each year?

Charles Sowell: No that's total. So in getting to the answer to your question how many people fill out the form...

David Lerman: Yes.

Charles Sowell: ...if you consider that every five years our cleared workforce is reinvestigated at the top secret level and currently every ten years our secret level workforce is reinvestigated, the numbers vary year to year, but you're looking at a number of clearance decisions and applications in the hundreds of thousands. How many people actually answer "yes" to Question 21 is data that we can get from the Department of Defense, but we do not - we don't at ODNI capture statistics on how many people answer which questions on the SF 86. The individual agencies and departments have that information but again it's not something that they routinely look at.

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We really tend to treat each individual case as an individual case. And as you can imagine, the different issues that come up on cases -- whether it’s mental health counseling, whether it’s any of the other questions that are asked on the SF 86 -- vary widely from person to person filling it out.

So I’m sorry that I don’t have the actual numbers of the number of people that answer yes to that question specifically. But what I will do is I’ll see if we had that any numbers related to that as a part of our working group discussions.

David Lerman: Thanks.

Charles Sowell: Yes.

Operator: Once again to ask a question, please press star 1. One moment please. At this time there are no further questions.

Michael Birmingham: I’d like to thank everybody for joining us this morning at such an early time and late notice. If you have any questions throughout the day, feel free to give me a call. The number was on the media advisory -- 703-275-3700 -- and we’ll try to get you answers as we are able.

With that, thank you very much again for joining us and have a good day.

Operator: Thank you. This concludes today’s conference. You may disconnect at this time.

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