

**NATIONAL INDUSTRIAL SECURITY PROGRAM
POLICY ADVISORY COMMITTEE (NISPPAC)**

**MINUTES OF THE MEETING
(Finalized June 30, 2006)**

The NISPPAC held its 26th meeting on Wednesday, May 10, 2006, at 10:00 a.m., at the National Archives Building, 700 Pennsylvania Avenue, N.W., Washington, D.C. J. William Leonard, Director, Information Security Oversight Office (ISOO) chaired the meeting. The meeting is open to the public.

1. **Welcome, Introductions and Administrative Matters** – The Chair greeted the membership and attendees. The participation of Dr. Joshua Weerasinghe (Policy Division Director [Acting], Office of the Program Manager-Information Sharing Environment [PM-ISE], Office of the Director of National Intelligence [ODNI]) was recognized.

2. **Reciprocity – Submission of Trend Data by Industry** – The Chair introduced this topic for discussion by recalling that the NISPPAC membership during the November 15, 2005 meeting endorsed the establishment of metrics regarding reciprocity with respect to security clearances. Industry agreed to submit high level information in response to a survey. By its nature, this information was acknowledged as containing false positives because it was based upon Facility Security Officers' perceptions regarding eligibility while not necessarily knowing whether access authorizations were granted with exceptions or waivers. The survey was not intended to be used for follow-up on individual transactions, but to reflect from a high level point of view whether reciprocity goals and objectives were being successfully achieved over a period of time. The first input was submitted to ISOO in March, which in turn was provided to the Personnel Security Clearance (PCL) oversight group chaired by Clay Johnson (Deputy Director for Management, Office of Management and Budget [OMB]). Feedback was obtained from the Department of Defense (DoD) that while helpful from a trends perspective, with additional granularity, the survey results might be useful to follow-up from a transactional point of view as there is a genuine interest on the part of many of the Defense components to identify where the specific problems exist, especially if it might concern a particular program office. The Chair posed the question whether the extra granularity being suggested could be gathered relatively effortlessly without undermining the integrity and the anonymity of the process. In the ensuing discussion, Thomas Langer (Industry) stated that industry would be willing to reformat the data gathering.
ACTION: The Chair agreed to forward DoD's suggestions to the NISPPAC membership so that they might evaluate whether it is possible to obtain additional granularity in the trends survey in order to provide more useful information.

- 3. ISOO Letter to Executive Branch Agency Heads on Investigations** – The Chair introduced the subject of Executive Branch agencies increasingly imposing vetting requirements on contractor personnel for reasons other than accessing classified information; and the lack of recognition on the part of certain agencies, most likely those that do not frequently deal with classified information, that there is a National Industrial Security Program (NISP) with over 750,000 contractors who have been subject to investigations and granted clearances. The Chair presented a draft letter to the NISPPAC for their consideration and comment. The letter will be sent to all Executive Branch agencies to remind them of the NISP and the investigative requirements for PCLs. It will reference the OMB memorandum that recognizes that there are reasons for performing investigations other than for access to classified information and when that occurs duplication of what already exists should be avoided. The letter will also provide sources for the verification of current clearances if necessary. In addition to forwarding this letter to all Executive Branch agencies, this document will be posted to the ISOO website.

ACTION: Comments from the NISPPAC members should be forwarded to the Director, ISOO, by May 15, 2006.
- 4. Sensitive But Unclassified (SBU) Update** – The Chair next introduced discussion of the increasing imposition of SBU requirements upon industry. As a follow-up to the last NISPPAC meeting, correspondence from the Industry NISPPAC members was sent to Mr. John A. Russack, the PM-ISE because the latter office has the lead for pulling together all of the various initiatives within government to bring about solutions to the SBU issue. Mr. Langer stated that recent personnel changes with Mr. Russack's departure and replacement by Ambassador Thomas McNamara have prevented a meeting to discuss this issue. The newly issued General Accountability Office's (GAO) report reinforces a prior Congressional Research report's conclusions, which identified 56 markings for SBU being used throughout the government. This plethora of markings dilutes the aims of national security markings. A number of these unclassified sensitive markings are driving the investigations for suitability determinations, thereby clogging the clearance process. Industry stands ready to assist in any way possible. A number of the presently used markings will not stand up to Freedom of Information Act (FOIA) requests because there is no regulation supporting them.
- 5. Dr. Weerasinghe provided an update on SBU from the perspective of the PM-ISE.** According to Executive Order, the Department of Homeland Security (DHS) and Department of Justice (DOJ) have the lead in assisting the PM formulate recommendations on SBU. Ms. Grace L. Mastalli (DHS) co-chairs the Working Group on SBU/Controlled Unclassified Information (CUI). This working group has produced an inventory of markings for 84 markings for SBU (17 of which are required by law). The main problem in dealing with SBU can be illustrated by the following example. If someone in the Intelligence Community (IC) reads a document stamped SECRET, they will know how to handle the information. On

the other hand, if the document was stamped LDI (Limited Distribution Information), a SBU category required by statute, most will not know how to handle this document. Similar problems exist for all 84 SBU designations. One agency has six separate designations for its own SBU. Industry has its own unique requirements in dealing with SBU, which are different from State, local and tribal entities. The next step is to analyze the inventory produced by the SBU/CUI working group and create structures and policies that will provide cross-community guidance on this issue. There are five major communities that are involved with terrorism information: Intelligence, Diplomatic, Law Enforcement, Homeland Security, and Defense. There has been no overarching policy. In lack of this policy, individual agencies have proliferated their own caveats to deal with SBU. There is a need to return to the premise that SBU needs to be handled from the position of how to share, and not how to prevent information sharing. The PM-ISE is receptive to comments, and wishes to build a dialogue with the NISPPAC, particularly for constructive solutions that are cross-community wide, rather than those that would promote silos.

6. Ms. Mastalli stated that the working group she co-chairs is operating within a tight timeframe to produce the first set of recommendations for the President from the Attorney General and Secretary of DHS in coordination with the PM and ODNI by June 14th concerning all counter-terrorism, homeland security, and law enforcement information; and for all other forms of information by December 2006. The working group shares the same concerns expressed by Industry's letter to the PM-ISE. It is necessary that solutions be brought to this area in order to promote the effective sharing and protecting of information. The consultation of the NISPPAC participants is invited. In response, the Chair asked Ms. Mastalli for recommendations on how this consultation might take place. Ms. Mastalli stated that a formal process is being created, but in the meantime informal input is welcome. She requested that the Director, ISOO, serve as a channel for input from the NISPPAC; and at the same time, her contact information can be directly used from business cards to be distributed at the conclusion of the present meeting. Dr. Weerasinghe added that the June deadline for recommendations is mandated by Congress and the President. He also invited members of the NISPPAC to contact his office and provide recommendations. Mr. Langer stated that it might be useful for Ms. Mastalli to learn that under the NISP companies are prohibited from releasing unclassified information without customer authorization; and that this requirement has existed for decades, independent of SBU markings.
7. **FISMA Concerns** – The Chair recalled that ISOO arranged a meeting between Glen Schlarman (OMB) with the NISPPAC industry members as a follow-up to concerns expressed during the last session of the NISPPAC. Mr. Langer then provided an update on the FISMA interim rule to the Federal Acquisition Regulation (FAR) that was effective September 30, 2005. During the aforementioned meeting, Mr. Schlarman requested a white paper dealing with industry's FISMA concerns. These concerns deal with many of the topics already

discussed such as SBU markings, suitability determinations, and IT requirements for new categories of unclassified information. As the FISMA standards have begun to be promulgated from the government IT community, industry is concerned about what compliance is legally obligated, the impact of the standards, and possible auditing of contractor systems by outside agencies. Industry will be providing a white paper to OMB with additional inputs. The completion of the paper is expected by the end of May and will be forwarded to ISOO and OMB. The Chair stated that a copy of the completed white paper will be provided to Ms. Mastalli. Mr. Langer stated that he will also provide an initial draft to Ms. Mastalli, which frames the issue.

ACTION: The FISMA white paper will be completed by the end of May with copies provided to OMB and Ms. Mastalli.

8. **DHS/ICE Issue** – The Chair stated that during the last NISPPAC meeting, issues were raised regarding the verification of status and background for immigrants employed at contractor facilities, the Verification Information System (VIS) database, and U.S. Immigration and Customs Enforcement (ICE) activities. At the time, Mr. John Young (DHS) offered to coordinate with NISPPAC members on this issue in order to open a dialogue with DHS. In response, Mr. Young reported that since the last meeting he has facilitated such a connection. Mr. Ray Musser (Industry) commented that representatives from ICE are scheduled next week to present a possible program of partnership with industry dealing with the issues outlined above at an Aerospace Industries Association (AIA) conference in Tucson, Arizona.
9. **Combined Industry Presentation (Attachment)** - The combined industry presentation was presented by Mr. Langer.
 - a. **Clearances** – Mr. Langer reported that there is new reinvestigation moratorium due to a Defense Security Service (DSS) funding shortfall. The cessation was effective April 28, 2006. Industry is working cooperatively through various industry associations to express its views. Letters have been sent to Secretary of Defense Donald Rumsfeld and Deputy Secretary of Defense Gordon England. The letters ask for reinstatement of funding for DSS for the remainder of FY 2006 and contain a pledge by industry to assist in evaluating the entire process. Congressional hearings on this issue are scheduled to begin during the week of May 15, 2006. The impact of this moratorium will affect college hires, reinvestigations for Sensitive Compartmented Information (SCI) or Special Access Program (SAP) accesses, and overall recruiting costs for cleared personnel.
 - b. **Reciprocity** - Industry appreciated the initiative Mr. Clay Johnson expressed in a December 2005 letter that outlined the Executive Branch position and requested industry feedback on compliance. The reciprocity guidelines stress a risk management approach, and determinations based

on current file and known adverse information. The trends survey is being carried out not in order to create conflicts with customers, but to gauge progress with reciprocity. AIA has graciously agreed to collect the survey data. Mr. William Davidson (Air Force) inquired regarding participation, especially the size of the companies involved. Mr. Langer stated that the survey has involved a representative sampling of industry, particularly sites that had meaningful cross briefing, moving between customers, but not with any effort to exclude smaller sites. The Chair and Mr. Langer emphasized that the survey was meaningful from a trends perspective. Mr. Gerald Schroeder (Department of Justice) asked whether survey results reflected the collateral and/or SAP worlds, i.e., whether reciprocity problems exist more in one area than the other as reflected in the trends. Mr. Langer stated that the trends survey results reflect more problems in the SAP world than in the collateral. The Chair stated that the intent is to include the collateral and SAP worlds. Mr. Schroeder stated that it would be more helpful in reporting results to Mr. Johnson for the survey to be broken down in order to show where the problem was greater (whether collateral or SAP) from a trends perspective and what the trends were showing. At the request of the Chair, Ms. Kirsten Koepsel (AIA) reviewed the survey apparatus and stated that the results could be broken out further. Mr. Langer added that anecdotal evidence and feedback indicates that not all the tools are in place for customer sites to access investigative data on SAP nominees. Data for April 2006 cases is being gathered now.

ACTION: Results of the trends survey will be broken out according to the SAP and collateral data.

- c. **NISPOM Revision** – Mr. Langer stated that the revised DoD 5220.22-M, National Industrial Security Program Operating Manual, was approved on February 28, 2006; and represents a comprehensive revision and update. This revision was preceded by significant coordination with the NISPPAC industry representatives and MOU groups. Industrial Security Letters (ISL) explaining or amplifying the prior 1995 NISPOM were pulled back. Those still applicable will eventually be reissued. Industry was pleased with the coordination process and the value placed on its inputs. According to Mr. Langer, Mr. P. Steve Wheeler (Industry) took the lead in gathering these inputs from various sources. Industry will continue to assist in bringing new issues or implementation problems to resolution.
- d. **NISPPAC/Memorandum of Understanding (MOU) Agreement Revision** – Mr. Langer stated that the signatories (Aerospace Industries Association [AIA], National Defense Industrial Association [NDIA], Contractor SAP Security Working Group [CSSWG], Industrial Security Working Group [ISWG], ASIS International [ASIS], and National Classification Management Society [NCMS]) reworked the agreement language. The wording now incorporates language stressing cooperative

approaches to common issues, but acknowledges organizational independence. The agreement calls for the election of an industry coordinator who is required to be from the signatory organizations or a current/prior NISPPAC member. Ms. Patricia Tomaselli was elected as the industry coordinator in April 2006. The Information Technology Association of America (ITAA) has requested membership in the NISPPAC/MOU. The process for their membership is underway. Mr. Langer briefly reviewed membership criteria such as having a security subcommittee and not to be a single issue organization.

10. **DoD Presentation** – The DoD presentation was made by Mr. Robert Rogalski (DoD). Mr. Rogalski stated that the DoD takes the issue of industrial PCLs seriously and regrets that the suspension of their processing had to be undertaken due to funding problems. Several dimensions are involved in the problems facing the Department. The first is that there is a major imbalance between the Department’s projections on investigative work and the actual requests that are submitted. A significant increase has occurred in the number of requests for investigations. The question being asked is what has caused this increase. A preliminary answer based on information obtained from DoD components and industry attributes this increase to more work being contracted out by the Department; additional requests for the more expensive clearances (Single Scope Background Investigations [SSBI]) connected with access to SAPs and SCI; and some organizations delaying the submission of requests for investigations until FY 2006. The numbers for FY 2006 are high. The Department needs to have more rigor in how work load is projected. At the end of the day, DoD has to provide accurate information to its service provider OPM, which in turn has to know what capacity needs to be budgeted and planned. The second dimension of the problem is cost. Obviously the cost of investigations is high, particularly for SSBIs. There are also additional surcharges required by OPM for prioritizations of DoD investigations. Thirdly, DoD needs a better way of managing “to requirements” and managing the budget. This is illustrated by a hypothetical example. Contractor A needs fifty clearances. Contractor B needs fifty clearances. These requests are made through the Defense Industrial Security Clearance Office (DISCO) and then to OPM. The funds are debited immediately. Nevertheless, there is no process to manage the hundred requests. If the Department has enough funding for only eighty investigations, it is necessary for there to be a management process that allows for a decision on which of the latter goes forward based on prioritization of requirements. Currently, there are 12,000 Facility Security Officers making clearance requests directly through DISCO to OPM; and funds are being debited. This is comparable to having 12,000 users of one credit card, with costs being learned at the end of the month. It is clear that more rigor needs to be brought into the process with greater management and fiscal oversight exerted by the Department.
11. Mr. Rogalski stated that regarding solutions, when DSS realized the problem, no more expedites were permitted since they involved expense. No additional

requests for investigations were permitted from Industry directly through DISCO to OPM. Actions were taken within the Department's power. One solution suggested is to provide more funding to resume industrial investigations. The Department's position is that resumption will not take place until a process is in place and there is adequate funding until the end of the fiscal year. However, funding is only part of the solution. There is a need to improve the process and the procedures. A team chaired by Mr. Rogalski in the Department was established on May 4th to examine these questions and has been meeting on a daily basis. This working group is meeting with industry to develop acceptable solutions to address and fix the problems and create a process to improve management and fiscal oversight of the personnel security program. Mr. Rogalski reported that a memorandum is being prepared for the Deputy Secretary of Defense to request DoD and industry to do "a scrub" to determine the clearances that are actually required. A DoD strategic plan for personnel security is being worked. The efficacy of how DoD determines who is granted access to classified information needs to be examined. In the NISP, one of the issues being considered is why the Department is paying for industrial clearances. Discussions will take place with industry on how funding takes place. One recommendation being made within the industrial community is that industry pays for its own clearances. While it is not clear where this issue will go, all options are being considered. The Department is committed to working with its industry partners to arrive at solutions.

12. Mr. James Linn (Industry) asked what the impediments were to reinstating the INTERIM SECRET PCL. Mr. Rogalski stated that the question is whether there has to be an exception to policy so that once an Electronic Personnel Security Questionnaire (EPSQ) is submitted and reviewed DISCO can grant an INTERIM SECRET without sending a request for investigation to OPM, which would entail an investigation and its costs. Similarly, in the case of INTERIM TOP SECRET PCL, the question should be asked whether results can be obtained from the National Agency Check (NAC) Local Agency Check (LAC) Credit so that DISCO can grant the INTERIM without submitting for a SSBI. Mr. Schroeder commented that all options should be considered, but certain solutions mostly in the long-term area, e.g., the five-year re-investigation, concern national standards that are contained in an executive order, which no agency operating on its own is able to change or deviate from; and to do so would counter-productively undermine reciprocity. Mr. Schroeder emphasized that he is willing work with the Department as chair of the Personnel Security Working Group and with DoD's representative, Ms. Charlene Wright. The Chair posed the issue of whether Executive Order 12968 would preclude the granting of INTERIMs. Mr. Schroeder stated that the Executive Order is very specific and believed the view at the National Security Council would be that this might be a matter which would have to be submitted to the President. The Chair stated that this situation was not envisioned when the Executive Order was written and would not impact reciprocity because INTERIMs are not required to be recognized reciprocally. Mr. Schroeder stated that as a matter of policy many agencies, including the

Department of Justice, give reciprocity to INTERIM clearances. An agency giving such reciprocity as a matter of policy as opposed to a requirement might want to know whether there is an investigation ongoing that might reveal a problem. Mr. Rogalski stated that the team he is heading is considering options. There are those options that can be exercised by DoD, e.g., it is a matter of process whether re-investigations are extended out to five years because this is consistent with the Executive Order. As the options are evaluated, it will be determined what is within the Department's authority. DoD is sensitive to these issues and will not implement measures in violation of national policy. Ms. Kim Baugher (Department of State) asked concerning clearance requests already lined up for submission to OPM. Mr. Rogalski stated that funding and management options have to be considered, and that just because requests are in the que today does not mean that they will be automatically worked. Ms. Baugher stated that Facility Security Clearances (FCL) are still being requested, but that these cannot be granted without clearance of the Key Management Personnel. She also stated that industry continues to submit clearance requests. Mr. Langer stated that within his organization and others employees are still preparing electronic security clearance forms, but that these are not being submitted or accumulating in a government database. Ms. Baybutt stated that Industry is aware that OPM automatically rejects clearance requests when they become too old for processing. Mr. Linn stated that there was a Federal Acquisition Regulation (FAR) change in January 2006 that if a contractor was required to have access to federal installations or information systems, the contract would have to be modified to have National Agency Checks with Written Inquiries (NACI). The environment is dynamic and affects projections. Homeland Security Presidential Directive 12 (HSPD-12) and Personnel Identification Badge (PIB) requirements will have an effect on this environment as well. Mr. Rogalski stated that requests for investigations based on the latter should not be submitted through the NISP because they are not security clearance requirements. Mr. Langer commented that during the last NISPPAC meeting, Ms. Kathy Dillaman (OPM) stated that OPM would run a suitability determination even if the individual already had a clearance, but the background investigation was one year out of scope. Industry was concerned that this would overload the system. The Chair asked the government agency representatives present about their policies regarding suitability, system access, or premise access in terms of currency of investigation. Mr. Schroeder stated that his understanding of the OMB HSPD-12 guidance is that if a person has a current investigation that meets or exceeds the requirement for a NACI, this is considered sufficient. The scope in such cases is at least ten years. Requesting a security clearance on the basis of an HSPD-12 requirement is wrong for a number of reasons, including the fact that it violates the Order because there is no need for access to classified information. Instead, it is being requested for convenience, which is wrong from a practical, policy, and legal standpoint. The Chair asked if there is some action that OPM can take regarding this matter. Mr. William Marosy stated that when a request for investigation is made, OPM is going by the agency's request. There is no indication whether the request is based on HSPD-12, etc. Consequently, there is no way that OPM is

able to screen at the front end process, which is part of the submitting agency's responsibilities. In reply to questions from the Chair and Mr. Schroeder, Mr. Marosy stated that if a prior investigation is within scope (ten for SECRET and five for TOP SECRET) and is in the system, a new request for investigation will not be accepted. Mr. Langer stated that since Industry's clearances are for the most part in the Joint Personnel Adjudication System (JPAS), requests for industrial personnel to OPM will always show up as new because they have not yet entered the Clearance Verification System (CVS). The Chair stated that this issue will be discussed at the next Reciprocity Working Group. Ms. Baugher brought up the issue of whether an INTERIM SECRET clearance could be used to fulfill HSPD-12 standards, which accept a personnel clearance or a NAC. An INTERIM SECRET is a clearance, but it does not meet NAC standards. The question is whether an INTERIM SECRET is sufficient, or are fingerprint checks still necessary for persons granted INTERIM SECRETS. The Chair stated that this would be brought up at the Reciprocity Working Group as well.

13. **OPM Update** – The OPM presentation was made by William Marosy. Mr. Marosy stated that the government is not a 100% user of eQIP (the Electronic Questionnaires for Investigations Processing). Industry is the biggest user of eQIP. The Department of State uses eQIP exclusively. OPM is testing a new version of eQIP with enhancement tools for submission of attachments. OPM has worked these issues with DoD to make sure the enhancements are compatible with JPAS. Electronic fingerprint submission would make processing quicker. OPM is still matching hard-print fingerprint cards, releases, and other documents with the electronic eQIP submission, which delays opening the case. It is anticipated that HSPD-12 will drive greater use of electronic submissions. Regarding legislative timelines for TOP SECRET and SECRET investigations under the Intelligence Reform and Terrorism Prevention Act of 2002, Mr. Marosy presented OPM's latest timelines over the last three quarters for all SSBI's - during last quarter these showed a trend for 231 days average, but in April the average is 171 days. This downward trend is continuing. As for SSBI priorities, the previous quarter showed an average of 38 days, but as of April the average is 53 days due to difficulties in receiving record information from repositories such as the Federal Bureau of Investigation and DoD. Regarding HSPD-12, the question was raised by the NISPPAC members as to the impact of performing NACI investigations on the security clearance workload. The answer is that there will be no impact because the NACI is a paper-based investigation. Information is obtained electronically or through written inquiries, and does not entail field work. Ms. Rosalind Baybutt (DoD) asked whether the figures for SSBI's included PRs. Mr. Marosy confirmed that only initial SSBI's were accounted in the figures presented. Mr. Douglas Hudson (Industry) asked whether the eQIP improvements included electronic signature. Mr. Marosy replied that this was not the case because of problems in acceptance of electronic signature in field work. Mr. Rogalski mentioned that there is an unfunded request to purchase electronic fingerprint machines for the Department and in turn to make these available for industry. Mr. Marosy stated that HSPD-12 is pushing the use of flat prints. Flat

prints have not been endorsed by any other group other than the National Institute of Standards and Technology (NIST). OPM's systems are only equipped to accept rolled not flat prints. The FBI has agreed to accept flat prints, but they are not prepared to process them at this time. Before purchasing a fingerprint machine, Mr. Marosy recommended that OPM is contacted to check on the resolution of outstanding issues. Ms. Baybutt recommended that machines not be purchased by the contractor community until standards are finalized for use of biometrics with JPAS. The future planning of shared processing centers to implement HSPD-12 requirements was briefly discussed. Mr. Schroeder commented that these centers will most likely electronically process finger prints and that this should be kept in mind for future planning. Mr. Marosy stated that there will be approximately 140 centers hosted at various locations nationally, but that many issues still remain to be resolved. In response to the Chair's question, Mr. Marosy stated that this effort is being lead by OMB and the General Services Administration.

14. **NISP Signatories Update** – Ms. Mary Gallion (Department of Energy [DOE]) reported that DOE is funding its implementation of HSPD-12 requirements.
15. **Closing Remarks and Adjournment** – The Chair summarized action items from the meeting:
 - a. The Chair will be forwarding Christine Bromwell's suggestions regarding the Reciprocity Trends survey for feedback from the NISPPAC membership within the next two weeks on revising the guidelines in time for the submission of June data.
 - b. The Chair will send to the NISPPAC membership an electronic copy of a proposed ISOO letter to Executive Branch Agencies on requiring investigations of contractors for access to other than classified information. Comments should be received back by May 15, 2006.
 - c. Regarding SBU, the Chair of the NISPPAC will serve as a focal point for feedback for the Working Group on SBU/CUI co-chaired by Ms. Mastalli.
 - d. The NISPPAC industry members (Mr. Langer) will forward the existing SBU Industry White Paper to Ms. Mastalli immediately; update the FISMA White Paper for the Office of Management and Budget (OMB) by the end of May; and provide copies of the final paper to Mr. Schlarman, the Chair, and Ms. Mastalli.
 - e. Several points will be considered by the Reciprocity Working Group to include investigations requested for purposes other than access to classified information, the question of existing investigations on record, the question of INTERIM SECRET clearances, issues related to HSPD-12 requirements, and future shared processing centers