May 13, 2013

Donna McLeod
Federal Investigative Services
U.S. Office of Personnel Management
1900 E. Street NW.
Washington, DC 20415

Re: *Comments on Information Collection Request, OMB Control No. 3206-0005, Questionnaire for National Security Positions, Standard Form 86 (SF 86).*

Dear Ms. McLeod:

On behalf of the Rights Task Force of the Consortium of Citizens with Disabilities (CCD), we submit the following comments in response to the Information Collection Request concerning the Questionnaire for National Security Positions, SF 86. CCD is a coalition of national disability-related organizations working together to advocate for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We believe that the proposed modifications to Section 21, Psychological and Emotional Health, take a step in the right direction by focusing some questions on conduct rather than on the receipt of mental health counseling. The questions remain, however, inappropriately focused on mental health treatment. We urge you to modify these questions to eliminate inquiries about mental health treatment and to instead focus these inquiries on conduct that may raise concerns.

Modification of the mental health questions on SF 86 is of tremendous importance. For years, these questions have encouraged unwarranted scrutiny into individuals' mental health histories despite their lack of relevance to suitability for a security clearance, and have inappropriately excluded many individuals with psychiatric histories from employment. They have also discouraged individuals from seeking needed help. In light of the President's Executive Order 13548, requiring the federal government to hire 100,000 people with disabilities over five years, and requiring federal agencies to improve their recruitment and retention of

people with disabilities, it is particularly timely to refocus these questions in order to prevent the inappropriate denial of federal job opportunities to individuals with psychiatric disabilities.

Our specific recommendations are as follows:

(1) Eliminate language suggesting that mental health treatment is relevant to a person's suitability for a security clearance.

Section 21 states three times that mental health treatment does not "in and of itself" (or "standing alone") adversely impact a person's suitability for a security clearance:

> Your decision to seek mental health care will NOT *in and of itself* adversely impact your ability to obtain or maintain a national security position.
>
> Mental health counseling *in and of itself* is not a reason to revoke or deny eligibility for access to classified information or for a sensitive position, suitability or fitness to obtain or retain federal employment, fitness to obtain or retain contract employment, or eligibility for physical or logical access to federally controlled facilities or information systems.
>
> Merely consulting a mental health professional is not, *standing alone*, evidence of [a condition that might impair judgment, reliability, or trustworthiness.]

This qualification incorrectly implies that a person's receipt of mental health treatment *is* a factor that is relevant to suitability for a security clearance, though not dispositive by itself. In fact, there is nothing about treatment for mental health needs that would affect a person's suitability for a security clearance. Indeed, the former top psychiatrist for the U.S. Army has questioned the need to ask about mental health treatment at all on the security clearance form, citing a lack of evidence that it has any relevance.[1]

It is not whether a person has received *treatment*, but rather whether a person has engaged in *behavior* that suggests impaired judgment, reliability or trustworthiness, that has any relevance to whether a person should receive a security clearance. Accordingly, we urge you to eliminate the phrases "in and of itself" and "standing alone."

(2) Eliminate the inquiry about failure to follow treatment advice related to a mental condition.

[1] Josh Gerstein, *Critics question White House mental health fix*, Politico, Apr. 15, 2013, available at http://www.politico.com/story/2013/04/security-clearances-mental-health-fix-criticized-90053.html (quoting Col. (ret.) Elspeth Ritchie).

The proposed modifications to Section 21 state that failure to follow treatment advice related to a diagnosed emotional, mental, or personality condition (including failure to take prescribed medication) constitutes evidence of a mental health condition that would cause concern about judgment, reliability, or trustworthiness. We strongly object to this statement and urge you to omit it, as it is based on incorrect assumptions that an individual's decision not to follow treatment advice for a mental disability indicates that the individual has poor judgment or is unreliable or untrustworthy.

Just as many people have reasons for not following treatment advice for physical or medical conditions that do not mean they have poor judgment or are unreliable,[2] there are many such reasons why people choose not to follow mental health treatment advice.[3] For example, some individuals decide not to follow treatment advice due to debilitating side effects of prescribed psychiatric medications, or interactions with medications prescribed for other conditions. Failure to follow treatment advice for mental disabilities should not be considered differently than other failures to follow treatment advice. Moreover, if an individual has sufficiently impaired judgment or is sufficiently unreliable or untrustworthy that he or she cannot be trusted with a security clearance, evidence of that will be manifested by conduct other than the failure to follow treatment advice for a mental disability.

(3) Modify the inquiry about mental health conditions to inquire instead about concerning behaviors.

For the reasons noted above, Section 21 should focus on *conduct* that causes concern about a person's judgment, reliability or trustworthiness rather than on whether the person has a mental health condition. It is irrelevant whether the cause of conduct reflecting poor judgment or lack of reliability or trustworthiness is a mental health condition or some other cause. And absent such conduct, the mere existence of a mental health condition indicates nothing about a person's judgment, reliability or trustworthiness; any suggestion that it does is premised on the worst types of unfounded stereotypes about individuals with mental illnesses.

---

[2] *See, e.g.*, Marie T. Brown & Jennifer K. Bussell, *Medication Adherence: WHO Cares*, 86 Mayo Clinic Proc. 304 (Apr. 2011), available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3068890 (approximately 50% of individuals with chronic illnesses do not take their mediations as prescribed due to a myriad of reasons, including provision of care by multiple physicians, office visit time limitations, limited access to care, lack of health information technology, lack of involvement in the treatment decision-making process, communication barriers, and ineffective communication about adverse effects).

[3] *See, e.g.*, Anthony P. Morrison et al., *Antipsychotics: is it time to introduce patient choice?*, 201 British J. Psychiatry 83-84 (Aug. 2012) (mental health systems "appear to have overestimated the strength of the evidence base for antipsychotic medication, while underestimating the seriousness of the adverse effects" and "[t]his risk–benefit profile may be a factor in the high rates of non-adherence and discontinuation of medication found in patients with psychosis; thus, some decisions to refuse or discontinue antipsychotic medication may represent a rational informed choice rather than an irrational decision due to lack of insight or symptoms such as suspiciousness.").

Indeed, the fact that Section 21 does not require applicants to report mental health treatment received due to marital, family, or grief issues unrelated to violence by the applicant, due to service in a military combat environment, or due to sexual assault,[4] makes clear the lack of relevance of a person's mental health condition or treatment history to suitability for a security clearance. Individuals in these categories who have sought mental health treatment may have the *same* diagnoses and/or symptoms as other individuals with mental health needs, and yet those diagnoses and symptoms have been determined *irrelevant* to whether the former group should receive a security clearance. If the symptoms of post-traumatic stress disorder or other disabilities caused by combat or by sexual assault are irrelevant to security clearance concerns, the symptoms of those same disabilities due to other causes are similarly irrelevant.

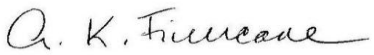
Accordingly, we urge you to modify the following question as indicated:

> In the last seven years, have you [had a mental health condition] ENGAGED IN BEHAVIOR that would cause an objective observer to have concern about your judgment, reliability, or trustworthiness in relation to your work?

Thank you for the opportunity to comment on these proposed modifications.

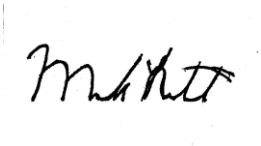
Sincerely,

Curt Decker
National Disability Rights Network



Sandy Finucane
Epilepsy Foundation

Jennifer Mathis
Bazelon Center for Mental Health Law



Mark Richert
American Foundation for the Blind

Co-Chairs, CCD Rights Task Force

[4] Josh Gerstein, *Feds: no need to report sexual assault counseling to get security clearance*, Politico, Apr. 5, 2013, available at http://www.politico.com/blogs/under-the-radar/2013/04/feds-no-need-to-report-sexual-assault-counseling-to-160931.html (describing new rule exempting counseling sought for sexual assault from reporting for security clearance purposes).