

PERSEREC 

PERS-TR-95-002
February 1995

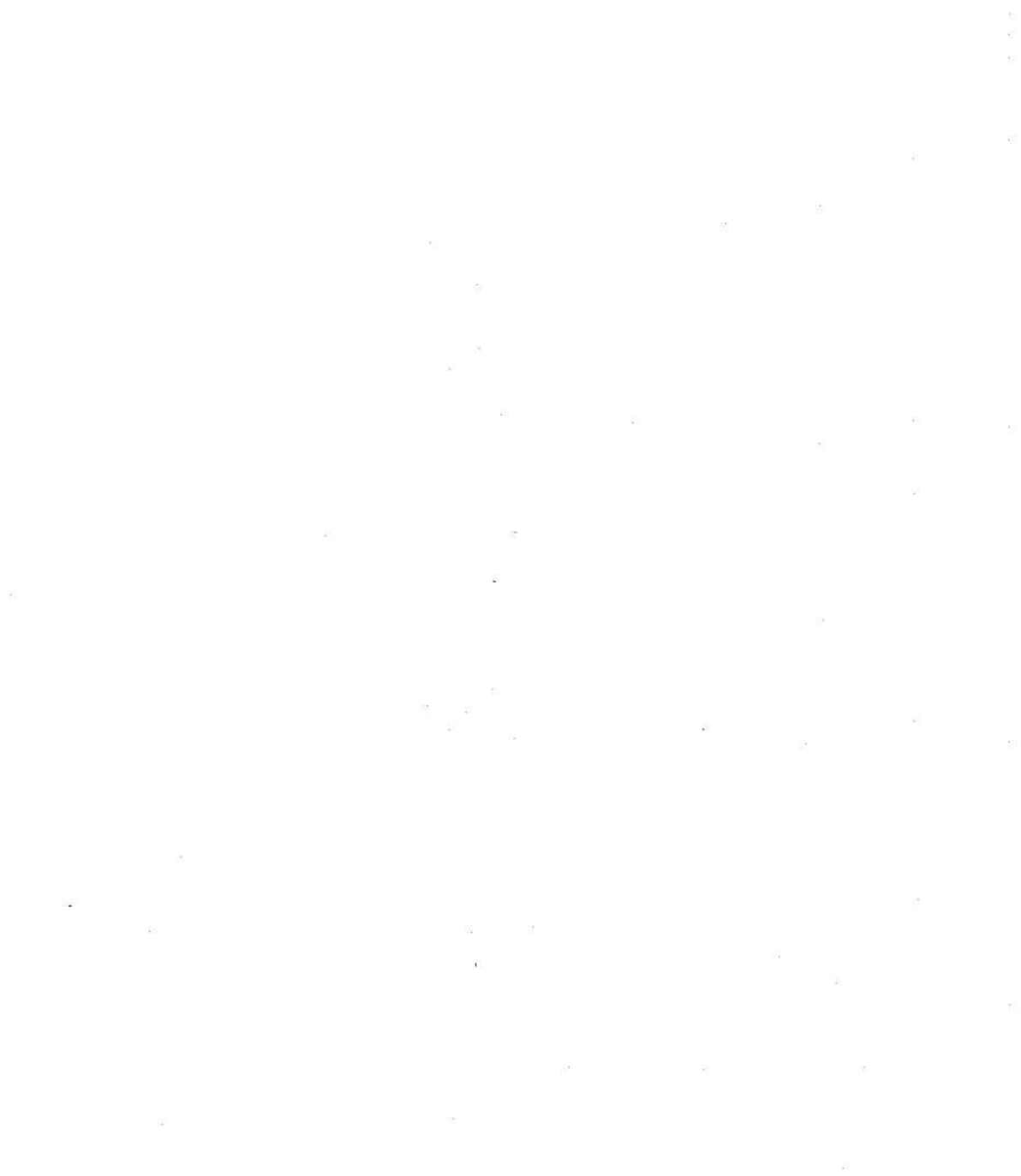
**APPEAL BOARD AND PERSONAL APPEARANCE
PROCEDURES FOR ADVERSE PERSONNEL SECURITY
DETERMINATIONS IN THE DEPARTMENT OF DEFENSE**

**James A. Riedel
Kent S. Crawford**

Approved for Public Distribution:
Distribution Unlimited

*Defense Personnel Security Research Center
99 Pacific Street, Building 455-E
Monterey, CA 93940-2481*

REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188	
1a. REPORT SECURITY CLASSIFICATION UNCLASSIFIED			1b. RESTRICTIVE MARKINGS	
2a. SECURITY CLASSIFICATION AUTHORITY			3. DISTRIBUTION/AVAILABILITY OF REPORT	
2b. DECLASSIFICATION/DOWNGRADING SCHEDULE				
4. PERFORMING ORGANIZATION REPORT NUMBER(S) PERS-TR-95-002			5. MONITORING ORGANIZATION REPORT NUMBER(S)	
6a. NAME OF PERFORMING ORGANIZATION Defense Personnel Security Research Center		6b. OFFICE SYMBOL	7a. NAME OF MONITORING ORGANIZATION	
6c. ADDRESS (City, State, and ZIP Code) 99 Pacific St., Bldg. 455-E Monterey, CA 93940-2481			7b. ADDRESS (City, State, and ZIP Code)	
8a. NAME OF FUNDING/SPONSORING ORGANIZATION DEFENSE PERSONNEL SECURITY RESEARCH CENTER (PERSEREC)		8b. OFFICE SYMBOL	9. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER	
8c. ADDRESS (City, State, and ZIP Code) 99 PACIFIC ST, BLDG 455-E MONTEREY, CA 93940-2481			10. SOURCE OF FUNDING NUMBERS	
			PROGRAM ELEMENT NO.	PROJECT NO.
11. TITLE (Include Security Classification) Appeal Board and Personal Appearance Procedures for Adverse Personnel Security Determinations in the Department of Defense				
12. PERSONAL AUTHOR(S) James A. Riedel, Kent S. Crawford				
13a. TYPE OF REPORT Technical	13b. TIME COVERED FROM: TO:		14. DATE OF REPORT (Y, M, D) 95, 2, 1	15. PAGE COUNT 19
16. SUPPLEMENTARY NOTATION				
17. COSATI CODES			18. SUBJECT TERMS (Continue on reverse if necessary and identify by block number) Due Process; Security clearance; Appeal; Personnel security ; Appeal board procedures; Personal appearance	
FIELD	GROUP	SUBGROUP		
19. ABSTRACT (Continue on reverse if necessary and identify by block number) This study was undertaken to develop: (1) policy requirements for personnel security appeal boards (PSABs), and (2) options for incorporating a personal appearance into the process for appealing an adverse personnel security determination in DoD. Policy requirements for PSABs are recommended. Three options for handling personal appearances are presented and Option 2 which provides an appellant the opportunity to appear before a PSAB is recommended.				
20. DISTRIBUTION OF ABSTRACT _ UNCLASSIFIED/UNLIMITED _ SAME AS RPT _ DTIC USERS			21. ABSTRACT SECURITY CLASSIFICATION UNCLASSIFIED	
22a. NAME OF RESPONSIBLE INDIVIDUAL ROGER P. DENK, Director			22b. TELEPHONE (408) 656-2448	22c. OFFICE SYMBOL



APPEAL BOARD AND PERSONAL APPEARANCE PROCEDURES
FOR ADVERSE PERSONNEL SECURITY DETERMINATIONS IN
THE DEPARTMENT OF DEFENSE

Prepared by

James A. Riedel
Kent S. Crawford

February 1995

Defense Personnel Security Research Center
Monterey, California 93940-2481

18

34

18

12

12

18

14

12

18

12

120

18

12 14 16 18

18

Preface

In April 1994, the Deputy for Personnel Security, Office of the Deputy Assistant Secretary of Defense for Intelligence and Security, tasked PERSEREC to develop: (1) policy requirements for personnel security appeal boards (PSABs), and (2) options for incorporating a personal appearance into the process of appealing an adverse personnel security determination. In response to this tasking, PERSEREC conducted the study described in this report. Policy requirements for PSABs are recommended. Three options for implementing personal appearances are described.

The initial results of this study were briefed to component personnel security representatives in a meeting in the Washington DC area on June 2, 1994. This report elaborates on those results and provides detailed information backing up the cost analyses presented at that briefing.

We would like to thank the organizations and individuals who provided valuable assistance in gathering information for this report. Personnel at each of the participating organizations gave generously of their time and answered our questions. Additional recommendations for improving appeal procedures can be found in two recent PERSEREC reports: *Due Process for Adverse Personnel Security Determinations in the Department of Defense* (PERS-TR-93-006, September 1993), and *Standardizing Procedures for Notifying Individuals of an Adverse Personnel Security Determination in the Department of Defense* (PERS-TR-94-002, September 1994).

Roger P. Denk
Director

Executive Summary

Section 1183 of the National Defense Authorization Act for Fiscal Year 1994 required the Secretary of Defense to conduct a review of the procedural safeguards available to Department of Defense (DoD) civilian employees who are facing denial or revocation of a security clearance. DoD conducted this review and documented the results in a March 1994 report entitled, *Security Clearance Denial and Revocation Procedures for Department of Defense Civilian Employees*. PERSEREC was tasked to assist in the implementation of the report recommendations by developing: (1) policy requirements for personnel security appeal boards (PSABs), and (2) options for implementing a personal appearance as part of the appeal process. These new policies would apply to both DoD civilian and military personnel.

PERSEREC developed requirements for governing PSABs. These requirements cover board composition, timeliness of handling appeals, and voting procedures. It is recommended that DoD change the Personnel Security Program Regulation, 5200.2-R, to include the requirements. This will help ensure that PSAB procedures are uniform throughout DoD and that all personnel employed by DoD will receive equal treatment if they choose to appeal an adverse personnel security determination to a PSAB.

Three options for handling personal appearances were developed. In Option 1, appellants would appear before a senior official of the individual's employing organization. Under Option 2, an appellant would appear personally before the PSAB. In Option 3, the appellant would appear before an administrative judge from the Defense Office of Hearings and Appeals. PERSEREC recommends that DoD implement Option 2.

All three options address Congressional concerns and the requirement of incorporating a personal appearance as part of the appeal process. However, Option 2 is recommended because it is the only option where the appellant appears directly before the decision-makers. Additionally, it is consistent with the recommendation of the Joint Security Commission that appellants be given an opportunity to appear personally before the adjudicative authority. Finally, it is the least costly option.

No matter which option is implemented, it is recommended that the opportunity for a personal appearance occur after an individual's clearance has been denied or revoked through issuance of a letter of denial/revocation (LOD) rather than after issuance of a letter of intent (LOI). Placing the appearance after the LOD would be much less expensive since approximately eight times as many individuals appeal a LOI as do a LOD.

Table of Contents

Preface	i
Executive Summary	iii
Introduction	1
Background	1
Purpose	2
Appeal Board Policy Requirements	2
Composition of the Board	3
Leadership and Tenure	3
Legal Counsel	3
Component Representation on PSAB	3
Independence of the Board	4
Timeliness and Notification of Final Determinations	4
Review and Decision-making Process	5
Options for Handling Personal Appearances	5
Timing	5
Steps in the Appeal Process Preceding a Personal Appearance	7
Option 1 - Personal Appearance in the Field	8
Option 2 - Personal Appearance before the PSAB	9
Option 3 - Personal Appearance before an Administrative Judge	10
Comparison of Options	11
Opportunity to Face Decision-makers	11
Equal Treatment	12
Ease of Implementation	12
Timeliness	13
Projected Cost	13
Summary of Advantages and Disadvantages	16
Conclusions and Recommendations	18
Appendix A	A-1
Appendix B	B-1

List of Tables

1. Disposition of FY92 Appeals of Adverse Determinations for Military or Civilian Security Clearance	6
2. Projected Cost of Appeal Process for Current System Versus The Three Options	14
3. Projected Cost of Lost Labor Time for Current System Versus The Three Options	16
4. Projected Total Cost for Current System Versus The Three Options	16

Introduction

Background

Section 1183 of the National Defense Authorization Act for Fiscal Year 1994 required the Secretary of Defense to conduct a review of the procedural safeguards available to Department of Defense (DoD) civilian employees who are facing denial or revocation of a security clearance. DoD conducted this review and documented the results in a report entitled, *Security Clearance Denial and Revocation Procedures for Department of Defense Civilian Employees*. This March 1994 report was approved by the Deputy Secretary of Defense on April 7, 1994, and forwarded to the Chairmen of the Senate and House Armed Services Committees.

The report concluded that the current due process procedures for the denial or revocation of security clearances for DoD civilians are fair and equitable. (See Appendix A for an overview of current procedures for appealing an adverse personnel security determination). However, among the report's recommendations were the following two changes for enhancing due process protections:

1. DoD component appeal procedures will be standardized to provide for personnel security appeal boards (PSABs) consisting of three members, one of whom is a senior official in the employee's DoD component and another of whom, unless the board has an attorney, is an attorney.
2. DoD civilian employees and military personnel will have an opportunity for a personal appearance upon request before a senior official of the individual's employing component. The opportunity will be identical within all DoD components.

Adoption of personnel security appeal boards was directed to achieve more independent due process and more consistent treatment throughout DoD for individuals appealing an adverse personnel security determination. It was reasoned that a board structure would provide greater protection for decision-makers from potential undue influence by either superiors or those responsible for the original adverse determination.

The intent of offering a personal appearance was to give an appellant the fullest opportunity to challenge the adverse information in his or her case. The March 1994 report to Congress indicated that no opportunity would be provided to present or cross-examine witnesses and that no trial-type hearing would be held. At the conclusion of the appearance, the senior official would make a report to the adjudicative authority for consideration during the decision-making process. The report did not specify when in the appeal process the personal appearance would

occur. However, it did state that the new procedures should not add significant cost or time delays to the current system.

In all DoD personnel security investigations with significant adverse information, the individual is interviewed by an investigator and given the opportunity to clarify or mitigate any negative information. Also, under current DoD procedures, an individual may submit a written response to the letter of intent (LOI) and a written appeal to the letter of denial (LOD) in order to challenge an adverse personnel security determination.¹ In addition, an individual may choose to discuss the case with a supervisor or security officer who may submit an independent assessment to the deciding authority. However, historically there have not been formalized procedures permitting an individual to make a personal appearance before a senior official or before either decision-makers at the adjudication facility or the appellate authority.

Purpose

In April 1994, the Deputy for Personnel Security, Office of the Deputy Assistant Secretary of Defense for Intelligence and Security, tasked PERSEREC to assist in the implementation of the report recommendations by developing policy requirements governing PSABs and options for incorporating a personnel appearance into the appeal process. This report summarizes the requirements developed as well as advantages and disadvantages of three options for handling a personal appearance. The options are compared in terms of the: (1) opportunity provided to face decision-makers, (2) equality of treatment across DoD, (3) ease of implementation, (4) timeliness of rendering a final determination and (5) projected cost of the appeal process. Only options for DoD military and civilian personnel were developed since DoD contractor personnel are covered by a different executive order and different procedural requirements.

Appeal Board Policy Requirements

The requirements listed below provide uniform operating procedures for PSABs. These requirements build on procedures used by the Navy for its currently operational PSAB.

¹A LOI serves as notification that the adjudicative authority will deny or revoke an individual's clearance eligibility unless compelling mitigating information is provided. A LOD serves as notification that an individual's clearance eligibility has been denied or revoked. The individual has an opportunity to respond in writing to both the LOI and the LOD.

Composition of the Board

The PSAB should be comprised of three members at the minimum military rank of 05 or civilian grade of GM/GS-14. In cases where the appellant is the same rank or grade, or is senior to military 05 or GM/GS-14, at least one member of the board should be equivalent or senior to the appellant. Two board members should have professional credentials in non-security occupations.

The requirement for three board members is consistent with the direction provided in the DoD report to Congress and is in accord with existing policy governing membership on similar appeal boards. The civilian grade and military rank requirements are based on the idea that, for the board to be a credible authority, members must be of sufficient seniority and bring an appropriate level of experience to the decision-making process. One of the strengths of a board with members from non-security occupational specialties is that the decision-making process will reflect concerns that transcend the security field.

Leadership and Tenure

The board should have a president. The president should be a permanent board member and have a thorough knowledge of, and experience in, the field of personnel security. Other board members will serve for a period of time deemed appropriate by the board president.

A permanent president with experience in the field of personnel security will ensure that governing personnel security requirements and adjudicative criteria are considered in the boards' decisions. While a three-member board assures that operational concerns also are considered, PSAB decisions must conform with personnel security policy. A permanent president will also assure a measure of consistency in a board's decision-making process over time.

Legal Counsel

One of the three members of the board should be an attorney, unless the board has access to legal counsel. This was a requirement contained in the DoD report to Congress. Since all DoD component headquarters have access to legal counsel, it is unlikely that this requirement will affect the composition of PSABs.

Component Representation on PSAB

The composition of the board may be changed if an appellant works for a component without a PSAB. A senior official of that component would be entitled,

but not required, to occupy one of the three board positions during consideration of the case.

The DoD report to Congress specified that one member of the board would be a senior official from the employee's DoD component. This requirement primarily applies to Washington Headquarters Services (WHS) since it handles appeals for a number of Defense components. This requirement ensures that these Defense components would be entitled to representation on the PSAB when their employees are appealing an adverse personnel security determination.

Independence of the Board

No official with direct supervisory responsibility for a component CAF, nor any official from the CAF, should serve as a member of the board. Also, board members and CAF personnel should not discuss substantive aspects of a particular case.

A PSAB's primary function is to objectively review adverse determinations that have been appealed. To conduct this *de novo* review or fresh look for each case, PSABs should function without undue influence from interested parties. Therefore, PSABs should function independently of CAFs. First, personnel from a CAF should not serve on an appeal board since they might have a vested interest in an initial adverse determination. Second, informal communications between a CAF and a PSAB regarding substantive issues on a case should be prohibited. The only information forwarded to a PSAB from a CAF concerning a case should be a copy of the LOI, LOD and written case records.

Timeliness and Notification of Final Determinations

If a personal appearance is not requested, a PSAB should notify appellants of the outcome of their appeal (via their employing organization) within 60 days of receiving the appeal. If a personal appearance is requested, a PSAB should notify appellants of the outcome of their appeal within 60 days of receiving a recommendation from the senior official who presided at the personal appearance. The notification of the final determination should provide the reasons that the original adverse determination was either sustained or overturned. A PSAB determination would be final and would conclude the appeal process.

For the appeal process to be fair to appellants, they should be notified of final determinations in a timely manner and provided with the rationale for the decision. Timeliness also will benefit the government since organizations in the field may not be able to effectively utilize or replace appellants until the appeal process is

completed. To assure timely decisions, component PSABs should meet regularly. Consistent with 5200.2-R requirements, PSAB decisions would conclude the appeal process.

Review and Decision-making Process

While cases should be studied by individual board members, all three members of a PSAB should meet formally together to review and discuss each case. Appeals should be decided by majority vote of the board members.

A three-member appeal board offers the advantage over a single decision maker of protecting against individual bias in the decision-making process. Formal deliberations should assure that governing policies and case facts, rather than individual biases, are known and explicitly considered in deciding an appeal. As stated earlier, the board president will assure that personnel security policy is the prominent factor governing the decision makers in considering the merits of a case.

Options for Handling Personal Appearances

In this section three options for handling personal appearances are described. An attempt was made to develop options within the general guidelines of the 1994 DoD Report to Congress. Option 1 has appellants appearing before a senior official of the individual's employing organization. With Option 2 appellants would appear personally before the PSAB. And with Option 3, appellants would appear before an administrative judge (AJ) from the Defense Office of Hearings and Appeals (DOHA).

Before considering the relative merits of these options, two issues are considered--when in the appeal process a personal appearance should occur and the steps in the appeal process preceding a personal appearance. An understanding of both of these issues should help the reader understand and evaluate the relative merits of the three options.

Timing

The March 1994 report to Congress did not specify when in the appeal process the personal appearance should occur but did state that it should not result in significant costs to DoD. A personal appearance could take place after a CAF issues a LOI informing an individual of an intent to deny/revoke access eligibility or after a CAF issues a LOD notifying an individual that their eligibility access actually has been denied or revoked. Offering a personal appearance after issuance of a LOI would give individuals an opportunity to challenge the determination, in person,

early in the appeal process and possibly have the preliminary decision reversed before issuance of a LOD. However, offering a personal appearance after issuance of a LOD would be much less costly. Data supporting this conclusion regarding cost are presented below.

Table 1 presents data taken from a 1993 PERSEREC report, *Due Process for Adverse Personnel Security Determinations in the Department of Defense*. As can be seen, in FY92 over 3500 individuals chose to respond to a LOI while only 436 individuals chose to respond to a LOD. Over eight times as many individuals appealed a LOI as appealed a LOD. Also, it can be seen that the preliminary determination was overturned for 40.9% of the individuals who responded to a LOI. The written responses provided sufficient explanatory or mitigating information for the CAF to reverse the preliminary determination.

Table 1
Disposition of FY92 Appeals of Adverse
Determinations for Military or Civilian Security Clearance²

Letters of Intent (LOIs)	Number of LOIs Appealed	Number of LOIs Appealed in Which Original Determination was Overturned	Letters of Denial (LODs)	Number of LODs Appealed	Number of LODs Appealed in Which Original Determination was Overturned
7076	3524 (49.8%)	1440 (40.9%)	4833	436 (9.0%)	84 (19.3%)

Two conclusions are drawn from these data. First, the first step in the appeal process is working. The fact that more than 40% of those who appeal a LOI have the original determination overturned suggests that individuals receive a fair opportunity to present their cases even without a personal appearance. Second, offering a personal appearance after the LOI rather than after the LOD would be

²Some individuals who receive a LOI and do not appeal or who appeal but do not get the original determination overturned do not receive a LOD. The reason is that these individuals leave DoD and/or the clearance facility loses jurisdiction. These cases are administratively closed without a LOD. Therefore, the actual number of LODs (4833) is less than the number one might expect (5636) if the number of LODs was estimated by subtracting the number of appeals in which the original determination was overturned (1440) from the number of LOIs (7076).

much more costly to DoD because more than eight times as many appearances would have to be conducted. Both of these conclusions favor offering personal appearances after individuals receive a LOD.

Steps in the Appeal Process Preceding a Personal Appearance

It was assumed that the offer of a personal appearance to an individual would follow completion of the appeal procedures outlined in the three steps below. Therefore, each option for a personal appearance described in this report was designed to be used in conjunction with these steps. It is envisioned that these steps will be followed irrespective of the personal appearance option that is eventually implemented.

Step 1 - Issuance of LOI. The CAFs would issue LOIs along with pertinent extracts from an individual's personnel security investigation (PSI), a detailed listing of allegations and supporting evidence, instructions for responding to the LOI, and the specific personnel security guidelines from DoD 5200.2-R (Appendix I) for the matters of security concern.³

Step 2 - Response to LOI. Individuals receiving a LOI would be required to indicate to the CAF, via the head of their employing organization, within 10 working days whether or not they intend to challenge the LOI. Individuals challenging the LOI would have 30 calendar days, from the date of receiving it, to respond to the CAF via the head of their organization. Employing organizations would be authorized to grant individuals up to 30 additional days to respond. Additional time extensions would only be granted by the CAF. Individuals failing to respond within the time deadline would be notified in writing that their access eligibility had been denied or revoked. Individuals responding within the time deadline would be notified in writing within 60 days of the final determination by the CAF.

Step 3 - Issuance of LOD. The CAFs would issue LODs to notify individuals when a preliminary adverse determination had been upheld. The LOD would list all remaining security concerns and inform individuals of their right to appeal the adverse determination to the appropriate PSAB. Individuals also would be informed of their right to a personal appearance.

³For more detailed procedures, see the 1994 PERSEREC report, *Standardizing Procedures for Notifying Individuals of an Adverse Personnel Security Determination in the Department of Defense*.

Option 1 - Personal Appearance in the Field

To keep the cost of this option to a minimum, appellants would appear before a senior official of their employing organization. The documented results of the appearance and a recommendation would be forwarded to the PSAB for a final determination. This option follows closely the direction given in the 1994 DoD Report to Congress and entails the following steps.

Step 1 - Response to LOD. Individuals would have the opportunity to appeal an adverse determination, in writing, within 15 calendar days of receiving the LOD. The appeal would be forwarded to the PSAB, via the head of the appellant's employing organization, indicating whether a personal appearance was being requested. Only the PSAB could authorize time extensions.

Step 2 - Personal Appearance. If an appellant requested a personal appearance, the employing organization would hold it within 30 days of receiving the written appeal from the appellant.

- a. The convening authority would be the head of the employing organization or an equivalent senior official, but in any case would be an officer or high-grade civilian. The convening authority would always be senior to the appellant.
- b. Appellants could present oral and documentary evidence on their own behalf and could be represented by counsel or personal representative at their own expense.
- c. Appellants would not have the opportunity to present or cross-examine witnesses.
- d. The convening authority would create a detailed record to document the results of the personal appearance.
- e. Within 30 days of the personal appearance, the convening authority would forward to the PSAB the results of the personal appearance and a recommendation regarding the appellant's access eligibility. This recommendation would be based on the information from the written appeal, investigative records, and the personal appearance.

Step 3 - Final Determination. The PSAB would render a final determination and notify the individual in writing (via the employing organization) within 90 days. This decision would be final and would conclude the appeal process.

Option 2 - Personal Appearance before the PSAB

With this option appellants would appear personally before the PSAB. This would require that components pay for travel by appellants to Washington, DC. The PSAB would make the final determination after these steps.

Step 1 - Response to LOD. Individuals would have the opportunity to appeal an adverse determination, in writing, within 15 calendar days of receiving a LOD. The appeal would be forwarded to the PSAB via the head of the appellant's employing organization, indicating whether a personal appearance was being requested. Only the PSAB could authorize time extensions.

Step 2 - Personal Appearance. The PSAB would base the final determination on the written appeal for appellants who did not request a personal appearance. If an appellant did request a personal appearance, the PSAB would schedule one and notify the appellant via the employing organization.

- a. The employing organization would issue government travel orders and make necessary arrangements to assure the appellant's availability for the scheduled appearance. The appellant would be placed in a temporary additional duty status during the travel period.
- b. Appellants could present oral and documentary evidence on their own behalf and could be represented by counsel or personal representative at their own expense.
- c. Appellants would not have the opportunity to present or cross-examine witnesses.
- d. The PSAB could authorize a commander or commanding officer to conduct the personal appearance in the field or delay the appearance before the PSAB in special circumstances where travel to Washington, DC, by the appellant is impractical due to operational requirements (e.g., a deployed ship or unit).

Step 3 - Final Determination. The PSAB would meet (and hold the personal appearance if it was requested), render a final determination and notify the individual in writing of the board's decision (via the individual's employing organization) within 90 days of receiving the appeal. This decision would be final and would conclude the appeal process.

Option 3 - Personal Appearance before an Administrative Judge

Appellants would appear before an AJ from DOHA. Appearances would take place in the field as currently conducted for employees of defense contractors. The AJ would prepare a written recommendation to the PSAB which would make the final determination.

Step 1 - Response to LOD. Individuals would have the opportunity to appeal an adverse determination, in writing, within 15 calendar days of receiving a LOD. The appeal would be forwarded to the PSAB, via the head of the appellant's employing organization, indicating whether a personal appearance was being requested. Only the PSAB could authorize time extensions.

Step 2 - Personal Appearance. If the appellant did request a personal appearance, the PSAB would ensure that the entire investigative and adjudicative record is forwarded from the CAF to the DOHA. DOHA would schedule a personal appearance before an AJ within 60 days of receipt of the appeal from the PSAB. The appearance would take place in the general geographic vicinity of the appellant's place of employment. Travel would be funded by the component when the appearance could not be scheduled near the appellant's job location (e.g., the appellant is located outside of CONUS). The AJ would preside at the personal appearance to hear testimony relevant to the security concerns in the case.

- a. Appellants could present oral and documentary evidence on their own behalf and could be represented by counsel or personal representative at their own expense.
- b. Appellants would not have the opportunity to present or cross-examine witnesses.
- c. DOHA would arrange for a transcript of the personal appearance.
- d. Within 90 days of the personal appearance, the AJ would forward the case record to the PSAB along with a written recommendation whether to overturn or sustain the original adverse determination by the CAF.

Step 3 - Final Determination. The PSAB would render a final determination and notify the individual in writing (via the individual's employing organization) within 90 days. This decision would be final and would conclude the appeal process. In cases with a personal appearance, significant weight would be given to the AJ's recommendation in rendering a final decision. If the PSAB's decision differed from that recommended by the AJ, then specific reasons would be provided for the record.

A possible variation of this option would be to assign responsibility for the final appeal decision to a DOHA appeal board. This board would be composed of one DOHA administrative judge and two members representing the appellant's employing component. In step 2d above, the AJ would forward the case record and recommendation to this board for a final determination.

Comparison of Options

Opportunity to Face Decision-makers

Option 2, Personal Appearance before the PSAB, is the only alternative in which the appellant would actually have the opportunity to appear before the decision-makers (i.e., the members of the PSAB). In the other two options, the appellant would appear before other senior officials. These officials would then forward to the PSAB a detailed record of the appearance along with a recommendation.

This characteristic of Option 2 is an advantage over the other two options. From the perspective of the appellants, they would probably view the process as fairer. They can be sure that the decision-makers have heard all the points they are presenting. In addition, the decision-makers would have the opportunity to directly ask appellants about issues or inconsistencies that may not have been covered in the appellants written appeal or may not have been addressed by senior officials under the other two options.

In addition, under Option 2, the members of the PSAB may exchange information that could provide a clearer understanding of the current conduct, state of mind, and credibility of the appellant, all of which may be vital to an accurate assessment of an applicant's claim of rehabilitation. While this information could emerge from the personal appearance under the other two options, the information would be given to the members of the PSAB as a written record with no opportunity to expand on issues that were not clearly resolved.

This opportunity to face the decision-makers under Option 2 also is consistent with the recommendation of the Joint Security Commission. The Commission, in its February 28, 1994 report to the Secretary of Defense and the Director of Central Intelligence, *Redefining Security: A Report by the Joint Security Commission*, recommended that "any DoD civilian employee be given the opportunity to appear personally before any adjudicative authority that is considering whether to deny a clearance to such an employee, or to revoke a clearance held by such employee" (p. 59).

Equal Treatment

The personnel security appeals process should provide for equal treatment of appellants throughout DoD. With regard to equal treatment, both Options 2 and 3 are superior to Option 1. Under Option 2, Personal Appearance before the PSAB, all appellants would have the same opportunity to present their case before the decision-makers. Given the small number of PSABs, standardized procedures could be easily implemented to ensure equal treatment. Likewise, with the small number of senior officials involved, it would be easy to develop standard training.

Similarly Option 3, Personal Appearance before an AJ, would ensure equal treatment of appellants. DOHA's AJs have considerable experience conducting these types of proceedings and DOHA already has standardized procedures that could be easily modified to meet the requirements for a personal appearance. In addition, the small number of AJs involved (probably 15 to 20) would help ensure that standard procedures are followed across different personal appearances.

On the other hand, Option 1, Personal Appearance in the Field, would have the greatest potential for unequal treatment across DoD. While standardized procedures could be developed, they would have to be implemented across diverse field elements of the different components. Given the small number of potential appellants and the large number of employing organizations in the field, it is very likely that a different senior official would be involved each time a personal appearance was scheduled. Since a personal appearance would be a very rare event in a field organization, it would be very difficult to ensure that appearances were conducted similarly.

Ease of Implementation

Both Options 2 and 3 have an advantage over Option 1 in terms of the ease of implementation. The only change required with Option 2 is that appellants have the opportunity to personally appear before the PSAB. Procedures to standardize these appearances and the guidelines for DoD-funded travel to the Washington, DC, area would not be difficult to implement. Likewise, Option 3 would require slight modification of existing DOHA procedures to accommodate personal appearances. The new requirement to have PSABs forward case files to DOHA also could be easily accomplished.

On the other hand, Option 1, Personal Appearance in the Field, would be more difficult to implement. It would require communication of standardized procedures to a wide array of field organizations of the different components. Training senior officials in the field would be impractical because personal appearances would occur infrequently in a single organization. It is likely that the low frequency of

occurrence would require headquarters to provide additional guidance and support to assist local organizations in handling individual cases.

Timeliness

One aspect of the fairness of due process is the extent to which procedures facilitate the timely completion of appeals. Option 2 has an advantage over Option 1 and 3 with regard to timeliness, while Option 1 is superior to Option 3.

With current appeal procedures, approximately 4 months is required to render a final determination.⁴ This includes the time from the day the LOD is issued by the CAF to the day the appellate authority issues a letter to the appellant reporting the final outcome of the appeal. It was estimated that Option 1, Personal Appearance in the Field, would require 2 additional months to complete the appeal process for a total of 6 months. Option 2, Personal Appearance before the PSAB, would require one-half additional month beyond the normal 4 months now required for the appeal for a total of 4.5 months. Option 3, Personal Appearance before an AJ, would require 5 additional months for a total of 9 months. Appendix B provides information concerning how these time estimates were calculated.

Projected Cost

In order to assess the projected costs of the three options, it was first necessary to estimate the annual number of personal appearances that DoD would be required to conduct. For cost analysis purposes, it was estimated that 50 percent of the individuals who chose to appeal a LOD also would ask for a personal appearance.⁵ In FY92, 436 military and civilian personnel appealed the denial or revocation of their security clearance. Components projected that the number of appeals in FY94 would be 306.⁶ Using 306 as the expected annual number of appeals of LODs, it

⁴This time estimate is based on data presented in a September 1993 PERSEREC technical report, *Due Process for Adverse Personnel Security Determinations in the Department of Defense*.

⁵ If a greater proportion of appellants actually request a personal appearance, the cost estimates will be too low. On the other hand, if less than 50 percent request a personal appearance, the estimates will be too high. Error in this estimator, however, will not distort comparisons of the relative cost of the three options.

⁶This number was based on estimates provided by the different component appellate authorities. For FY94, the Army estimated 57 appeals, the Navy 189, the Air Force 20, and Washington Headquarters Services (WHS) 40. This last number represented all appeals for the defense agencies since WHS handles both adjudications and appeals for these organizations. Summing the above numbers resulted in the 306 total projected appeals for DoD for FY94.

was estimated that DoD would conduct 153 personal appearances (.50 times 306) each year.⁷

Table 2 presents cost estimates for the appeal process for both the current appeal system for handling appeals of LODs and the different options, which would add a personal appearance to the current system. Since all of the appeal procedures in the current system would still be required independent of which option was chosen, the cost for each option includes both the cost of the current system and the additional cost for 153 personal appearances.

Table 2

Projected Cost of Appeal Process for Current
System Versus The Three Options
(\$ in thousands)

	Current System	Option 1 Field	Option 2 PSAB	Option 3 DOHA
Cost of Appeal Procedures	180	410	370	745
Additional Cost Over Current System	—	+230	+190	+565

As can be seen, Option 3 using DOHA would be the most expensive option, requiring an additional \$565K above the costs of the current system. Options 1 and 2 would require an additional \$230K and \$190K over the current system.⁸ Appendix B provides more detailed information on the assumptions and cost parameters used to generate the data in Table 2.

If the requirement for a personal appearance adds time to the appeal process, DoD will incur lost labor costs in addition to those required to conduct the appearances. Appellants have their access to classified information suspended pending resolution of their appeals. Thus, many appellants cannot perform job

⁷Given that DoD is still downsizing, it is likely that the number of appeals and resultant personal appearances would decrease during the FY95 to FY99 timeframe.

⁸The estimate for Option 1 (\$230K) was based on the number of work hours we project would be required by personnel in the field to handle the personal appearance (see Appendix B for details). The Navy estimates that fewer work hours would be required by field personnel. If the Navy is correct, the \$230K would be an overestimate.

duties that require access to classified information and have significant productivity decreases during the time that they are awaiting resolution of their appeals. For purposes of conducting cost analyses, it was assumed that individuals will only be 50 percent productive during the period that they are awaiting completion of their appeal.⁹

Table 3 presents cost estimates for lost labor time for the current system and the three options. It was assumed that individuals are 50 percent productive during the time that they are awaiting completion of their appeals. The current system results in a annual lost labor cost of \$2440K. This reflects an average 4-month appeal period for each of 306 appellants. Because DOHA personal appearances under Option 3 require the most additional time (an average of 5 months per case), Option 3 has the greatest projected increase in cost to DoD - \$1525K.¹⁰ Option 2 using PSAB personal appearance has a projected increase of \$185K while field personal appearance under Option 1 has a projected increase of \$610K. Appendix B has more detailed information concerning the assumptions and cost parameters used to generate the data in Table 3.

⁹In reality, some individuals will be almost 100 percent productive during this period since their work may require very little access to classified information and/or they also can be assigned to alterative duties that allow for productive use of their skills. Other individuals may have very limited productive capabilities since their job requires extensive access to classified information and there are limited or no additional duties available that will allow productive use of their skills. For these reasons, 50 percent seem like a reasonably productive estimate for the total population.

¹⁰The Director of DOHA estimates that, due to recent changes, DOHA could complete personal appearances in 2 months rather than the 5 months used to project the increased cost of lost labor in the field of \$1525K (see Appendix B). Assuming that it requires 2 months, the additional cost of lost labor to the field for this option over the current system (\$1525K) would be reduced to approximately \$610K. This would reduce the total additional cost of this option from \$2090K to \$1175K (see Table 4).

Table 3

Projected Cost of Lost Labor Time for Current
System Versus The Three Options
(\$ in thousands)

	Current System	Option 1 Field	Option 2 PSAB	Option 3 DOHA
Cost of Lost Labor Time	2440	3050	2625	3965
Additional Cost Over Current System	---	+610	+185	+1525

Table 4 presents the projected total costs for both the current system and the three Options. It includes both the cost of the appeal process and the cost of lost labor time. Option 3 has the largest cost increase estimated to be \$2090K. Option 1 is next highest at \$840K while Option 2 has the smallest increased cost at \$375K.

Table 4

Projected Total Cost for Current
System Versus The Three Options
(\$ in thousands)

	Current System	Option 1 Field	Option 2 PSAB	Option 3 DOHA
Total Cost for Both Appeal Processes and Lost Labor Time	2620	3460	2995	4710
Additional Cost Over Current System	---	+840	+375	+2090

Summary of Advantages and Disadvantages

In the boxes on the next two pages, the advantages and disadvantages of the three options are summarized.

Option 1 - Personal Appearance in the Field

Advantages

- Consistent with recommended procedures in DoD Report to Congress
- Components have flexibility to meet unique operating requirements
- No travel required in most cases
- Presiding officials able to consider security concerns in context of operational requirements
- Presiding official is more likely to be familiar with appellant's on-job reliability and trustworthiness

Disadvantages

- Could take 6-12 months to implement
- No opportunity for appellant to face final decision-makers
- Presiding official not experienced with adjudicating security clearances
- Extensive documentation required
- Two additional months could be required to complete cases
- Potentially large number of presiding officials handling only an occasional case may result in disparate treatment of appellants across DoD
- Difficult to monitor quality and consistency due to large number of field elements involved

Option 2 - Personal Appearance before the PSAB

Advantages

- Appellant has opportunity to face final decision-makers
- Additional documentation is minimal because decision-makers hear case and are in possession of entire case file
- Less than one month added to complete case - least additional time of three options
- Least costly option
- Requires only slight modification to existing system
- Consistent with Joint Security Commission recommendation
- Easy to implement once component PSABs are operational

Disadvantages

- Requires travel by appellant to Washington, DC
- Disclosing identity of decision-makers may increase threat of personal retribution
- Raises issue of who pays for travel and expenses of counsel
- Use of DoD funds for appellant's travel may be viewed as inappropriate
- Requires coordination of PSAB meeting and appellant travel

Option 3 - Personal Appearance before an Administrative Judge

Advantages

- AJs have experience and training in conducting this type of proceeding
- Few AJs (15-20) assures equivalent treatment of appellants across DoD
- Implementation requires only slight modification to current DOHA procedures
- Closest to what Congress suggested in FY94 DoD Authorization Act
- Can be implemented quickly (within 60-90 days)
- AJs provide objective viewpoint independent of components
- Insures consistent and complete documentation of personal appearances

Disadvantages

- No opportunity for appellant to face final decision-makers
- Extensive documentation required
- Removes part of due process appeal procedures from component control
- Five additional months could be required to complete cases
- Most costly option

Conclusions and Recommendations

This report has outlined requirements for PSABs and options for implementing personal appearances. PERSEREC recommends that DoD implement the following three recommendations:

Recommendation 1. Change the Personnel Security Program Regulation, 5200.2-R, to include the requirements outlined in this report for Personnel Security Appeal Boards.

Rationale. Implementation of these requirements will ensure that PSAB procedures are uniform across the different components and that all personnel employed by DoD will receive equal treatment if they choose to appeal an adverse personnel security determination to a PSAB.

Recommendation 2. Change the Personnel Security Program Regulation, 5200.2-R, to include the steps outlined in this report for Option 2, Personal Appearance before the PSAB.

Rationale. All three options would address Congressional concerns and would meet the general requirement of implementing a personal appearance as part

of the appeal process. However, Option 2 provides for a personal appearance in the most effective and efficient manner. It is the only option where the appellant appears directly before the decision-makers. Option 2 is also consistent with the recommendation of the Joint Security Commission. Finally, it is the least costly option both in terms of implementing and providing new appeal procedures and minimizing lost labor hours to the field.

Recommendation 3. The personal appearance should occur after the individual's clearance has been denied or revoked through issuance of a letter of denial of revocation (LOD).

Rationale. No matter which option is implemented, it is significantly less expensive to hold the personal appearance after the individual has received a LOD than after the individual has received a LOI. Approximately eight times as many individuals appeal a LOI as compared to the number who appeal a LOD. In addition, LOI overturn rates suggest that individuals receive a fair opportunity to present their case without a personal appearance.

Appendix A

Current Policy and Procedures for Handling Appeals of Adverse Personnel Security Determinations¹¹

For DoD civilian and military personnel, DoD *Personnel Security Program Regulation* (5200.2-R) (January 1987) governs the handling of appeals of adverse personnel security determinations for security clearances. It requires the following for the denial or revocation of eligibility for access to classified information:

1. A written statement of reasons why the adverse administrative action is being taken;
2. An opportunity to reply in writing;
3. A written response stating the reasons for the final determination; and
4. An opportunity to appeal to a higher level of authority.

The first level of review occurs before, and the second level after, the actual denial or revocation. When a preliminary adverse determination is made by a Central Adjudication Facility (CAF), a Letter of Intent (LOI) to deny eligibility for a security clearance is sent to individuals before actually denying or revoking access eligibility. The individual has an opportunity to respond in writing to this first letter before the actual determination is made by the CAF. If this determination is adverse, the individual receives a letter of denial or revocation (LOD) informing him or her of the decision. The individual may appeal this decision to a higher authority for a final decision.

An individual may initiate a second-level appeal of the CAF decision to a higher authority. There are currently different types of structures for processing the appeal depending upon which component is involved. The Navy uses a three-person Personnel Security Appeals Board (PSAB) to review appeals. The Army, Joint Chiefs of Staff, and Washington Headquarters Services each use a single senior official as the appellate authority. The Air Force uses a panel to review the appeal and provide a recommendation to a senior decision-maker who makes the final decision.

¹¹ A more detailed description of the due process procedures for the different components can be found in a September 1993 PERSEREC report, *Due Process for Adverse Personnel Security Determinations in the Department of Defense*.

100

Appendix B

Method for Calculating Costs of the Current System and Three Options for Handling Personal Appearances

Cost estimates were calculated in two areas. First, the cost of the appeal process was determined by estimating the cost for the current system and then adding to this amount the additional costs associated with handling personal appearances for each of the three options. Second, the cost to DoD of lost labor in the field associated with the appeal process was estimated for the current system and for each of the three options. Lost labor costs are incurred because appellants may not be fully productive or replaced until all appeal procedures are completed. This cost estimate was based on the number of months of lost labor in the field that would be incurred awaiting the completion of a final determination and the average cost per month associated with the lost labor. While the extent of the impact on field operations of these delays is difficult to predict, rough estimates of lost labor are useful in assessing the relative merits of the options.

Assumptions for Cost Analyses

The following assumptions and cost estimators were used for the two sets of cost analyses:

1. Annual labor costs were based on the 1994 General Schedule pay rates for the Washington, DC, locality. For each grade, step 5 was selected. These pay rates were increased by 17.36% to reflect the cost of employee benefits paid by the government.¹² Annual labor costs were determined by increasing the annual pay rate, including fringe benefits, by 52% to account for general and administrative costs (G&A).¹³

¹² This value was obtained from NAVCOMPTNOTE 7041 of 10 December 1990. This rate may be conservative since rates now vary across different organizations and depend upon the proportions of personnel covered under the two different civilian retirement systems, the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The government's cost for fringe benefits is rising because a greater proportion of government civilians are being covered by FERS each year and because FERS requires a greater initial contribution from the government than does CSRS.

¹³ A working assumption of these analyses was that these expenses are paid by the government and should not be treated as free resources. The 52% G&A rate has been used to estimate the costs for various types of overhead expenses for adjudicative organizations. Please refer to PERSEREC technical report, *Consolidation of Personnel Security Adjudication in DoD*, for definitions of the cost categories comprising these expenses as well as a detailed description of the method for calculating the 52% G&A rate.

2. Monthly labor costs were computed by dividing annual labor costs by 12. Hourly labor costs were computed by dividing annual labor costs by 1744, the expected number of productive work-hours in a year.¹⁴

3. The annual number of appeals was estimated at 306. This number was based upon estimates of the number of appeals expected in FY94 provided to PERSEREC by DoD appeal authorities for security clearance determinations. The numbers provided by the components were: 57 for Army, 189 for Navy, 20 for Air Force, and 40 for Washington Headquarters Services, which also includes appeals for all defense agencies.

4. It was assumed that 50% or 153 of the 306 individuals submitting an appeal would also request a personal appearance. Lacking empirical data upon which to base this percentage, the mid-point or 50% was chosen as a "best guess". If more than 50% of appellants actually opt for a personal appearance, then the actual costs of handling personal appearances for all three options will be greater than the estimated costs. Conversely, if fewer than 50% of the appellants opt for a personal appearance, then the actual costs of handling personal appearances for all three options will be less than the estimated costs. Error in this estimator, however, will not distort comparisons of the relative cost of the three options.

Cost of the Appeal Process

Current System. The estimated annual cost (\$179,928 rounded to \$180K) of the current system was determined by multiplying the expected number of appeals per year (306) and the estimated cost for processing each appeal (\$588). The cost for processing each appeal (\$588) was based on data presented in PERSEREC's report *Due Process for Adverse Personnel Security Determinations*. This report estimated that in FY92, it cost \$544 to process an appeal of an adverse security clearance determination for military or civilian personnel receiving a letter of denial or revocation (see Table 3 on page 18 of the report). The \$544 was increased to \$588 to reflect the 3.7% increase in federal employee wages in FY93 and the 4.23% pay increase for federal employees in the Washington, DC, locality in FY94. The Washington locality was chosen since appeals are handled in this area.

Option 1. The estimated annual cost of processing appeals for option 1 (\$410K) was determined by adding the cost of the current system (\$180K) to the additional cost associated with option 1 (\$230K). This additional cost (\$230,724 rounded to \$230K) was determined by multiplying the estimated cost of handling a

¹⁴This value was based on an estimate by the Office of Management and Budget of the number of productive work-hours per year for a full-time employee (see OMB Circular A-76).

personal appearance (\$1,508) by the expected number of appearances (153). The cost for handling a personal appearance was determined by multiplying the additional hours required to handle the personal appeal in the field (26) by an hourly labor rate of \$58. It was estimated that 26 hours would be required by personnel in the field to handle the personal appearance (i.e., 4 hours for the head of the organization, 18 hours for staff support, and 4 hours for counsel). The hourly labor cost of \$58, which includes fringe benefits and G&A, was based on the pay rate for a GS-13, step 5 government civilian. This rate was used to reflect the average grade level of field personnel expected to be involved in the personal appearance process in option 1.

Option 2. The estimated annual cost of processing appeals for option 2 (\$370K) was determined by adding the cost of the current system (\$180K) to the additional cost associated with option 2 (\$190K). The additional annual cost of option 2 (\$191K rounded to \$190K) was estimated by taking the sum of three values: the cost of travel required to bring appellants to Washington, DC, (\$153K), the cost of processing travel orders (\$7K), and the additional cost to the appeal board of holding personal appearances (\$31K). These three values were calculated as follows.

First, the travel and per diem costs required to bring appellants to Washington, DC, for a personal appearance (\$153K) was based on an average cost of \$1,003 per appellant times 153 trips (\$153,459 rounded to \$153K). The \$1,003 was based on the expected cost (including per diem, air fare, and expenses) of a 3-day trip from the West Coast to Washington, DC.

Second, the estimated annual administrative cost for local organizations to process travel orders was estimated to be \$7K. This estimate was made by multiplying the estimated number of hours required to process a travel order (2); the hourly labor rate for a GS-5 step 5 government civilian, including fringe benefits and G&A (\$22); and the number of expected personnel requesting a personal appearance (153). The product \$6,732, was rounded to \$7K.

Third, the annual cost to the appeal boards for handling personal appearances (\$31,212 rounded to \$31K) was calculated by taking the product of the estimated additional .75 hours required to hold each personal appearance, the expected number of appearances (153), the average hourly labor rate of the board members (\$68), and 4 (the number of persons expected to be at a board meeting which would include three board members and an executive secretary). The \$68 was based on the hourly labor rate for a GS-14 step 5 government civilian, including fringe benefits and G&A.

Option 3. The estimated annual cost of processing appeals for option 3 (\$745K) was determined by adding the cost of the current system (\$180K) to the additional cost associated with option 3 (\$565K). This additional cost (\$565,335 rounded to \$565K) was determined by multiplying the additional cost of having DOHA hold a personal appearance (\$3,695) and the expected number of appearances (153). The cost of the personal appearance (\$3,695) was based on data presented in PERSEREC's 1993 report *Due Process for Adverse Personnel Security Determinations*.

This report estimated that the cost of a DOHA hearing was \$6,483 in FY92 (see page 18 PERSEREC report). Since DOHA would not be required to send LODs under this option, that portion of the total cost associated with issuing a statement of reasons (\$1,355) was determined and then was subtracted from the total hearing cost of \$6,483. Therefore, the estimated cost of a hearing, not including the costs for the statement of reasons, was estimated to be \$5,128. This \$5,128 was reduced by 33% to \$3,419. It was assumed that the cost of a personal appearance before an AJ would be less (by a third) than the cost of the DOHA hearings for employees of defense contractors. Since \$3,419 was based on FY92 costs, this estimate was increased to \$3,695 to reflect the 3.7% increase in federal wages in FY93 and the 4.23% locality pay increase for Washington, DC, in FY94.

Cost of Lost Labor in the Field

Additional assumptions. The estimated cost of lost labor to the field was based on the following additional assumptions:

1. The monthly cost of lost labor in the field is \$3,990. This rate, which includes fringe benefits and G&A, is based on the annual pay rate for a GS-7, step 5 government civilian. Adding the costs of fringe benefits and G&A expenses to the \$26,834 basic pay rate results in an annual labor cost of \$47,868. The monthly cost (\$3,989 rounded to \$3,990) equals the annual labor cost divided by the number of months in a year (12).

2. The daily cost of lost labor in the field is \$220. This cost estimate was based on the annual labor cost for a GS-7 step 5 government civilian (\$47,868) divided by the number of productive work-hours per year (1,744). The resultant hourly labor cost was multiplied by 8 to determine the daily labor cost of (\$219.58 rounded to \$220).

3. It was assumed that, on average, appellants could be utilized productively for 50% of the time while awaiting a final appeal determination.¹⁵ Therefore, a productivity rate of .50 was used.

4. The cost of lost labor in the field due to time awaiting a final appeal determination for the three personal appearance options includes costs in two categories. First is the cost of lost labor in the field associated with the time spent waiting for a final determination under the current system. These costs will be incurred in all cases, independent of whether a personal appearance is requested. Second are the additional costs of lost labor in the field associated with the particular personal appearance option being considered. These two costs were added together to determine the total cost of lost labor to the field due to time awaiting completion of the appeal process.

Current system. The annual cost of lost labor to the field (\$2442K rounded to \$2440K) due to delays associated with current system was estimated by multiplying the expected number of months required for a final determination (4), the cost per month to pay the appellant (\$3,990), the total number of expected cases (306), and the productivity rate of the appellant (.50). The expected number of months required for a final determination was based on median number days (119) required in FY92 to complete appeals of adverse security clearance determinations (see page 19 of PERSEREC report, *Due Process for Adverse Personnel Security Determinations in the Department of Defense*). The 119 days was rounded to 4 months.

Option 1. The annual cost of lost labor to the field (\$3050K) due to delays associated with option 1 was estimated by adding the annual cost of lost labor with the current system (\$2440K) and the annual cost of lost labor with a personal appearance in the field (\$610K). The annual cost of lost labor associated with a personal appearance in the field (\$610,470 rounded to \$610K) was determined by multiplying the number of expected requests for a personal appearance (153), the number of additional months required to complete a personal appearance in the field (2), the cost per month to pay the appellant (\$3,990), and the productivity rate of the appellant (.50). The two additional months required to complete a personal appearance in the field includes one month for scheduling the appearance and one month for documenting the results of the appearance.

¹⁵In practice, productivity will vary considerably across appellants. Some individuals will be almost 100% productive since they require little access to classified information to perform essential job duties. On the other hand, some appellants will not be able to perform most job duties or may not even be able to enter their work area while their access eligibility is suspended. Their productivity would be much less than 50%.

Option 2. The annual cost of lost labor to the field (\$2625K) due to delays associated with option 2 was estimated by adding the annual cost of lost labor with the current system (\$2440K) and the additional annual cost of lost labor to the field (\$185K). The cost of lost labor to the field (\$183,141 rounded to 185K) was determined by multiplying the number of expected requests for a personal appearance (153), the number of additional months required to complete a personal appearance (.6), the cost per month to pay the appellant (\$3,990), and the productivity rate of the appellant (.50). The .6 additional month required to complete a personal appearance includes 15 days added to the appeal process by this option, or .5 month and 3 days, or .1 month required by appellants to make the personal appearance in Washington DC. It was reasoned that coordination of appellants' travel and PSAB meeting times would result in one-month delays for approximately one-half of the cases. Therefore, the average delay per case would be .5 month.

Option 3. The annual cost of lost labor to the field (\$3965K) due to delays associated with option 3 was estimated by adding the annual cost of lost labor with the current system (\$2440K) and the annual cost of lost labor with a personal appearance before an AJ (\$1525K). The annual cost of lost labor associated with a personal appearance before the AJ (\$1,526,175 rounded to \$1525K) was determined by multiplying the number of expected requests for a personal appearance (153), the number of additional months required to complete a personal appearance before the AJ (5), the cost per month to pay the appellant (\$3,990), and the productivity rate of the appellant (.50).

The 5 additional months required to complete a personal appearance before an AJ includes 2 months for scheduling the appearance and 3 months for documenting the results of the appearance. Five months also is consistent with data reported to PERSEREC by DOHA in FY92. At that time, DOHA reported that it took approximately 7 months to complete a hearing. Since approximately 2 months of this time resulted from the issuance and response to the SOR, 5 months is a good estimate of the time required to schedule, conduct, adjudicate, and document a personal appearance.