

May 1993

DOD SPECIAL ACCESS PROGRAMS

Administrative Due Process Not Provided When Access Is Denied or Revoked



**National Security and
International Affairs Division**

B-247246

May 5, 1993

**The Honorable William L. Clay
Chairman, Committee on Post Office
and Civil Service
House of Representatives****The Honorable Frank McCloskey
Chairman, Subcommittee on the
Civil Service
Committee on Post Office
and Civil Service
House of Representatives****The Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives**

This report responds to your request that we review the due process procedures and practices for individuals whose access to special access programs (SAP) and sensitive compartmented information (SCI) in the Army, Navy, and Air Force is denied or revoked. We have previously reported on due process practices for individuals for whom security clearances are denied or revoked.¹ As agreed with your office, our current review focused on military, civilian, and contractor personnel.

Background

Classified information is placed in one of three levels—top secret, secret, or confidential—depending on its sensitivity. Some particularly sensitive classified information is further segregated and designated as SAP or SCI.²

A SAP imposes need-to-know or access controls beyond those normally provided for top secret, secret, or confidential information. Such a program may include, but not be limited to, special clearance,

¹Security Clearances: Due Process for Denials and Revocations by Defense, Energy, and State (GAO/NSIAD-92-99, May 6, 1992).

²A security clearance at the appropriate level—top secret, secret, or confidential—is needed to obtain access to classified information. Access to a SAP or SCI requires an additional specific determination and authorization. Because of higher adjudication standards for access to some SAPs and SCI, the denial and revocation of such access often occurs without the revocation of the individual's security clearance.

adjudication, investigative requirements, material dissemination restrictions, or special lists of individuals determined to have a need-to-know.

SCI is classified information concerning or derived from intelligence sources, methods, or analytical processes that require handling exclusively within formal access control systems established by the Director of Central Intelligence.

During fiscal year 1992, the Department of Defense (DOD) granted over 68,000 SCI accesses, denied about 900, and revoked about 500. At the end of the year, there were about 214,500 authorized SCI accesses for DOD and contractor personnel and reservists. (Some individuals had SCI access for their DOD or contractor assignments as well as for their reserve positions.) The total number of SAP access authorizations at the end of fiscal year 1992 is unknown, but is believed to be between 200,000 and 250,000.

When unfavorable information surfaces or actions occur that indicate that authorizing or continuing an individual's access to a SAP or SCI is not clearly consistent with the interest of national security, the access may be denied or revoked. When this happens, the individual should generally receive administrative due process, which includes being notified of the reasons, given a chance to respond, and advised of any appeal procedures. The nature and extent of due process depends on whether there is a security clearance, SAP access, or SCI access and whether the individual is a government or contractor employee.³

DOD has established administrative due process procedures for contractor employees (for their security clearances) as well as other procedures for its military and civilian personnel.⁴ The procedures for government personnel are similar to those suggested by the Office of Personnel Management. The DOD procedures for security clearance and SAP/SCI access denials and revocations for government personnel provide that the individual be told in writing that denial or revocation is being considered, including the reasons; given an opportunity to respond in writing; given a written response with the reasons for the final administrative action; and

³The administrative due process requirements for contractor employees were established by Executive Order 10865, "Safeguarding Classified Information Within Industry," February 20, 1960. The order does not specifically mention SCI or SAPs and does not cover government employees, who do not have a comparable order.

⁴Department of Defense Personnel Security Program Regulation, DOD 5200.2-R (Jan. 1987).

given an opportunity to appeal the decision to a higher authority within the service or component. (See app. III.)

The Director of Central Intelligence has established minimum appeal procedures for individuals for whom access to SCI has been denied or revoked. The SCI due process procedures are not as extensive as DOD's. For example, the individual can request the reasons for denial or revocation of an SCI access, but there is no requirement that the reasons be provided. (See app. I for a comparison of procedures and app. IV for a copy of them.)

Table 1 compares administrative due process coverage authorized by executive order or regulation for DOD personnel and contractor employees.

Table 1: Administrative Due Process Required for Government Personnel and Contractor Employees

	DOD personnel			Contractor employees		
	Security clearances	SCI access	SAP access	Security clearances	SCI access	SAP access
Executive Order 10865	N/A	N/A	N/A	Yes	^a	^a
DOD Regulation 5200.2-R	Yes	Yes	Yes	N/A	N/A	N/A
Director of Central Intelligence Directive 1/14	N/A	Yes	N/A	N/A	Yes	N/A

Note: N/A is not applicable.

^aIt is not clear whether the order covers classified SCI and classified information in a SAP.

Results in Brief

With respect to DOD military and civilian personnel in special access programs, the Navy and Air Force did not comply with DOD Regulation 5200.2-R, which generally requires administrative due process when access to a SAP is denied or revoked, but the Army provided it in the few cases we examined. In responding to this apparent noncompliance by the Navy and Air Force, DOD officials said that the regulation was not intended to cover covert or unacknowledged SAPs. However, the regulation does not contain such qualification or limitation. With respect to contractor employees, DOD does not require administrative due process because it believes that the due process provisions of Executive Order 10865 are not applicable to contractor employees involved with SAPs. However, the Army chose to provide it for its contractor employees, using the procedures in DOD's Regulation 5200.2-R.

The services provided administrative due process for government and contractor employees for whom SCI access was initially denied and revoked, but they used different procedures. The Army used the procedures required by the DOD regulation (e.g., letters of intent to deny or revoke access were sent to the individuals). The Navy and Air Force, as permitted by DOD's regulation, used the minimum procedures established by the Director of Central Intelligence (e.g., individuals were notified after the access had been denied or revoked).

Proposed administrative due process procedures for contractor employees in SAPs under the newly authorized National Industrial Security Program, if adopted, could result in those employees receiving minimum administrative due process patterned after the Director of Central Intelligence's SCI procedures. If the proposed procedures are adopted, contractor employees would receive less due process than that generally required by DOD's regulation for SAPs. The DOD regulation provides more protection to employees than the proposed procedures for contractors. For example, DOD's regulation requires that the reasons for denial or revocation of a SAP access be provided to the individual before an action is taken, while the SCI regulation only states that the individual may request the reasons after an action is taken. There is no requirement that the reasons be provided

The Navy and Air Force did not have appeal procedures for SAPs because they did not have administrative due process for these programs. The Army had SAP administrative due process, including appeals, which was similar to its SCI process. The Army's appeal process for SCI access denials and revocations provides for the appeals to be submitted to a command separate from the one that denied or revoked the SCI access. Some of the designated appeal officials of the Navy and Air Force were in the same commands as the officials who made the determinations that resulted in the appeals. This resulted in the Navy and Air Force being perceived as being less independent than the Army in the appeal process.

Administrative Due Process Not Provided in Special Access Programs

Although DOD's personnel security program regulation generally requires that administrative due process be given to DOD personnel for whom access to a SAP is denied or revoked, the Navy and Air Force were not providing it. The Army appeared to be complying with the regulation, but the sample of cases that it provided us for review was too small for us to conclude overall compliance.

The Army said that it also provided due process to contractor employees, even though not required by DOD regulation to do so. DOD believes that the due process provisions of Executive Order 10865 only apply to contractor employee access to classified information, but not when that information is part of a SAP. The Navy and Air Force did not provide due process to contractor employees. The services may provide due process to contractor employees but are not required to do so by DOD's regulation.

DOD Regulation 5200.2-R states that no final unfavorable administrative action is to be taken against a military or civilian employee until he or she has been afforded the specified due process. It also states that an unfavorable administrative action includes an unfavorable personnel security determination, which it defines as follows:

A denial or revocation of clearance for access to classified information; denial or revocation of access to classified information; denial or revocation of a Special Access authorization (including access to sci). (underscoring added.)

DOD officials told us that the regulation was not intended to cover covert or unacknowledged SAP or SCI programs; however, there is no mention in the regulation about this limitation. DOD officials said that in the case of SAPs involving DOD personnel, they used the due process procedures established by the Director of Central Intelligence for sci because of the programs' similarities.

DOD Regulation 5200.2-R states that all of its provisions (adjudication criteria, etc.) apply to contractor personnel except for the unfavorable administrative action procedures. The regulation states that they are included in an industrial security regulation and a directive pertaining to the handling of unfavorable contractor security clearance actions; however, neither document specifies the SAP administrative due process applicable to contractor employees.

Because DOD does not maintain centralized records on SAP denials and revocations, we could only review the cases provided by the services, who told us that unacknowledged program cases would be excluded. The Navy gave us a listing of 70 cases that covered the 9-month period beginning October 1, 1991, and we randomly selected 30. The Air Force gave us 26 cases, and we reviewed them all. Most of the cases involved contractor personnel. Our review showed that neither DOD nor contractor personnel involved with SAPs received administrative due process from the Navy and Air Force.

The Army gave us six cases; however, it had discharged three of the individuals before it had the opportunity to adjudicate their access or provide administrative due process. In the other three cases, letters of intent to revoke their access had been sent to the three individuals, and the other administrative due process procedures required by DOD's regulation had been followed. One of the three cases was not a current case, but the individual, after appealing the revocation of SAP access, had the access reinstated in August 1991.⁵

In planning for the recently authorized National Industrial Security Program,⁶ DOD has been working with other agencies and industry for several years to establish standards for protecting national security information held by contractors. As part of that effort, a group established to study due process in industry sent a questionnaire to 164 contractors requesting separate responses for each SAP in which they were involved. The responses from 100 of the contractors identified 235 programs.⁷ Briefly, the study group's June 1990 report said that, in most cases, contractor employees were not told that they had been denied access, given the reasons, or given an opportunity to appeal. (See app. V for more detail on the report.)

Executive Order 12829 provides for the Secretary of Defense, in consultation with other agencies, to issue a National Industrial Security Program operating manual within 1 year of the issuance of the order, or by January 6, 1994. One of the purposes of the manual is to promote consistent requirements for protecting classified information, including SCI and SAPs. As part of this effort, it has been proposed that administrative due process procedures similar to those of the Director of Central Intelligence for SCI also be used governmentwide for SAPs.

Adoption of SCI-type procedures for contractor employees in SAPs means that they would receive less due process than what is generally required by DOD's Regulation 5200.2-R. DOD's support for SCI-type procedures in the National Industrial Security Program may be the first step in its efforts to

⁵The SAP access was automatically revoked after the individual's clearance was revoked. The Army uses the DOD personnel security program regulation adjudication criteria in determining whether to deny or revoke a security clearance. It uses the same criteria in making SAP access determinations. Therefore, an individual associated with an Army SAP could not have the access denied or revoked and still be given or allowed to retain a security clearance.

⁶Executive Order 12829, "National Industrial Security Program," January 6, 1993.

⁷Some programs require multiple contractor participation. Since respondents to the questionnaire did not identify the programs, the actual number may be less than 235, because some contractors may have referred to the same program.

continue denying contractor and DOD employees administrative due process. We believe that contractor employees, at a minimum, should receive the type of administrative due process generally specified for DOD employees. Adoption of a process similar to that in Regulation 5200.2-R could help to ensure that the waiver provision of the SCI procedures is not available to exclude administrative due process entirely, as has been done in the past.

There are other major differences between the Director's minimum due process requirements for SCI and DOD's SAP/SCI due process requirements. For example, under the Director's procedures, the official who denies or revokes an SCI access also determines if the reasons for the action will be provided if the individual requests them and if the individual will be allowed to appeal the denial or revocation. Under DOD's procedures, the individual is to be told in writing that an unfavorable decision has been proposed, along with the reasons. The unfavorable decision can be appealed. (See app. I for more differences.)

Administrative Due Process Provided for Denials and Revocations of Access to SCI

The three services provided administrative due process to government and contractor personnel for whom access to SCI was initially denied or revoked. The Army followed the procedures in DOD's personnel security regulation, while the Navy and Air Force, as allowed by the DOD regulation, followed the procedures of the Director of Central Intelligence. There were some problems in the way the Navy and Air Force recorded SCI access and security clearance denials and revocations in DOD's central records, but DOD was working to resolve the problems.

Our review of 120 cases (30 Army, 30 Air Force, and 30 each for the Navy's two SCI offices) selected at random indicated that the three services provided due process to individuals for whom access to SCI was denied or revoked. Because the Army followed the DOD regulation, it sent the individuals letters advising them that their access was going to be denied or revoked. On the other hand, the Navy and Air Force, following the Director of Central Intelligence's regulation, notified the individuals after the access was denied or revoked.

DOD maintains a central records system that shows the security clearance and SCI eligibility status of DOD military, civilian, and contractor personnel. We used these records to select random samples of security clearance denials and revocations during our previous review and had expected to use them during our current SCI review, but we could only use them to

select Army cases. We could not use them to select Navy and Air Force cases because of unreliable data partly resulting from the way the two services were organized to adjudicate security clearances and SCI accesses. Pursuant to DOD's regulation, the Army has a central adjudication facility to handle clearances and SCI accesses, whereas the Navy has one office handling clearances and two that handle SCI accesses. The Air Force, until recently, had two separate offices handling clearances and SCI accesses.

The central records showed that during the first 6 months of fiscal year 1992, there were 479 DOD and contractor employees for whom the Army denied or revoked SCI access. We selected our 30-case sample from that number. When we extracted random samples of Navy and Air Force cases from the central records and attempted to review the cases at the Navy and Air Force SCI adjudicating offices, we had some problems. The offices had many cases that did not appear in the central records. Therefore, we had to use listings of cases provided by the offices to select random samples of cases to review.

The discrepancies in the central records occurred because the Navy and Air Force used a two-step procedure to adjudicate security clearances and SCI accesses, which the central records system was not designed to handle. The two services' SCI offices adjudicated the SCI accesses, entered the results (denial or revocation) in the system, and sent the cases to their central clearance offices for determinations concerning the denial or revocation of the individuals' security clearances. When the central clearance offices entered the clearance denial or revocation data in the system, the SCI denial or revocation status was erased. Similar problems did not occur with the Army cases because one office does all the adjudications (security clearance and SCI access) and enters them in the central records. DOD officials are aware of the problem and are working to resolve it.

Appeal Procedures

Pursuant to the broad authority in DOD's regulation, the services have established different appeal procedures. The Navy and Air Force SCI appeal procedures can be perceived as not being independent because appeals are submitted to officials in the same command, often in the same chain of command, as the individuals who made the initial unfavorable determinations. For example, in a Navy office that adjudicates SCI access, appeals are submitted to the same office and considered by three officials within the same command. A decision is rendered on the basis of a

majority vote of the three-member panel. (Records of the deliberations of the panel and the vote are not maintained.)

Army SCI appeals are submitted to the Deputy Chief of Staff for Intelligence, who is not in the same command that adjudicates the SCI access.

The services' personnel security regulations do not specify the SAP appeal procedure to be used; however, the Army used the same appeal process that it used for SCI appeals. The Navy and Air Force have a procedure they refer to as an appeal, but the individuals are not involved in the process or informed about it. Under this procedure, Navy and Air Force supervisors and contractors submit "letters of compelling need" that state why the employees are critical to their programs and should retain their access, despite being potential security risks. The employees are not told about the letters or the unfavorable access determinations. In some cases, access has been reinstated after receipt of the letters.

Recommendations

We recommend that the Secretary of Defense

- direct the Secretaries of the Navy and Air Force to comply with the due process requirements of DOD's personnel security program regulation with respect to military and civilian personnel for whom access to a SAP is denied or revoked;
- require that the services designate officials for appeal purposes from commands that are independent from those officials who make unfavorable SAP/SCI access determinations;
- establish oversight procedures to ensure compliance by the services and components with the SAP/SCI due process requirements for DOD and contractor personnel; and
- propose that the National Industrial Security Program establish SAP due process procedures for contractor employees that are similar to DOD's procedures for its military and civilian personnel.

DOD Comments and Our Evaluation

DOD generally did not agree with our findings and recommendations, although it agreed with several issues. We made some revisions in response to DOD's comments; however, basic differences exist with respect to (1) the interpretation of the requirements of DOD Regulation 5200.2-R, (2) DOD's practical definition of administrative due process, and (3) the results of our review and accompanying recommendations.

DOD did not concur with our recommendation calling for Navy and Air Force compliance with the administrative due process requirements. DOD said that we incorrectly took the position that its regulation requires the same administrative due process to deny or revoke an individual's clearance for access to its SAPs, regardless of the sensitivity of the program information. DOD also maintains that we misinterpreted the language of DOD Regulation 5200.2-R, which specifically recognizes that special clearance and adjudicative procedures may be followed in connection with clearance determinations involving SAPs. DOD said that, consistent with paragraphs 1-324, 3-500, and 3-506 of Regulation 5200.2-R, it sometimes upgraded DOD SAP adjudicative standards to those of the Director of Central Intelligence for SCI. DOD also said that the approval of the Deputy Secretary of Defense was needed to waive the Director of Central Intelligence's procedures for SCI.

Our position is based on the regulation's general requirement for administrative due process when access to a SAP is denied or revoked. The three paragraphs referred to by DOD do not mention administrative due process. They contain definitions of SAPs, descriptions of investigative procedures, and the procedure for obtaining a waiver from DOD investigative procedures. Further, even though the regulation does not specify that the administrative due process procedures may be waived under extenuating circumstances, because of national security considerations, we recognize that some programs will be authorized a specific exemption. However, in every SAP case that the Navy and Air Force gave us for review, the individuals did not receive the due process required by Regulation 5200.2-R, nor did they receive the due process specified for SCI by the Director of Central Intelligence. The individuals were not notified that an access had been denied or revoked and were not given reasons for the actions.

The requirement for administrative due process for SAP access denials and revocations appears in DOD Regulation 5200.2-R. Paragraph 7-100 provides as follows:

The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information. . .) is a function distinct from that involving the granting of access to classified information. . . Access determinations are made solely on the basis of the individual's need for access to classified information in order to perform official duties. Except for suspension of access pending

final adjudication of a personnel security clearance, access may not be finally denied for cause without applying the provisions of paragraph 8-201.⁸

DOD stated that specific procedures of the regulation were being followed unless other special procedures were necessary to protect classified information. In such cases, DOD sometimes upgraded adjudicative standards by applying standards set by the Director of Central Intelligence for SCI. The administrative due process procedures established for SCI allow for a waiver of all procedures. DOD believes that when it waives the appeal procedures specified in the Director of Central Intelligence Directive No. 1/14 it is providing administrative due process. However, a DOD official responsible for SAP security policy earlier said that he knew of no approval being given by the Deputy Secretary of Defense to waive the procedures prescribed by the Director of Central Intelligence for SCI, as required by DOD Regulation 5200.2-R.

When we started our review, DOD was reluctant to give us SAP cases from unacknowledged programs because of security reasons. DOD told us that such programs accounted for about 10 to 20 percent of the total number of SAPs. We agreed to review access denials and revocations for only the presumably less sensitive acknowledged programs. As previously stated, we found no administrative due process in any of the cases that the Navy and Air Force gave us to review. The results of our review, interviews with contractor security officers, and the industry survey of due process in SAPs (see app. V) seem to agree—no meaningful administrative due process is given by the Navy and Air Force to individuals for whom access to a SAP has been denied or revoked.

DOD said that it partially agreed with our recommendation that it propose administrative due process procedures for SAPs in the National Industrial Security Program that are similar to the procedures in DOD Regulation 5200.2-R. However, working within the established structure of the governmentwide program, DOD said that the administrative due process procedures for both SAPs and SCI probably would be in accordance with Director of Central Intelligence Directive 1/14 for SCI. We believe that if the Director's procedures for SCI are adopted for use in SAPs, the procedures' waiver provision may continue to be used with respect to contractor and government employees.

DOD said that it partially concurred with our recommendation concerning the appointment of officials for appeal panels, who can be perceived as

⁸See app. III for paragraph 8-201, which contains the administrative due process procedures.

being independent, and that Navy and Air Force regulations had been developed to clarify this issue. We reviewed the proposed changes and found that some panel officials were still within the same office or command that was responsible for the denial or revocation of access being appealed.

DOD also said that it partially concurred with our recommendation that the Secretary of Defense establish oversight procedures to ensure compliance with SAP/SCI administrative due process requirements; however, it said that the procedures already exist. DOD said that a program's security plan, including the administrative due process provisions, requires the approval of the Deputy Secretary of Defense, and that the Office of the Deputy Secretary of Defense for Security Policy conducts periodic oversight visits.

Approval of security plans at the deputy secretary level and periodic oversight visits are commendable efforts. However, we were informed that approval of the plans at this level was begun in March 1992. Since many SAPs were authorized prior to that date, it does not appear that the security plans were approved by the Deputy Secretary. If oversight visits were made to SAP offices, it does not appear that they were effective in getting the offices to provide some form of administrative due process, since neither the Navy nor the Air Force furnished us SAP cases that included DOD Regulation 5200.2-R or Director of Central Intelligence Directive 1/14 administrative due process.

Although DOD did not fully concur with the report's findings, it said that the report will facilitate efforts to refine existing policy documents. DOD intends to revise its regulations to specifically define the requirements for administering due process in SAPs.

Scope and Methodology

We reviewed executive order requirements for contractor employee access to classified information and DOD regulations for DOD and contractor personnel access to classified information in SAPs and SCI. Also, we reviewed the Director of Central Intelligence regulation governing access to SCI. We discussed administrative due process practices with security officials from DOD and industry.

We reviewed the administrative due process practices of the Departments of the Army, Navy, and Air Force for DOD and contractor employees for whom access to a SAP or SCI was denied or revoked for the first 6 months of fiscal year 1992. We reviewed 120 SCI and 59 SAP cases.

We selected a random sample of Army SCI cases from data in DOD's central records system. Similar data for Navy and Air Force cases was not complete or accurate; therefore, we selected random samples from listings provided by the two services.

Since DOD does not maintain a central records system for individuals involved with SAP access, we selected random samples of SAP access denials and revocations from listings provided by the Navy and Air Force. We reviewed all six cases provided by the Army.

We conducted our review from May 1992 to February 1993 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Secretaries of Defense and the Army, Navy, and Air Force; the Director of the Information Security Oversight Office; and other interested parties. We will also make copies available to others upon request.

Please contact me at (202) 512-8412 if you or your staffs have any questions concerning the report. The major contributors to this report are listed in appendix VII.



Donna M. Heivilin
Director, Defense Management
and NASA Issues

Contents

Letter	1
Appendix I Comparison of Administrative Due Process Requirements	16
Appendix II Administrative Due Process Requirements of Executive Order 10865	17
Appendix III Administrative Due Process Requirements of DOD Personnel Security Program Regulation 5200.2-R	18
Appendix IV Appeal Procedures Required by Director of Central Intelligence Directive No. 1/14	19
Appendix V Industry Survey of Due Process in Special Access Programs	22

Appendix VI Comments From the Department of Defense	23	
Appendix VII Major Contributors to This Report	33	
Table	Table 1: Administrative Due Process Required for Government Personnel and Contractor Employees	3

Abbreviations

DOD	Department of Defense
GAO	General Accounting Office
SAP	Special Access Program
SCI	Sensitive Compartmented Information

Comparison of Administrative Due Process Requirements

	DOD Personnel Security Program Regulation 5200.2-R	Director of Central Intelligence Directive 1/14
Applicability	DOD military and civilian personnel access to all classified information, including SAPs and SCI.	All government and contractor personnel access to SCI.
Notification of denial or revocation of access	Requires written notification of intent to deny or revoke access with reasons.	Requires notification that access has been denied or revoked.
Individual's response to notification	Requires an opportunity for written response.	No provision for response.
Determination to deny or revoke access	Requires a written response to individual stating reasons for the determination.	Notify individual that he or she may request the reasons.
Appeals	Individual is to be given an opportunity to appeal to a higher level of authority designated by the service or component.	Individual is to be given an opportunity to appeal. ^a

^aThe determination authority is the official authorized to make decisions regarding an individual's eligibility or ineligibility for access to SCI. Specifically, the directive states that the individual will be afforded any of the administrative due process procedures whenever the determination authority, "in the exercise of his/her discretion, deems such action in any given case to be clearly consistent with the interests of the national security." If the determination authority reaffirms a denial or revocation of access, the individual may request a final review of the case by a higher official or his or her designee.

Administrative Due Process Requirements of Executive Order 10865

SECTION 3. Except as provided in section 9 of this order, an authorization for access to a specific classification category may not be finally denied or revoked by the head of a department or his designee, including, but not limited to, those officials named in section 8 of this order, unless the applicant has been given the following:

(1) A written statement of the reasons why his access authorization may be denied or revoked, which shall be as comprehensive and detailed as the national security permits.

(2) A reasonable opportunity to reply in writing under oath or affirmation to the statement of reasons.

(3) After he has filed under oath or affirmation a written reply to the statement of reasons, the form and sufficiency of which may be prescribed by regulations issued by the head of the department concerned, an opportunity to appear personally before the head of the department concerned or his designee, including, but not limited to, those officials named in section 8 of this order, for the purpose of supporting his eligibility for access authorization and to present evidence on his behalf.

(4) A reasonable time to prepare for that appearance.

(5) An opportunity to be represented by counsel.

(6) An opportunity to cross-examine persons either orally or through written interrogatories in accordance with section 4 on matters not relating to the characterization in the statement of reasons of any organization or individual other than the applicant.

(7) A written notice of the final decision in his case which, if adverse, shall specify whether the head of the department or his designee, including, but not limited to, those officials named in section 8 of this order, found for or against him with respect to each allegation in the statement of reasons.

Administrative Due Process Requirements of DOD Personnel Security Program Regulation 5200.2-R

8-201 Unfavorable Administrative Action Procedures

Except as provided for below, no unfavorable administrative action shall be taken under the authority of this Regulation unless the person concerned has been given:

a. A written statement of the reasons why the unfavorable administrative action is being taken. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) (reference (m)) and national security permit. Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, Chapter 732, Subchapter 1, paragraph 1-6b (reference (cc)). The signature authority must be as provided for in paragraph 6-101.b.(1)(b) and 6-101.b.(2)(b).

b. An opportunity to reply in writing to such authority as the head of the Component concerned may designate;

c. A written response to any submission under subparagraph b. stating the final reasons therefor, which shall be as specific as privacy and national security considerations permit. The signature authority must be as provided for in paragraphs 6-101.b.(1)(b) and 6-101.b.(2)(b). Such response shall be as prompt as individual circumstances permit, not to exceed 60 days from the date of receipt of the appeal submitted under subparagraph b., above, provided no additional investigative action is necessary. If a final response cannot be completed within the time frame allowed, the subject must be notified in writing of this fact, the reasons therefor, and the date a final response is expected, which shall not, in any case, exceed a total of 90 days from the date of receipt of the appeal under subparagraph b.

d. An opportunity to appeal to a higher level of authority designated by the Component concerned.

8-202 Exceptions to Policy

Notwithstanding paragraph 8-201 above or any other provision of this Regulation, nothing in this Regulation shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense to find that a person is unsuitable for entrance or retention in the Armed Forces, or is ineligible for a security clearance or assignment to sensitive duties, if the national security so requires, pursuant to Section 7532, Title 5, United States Code (reference (pp)). Such authority may not be delegated and may be exercised only when it is determined that the procedures prescribed in paragraph 8-201 above are not appropriate. Such determination shall be conclusive.

Appeal Procedures Required by Director of Central Intelligence Directive No. 1/14

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

See comment 1.

See comment 2.

UNCLASSIFIED

DCID 1/14-15

ANNEX B

APPEALS

POLICY

This annex establishes common appeals procedures for the denial or revocation of access to sensitive compartmented information (SCI) by entities of the Intelligence Community after adjudication pursuant to the provisions of DCID 1/14. This annex is promulgated pursuant to Executive Order 12333, Executive Order 12356, and Section 102 of the National Security Act of 1947. For the purposes of this annex, all references to DCID 1/14 include the basic document and all of its annexes. Any individual who has been considered for initial or continued access to SCI pursuant to the provisions of DCID 1/14 shall, to the extent provided below, be afforded an opportunity to appeal the denial or revocation of such access. This annex supersedes any and all other practices and procedures for the appeal of the denial or revocation of SCI access. This annex will not be construed to require the disclosure of classified information or information concerning intelligence sources and methods, nor will it be construed to afford an opportunity to appeal before the actual denial or revocation of SCI access. In addition, the provisions of DCID 1/14, or any other document or provision of law, will not be construed to create a property interest of any kind in the access of any individual to SCI. Further, since the denial or revocation of access to SCI cannot by the terms of DCID 1/14 render an individual ineligible for access to other classified information solely for that reason, the denial or revocation of SCI access pursuant to the provisions of DCID 1/14 will not be construed to create a liberty interest of any kind.

APPLICABILITY

This annex applies to all United States Government civilian and military personnel, as well as any other individuals, including contractors and employees of contractors, who are considered for initial or continued access to SCI. This annex does not apply to decisions regarding employment and will not be construed to affect or impair Public Law 88-290 or the authority of any entity to effect applicant or personnel actions pursuant to Public Law 88-290, Public Law 86-36, or other applicable law.

SCI ACCESS DETERMINATION AUTHORITY

Adjudications for access to SCI will be made in accordance with DCID 1/14 by a Determination Authority designated by the Senior Official of the Intelligence Community (SOIC) of each entity. Access to SCI shall be denied or revoked whenever it is determined that a person does not meet the security standards provided for in DCID 1/14.

PROCEDURES

1. Individuals will be:
 - Notified of the denial or revocation of SCI access.
 - Notified that they may request to be provided with the reasons for such denial or revocation.
 - Afforded an opportunity to appeal whenever the Determination Authority of any entity, in the exercise of his/her discretion, deems such action in any given case to be clearly consistent with the interests of the national security.

UNCLASSIFIED

**Appendix IV
Appeal Procedures Required by Director of
Central Intelligence Directive No. 1/14**

UNCLASSIFIED

DCID 1/14-16

2. Any individual who is given notification and afforded an opportunity to appeal pursuant to paragraph 1 of this annex may, within 45 days of the date on which such individual is notified of the reasons for denial or revocation of SCI access, submit a written appeal of that denial or revocation to the Determination Authority. The written material submitted for consideration may include any information the individual believes will assist the Determination Authority in reviewing the case.
3. After a further review of the case in the light of the written appeal, the individual will be notified of the decision of the Determination Authority.
4. If the Determination Authority reaffirms a denial or revocation of access, the individual may, within 30 days of the date on which such individual is notified of the Determination Authority's reaffirmation, request a final review of the case. In that event, the SOIC or his or her designee, will personally review the case and exercise his or her discretion pursuant to the provisions of DCID 1/14, and will inform the individual of his or her decision, which action will be final and unreviewable.

UNCLASSIFIED

**The following are GAO's comments on the Appeal Procedures Required by
Director of Central Intelligence Directive No. 1/14.**

GAO Comments

1. The title of the directive is "Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI)."
2. The Central Intelligence Agency advised us of a printing error in the third bullet under paragraph 1. The national security caveat was meant to apply to all three bullets in the paragraph.

Industry Survey of Due Process in Special Access Programs

A May 1990 industry survey identified problems concerning administrative due process received by contractor employees. A 9-question survey form was sent to 164 contractors requesting separate responses for each special access program. One hundred contractors responded, identifying 235 programs. The survey forms showed that

- in 49 percent of the programs reported, employees were not told that they had been nominated for the programs;
- in 58 percent of the programs, employees were not told that they had not been approved for access to the programs;
- in 60 percent, employees were not given the right to appeal a denial;
- in 70 percent, employees were not given the reasons for denials;
- in 10 percent, decisions were reversed after appeals were made;
- in 12 percent, employees were terminated after denial of access to the programs;
- in 69 percent, the contractors prescreened the individuals prior to submitting their names for access to the programs;
- in 19 percent, contractors were asked to withdraw requests because the program managers refused to give denials; and
- in 29 percent, the contractors adjudicated access for their own employees.

Comments From the Department of Defense

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2000

29 April 1993

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International Affairs Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, entitled "SPECIAL ACCESS PROGRAMS: No Administrative Due Process for Denials and Revocations of Access," dated April 5, 1993, (GAO Code 398124), OSD Case #9359. The DoD partially concurs with the report.

Although the DoD agrees with several underlying report issues, the DoD disagrees with two basic aspects:

The report incorrectly concludes that the same administrative due process is required in connection with all determinations to deny or revoke an individual's access to information protected within a Special Access Program, regardless of the sensitivity of a Special Access Program, the nature of a program, and the possible damage to national security which could result from following a particular procedure.

The report incorrectly interprets the plain language contained in DoD Regulation 5200.2-R which specifically recognizes that special clearance and adjudication procedures may be followed in connection with clearance determinations involving Special Access Programs.

The DoD is complying with the procedural requirements of DoD Regulation 5200.2-R, because the specific procedures detailed in the regulation are followed in connection with Special Access Program determinations unless other special procedures are necessary to protect classified information. The procedures satisfy legal requirements.

It should be recognized that the DoD procedural requirements go beyond constitutional due process requirements, since individuals are not deemed to have a protected constitutional interest in access to classified information, and the denial or termination of that access, therefore does not implicate any constitutional due process rights. Nevertheless, DoD developed and implemented Special Access Program clearance procedural requirements that are designed to satisfy fundamental notions of fair treatment of individuals to the full extent possible,

Appendix VI
Comments From the Department of Defense

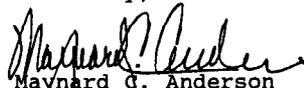
limited only as is necessary to protect classified information from unauthorized disclosure during the clearance process. In summary, it is the DoD position that the nation's most sensitive information, to include national security information associated with Special Access Programs, must be protected, while providing a fair clearance procedure to U.S. citizens.

Consistent with paragraphs 1-324, 3-500, and 3-506 of DoD Regulation 5200.2-R, the DoD sometimes upgrades adjudicative standards to those of Director of Central Intelligence Directive 1/14 for Special Access Program denials and revocations. The draft report correctly notes that this directive permits agencies to waive the administrative process if such provisions are not consistent with national security. Within the DoD, such waivers should only be invoked when approved by the Deputy Secretary of Defense for programs of such extreme sensitivity that knowledge of their existence would endanger national security.

The DoD appreciates the time and effort expended by the GAO in conducting its study of what is a very difficult issue. Although the DoD disagrees with several GAO views, the report will facilitate efforts to refine existing policy documents. The DoD intends to revise DoD Regulation 5200.2-R to outline more specifically the requirements for administering Special Access Programs. Further, the Navy and the Air Force are working to implement new and improved appeal procedures.

Specific responses to the individual report findings are provided at the enclosure. If you have any questions concerning this matter, you may contact Mr. Richard F. Williams, my Assistant for Special Programs at (703) 614-0578.

Sincerely,



Maynard G. Anderson
Assistant Deputy Under Secretary of Defense
(Security Policy)

Enclosure
As stated

**Appendix VI
Comments From the Department of Defense**

GAO DRAFT REPORT - DATED APRIL 5, 1993
(GAO CODE 398124) OSD CASE 9359

**"SPECIAL ACCESS PROGRAMS: NO ADMINISTRATIVE DUE PROCESS
FOR DENIALS AND REVOCATIONS OF ACCESS"**

DEPARTMENT OF DEFENSE COMMENTS

FINDINGS

FINDING A: Access to Special Access Programs and Sensitive Compartmented Information. The GAO reported that classified information is placed in one of three levels--TOP SECRET, SECRET, OR CONFIDENTIAL--depending on the sensitivity of the information. The GAO further reported that some particularly sensitive classified information is further segregated and designated as Special Access Program and Sensitive Compartmented Information access. The GAO found that access may be denied or revoked, when unfavorable information surfaces or actions occur that indicate the authorizing or continuing of the access of an individual to Special Access Programs or Sensitive Compartmented Information is not clearly consistent with the interest of national security. The GAO observed that, when such a situation occurs, the individual should generally receive administrative due process--which includes (1) being notified of the reasons, (2) given a chance to respond, and (3) being advised of any appeal procedures.

The GAO reported that the DoD established administrative due process procedures for contractor employees for their security clearances, as well as other procedures for military and civilian personnel. The GAO pointed out that, in contrast, the Director of Central Intelligence has established minimum appeal procedures for individuals for whom access to Sensitive Compartmented Information has been denied or revoked--with the Sensitive Compartmented Information due process procedures not being as extensive as the DoD procedures. (pp. 2-7/GAO Draft Report)

DOD RESPONSE: Partially concur. While much of the descriptive information is accurate, the DoD disagrees that paragraph 8-201, DoD Regulation 5200.2-R should be used for denials and revocations of access to Special Access Programs. It is the longstanding view of the DoD that paragraphs 1-324, 3-500, 3-506, and 7-100b of the regulation facilitate the use of Director of Central Intelligence Directive 1/14 for Special Access Program adjudications, denials, and revocations, provided the program is authorized upgraded adjudicative criteria. In the DoD, Special Access Programs may utilize upgraded adjudicative criteria only if approved by the Deputy Secretary of Defense.

The DoD is currently revising both DoD Regulation 5200.2-R, and DoD Directive 0-5205.7, "Special Access Program Policy." To clarify policy regarding administrative process for Special Access Programs, the draft regulation will separate reference to

Now on pp. 1-4.

Special Access Programs from the normal regulation procedures. As currently drafted, the revised regulation states that administrative process requirements for Special Access Programs can be found in DoD Directive 0-5205.7, "Special Access Program Policy." The draft directive will indicate that Annex B of Director of Central Intelligence Directive 1/14 will be the minimum standard for administrative process. The DoD expects to publish the revised regulation and the revised directive during calendar year 1993.

FINDING B: Administrative Due Process Not Provided in Special Access Programs. The GAO found the DoD personnel security program regulation requires that administrative due process be given to the DoD personnel for whom access to a Special Access Programs is denied or revoked. The GAO explained that the Navy and Air Force do not provide administrative due process. The GAO did note that, on the other hand, the Army appeared to be complying with the DoD regulation. The GAO further observed however, that the sample of cases provided for its review was too small to conclude overall compliance.

The GAO found that DoD regulations do not require administrative due process for contractor employees. The GAO found that, even though the DoD indicated that the due process provisions of Executive Order 10865 applied to contractor employee access to classified information, the provisions do not apply when that information is part of a Special Access Program. The GAO reported that the Navy and Air Force do not provide due process to contractor employees, but the Army does--even though not required to do so by the DoD regulation.

The GAO noted the DoD regulation states that no final unfavorable administrative action is to be taken against a military or civilian employee until the employee has been afforded the specified due process. The GAO was advised that the regulation was not intended to cover covert or unacknowledged Special Access Programs or Sensitive Compartmented Information programs; however, the GAO could find no mention in the regulation about such a limitation.

The GAO reported that all of the DoD regulations, including adjudication criteria, apply to contractor personnel--except for the unfavorable administrative action procedures. The GAO pointed out the DoD regulation indicated that the procedures are included in an industrial security regulation and directive pertaining to the handling of unfavorable contractor security clearance actions. The GAO noted that, because of similarities in the programs, in the case of Special Access Programs involving DoD personnel the DoD used due process procedures established by the Director of Central Intelligence for Sensitive Compartmented Information.

The GAO reported that, because the DoD does not maintain centralized records on Special Access Program denials and revocations, the GAO could only review the cases provided by the Services. The GAO compared the Services, and reported that for:

- Navy and Air Force Special Access Programs, neither the DoD nor the contractor personnel involved received administrative due process; and
- of the six Army cases it reviewed, three were discharged and three were given letters of intent to revoke their access.

The GAO reported that, in planning for the recently authorized National Industrial Security Program, the DoD had been working with other agencies and with industry for several years to establish standards for protecting national security information held by contractors. The GAO indicated a May 1990 study group--established to study due process in industry--issued a report that revealed, in most cases, contractor employees were not (1) told that they had been denied access, (2) given the reasons, or (3) given an opportunity to appeal.

The GAO found that the DoD was following the Sensitive Compartmented Information procedures established by the Director of Central Intelligence to provide administrative due process. The GAO noted that the DoD had done so by exercising the waiver provision; therefore, there was no due process for either the DoD or contractor employees. The GAO concluded that the DoD support for Sensitive Compartmented Information-type procedures in the National Industrial Security Program may be the first step in efforts to continue denying contractors and DoD employees administrative due process.

The GAO pointed out that there are other major differences between the minimum due process requirements for Sensitive Compartmented Information established by the Director of Central Intelligence and the DoD Special Access Programs/Sensitive Compartmented Information due process requirements. The GAO explained for example, that under the DoD procedures, the individual is to be told in writing that an unfavorable decision had been proposed, along with the reasons; however, the procedures of the Director of Central Intelligence state that the individual may request the reasons for the action, but there is no requirement that the reasons be provided. (pp. 7-12/GAO Draft Report)

DOD RESPONSE: Nonconcur. This finding is based on an incorrect interpretation of DoD Regulation 5200.2-R. It is the DoD policy that the administrative process provisions of DoD Regulation 5200.2-R will be used, unless the Special Access Program utilizes upgraded adjudicative criteria as approved by the Deputy

Now on pp. 4-7.

Secretary of Defense. In these upgrade cases, as a minimum, Annex B of Director of Central Intelligence Directive 1/14 would apply. The DoD also disagrees that the Director of Central Intelligence Directive 1/14, as usually applied, provides less administrative process than DoD Regulation 5200.2-R. The directive simply is a different procedure.

FINDING C: Administrative Due Process Provided for Denials and Revocations of Access to Sensitive Compartmented Information.

The GAO compared the way the Military Services provided administrative due process to Government and contractor personnel for whom access to Sensitive Compartmented Information was denied or revoked. The GAO found that the Navy and Air Force followed the procedures of the Director of Central Intelligence and notified the individuals after the access was denied or revoked. The GAO further found that, on the other hand, the Army followed the procedures in the DoD personnel security regulation and sent letters to the individuals advising them that their access was going to be denied or revoked.

The GAO reported that the DoD maintains a central records system that shows the security clearance and Sensitive Compartmented Information eligibility status of DoD military, civilian, and contractor personnel. The GAO explained that those records were used during a previous review (OSD Case 8934), and the GAO had expected to use them during the current review; however, the records could only be used to select the Army cases.

The GAO noted, however, that the records for the Navy and Air Force cases could not be used because of unreliable data--partly resulting from the way the two Services were organized to adjudicate security clearances and Sensitive Compartmented Information accesses. The GAO further noted that (1) the Army has a central adjudication facility to handle clearances and sensitive compartmented information accesses, (2) the Navy has one office handling clearances and two that handle clearances and Sensitive Compartmented Information accesses, and (3) until recently, the Air Force had two separate offices handling clearances and Sensitive Compartmented Information accesses. The GAO noted that the DoD is aware of the problems of using a two-step procedure to adjudicate security clearances and Sensitive Compartmented Information accesses and is working to resolve them. (pp. 12-15/GAO Draft Report)

DOD RESPONSE: Partially concur. The GAO appears to imply that the Navy and the Air Force are improperly utilizing the administrative process provisions allowed in Director of Central Intelligence Directive 1/14 for Sensitive Compartmented Information denials and revocations. The use of the directive is specifically authorized by Paragraph 8-201 of DoD Regulation 5200.2-R. Further, the lines of authority for Sensitive

Now on pp. 7-8.

Compartmented Information eligibility are established by Executive Order 12333, and implemented by Director of Central Intelligence directives. Therefore, the Director of Central Intelligence Directive 1/14 establishes the minimum administrative process provisions required for Sensitive Compartmented Information denials and revocations. The Army, for several reasons has opted to exceed the directive's minimum requirements.

FINDING D: Appeal Procedures. The GAO reported that in accordance with the broad authority in the DoD regulation, the Services have established different appeal procedures. The GAO described the differences in procedures, as follows:

Navy and Air Force--The GAO found that Sensitive Compartmented Information appeals are submitted to the same individuals who made the initial determinations, or to three higher officials within the same command. The GAO added that a decision is rendered on the basis of a majority vote of the three-member panel. The GAO noted that records of the deliberations of the panel and the vote are not maintained. The GAO commented that in Special Access Program appeals, individuals are not involved in the process or informed about it. The GAO noted that supervisors and contractors submit letters stating why employees are critical to the programs and should retain access, despite being potential security risks.

Army--The GAO found that Sensitive Compartmented Information appeals are submitted to the Deputy Chief of Staff for Intelligence--who is not in the same command that adjudicates the Sensitive Compartmented access. The GAO added that the Army used the same procedures for the Special Access Programs appeals process. (pp. 15-16/GAO Draft Report)

DOD RESPONSE: Partially concur. At the time of the GAO review, both the Navy and the Air Force were developing new written appeal procedures to ensure a complete perception of independence. In both services, appeals are ruled upon by different individuals from those who made the initial determination, and above the immediate chain of command. A description of the new procedures is provided below:

- **Navy:** Procedures entail (1) notification of the individual which includes a summary of disqualifying issue(s), (2) a review board made up of personnel removed from the adjudication process and program in question, and (3) the opportunity for a final appeal by the candidate to a senior military or civilian official in the event the appeal review board affirms the ineligibility determination of the senior adjudication official. These

Now on pp. 8-9.

procedures will be documented and official records will be maintained for each case. Extending this appeal process will commence on May 1, 1993 for acknowledged programs, and no later than June 1, 1993 for unacknowledged programs. When security considerations preclude affording administrative process, Department of the Navy Senior Management will be advised, and a waiver requested.

- Air Force: The Air Force implemented new procedures in October, 1992. Under the new procedures, (1) an access denial, suspension, or limitation letter will be sent to the employer's security staff. (2) When directed by the adjudication office, the employer's security staff provides a copy of the letter to the candidate. If consistent with national security, the letter will contain information explaining the action, inform the candidate that he/she has 30 days to request a written explanation for the decision, and advise that the candidate may provide clarifying, rebutting, mitigating, or explanatory information. (3) If so requested by the candidate, a detailed explanation will be provided which also contains provisions for requesting a review of the access decision. Any information provided by the candidate will be used to reconsider the access decision. (4) If the candidate requests adjudicative review, all new information will be reviewed and ruled upon by a superior of the initial determination authority. Following this review, the candidate is notified of the results in writing, told that the decision may be appealed to a higher authority, and advised that any new or additional information may be submitted. (5) Upon receipt of the final appeal, the reviewer will forward all documents to a three member appeals board which is separate from the initial determination authority and the program involved. The appeals board will accept written communications from the candidate, and renders the final, binding, written decision. These procedures will be documented, and official records will be maintained for each case.

* * * * *

RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommended that the Secretary of Defense direct the Secretaries of the Navy and the Air Force to comply with the due process requirements of the DoD personnel security program regulation with respect to the DoD military and civilian personnel for whom access to a Special Access Program clearance is denied or revoked. (pp. 16/GAO Draft Report)

DOD RESPONSE: Nonconcur. Due to national security concerns, the use of Director of Central Intelligence Directive 1/14 must be permitted. This position is consistent with DoD Regulation 5200.2-R, and strikes a balance between the protection of the

Now on p. 9.

**Appendix VI
Comments From the Department of Defense**

nation's most sensitive classified programs, and providing citizens with a fair clearance procedure. It is noted that the provisions of DoD 5200.2-R are utilized in those Special Access Programs that are not authorized upgraded adjudicative criteria.

RECOMMENDATION 2: The GAO recommended that the Secretary of Defense require that the Services designate officials for appeal purposes from commands that are independent from those officials who make unfavorable Special Access Programs and Sensitive Compartmented Information access determinations. (pp. 16/GAO Draft Report)

Now on p. 9.

DOD RESPONSE: Partially concur. Although the DoD agrees with the report premise that appeals should be reviewed by individuals who are independent from those officials who make the initial unfavorable Special Access Program and Sensitive Compartmented Information access determination, such procedures already exist. New Navy and Air Force appeal procedures have been developed to help clarify this issue, as discussed in the DoD response to Finding D.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense establish oversight procedures to ensure compliance by the Military Services and other Defense components with the Special Access Programs/Sensitive Compartmented Information due process requirements for the DoD and contractor personnel. (pp. 17/GAO Draft Report)

Now on p. 9.

DOD RESPONSE: Partially concur. Although the DoD agrees with the GAO objective, the recommended procedures already exist. When Special Access Programs are initially approved, the program's security plan is reviewed by the Office of the Deputy Under Secretary of Defense for Security Policy, and ultimately approved by the Deputy Secretary of Defense. At that time, the adjudicative criteria, and administrative process provisions for the program are also approved. The Office of the Deputy Under Secretary of Defense for Security Policy also conducts oversight visits of DoD Special Access Program central offices, field installations, and contractor facilities. During those visits, all elements of the Special Access Program security plan are reviewed, to include the issue of administrative process, and appeal.

RECOMMENDATION 4: The GAO recommended that the Secretary of Defense propose that the National Industrial Security Program establish Special Access Program due process procedures for contractor employees that are similar to the DoD procedures for military and civilian personnel. (pp. 17/GAO Draft Report)

Now on p. 9.

Appendix VI
Comments From the Department of Defense

DOD RESPONSE: Partially concur. The DoD is working within the established structure of the National Industrial Security Program to clearly define what will be the minimum administrative process provisions for program. Currently, it is foreseen that such provisions are to be addressed in the National Industrial Security Program Supplement which is to cover Sensitive Compartmented Information, and Special Access Programs of all Executive Branch structures, and will be in accordance with Director of Central Intelligence Directive 1/14. It is expected that the National Industrial Security Program Supplement will be completed by January, 1994.

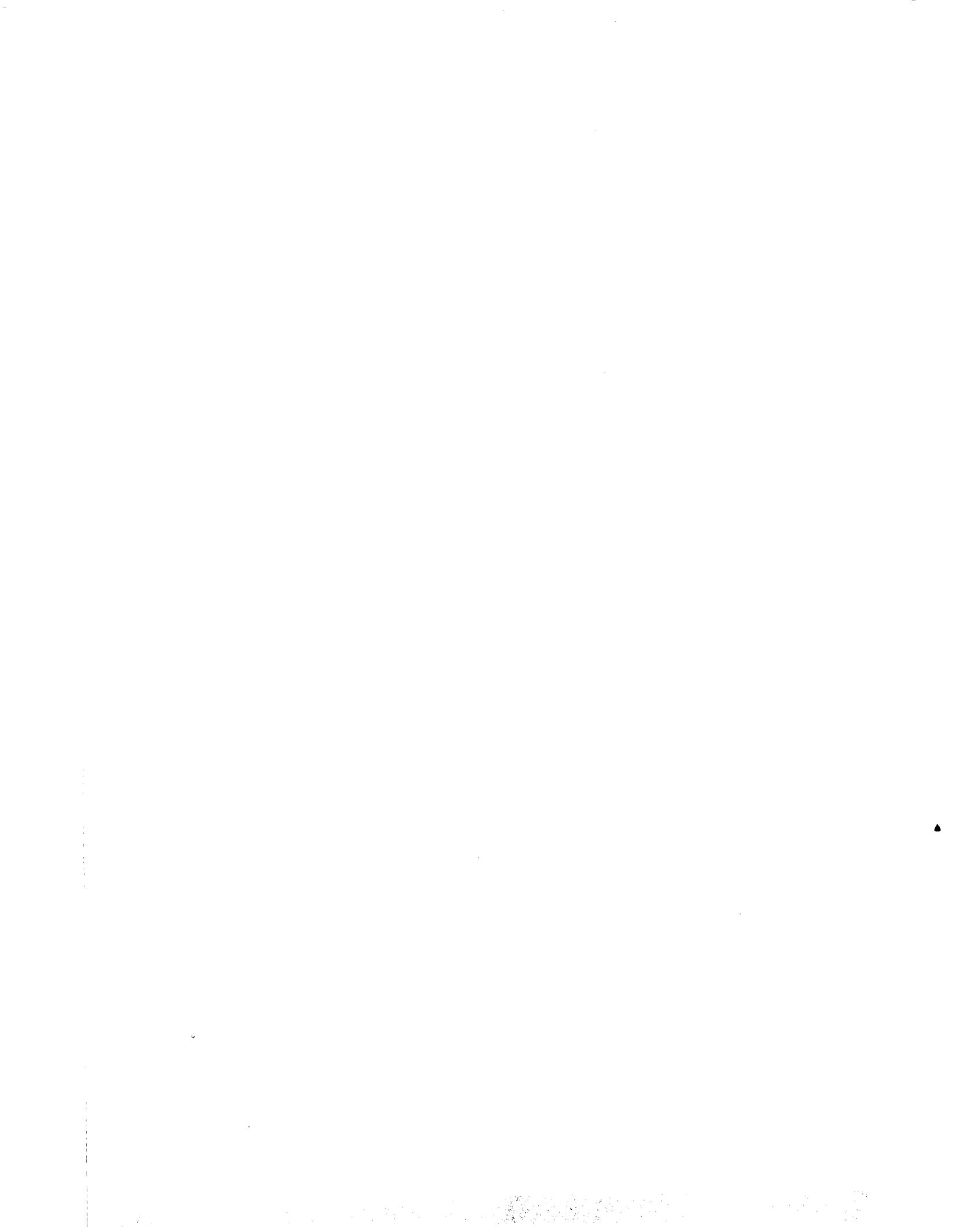
Major Contributors to This Report

**National Security and
International Affairs
Division, Washington,
D.C.**

Victor Zangla, Assistant Director
Irving T. Boker, Evaluator-in-Charge
Leo G. Clarke III, Evaluator
Carolyn S. Blocker, Reports Analyst
Arthur L. James, Jr., Mathematical Statistician

**Office of the General
Counsel**

Raymond J. Wyrsh, Senior Attorney



Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015**

or visit:

**Room 1000
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

**Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066.**

**United States
General Accounting Office
Washington, D.C. 20548**

**Official Business
Penalty for Private Use \$300**

**First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100**
