

Personal Debt Sinks More Clearances

The economic downturn is taking a growing toll on federal employees and contractors who need access to classified information for their jobs, according to government records and people familiar with the process.

"More and more people are experiencing trouble either obtaining a clearance or during an existing clearance reinvestigation due to hard economic times," said Evan Lesser, managing director of ClearanceJobs.com, an online job board for people with active clearances. "These are far more common now than they were three to five years ago."

"It's just been a constant flow of those cases, and definitely more than before" the slump began in late 2007, said Sheldon I. Cohen, a Virginia attorney who specializes in clearance work.

In an article on his website last year, Cohen concluded that debt stemming from unemployment and foreclosures had become the top factor in clearance denials and revocations. The upshot, Cohen wrote, was the loss of good-paying jobs "putting skilled workers further and further behind in their effort to dig out of debt."

Clearances are essential for access to classified national security information, typically labeled confidential, secret or top secret. The application process begins with a lengthy questionnaire, followed by a background investigation that includes a credit report. Ultimately, an adjudicator weighs 13 guidelines in deciding whether the applicant warrants approval.

One of those factors is debt, which, from the government's perspective, could heighten someone's vulnerability to bribery or blackmail, said Christopher Graham, a Washington lawyer at Tully Rinckey who also handles clearance cases.

The government does not track or publish data on clearance denials, so it is hard to know precisely what the numbers show. But one good barometer can be found in rulings published by the Defense Office of Hearings and Appeals (DOHA), a Pentagon agency that handles appeals of prospective clearance denials. In fiscal 2006, there were just nine published decisions involving contractors that mentioned foreclosure as a factor, according to summaries posted on the office's website. In fiscal 2011, there were 69.

One applicant, for example, had held a clearance during his career as a Navy officer and wanted to keep it after going to work for a contractor, according to a ruling issued in September.

But the man had also bought a \$500,000 home in 2005, with all of the financing coming from two adjustable-rate mortgages. In 2009, he fell behind in his payments after his income dropped; by early this year, foreclosure proceedings had begun on one of the mortgages and he was able to sell the house for only \$375,000. The man also failed to file state income tax returns for two years. Even though he had held a clearance for many years, a DOHA administrative judge denied his appeal, writing that he "exercised bad judgment by overextending himself to purchase a home."

Another applicant prevailed at one level only to lose at a second. A senior engineer, he had surrendered three rental houses to foreclosure after repeatedly losing tenants and seeing the value of his properties plummet. In one instance, the house's value plunged from \$550,000 to \$299,000 while the monthly payment on his adjustable-rate mortgage jumped by 25 percent. A DOHA administrative judge, ruling on a recommendation to deny clearance, initially decided in the applicant's favor, noting that the man was in his twenties during his failed fling as a landlord and had since gotten a better understanding of finance. But when DOHA's staff questioned the judge's decision, a DOHA appeal board in August reversed that decision on the grounds that the engineer had failed to resolve doubts about his fitness to hold a clearance.

Applicants' names are redacted from the decisions.

'Tip of the iceberg'

"You're only seeing the tip of the iceberg," said David Price, a retired Navy captain who now practices law in Virginia Beach, Va.

Not all decisions on contractor appeals are published, Price said. The office also doesn't make public decisions on cases involving military personnel and federal civilian employees. The CIA, FBI and other agencies typically don't disclose any information on the reasons for clearance approvals or denials.

At the Professional Services Council, a trade group for government service contractors, one official did not know of any problems that individual companies have encountered from the loss of employees whose clearances were denied or revoked.

"I think the pool is still large enough and the skill base still broad enough," said Alan Chvotkin, the group's executive vice president and counsel.

How often foreclosures and other money woes arise governmentwide during the adjudication process is likewise unclear. While the Office of the Director of National Intelligence recently released a congressionally mandated report finding that some 4.2 million federal employees and contractors had clearances as of last year, the agency is not required to keep statistics on why clearances are denied or revoked, a spokesman said. The Office of Personnel Management, which conducts most of the background investigations on clearance applicants, referred questions back to the intelligence office.

Navy Cmdr. Leslie Hull-Ryde, a DOHA spokeswoman, said the board doesn't keep statistics on cases adjudicated under a particular guideline. But the financial considerations guideline does not rely on credit ratings or credit scores, she said, and adjudicators take into account "the difficult financial situations that individuals may face in the current economy."

Despite extensive official guidance for evaluating financial issues, the adjudicator's decision is ultimately "a judgment call on a case-by-case basis," Cohen said.

Good-faith effort counts

Foreclosure or other financial turmoil is not an automatic barrier to a clearance.

In another DOHA case decided earlier this year, the applicant had long held a confidential-level clearance, but she and her husband ran into trouble making payments on investment property and the lender eventually foreclosed. The administrative judge in her case noted that the applicant otherwise paid her bills on time and was willing to sell her home if necessary to satisfy a leftover claim from the foreclosure. The judge ruled in her favor.

"What you have to show is that you are making a good-faith effort to resolve your debts," Graham said. For applicants at risk of foreclosure, he recommended such practical steps as a short sale — in which the lender agrees to accept less than the full value of the mortgage — as a way of minimizing the damage to a credit report.

Adjudicators are already supposed to take illness, job loss and other circumstances into account when making clearance decisions. But under the House version of the 2012 defense authorization bill, the Defense Department would be required to give "special consideration" to service members who show foreclosures on their credit reports.

The language was inserted by Rep. Joe Heck, R-Nev., where the collapse in home prices has been especially severe. Although no particular situation prompted Heck to add the provision, he was concerned about service members who were transferred but could not "sell their property under reasonable terms and conditions," a House Armed Services Committee spokesman said.