

**§ 732.203 Periodic reinvestigation requirements.**

The incumbent of each position designated Special-Sensitive or Critical-Sensitive under this part shall be subject to periodic reinvestigation of a scope prescribed by OPM 5 years after placement, and at least once each succeeding 5 years. The employing agency will use the results of such periodic reinvestigation to determine whether the continued employment of the individual in a sensitive position is clearly consistent with the interests of the national security.

**Subpart C—Due Process and Reporting****§ 732.301 Due process.**

When an agency makes an adjudicative decision under this part based on an OPM investigation, or when an agency, as a result of information in an OPM investigation, changes a tentative favorable placement or clearance decision to an unfavorable decision, the agency must:

(a) Insure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to assure fairness to the individual in any determination.

(b) Comply with all applicable administrative due process requirements, as provided by law, rule, or regulation.

(c) At a minimum, provide the individual concerned:

(1) Notice of the specific reason(s) for the decision; and

(2) An opportunity to respond; and

(3) Notice of appeal rights, if any.

(d) Consider all available information in reaching its final decision.

(e) Keep any record of the agency action required by OPM as published in its issuances.

[56 FR 18654, Apr. 23, 1991, as amended at 66 FR 66711, Dec. 27, 2001]

**§ 732.302 Reporting to OPM.**

(a) In accordance with section 9(a) of E.O. 10450, each agency conducting an investigation under E.O. 10450 is required to notify OPM when the investigation is initiated.

(b) In accordance with section 14(c) of E.O. 10450, agencies shall report to OPM the action taken with respect to individuals investigated pursuant to E.O. 10450 as soon as possible and in no event later than 90 days after receipt of the final report of investigation.

**Subpart D—Security and Related Determinations****§ 732.401 Reemployment eligibility of certain former Federal employees.**

(a) *Request.* A former employee who was terminated, or who resigned while charges were pending, from a department or agency of the Government under a statute or executive order authorizing termination in the interest of national security or on grounds relating to loyalty, and authorizing OPM to determine the eligibility for employment in another department or agency of the Government, may request OPM in writing to determine whether the individual is eligible for employment in another department or agency of the Government.

(b) *Action by OPM.* (1) OPM shall determine, and will notify the former employee, after appropriate consideration of the case, including such investigation as it considers necessary, whether the individual may be employed in another department or agency of the Government.

(2) If a former Federal employee found ineligible under this section has had an opportunity to comment on the reasons for the action, or has furnished them to OPM or to the former employing agency, OPM may cancel the reinstatement eligibility if the eligibility resulted from the last Federal employment and was obtained through fraud, and OPM may prescribe a period of debarment not to exceed 3 years.

**PART 733—POLITICAL ACTIVITY—FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES**

Sec.

733.101 Definitions.

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- 733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.
- 733.106 Prohibited political activities—employees who reside in designated localities and are employed in certain agencies and positions.
- 733.107 Designated localities.

AUTHORITY: 5 U.S.C. 7325; sec. 308 of Pub. L. 104-93, 109 Stat. 961, 966 (Jan. 6, 1996).

SOURCE: 63 FR 4558, Jan. 30, 1998, unless otherwise noted.

**§733.101 Definitions.**

In this part:

*Accept* means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

*Candidate* means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

*Campaign* means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

*Election* includes a primary, special, runoff, or general election.

*Employee* means:

Any individual (other than the President, the Vice President, or a member of the uniformed services) employed or holding office in—

- (1) An Executive agency other than the General Accounting Office;
- (2) A position within the competitive service which is not in an Executive agency;
- (3) The government of the District of Columbia, other than the Mayor or a

member of the City Council or the Recorder of Deeds; or

(4) The United States Postal Service or the Postal Rate Commission.

*On Duty* means the period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

*Partisan* when used as an adjective means related to a political party.

*Partisan political group* means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

*Partisan political office* means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

*Person* means an individual; a State, local, or foreign government; or a corporation and the subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity.

*Political activity* means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

*Political contribution* means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(1) A political contribution includes:

- (i) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;
- (ii) Any payment by any person, other than a candidate or a political

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party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(iii) The provision of personal services, paid or unpaid, for any political purpose.

(2) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

*Political management* means the direction or supervision of a partisan political group or campaign for partisan political office.

*Political party* means a national political party, a State political party, or an affiliated organization.

*Political purpose* means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

*Receive* means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

*Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof* includes, but is not limited to:

(1) Any Federally owned space (including, but not limited to, “public buildings” as defined in 40 U.S.C. 612(1)) or Federally leased space in which Federal employees perform official duties on a regular basis;

(2) Public areas as defined in 40 U.S.C. 490(a)(17) and 41 CFR 101-20.003 of buildings under the custody and control of the General Services Administration.

(3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

*Solicit* means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

*Subordinate* refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

*Uniformed services* means uniformed services as defined in 5 U.S.C. 2101(3).

### **§ 733.102 Exclusion of employees in the Criminal Division of the United States Department of Justice.**

Employees in the Criminal Division in the Department of Justice (except employees appointed by the President, by and with the advice and consent of the Senate) specifically are excluded from coverage under the provisions of this part.

### **§ 733.103 Permitted political activities—employees who reside in designated localities.**

(a) This section does not apply to an individual who is employed in an agency or position described in § 733.105(a), unless that individual has been appointed by the President, by and with the advice and consent of the Senate.

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and

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(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

**§ 733.104 Prohibited political activities—employees who reside in designated localities.**

(a) This section does not apply to an individual who is employed in an agency or position described in § 733.105(a), unless that individual has been appointed by the President, by and with the advice and consent of the Senate.

(b) Employees who reside in a municipality or political subdivision designated by OPM under § 733.107 may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2)(A)–(C).

(4) Accept or receive a political contribution from a subordinate; or

(5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose.

(c) An employee covered under this section may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(d) An employee described in 5 U.S.C. 7324(b)(2) may participate in political activity otherwise prohibited by § 733.104(c) if the costs associated with that political activity are not paid for

by money derived from the Treasury of the United States.

(e) Candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

**§ 733.105 Permitted political activities—employees who reside in designated localities and are employed in certain agencies and positions.**

(a) This section applies to employees who reside in designated localities and are employed in the following agencies or positions:

(1) Federal Election Commission;

(2) Federal Bureau of Investigation;

(3) United States Secret Service;

(4) Central Intelligence Agency;

(5) National Security Council;

(6) National Security Agency;

(7) Defense Intelligence Agency;

(8) Merit Systems Protection Board;

(9) United States Office of Special Counsel;

(10) Office of Criminal Investigation of the Internal Revenue Service;

(11) Office of Investigative Programs of the United States Customs Service;

(12) Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(13) National Imagery and Mapping Agency;

(14) Career Appointees in the Senior Executive Service;

(15) Administrative Law Judges; and

(16) Contract appeals board members described in 5 U.S.C. 5372a.

(b) This section does not apply to individuals who have been appointed by the President by and with the advice and consent of the Senate, even though they are employed in the agencies and positions described in paragraph (a) of this section.

(c) Employees who are covered under this section and who reside in a municipality or political subdivision designated by OPM under § 733.107 may:

(1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;

(2) Solicit, accept, or receive a political contribution as, or on behalf of, an

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independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

(3) Solicit, accept, or receive uncompensated volunteer services as, or on behalf of, an independent candidate for partisan political office in elections for office in the municipality or subdivision; and

(4) Take an active part in other political activities associated with elections for local partisan political office and in managing the campaigns of candidates for election to local partisan political office in the municipality or political subdivision, but only as an independent candidate or on behalf of, or in opposition to, an independent candidate.

### § 733.106 Prohibited political activities—employees who reside designated localities and are employed in certain agencies and positions.

(a) This section does not apply to individuals who have been appointed by the President, by and with the advice and consent of the Senate, even though they are employed in the agencies and positions described in § 733.105(a).

(b) Employees who are employed in the agencies and positions described in § 733.105(a), and who reside in a municipality or political subdivision designated by OPM under § 733.107, may not:

(1) Run as the representative of a political party for local partisan political office;

(2) Solicit, accept, or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(3) Knowingly solicit a political contribution from any Federal employee;

(4) Accept or receive a political contribution from a subordinate;

(5) Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

(6) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose; or

(7) Take an active part in other political activities associated with elections for local partisan political office, when such participation occurs on behalf of a

political party, partisan political group, or a candidate for local partisan political office who represents a political party.

(c) An employee covered under this section may not participate in political activities:

(1) While he or she is on duty;

(2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;

(3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or

(4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

(d) Candidacy for, and service in, or partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

### § 733.107 Designated localities.

(a) OPM may designate a municipality or political subdivision in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or a municipality in which the majority of voters are employed by the Government of the United States, when OPM determines that, because of special or unusual circumstances, it is in the domestic interest of employees to participate in local elections.

(b) Information as to the documentation required to support a request for designation is furnished by the General Counsel of OPM on request.

(c) The following municipalities and political subdivisions have been designated, effective on the day specified:

#### IN MARYLAND

Annapolis (May 16, 1941).  
Anne Arundel County (March 14, 1973).  
Berwyn Heights (June 15, 1944).  
Bethesda (Feb. 17, 1943).  
Bladensburg (April 20, 1942).  
Bowie (April 11, 1952).  
Brentwood (Sept. 26, 1940).  
Calvert County (June 18, 1992).  
Capitol Heights (Nov. 12, 1940).  
Cheverly (Dec. 18, 1940).

Chevy Chase, section 3 (Oct. 8, 1940).  
 Chevy Chase, section 4 (Oct. 2, 1940).  
 Chevy Chase View (Feb. 26, 1941).  
 Chevy Chase Village, Town of (March 4, 1941).  
 College Park (June 13, 1945).  
 Cottage City (Jan. 15, 1941).  
 District Heights (Nov. 2, 1940).  
 Edmonston (Oct. 24, 1940).  
 Fairmont Heights (Oct. 24, 1940).  
 Forest Heights (April 22, 1949).  
 Frederick County (May 31, 1991).  
 Garrett Park (Oct. 2, 1940).  
 Glenarden (May 21, 1941).  
 Glen Echo (Oct. 22, 1940).  
 Greenbelt (Oct. 4, 1940).  
 Howard County (April 25, 1974).  
 Hyattsville (Sept. 20, 1940).  
 Kensington (Nov. 8, 1940).  
 Landover Hills (May 5, 1945).  
 Martin's Additions, Village of (Feb. 13, 1941).  
 Montgomery County (April 30, 1964).  
 Morningside (May 19, 1949).  
 Mount Rainier (Nov. 22, 1940).  
 New Carrollton (July 7, 1981).  
 North Beach (Sept. 20, 1940).  
 North Brentwood (May 6, 1941).  
 North Chevy Chase (July 22, 1942).  
 Northwest Park (Feb. 17, 1943).  
 Prince George's County (June 19, 1962).  
 Riverdale (Sept. 26, 1940).  
 Rockville (April 15, 1948).  
 St. Mary's County (March 2, 1998).  
 Seat Pleasant (Aug. 31, 1942).  
 Somerset (Nov. 22, 1940).  
 Takoma Park (Oct. 22, 1940).  
 University Park (Jan. 18, 1941).  
 Washington Grove (April 5, 1941).

#### IN VIRGINIA

Alexandria (April 15, 1941).  
 Arlington County (Sept. 9, 1940).  
 Clifton (July 14, 1941).  
 Fairfax, City of (Feb. 9, 1954).  
 Fairfax County (Nov. 10, 1949).  
 Falls Church (June 6, 1941).  
 Herndon (April 7, 1945).  
 Loudoun County (Oct. 1, 1971).  
 Manassas (Jan. 8, 1980).  
 Manassas Park (March 4, 1980).  
 Portsmouth (Feb. 27, 1958).  
 Prince William County (Feb. 14, 1967).  
 Spotsylvania County (March 2, 1998).  
 Stafford County (Nov. 2, 1979).  
 Vienna (March 18, 1946).

#### OTHER MUNICIPALITIES

Anchorage, Alaska (Dec. 29, 1947).  
 Benicia, Calif. (Feb. 20, 1948).  
 Bremerton, Wash. (Feb. 27, 1946).  
 Centerville, Ga. (Sept. 16, 1971).  
 Crane, Ind. (Aug. 3, 1967).  
 Elmer City, Wash. (Oct. 28, 1947).  
 Huachuca City, Ariz. (April 9, 1959).  
 New Johnsonville, Tenn. (April 26, 1956).  
 Norris, Tenn. (May 6, 1959).  
 Port Orchard, Wash. (Feb. 27, 1946).

Sierra Vista, Ariz. (Oct. 5, 1955).  
 Warner Robins, Ga. (March 19, 1948).

## PART 734—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

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