

## Office of Personnel Management

## § 731.101

written notice must include information on the applicable penalties or injunctions that may be imposed under 18 U.S.C. 216(a), (b), and (c) for violations of the post-employment restrictions in 18 U.S.C. 207(c). The notice also must indicate that employees covered by 18 U.S.C. 207(c) are subject to 18 U.S.C. 207(f), which imposes additional post-employment restrictions on representing, aiding, or advising certain foreign entities.

(b) Notwithstanding paragraph (a) of this section, the post-employment restrictions in 18 U.S.C. 207(c) apply to covered employees without regard to whether they receive written notice from their employing agency.

### § 730.105 Savings provision.

Any post-employment restrictions established under 18 U.S.C. 207 and applicable prior to the first day of the first pay period beginning on or after January 1, 2004, remain in effect.

## PART 731—SUITABILITY

### Subpart A—Scope

Sec.

731.101 Purpose.

731.102 Implementation.

731.103 Delegation to agencies.

731.104 Appointments subject to investigation.

731.105 Authority to take suitability actions.

731.106 Designation of public trust positions and investigative requirements.

### Subpart B—Suitability Determinations and Actions

731.201 Standard.

731.202 Criteria for making suitability determinations.

731.203 Suitability actions by OPM and other agencies.

731.204 Debarment by OPM.

731.205 Debarment by agencies.

731.206 Reporting requirements.

### Subpart C—OPM Suitability Action Procedures

731.301 Scope.

731.302 Notice of proposed action.

731.303 Answer.

731.304 Decision.

### Subpart D—Agency Suitability Action Procedures

731.401 Scope.

731.402 Notice of proposed action.

731.403 Answer.

731.404 Decision.

### Subpart E—Appeal to the Merit Systems Protection Board

731.501 Appeal to the Merit Systems Protection Board.

### Subpart F—Savings Provision

731.601 Savings provision.

AUTHORITY: 5 U.S.C. 1302, 3301, 7301; E.O. 10577, E.O. 13467, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

SOURCE: 73 FR 20154, Apr. 15, 2008, unless otherwise noted.

## Subpart A—Scope

### § 731.101 Purpose.

(a) The purpose of this part is to establish criteria and procedures for making determinations of suitability and for taking suitability actions regarding employment in covered positions (as defined in paragraph (b) of this section) pursuant to 5 U.S.C. 3301, E.O. 10577 (3 CFR, 1954–1958 Comp., p. 218), as amended, and 5 CFR 1.1, 2.1(a) and 5.2. Section 3301 of title 5, United States Code, directs consideration of “age, health, character, knowledge, and ability for the employment sought.” E.O. 10577 (codified in relevant part at 5 CFR 1.1, 2.1(a) and 5.2) directs OPM to examine “suitability” for competitive Federal employment. This part concerns only determinations of “suitability,” that is, those determinations based on a person’s character or conduct that may have an impact on the integrity or efficiency of the service. Determinations made and actions taken under this part are distinct from objections to eligibles or pass overs of preference eligibles, and OPM’s and agencies’ decisions on such requests, made under 5 U.S.C. 3318 and 5 CFR 332.406, as well as determinations of eligibility for assignment to, or retention in, sensitive national security positions made under E.O. 10450 (3 CFR, 1949–1953 Comp., p. 936), E.O. 12968, or similar authorities.

(b) *Definitions.* In this part:

## § 731.102

*Applicant* means a person who is being considered or has been considered for employment.

*Appointee* means a person who has entered on duty and is in the first year of a subject-to-investigation appointment (as defined in § 731.104).

*Core Duty* means a continuing responsibility that is of particular importance to the relevant covered position or the achievement of an agency's mission.

*Covered position* means a position in the competitive service, a position in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and a career appointment to a position in the Senior Executive Service.

*Days* means calendar days unless otherwise specified in this part.

*Employee* means a person who has completed the first year of a subject-to-investigation appointment.

*Material* means, in reference to a statement, one that is capable of influencing, affects, or has a natural tendency to affect, an official decision even if OPM or an agency does not rely upon it.

*Suitability action* means an outcome described in § 731.203 and may be taken only by OPM or an agency with delegated authority under the procedures in subparts C and D of this part.

*Suitability determination* means a decision by OPM or an agency with delegated authority that a person is suitable or is not suitable for employment in covered positions in the Federal Government or a specific Federal agency.

[73 FR 20154, Apr. 15, 2008, as amended at 73 FR 66492, Nov. 10, 2008]

## § 731.102 Implementation.

(a) An investigation conducted for the purpose of determining suitability under this part may not be used for any other purpose except as provided in a Privacy Act system of records notice published by the agency conducting the investigation.

(b) Under OMB Circular No. A-130 Revised, issued November 20, 2000, agencies are to implement and maintain a program to ensure that adequate protection is provided for all automated information systems. Agency personnel

## 5 CFR Ch. I (1-1-11 Edition)

screening programs may be based on procedures developed by OPM. The Computer Security Act of 1987 (Pub. L. 100-235) provides additional requirements for Federal automated information systems.

(c) OPM may set forth policies, procedures, criteria, standards, quality control procedures, and supplementary guidance for the implementation of this part in OPM issuances.

## § 731.103 Delegation to agencies.

(a) Subject to the limitations and requirements of paragraphs (f) and (g) of this section, OPM delegates to the heads of agencies authority for making suitability determinations and taking suitability actions (including limited, agency-specific debarments under § 731.205) in cases involving *applicants* for and *appointees* to covered positions in the agency.

(b) When an agency, acting under delegated authority from OPM, determines that a Governmentwide debarment by OPM under § 731.204(a) may be an appropriate action, it must refer the case to OPM for debarment consideration. Agencies must make these referrals prior to any proposed suitability action, but only after sufficient resolution of the suitability issue(s), through subject contact or investigation, to determine if a Governmentwide debarment appears warranted.

(c) Agencies exercising authority under this part by delegation from OPM must adhere to OPM requirements as stated in this part and OPM's issuances described in § 731.102(c). Agencies must also implement policies and maintain records demonstrating that they employ reasonable methods to ensure adherence to these OPM issuances.

(d) Agencies may begin to determine an applicant's suitability at any time during the hiring process. Because suitability issues may not arise until late in the application/appointment process, it is generally more practical and cost-effective to first ensure that the applicant is eligible for the position, deemed by OPM or a Delegated Examining Unit to be among the best qualified, and/or within reach of selection. However, in certain circumstances, such as filling law enforcement positions, an agency may choose to initiate