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Date

DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #84, FY 08

SUBJECT: Federal Employment Suitability

EFFECTIVE DATE: June 16, 2008

BACKGROUND: The Office of Personnel Management (OPM) issued final regulations amending Title 5, Code of Federal Regulations (CFR), Part 731, Federal Employment Suitability. These regulations were effective June 16, 2008. The final regulation clarifies: (1) procedural requirements for taking suitability actions; (2) appropriate authorities; and (3) the Merit Systems Protection Board's review and assessment of suitability reviews.

PURPOSE: The purpose of this HR Bulletin is to provide policy guidance on changes in the Federal Employment Suitability program.

COVERAGE: The provisions of this HR Bulletin are applicable to:

1. An *applicant,* (a person who is being considered or has been considered for employment) under 5 CFR 731.101(b);
2. An *appointee*, (a person who has entered on duty and is in the first year of a subject-to-investigation appointment, i.e., the person is required to undergo an investigation by OPM or an agency with delegated authority to conduct investigations) under 5 CFR 731.103(b); or
3. An *employee* (a person who has completed the first year of a subject-to-investigation appointment) under 5 CFR 731.101(b) in a *covered position* (a position in the competitive service, a position in the excepted service where the incumbent can be noncompetitively converted to the competitive service, or a career appointment to a position in the Senior Executive Service) under 5 CFR 731.101(b).

POLICY. The Servicing Human Resources Office (SHRO), under 5 CFR 731.103, will continue to adjudicate suitability determinations for applicants and appointees for covered positions with their respective operating unit. The following applies when the SHRO makes such suitability determinations or actions:

1. Applicants or appointees for covered positions may now be debarred from employment with the Department for up to three years (previously the limit had been one year);

2. An additional period of debarment from employment with the Department may be imposed after making a new suitability determination for an individual whose period of debarment has expired and who subsequently applies with the Department for a covered position;
3. Applicants or appointees found unsuitable for Federal employment by the Department and employees found unsuitable by OPM have the right to a representative of their own choosing. The personal representative has the authority to act on behalf of the person. This includes being responsible for meeting deadlines and matters relating to correspondence. The personal representative must be designated in writing;
4. An employee of the Department, who is otherwise in a duty status, may use a reasonable amount of official time when he/she is designated as a personal representative for an employee or appointee of the Department in a proposed suitability action. Management has the sole responsibility to determine the amount of official time; and
5. Arrangements for the use of official time must be coordinated with, and approved by, the representative's supervisor prior to use.

Supervisors and SHROs should refer to the terms of the applicable collective bargaining agreement for procedures governing the use of official time for grievances under the negotiated grievance procedure by bargaining unit employees.

REFERENCES: 5 CFR Part 731, as amended by OPM's final rule published in the *Federal Register* on April 15, 2008. 73 FR 20149

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