


Approved for Release

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**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #172, FY14

SUBJECT: Federal Employment Suitability Determinations under Title 5, Code of Federal Regulations (CFR), Part 731

EFFECTIVE DATE: Effective upon release of this bulletin

BACKGROUND: “Suitability” refers to a person’s identifiable character traits and conduct sufficient to decide whether employment or continued employment would or would not protect the integrity or promote the efficiency of the service. A suitability action taken against an applicant, appointee, or employee is done so in order to protect the integrity or promote the efficiency of the service. Title 5, CFR, Part 731 establishes criteria and procedures for suitability investigations, determination, and actions.

SUPERSEDES: HR Bulletin #84, FY08, “Federal Employment Suitability.”

REVISION: This bulletin clarifies the authority of Servicing Human Resources Offices (SHROs) and the Office of Personnel Management (OPM) to make suitability adjudication determinations for applicants, appointees, and employees occupying covered positions under 5 CFR Part 731, and expands the overall guidance.

COVERAGE: The provisions of this bulletin are applicable to applicants, appointees, and employees occupying covered positions under 5 CFR Part 731.

POLICY: It is the policy of the Department of Commerce (Department) that SHROs have the delegated authority to adjudicate suitability determinations for applicants and appointees in covered positions within their serviced bureaus/operating units, unless the factor(s) cited is under OPM’s exclusive authority.

DEFINITIONS:

- *Applicant* – A person who is being considered for or has been considered for employment.
- *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.

- *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, and a career appointment to a position in the Senior Executive Service.
- *Employee* – A person who has completed the first year of a subject-to-investigation appointment.

DEPARTMENT DELEGATED AUTHORITY: In accordance with 5 CFR 731.103, the Department has delegated authority for making suitability determinations and taking suitability actions (including limited, agency-specific debarments under 5 CFR 731.205) in cases involving applicants for and appointees to covered positions within the Department, **unless there** is evidence of material, intentional false statement, or deception or fraud in examination or appointment; or refusal to furnish testimony as required by 5 CFR 5.4. In those situations, only OPM can adjudicate the determination.

The SHRO may **not** take a suitability action against an **employee** as agencies have no jurisdiction to take actions on employees under 5 CFR 731; any necessary actions must be taken under other agency authority (e.g., 5 CFR 752).

OPM RETAINS EXCLUSIVE AUTHORITY: OPM retains exclusive authority to adjudicate covered applicants, appointees, and employees when there is evidence of material, intentional false statement, or deception or fraud in examination or appointment; or refusal to furnish testimony as required by 5 CFR 5.4, or in cases in which Government-wide debarment is warranted.

OPM NOTIFICATION: Agencies do not need approval from OPM before taking unfavorable suitability actions. However, they are required to report to OPM all unfavorable suitability actions taken under Part 731 within 30 days after they take the action. Also, all actions based on an OPM investigation must be reported to OPM as soon as possible and in no event later than 90 days after receipt of the final report of investigation. Notification to OPM is required for actions taken by other authority (5 CFR Parts 315, 359, or 752).

SUITABILITY DETERMINATION GUIDANCE:

- SHROs may begin to determine an applicant's suitability at any time during the hiring process.
- SHROs must refer cases warranting Government-wide debarment to OPM.
- Suitability determinations must be based on the presence or absence of one or more specific factors.
- Only the eight specific factors outlined in 5 CFR 731.202(b) are considered a basis for finding a person unsuitable and taking a suitability action.
- SHROs must consider the following additional considerations to the extent the SHRO deems any of them pertinent to the individual case:
 - nature of the position (authority, responsibility, sensitivity, and public trust),
 - core duties of the position,
 - nature and seriousness of the conduct,
 - circumstances surrounding the conduct,
 - recency of the conduct,
 - age of person at time of conduct,

- contributing societal conditions (economic and cultural conditions might be a mitigating factor if the conditions are now removed), and
- absence or presence of rehabilitation or efforts toward rehabilitation.

NOTE: A non-selection, or cancellation of eligibility based on an objection to an eligible or pass over of a preference eligible under 5 CFR 332.405 is **not** a suitability action even if it is based on reasons set forth in 5 CFR 731.202 (5 CFR 731.203(b)).

UNFAVORABLE DETERMINATIONS: 1) Must be based on the presence or absence of one or more specific factors; and 2) only the eight specific factors outlined in 5 CFR 731.202(b) are considered a basis for finding a person unsuitable and taking a suitability action.

The following actions can be taken by an SHRO against an applicant for or an appointee to covered positions:

- Cancel the individual's eligibility.
- May, for a period of not more than three years from the date of the unfavorable determination, deny that person examination for, and appointment to, either all, or specific covered, positions within the Department.
 - An additional period of denial of examination for, and appointment to, either all, or specific covered, positions within the Department may be imposed after making a new unfavorable suitability determination for an individual whose previous period has expired and who subsequently applied for a covered position with the Department. The additional period may be based in whole or in part on the same conduct or new conduct.
- Cancel reinstatement eligibility.

Right to a Representative:

- 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.
- 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 applicant, appointee, or employee of the Department in a proposed suitability action. Management has the sole responsibility to determine the amount of official time.
- Arrangements for the use of official time must be coordinated with, and approved by, the representative's supervisor prior to use.

NOTE: Supervisors and SHROs shall refer to the terms of the applicable collective bargaining agreement for procedures governing the use of official time by bargaining unit employees.

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

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