

Material transmitted:

HHS Instruction 731-1, Personnel Security/Suitability Program

Material superseded:

HHS Instruction 731-1 (all)

Background:

This Instruction has been revised consistent with recent changes in the organization of HHS, and in support of HHS administrative initiatives calling for more streamlined rules and greater delegation of authority. It covers personnel security and suitability policy and procedures, including the designation of public trust and national security positions, the scheduling and adjudication of personnel investigations, and the granting of security clearances for access to classified national security information. This revised Instruction is necessary to implement numerous changes in the Federal personnel security program due to the abolishment of the Federal Personnel Manual, the issuance of new regulations and security forms by the Office of Personnel Management (OPM), and the issuance of a new executive order on access to classified information.

This issuance has been streamlined and outdated material has been either eliminated or updated.

Any reference to "OPDIV" in this instruction now includes AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AOA.

This issuance is effective immediately. Implementation under this issuance must be carried out in accordance with applicable laws and bargaining agreements.

Filing Instructions:

Remove superseded material and file new material. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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HHS PERSONNEL INSTRUCTION 731-1
PERSONNEL SECURITY/SUITABILITY PROGRAM

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731-1-00 PURPOSE

This Instruction outlines the policies and requirements for the administration of the Department's personnel security/suitability program.

731-1-10 COVERAGE

This Instruction covers all employees of the Department, including contractors who work in HHS-controlled facilities or on sensitive HHS projects.

731-1-20 REFERENCES

- A. Executive Order 10450, Security Requirements for Government Employment
- B. Executive Order 12968, Access to Classified Information
- C. 5 CFR Part 315 (regulations - career and career-conditional employment)
- D. 5 CFR Parts 731, 732, and 736 (regulations - suitability, national security positions, and personnel investigations)
- E. 5 CFR Part 752 (regulations - adverse actions)
- F HHS National Security Information Manual
- G. National Security Directive 63 - Single Scope Background Investigations
- H. OMB Circular No. A-130, Appendix III, Security of Federal Automated Systems
- I. Public Law 100-235, The Computer Security Act of 1987

- J. Public Law 101-630, Section 408, "Character Investigations", Indian Child Protection and Family Violence Prevention Act
- K. Public Law 101-647, Section 231, "Child Care Worker Employee Background Checks", Crime Control Act, as amended by Public Law 102-190

731-1-30 **AUTHORITY**

- A. Authority for the Department's security/suitability program is vested in the Secretary pursuant to the requirements of Executive Order (EO) 10450 and 5 CFR Parts 731, 732, and 736. These directives and others require the Secretary to establish and maintain an effective personnel security/suitability program within the Department to ensure that the employment and retention of any employee or contractor is clearly consistent with the efficiency of Federal service and the interests of the national security.
- B. The Secretary delegated to the Assistant Secretary for Personnel Administration the authority to conduct all personnel security/suitability functions for the Department. On September 29, 1995, the Secretary approved a reorganization which placed those personnel security functions under the authority of the Assistant Secretary for Management and Budget (ASMB).
- C. The Secretary has retained authority to suspend or separate an employee on grounds of disloyalty or subversion, to restore to duty any employee who had been released from duty on such grounds, and to reemploy any person separated from a Federal position on such grounds.
- D. A number of officials have major responsibilities for personnel security and suitability policy and practices in this Department. Those responsibilities are listed in the *HHS Personnel Security/Suitability Handbook* which is issued by the Director, Security and Drug Testing Division (SDD).

731-1-40 **POLICY**

- A. Every Department position, including those occupied by Commissioned Corps officers and those of contractors, must be designated with a sensitivity level. (Indian tribes and tribal organizations contracting under the Indian Self-Determination and Education Assistance Act are not considered contractors under this policy).

- B. All employees and contractors must meet personnel security/suitability standards commensurate with their position sensitivity level and they must be subject to personnel investigation requirements.
- C. Access to classified national security information is granted upon demonstration of a valid "need-to-know" and not merely on the basis of position, title, level of investigation conducted, or position sensitivity level.
- D. There is a reinvestigation requirement for individuals who have security clearances if they continue to have a need for access to classified information.

731-1-50 POSITION SENSITIVITY DESIGNATION

A. General

The key to an effective and efficient personnel security/ suitability program is to spend the majority of the program resources investigating and evaluating those individuals whose actions or inactions pose the greatest risk to the Department or national security. To assure that the risk inherent in the hiring and placement decisions is properly managed, it is essential that all positions be designated with correct and consistent sensitivity levels.

The position sensitivity level is very important because it indicates what the investigative requirements are for anyone occupying the position. Incorrect designations could result in program vulnerabilities and unwarranted staffing delays as well as unnecessary and costly investigative coverage.

The investigation required for each position should be sufficient to provide management with a basis for ensuring that the employment of the individual is clearly consistent with Federal suitability and national security standards, thus reducing the risk of any damage that could be done by the individual.

B. Sensitivity Levels

There are three sensitivity designations (Non-Sensitive, Public Trust, and National Security) which correlate directly with specific sensitivity levels and the personnel security questionnaire that the individual must complete for the required investigation.

1. Non-Sensitive Positions (Level 1) make up the majority HHS positions because of the nature of the primary responsibilities of this Department.
2. Public Trust Positions (Levels 5 & 6) have duties which include policy-making, major program responsibility, access to sensitive, proprietary, or financial information, audit, law enforcement, or security responsibilities, etc.
3. National Security Positions (Levels 2, 3, & 4) are quite limited at HHS because they are positions in which the incumbent needs a security clearance for access to classified national security information.

731-1-60 **SUITABILITY FOR FEDERAL EMPLOYMENT**

- A. The Office of Personnel Management (OPM) is responsible for carrying out a program of investigating and adjudicating the suitability of applicants and employees for Federal employment. Suitability involves assessing identifiable character traits and past conduct sufficiently to determine whether a specific individual is likely to be able to carry out the duties of a Federal job with appropriate efficiency and effectiveness. OPM provides guidance making suitability determinations in 5 CFR Part 731. Unfavorable decisions are made to promote the efficiency of Government service, and only after giving the individual due process rights.
- B. OPM has delegated to agencies the authority for adjudicating suitability, except in competitive service cases involving evidence of material, intentional false statement or deception or fraud in examination or appointment. In these cases, agencies are required to contact OPM before taking action. In adjudicating suitability, 5 CFR Part 731 guidance on standards, due process, and jurisdiction must be followed.
- C. The "suitability" or "fitness" decision is made by the Personnel Security Representative (PSR) or other management official after reviewing the results of the required background investigation which is conducted by OPM or another Federal agency. The scope and coverage area of the investigation is determined by the designated position sensitivity level. The investigation is designed to reveal pertinent facts, past and present, about the character, honesty, trustworthiness, reputation, etc., of the applicant, employee, or contractor.

- D. All pertinent information obtained from investigative reports, personnel records, responses to written inquiries, medical fitness records, personal or subject interviews, or any other sources, shall be considered in reaching suitability/security determinations. Due process procedures must be followed when making an unfavorable determination.
- E. The Director, SDD, and each PSR shall assure that the analysis of background investigative information and subsequent suitability/security determination and the handling of the investigative reports follow the requirements, criteria, and standards in 5 CFR Parts 731, 732, and 736 and in EOs 10450 and 12968.

731-1-70 PERSONNEL SECURITY BACKGROUND INVESTIGATIONS

- A. The minimum personnel background investigation requirements for the various position sensitivity levels are listed in the *HHS Personnel Security/Suitability Handbook*, supplemented by OPM issuances, including those which show the current costs of the available investigations.
- B. There is an exemption to the minimum investigation requirements for certain Non-Sensitive (Level 1) positions. (See the *HHS Personnel Security/Suitability Handbook*.)

731-1-80 WAIVERS

- A. Special circumstances may require immediate action to employ an applicant or move an employee into a position designated as sensitive National Security (Level 3) or high risk Public Trust (Level 6). The situation may not permit sufficient time to complete the required preappointment investigation.
- B. EO 10450 authorizes a waiver of the preappointment investigation for a person being considered for a sensitive position "in case of emergency" if the agency "finds that such action is necessary in the national interest." In such cases, the Secretary or a designated official can make this decision by signing the waiver request. The original signed waiver must be made a part of the records of the Department by placing it in the employee's OPF and the background investigation must be scheduled shortly after the employee enters on duty.

731-1-90 SECURITY CLEARANCES - ACCESS TO CLASSIFIED INFORMATION

- A. The employment and retention of any employee or contractor in a national security position must be consistent with the interests of the national security. At HHS that determination usually is related specifically to the individual's need for access to classified national security information, also referred to as a need for a security clearance.
- B. Security clearances to permit access to classified (Confidential, Secret, or Top Secret) information are granted by the Director, SDD, in accordance with EO 12968 or any successor order.
- C. Completion of a favorable background investigation does not of itself confer access to classified materials. An individual is eligible for access to classified information provided: (1) the individual has been determined to be trustworthy after completion and review of the required investigation and (2) it is determined that access to classified information is essential to the accomplishment of lawful and authorized Government purposes, referred to as a "need-to-know".
- D. The final responsibility for determining whether an employee's official duties require possession of, or access to, classified information and whether the employee has been granted the appropriate security clearance and has a bona-fide "need-to-know" this information rests with the official who will be providing access to the information, and not with the prospective recipient.
- E. Government contractors, licensees, grantee employees, or other non-governmental personnel requiring access to classified information in the performance of their duties are subject to the same access requirements and standards as Federal employees.
- F. As an additional condition for access to classified information, all individuals shall be required to provide to HHS written consent permitting access by an authorized investigative agency to their relevant financial and consumer reports, for such time as access to classified information is maintained and for a period of three years thereafter. Further clarification of the records which can be accessed and the conditions under which the information can be requested pursuant to the individual's written content are stated in EO 12968.

- G. EO 12968 further requires in Section 1.3 that certain employees with access to special types of classified intelligence, cryptographic, or special access information meet financial disclosure and foreign travel requirements.

731-1-100 ACCESS ELIGIBILITY STANDARDS

Eligibility standards for access to classified information are further clarified in EO 12968.

- A. An individual must not be granted a security clearance for access to classified information solely by virtue of title, position, or level of position sensitivity. A security clearance must be granted only when there is a demonstrated need for required access to a specific classified program, project, or assignment.
- B. Only United States citizens are eligible for security clearances, except as provided in EO 12968. The completed background investigation must show that the individual is loyal to the United States and that the individual's personal and professional history affirmatively indicate strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment. Additionally, the investigation must show the individual to be free from conflicting allegiances and the potential for coercion and also indicate the individual's willingness and ability to abide by regulations governing the use, handling, and protection of classified information.
- C. In granting access to classified information, there must be no discrimination on the basis of race, color, religion, sex, national origin, disability, or sexual orientation.
- D. Although the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security, no inference concerning these standards may be raised solely on the basis of the sexual orientation of the employee.
- E. No negative inference concerning these standards may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determination. However, mental health counseling, where relevant to the adjudication of the access decision, may justify further inquiry to determine whether the standards cited in paragraph B above are satisfied, and mental health may be considered where it directly relates to those standards.

- F. The determination of eligibility for access is a discretionary security decision based upon all available facts and circumstances. Any doubt about whether access should be granted must be resolved in favor of national security.
- G. PSRs must ensure that each individual who has been granted a security clearance receives briefings on security matters based upon guidance provided by SDD.

731-1-110 CLEARANCE TERMINATIONS, DOWNGRADES, DENIALS

- A. A PSR in coordination with the immediate supervisor and the Director, SDD, may determine a currently cleared individual no longer has a need for a security clearance. That determination is a discretionary one and the decision of the Director, SDD, is conclusive. Upon written notice to the individual, the PSR may administratively terminate, or downgrade, the security clearance by following SDD procedures.
- B. Individuals who are being denied a security clearance, or having their clearance revoked, because they do not meet access eligibility standards, must be given specific due process and appeal rights as stipulated in EO 12968, Section 5.2, Review Proceedings for Denials or Revocation of Eligibility for Access.

731-1-120 REINVESTIGATIONS

- A. Because circumstances and characteristics of individuals may change dramatically over time and thereby alter their eligibility for continued access to classified information, reinvestigations must be conducted with the same priority and care as initial investigations. The reinvestigation requirement covers all incumbents in National Security Positions, i.e., those designated as Levels 2, 3, and 4. The type of reinvestigation required for each access level is indicated in the *Personnel Security/Suitability Handbook*.
- B. Individuals having a security clearance also may be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access. Recent arrest records, news media information, etc., are examples of reasons why a PSR and the Director, SDD, may decide to schedule a reinvestigation of an individual prior to the normal reinvestigation date.

- C. The results of the reinvestigation must be evaluated to determine whether the incumbent can continue to occupy a National Security Position or have a security clearance, and an unfavorable decision could result in a clearance suspension, revocation, or other disciplinary or adverse action.

731-1-130 ADVERSE ACTION

- A. An adverse action proposed as a part of the suitability adjudication process must involve an assessment of the risk of public trust abuse by the individual in performing specific duties. This assessment provides the nexus between the suitability issue and the efficiency of service.
- B. Adverse suitability actions are taken by authorized officials and are processed under procedures in 5 CFR Part 731, except when they decide that it is more appropriate to take action under procedures in 5 CFR Part 315 or 752.
- C. Adverse suitability actions taken under 5 CFR Part 731 are appealable to the Merit Systems Protection Board or may be grievable under the HHS grievance procedures. All due process requirements must be followed.
- D. Most of the FBI post appointment arrest records that are referred to the Department by OPM for action are on employees who already have been found suitable for Federal employment. Therefore, these records shall be adjudicated to determine if there is need for some kind of disciplinary or adverse action against the employee.

731-1-140 SAFEGUARDING AND HANDLING INVESTIGATIVE REPORTS

Personnel investigative reports and records must be safeguarded with the highest degree of discretion to protect the interests of the individual and the Department. Accordingly, the *Personnel Security/Suitability Handbook* contains specific safeguarding and handling requirements.