

Office of Personnel Management

§ 731.103

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, 7701; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 12731, 3 CFR, 1990 Comp., p. 306., 5 CFR, part 5.

SOURCE: 65 FR 82243, Dec. 28, 2000, 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 for employment in positions in the competitive service and for career appointment in the Senior Executive Service (hereinafter in this part, “competitive service”) pursuant to 5 U.S.C. 3301 and Executive Order 10577 (3 CFR, 1954–1958 Comp., p. 218). Section 3301 of title 5, United States Code, directs consideration of “age, health, character, knowledge, and ability for the employment sought.” Executive Order 10577 directs OPM to examine “suitability” for competitive Federal employment. This part concerns only determinations of “suitability” based on an individual’s character or conduct that may have an impact on the integrity or efficiency of the service. Determinations made under this part are distinct from determinations of eligibility for assignment to, or retention in, sensitive national security positions made under Executive Order 10450 (3 CFR, 1949–1953 Comp., p. 936), Executive Order 12968, or similar authorities.

(b) *Definitions.* In this part:

Applicant. A person being considered for employment.

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

Employee. A person who has completed the first year of a subject to investigation appointment.

Material. A “material” statement is one that is capable of influencing, or

has a natural tendency to affect, an official decision.

§ 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 February 8, 1996, the Director of OPM is to establish policies for Federal personnel associated with the design, operation, or use of Federal automated information systems. Agencies are to implement and maintain a program to ensure that adequate protection is provided for all automated information systems. Agency programs should be consistent with government-wide policies and procedures issued by OPM. The Computer Security Act of 1987 (Public Law 100–235) provides additional requirements for Federal automated information systems.

(c) Policies, procedures, criteria, and guidance for the implementation of this part shall be set forth in OPM issuances. OPM may revoke an agency’s delegation to adjudicate suitability under this part if an agency fails to conform to OPM issuances.

§ 731.103 Delegation to agencies.

(a) OPM delegates to the heads of agencies limited authority for adjudicating suitability in cases involving applicants for and appointees to competitive service positions in the agency (including limited, agency-specific debarment authority under § 731.205). OPM retains jurisdiction in all competitive service cases involving evidence of material, intentional false statement or deception or fraud in examination or appointment. Agencies must refer these cases to OPM for adjudication, or contact OPM for prior approval if the agency wants to take action under its own authority (5 CFR part 315 or 5 CFR part 752). Also, this delegation does not include cases involving refusal to furnish testimony as required by § 5.4 of this chapter, title, or passover requests involving preference eligibles who are 30 percent or more compensably disabled which must

§731.104

5 CFR Ch. I (1-1-03 Edition)

be referred to OPM for adjudication, as provided under Civil Service Reform Act of 1978, Public Law 95-454, 92 Stat. 1111 *et seq.* (Codified as amended in scattered sections of 5 U.S.C.)

(b) Any adjudication by an agency acting under delegated authority from OPM which indicates that an extended general, across agency lines, debarment by OPM under §731.204(a) may be an appropriate action should be referred to OPM for debarment consideration if not favorably adjudicated by the agency. Referral should be made prior to any proposed action, but after sufficient resolution of the suitability issue(s) through subject contact or investigation to determine if an extended general debarment period appears warranted.

(c) Agencies exercising authority under this part by delegation from OPM must show by policies and records that reasonable methods are used to ensure adherence to regulations, standards, and quality control procedures established by OPM.

(d) Before making any applicant suitability determination, the agency should first ensure the applicant is eligible for the position, among the best qualified, and/or within reach of selection. Because suitability issues may not be disclosed until late in the application/ appointment process, only the best qualified should require a suitability determination, with appropriate procedures followed and appeal rights provided, if suitability issues would form the only basis for elimination from further consideration.

(e) When an agency, exercising authority under this part by delegation from OPM, makes an adjudicative decision under this part, or changes a tentative favorable placement decision to an unfavorable decision, based on an OPM report of investigation or upon an investigation conducted pursuant to OPM-delegated authority, the agency should:

(1) Ensure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to ensure fairness to the individual in any determination;

(2) Ensure that all applicable administrative procedural requirements pro-

vided by law, the regulations in this part, and OPM policy guidance have been observed;

(3) Consider all available information in reaching its final decision, except information furnished by a non-corroborated confidential source. Information furnished by a non-corroborated confidential source can only be used for limited purposes, such as lead information or in interrogatories to a subject if the identity of the source is not compromised in any way; and

(4) Keep any record of the agency action as required by OPM in its supplemental guidance.

(f) Paragraph (a) of this section notwithstanding, OPM may exercise its jurisdiction under this part in any case when it, in its discretion, deems necessary.

(g) Any applicant or appointee who is found unsuitable by any agency acting under delegated authority from OPM under this part may appeal the adverse suitability decision to the Merit Systems Protection Board under the Board's regulations.

§731.104 Appointments subject to investigation.

(a) To establish a person's suitability for employment, appointments to positions in the competitive service require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. Certain appointments do not require investigation. Except when required because of risk level changes, a person in the competitive service who has undergone a suitability investigation need not undergo another one simply because the person has been:

(1) Promoted;

(2) Demoted;

(3) Reassigned;

(4) Converted from career-conditional to career tenure;

(5) Appointed or converted to an appointment if the person has been serving continuously with the agency for at least 1 year in one or more positions under an appointment subject to investigation; and

(6) Transferred, provided the individual has served continuously for at least 1 year in a position subject to investigation.