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Date

DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #097, FY 09

SUBJECT: Federal Employment Suitability - Reciprocity

EFFECTIVE DATE: January 9, 2009

AMENDS: Title 5, Code of Federal Regulations (CFR), Part 731, Federal Employment Suitability

BACKGROUND: Section 731.104(a) of Title 5 CFR requires that individuals appointed to covered positions undergo an investigation conducted by the Office of Personnel Management (OPM) or an agency with delegated authority from OPM. Executive Order (E.O.) 13467 (June 30, 2008) was issued to improve Executive branch policies and procedures regarding background investigations and adjudications. Specifically, Section 2.1(c) of the E.O. requires that background investigations and adjudications be mutually and reciprocally accepted by all agencies, unless excepted or otherwise authorized by law. Accordingly, OPM issued final regulations amending Title 5, CFR, Part 731 and establishing the requirements for applying reciprocity to Federal employment suitability determinations and investigations.

E.O. 13488, (January 16, 2009) provides the authority to apply reciprocity when making fitness determinations for excepted service positions not subject to Title 5, CFR, Part 731. It also requires individuals in positions of public trust to be subject to reinvestigations under standards as determined by the Director of OPM. The Office of Human Resources Management will update this Bulletin when OPM issues its standards on reinvestigations and its guidance on fitness.

PURPOSE: The purpose of this HR Bulletin is to provide policy guidance on applying reciprocity to suitability determinations and investigations.

COVERAGE: The provisions of this HR Bulletin apply to covered positions, which are positions in the competitive service, positions in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and career appointments to positions in the Senior Executive Service.

POLICY: The following policy applies to reciprocity for background investigations and suitability determinations:

- (1) An individual is not subject to a new background investigation when he or she is appointed or converted to a covered position if the individual had a background investigation at the same or higher risk level as the new position and has at least one year of continuous service in a covered position within the Department, which is subject to investigation.
- (2) An individual is not subject to a new background investigation when he or she transfers to a covered position if the individual has had a background investigation at the same or higher risk level as the new position and has at least one year of continuous service in a covered position, which is subject to investigation.
- (3) An individual is not subject to a new background investigation when he or she transfers to a covered position if the individual has at least one year of continuous service in an excepted service position that is not a covered position at the same or higher risk level as the new position and the individual has been determined fit for appointment based on criteria equivalent to factors in Title 5, CFR § 731.202.
- (4) A Federal Government contract employee is not subject to a new background investigation when he or she is appointed to a covered position if the individual has had at least one year of continuous service in a job at the same or higher risk level and a Federal agency determined the contract employee fit to perform work on the contract based on criteria equivalent to the factors provided in Title 5, CFR § 731.202.
- (5) A new investigation must be conducted if the employee's current position is being changed to a higher risk level, or the employee is promoted, demoted, or reassigned to a position with a higher risk level than their current position. The individual may remain or encumber the position with the higher risk level while the new investigation is conducted. However, the new background investigation must be initiated within 14 calendar days of the effective date of the appointment, conversion, or upgrade in risk level.
- (6) A new investigation must be conducted if new information in connection with the individual's appointment becomes available that raises questions about the individual's suitability under the specific factors and/or additional considerations listed in Title 5, CFR § 731.202.
- (7) A new suitability determination cannot be made if the individual has a favorable suitability determination based on the criteria contained in Title 5, CFR § 731.202 (character or conduct). The only exceptions where a new suitability determination may be made are:
 - (a) If the individual is required to undergo a new investigation (e.g., a higher risk level or for designation to a public trust position), or

- (b) If the individual's investigative record on file shows conduct(s) that is incompatible with the core duties (*a continuing responsibility that is of particular importance to the relevant covered position or the achievement of the Department's mission*) of the relevant covered position. An example: prior criminal misconduct may be antithetical with the duties of a law enforcement official.
- (8) All positions designated as public trust and subject to an investigation under Title 5, CFR, Part 731 must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical Sensitive, when duties of the position could cause a material adverse effect on national security. The sensitivity designation is complimentary to the risk level designation, and may have an effect on the position's investigative requirement. Positions designated "sensitive" normally require eligibility for a national security clearance.
- (9) The reciprocity requirement for investigations does not negate the Department's ability to conduct reinvestigations for public trust positions.
- (10) If a Servicing Human Resources Office (SHRO) believes reciprocity is not applicable in a particular situation, it must consult with its servicing General Counsel's office before making any decision regarding suitability or background investigation.

REPORTING REQUIREMENTS: OPM's final regulations now require agencies to report the level and result of each suitability determination and suitability action taken under Title 5, CFR, Part 731 in the same manner as they report the results of background investigations.

RECORDS RETENTION: All SHROs must forward a copy of the INV-79a to the servicing Security office. The Certificate of Investigation must be retained in the individual's OPF. The investigation report should be destroyed after a suitability determination has been made.

REFERENCES:

- Title 5, CFR, Part 731, as amended by OPM's final rule published in the *Federal Register* (Volume 73, No. 218) on November 10, 2008; and
- E.O. 13488, "Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust," January 16, 2009.

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