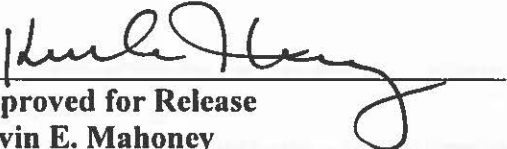


APR 27 2017


Approved for Release
Kevin E. Mahoney
Director for Human Resources Management and
Chief Human Capital Officer

4/27/17
Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT
HUMAN RESOURCES (HR) BULLETIN #209, FY17**

SUBJECT: Federal Employment Suitability Determinations under Title 5, Code of Federal Regulations (CFR), Part 731, Conducted by the Servicing Human Resources Offices and the Enterprise Services Center

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until canceled or superseded

SUPERSEDES: HR Bulletin #172, FY14, "Federal Employment Suitability Determinations Under Title 5, Code of Federal Regulations (CFR), Part 731"

REVISION: This bulletin clarifies the authority of the Enterprise Services Center (ESC) to make recommendations on pre-employment suitability adjudication determinations for applicants and appointees occupying covered positions under 5 CFR Part 731.

BACKGROUND: Under Title 5, CFR 731.103(a), the Office of Personnel Management (OPM) has delegated to the Department of Commerce (Department) the 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 in the agency. "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 efficacy of the service. Title 5, CFR, Part 731 establishes the criteria and procedures for suitability investigations, determinations, and actions.

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

DEFINITIONS:

- Applicant – A person being considered for, or who 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 under 5 CFR 731.103(b).

- Covered Position – A position in the competitive service, or 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.
- Employee – A person who has completed the first year of a subject-to-investigation appointment.

DELEGATION OF AUTHORITY: The Director for Human Resources Management (Director) has delegated the authority for making final pre-employment suitability determinations to the Department's Principal Human Resources Managers (PHRMs), who in turn have the authority to re-delegate the authority to Federal employees in their Servicing Human Resources Office (SHRO).

In addition, the Director has delegated the authority for making recommendations on pre-employment suitability determinations to the Director, ESC, who in turn has the authority to re-delegate the authority to both Federal and non-Federal employees in the ESC.

Note: All individuals who are making final determinations and those recommending final determinations must meet the National Training Standards for Suitability Adjudicators as approved by the Suitability Executive Agent (Director of OPM) in August 2012.

POLICY: For matters **not** within OPM's exclusive authority, Federal employees in a SHRO or ESC have authority to adjudicate final suitability determinations for applicants and appointees in covered positions in their serviced bureaus/operating units.

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 where Government-wide debarment is warranted.

Non-Federal employees in a SHRO or ESC only have the authority to make recommendations to the appropriate Federal employee in the SHRO or ESC, as appropriate for final suitability determinations.

All requests for agency-specific debarments must be approved by the Director, through a written request from the PHRM. Requests for Government-wide debarments must be submitted and approved by OPM, through the Director.

Suitability actions against employees **may not be taken**, as agencies have no jurisdiction to take actions on employees under 5 CFR 731. Any necessary actions must be taken under agency authority 5 CFR 752.

OPM NOTIFICATION: SHROs and the ESC do not need approval from OPM before taking unfavorable suitability actions. However, all unfavorable suitability actions taken under Part 731 must be reported to OPM within 30 days of taking the action. In addition, all actions based on an OPM investigation must be reported to OPM as soon as possible, and no later than 90 days after receipt of the final investigation report. Those responsible for reporting such actions should use OPM's electronic suitability portal (NP2).

SUITABILITY DETERMINATION GUIDANCE:

- The SHRO/ESC may begin to examine an applicant's suitability at any time during the hiring process.
- Suitability determinations must be based on the presence or absence of one or more specific factors.
- Only the eight defined specific factors (outlined in 5 CFR 731.202(b)) are considered a basis for finding a person unsuitable and taking a suitability action.
- The SHRO/ESC must consider the following additional considerations to the extent the SHRO/ESC deems any of them pertinent to the individual case:
 - Nature of the position for which the person is applying or in which the person is employed;
 - Nature and seriousness of the conduct;
 - Circumstances surrounding the conduct;
 - Recency of the conduct;
 - Age of the person at the 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 the 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 (Title 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 defined specific factors outlined in 5 CFR 731.202(b) are considered a basis for finding an applicant or an appointee unsuitable and taking a suitability action.

Federal employees in the SHRO and the ESC can take the following actions, or direct a non-Federal employee in the ESC to take the action(s) against an applicant for, or appointee to, covered positions after the Federal employee renders an unfavorable **final determination**:

- Cancel the individual's eligibility.
- May deny the individual an examination for, and appointment to, either all, or specific covered positions in the Department, for a period of not more than 3 years from the date of the unfavorable determination.
 - 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 to the Department for a covered position. 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 duty 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 duty time.
- Arrangements for the use of duty time must be coordinated with, and approved by, the representative's supervisor prior to use.

NOTE: The terms of the applicable collective bargaining agreement determine the procedures governing the use of official time by bargaining unit employees.

OPERATING PROCEDURES:

Non-Federal Employees in ESC and the SHRO –

Upon completing the suitability determination process, the ESC submits its recommendation of final pre-employment suitability determination and all supporting documentation to the appropriate SHRO.

- Upon receiving the recommendation and supporting documentation from the ESC, the SHRO reviews and makes the final pre-employment determination.
- The SHRO submits a written memo to the ESC sustaining the ESC's recommendation, or rendering a different determination. If the determination is unfavorable, the SHRO also includes written instructions of the action(s) for the ESC to take.
- The ESC must maintain the written final determination and required action(s), if applicable, in the recruitment case file.

Non-Federal Employees in the SHRO –

Upon completing the suitability determination process, the non-Federal employees submits his/her recommendation of final pre-employment suitability determination and all supporting documentation to the appropriate Federal employees in the SHRO.

- Upon receiving the recommendation and supporting documentation from the individual, the SHRO reviews and makes the final pre-employment determination.
- The SHRO submits a written memo to the ESC with the results of the suitability determination. If the determination is unfavorable, the SHRO also includes written instructions of the action(s) for the ESC to take.

- The ESC must maintain the written final determination and required action(s), if applicable, in the recruitment case file.

REFERENCES: Title 5, CFR Part 731.

OFFICE OF POLICY AND PROGRAMS: Valerie Smith, vsmith@doc.gov, (202) 482-0272

PROGRAM MANAGER CONTACT INFORMATION: Frank Milman, fmilman@doc.gov, (202) 482-3321

