

§ 724.403

5 CFR Ch. I (1–1–25 Edition)

§ 724.403 Advisory guidelines.

OPM will issue advisory guidelines to Federal agencies incorporating the best practices identified under § 724.402 that agencies may follow to take appropriate disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Laws.

§ 724.404 Agency obligations.

(a) Within 30 working days of issuance of the advisory guidelines required by § 724.403, each agency must prepare a written statement describing in detail:

(1) Whether it has adopted the guidelines and if it will fully follow the guidelines;

(2) If such agency has not adopted the guidelines, the reasons for non-adoption; and

(3) If such agency will not fully follow the guidelines, the reasons for the decision not to do so and an explanation of the extent to which the agency will not follow the guidelines.

(b) Each agency's written statement must be provided within the time limit stated in paragraph (a) of this section to the following:

(1) Speaker of the U.S. House of Representatives;

(2) President Pro Tempore of the U.S. Senate;

(3) Chair, Equal Employment Opportunity Commission;

(4) Attorney General; and

(5) Director, U.S. Office of Personnel Management.

PART 730—NOTIFICATION OF POST-EMPLOYMENT RESTRICTIONS

Sec.

730.101 Purpose.

730.102 Definitions.

730.103 Coverage.

730.104 Notification.

730.105 Savings provision.

AUTHORITY: 5 U.S.C. 7302 and sec. 1125(b) of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1392.

SOURCE: 69 FR 61144, Oct. 15, 2004, unless otherwise noted.

§ 730.101 Purpose.

This part implements 5 U.S.C. 7302, which requires agencies to provide

written notice to senior executives and other individuals covered by 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to certain post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c).

§ 730.102 Definitions.

Agency means an Executive agency as defined in 5 U.S.C. 105, but does not include the General Accounting Office.

Senior executive means a member of the Senior Executive Service (SES).

§ 730.103 Coverage.

(a) The following individuals are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c), as amended by section 1125(b)(1) of the National Defense Authorization Act for FY 2004:

(1) Any individual, including a senior executive, who is paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule; and

(2) Any individual, including a senior executive, who as of November 23, 2003, was paid at a rate of basic pay, exclusive of any locality-based comparability payments under 5 U.S.C. 5304, equal to or greater than the rate of basic pay for level 5 of the Senior Executive Service on that date (*i.e.*, \$134,000). These employees are subject to the post-employment restrictions through November 24, 2005, without regard to any subsequent changes in position or pay.

(b) Nothing in this part affects individuals serving in positions described in 18 U.S.C. 207(c)(2)(A)(i), (iii), (iv), or (v).

§ 730.104 Notification.

(a) Agencies must provide written notification to senior executives and other individuals covered by the amendment to 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207, before, or as part of, any personnel action that affects the employee's coverage under 18 U.S.C. 207(c)(1), including when employment or service in a covered position is terminated. A copy of the written notice must be provided simultaneously to the Designated Agency Ethics Official (or his or her delegate). The

Office of Personnel Management

§ 731.101

written notice must include information on the applicable penalties or injunctions that may be imposed under 18 U.S.C. 216(a), (b), and (c) for violations of the post-employment restrictions in 18 U.S.C. 207(c). The notice also must indicate that employees covered by 18 U.S.C. 207(c) are subject to 18 U.S.C. 207(f), which imposes additional post-employment restrictions on representing, aiding, or advising certain foreign entities.

(b) Notwithstanding paragraph (a) of this section, the post-employment restrictions in 18 U.S.C. 207(c) apply to covered employees without regard to whether they receive written notice from their employing agency.

§ 730.105 Savings provision.

Any post-employment restrictions established under 18 U.S.C. 207 and applicable prior to the first day of the first pay period beginning on or after January 1, 2004, remain in effect.

PART 731—SUITABILITY AND FITNESS

Subpart A—Scope

Sec.

731.101 Purpose.

731.102 Implementation.

731.103 Delegation to agencies.

731.104 Appointments subject to investigation.

731.105 Authority to take suitability actions.

731.106 Designation of public trust positions and investigative requirements.

Subpart B—Suitability Determinations and Actions

731.201 Standard.

731.202 Criteria for making suitability determinations.

731.203 Suitability actions by OPM and other agencies.

731.204 Debarment by OPM.

731.205 Debarment by agencies.

731.206 Reporting requirements.

Subpart C—OPM Suitability Action Procedures for the Competitive Service or Senior Executive Service

731.301 Scope.

731.302 Notice of proposed action.

731.303 Answer.

731.304 Decision.

Subpart D—Agency Suitability Action Procedures for the Competitive Service or Career Senior Executive Service

731.401 Scope.

731.402 Notice of proposed action.

731.403 Answer.

731.404 Decision.

Subpart E—Appeal to the Merit Systems Protection Board of Suitability actions in cases involving the Competitive Service or Career Senior Executive Service

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, 9201–9206; Pub. L. 116–92, sec. 1122(b)(1); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended; E.O. 13467, 3 CFR, 2009 Comp., p. 198; E.O. 13488, 3 CFR, 2010 Comp., p. 189; 5 CFR, parts 1, 2 and 5; Presidential Memorandum on Enhancing Safeguards to Prevent the Undue Denial of Federal Employment Opportunities to the Unemployed and Those Facing Financial Difficulty Through No Fault of Their Own, January 31, 2014.

EFFECTIVE DATE NOTE: At 89 FR 102691, Dec. 18, 2024, the authority citation for part 731 was revised, effective Jan. 17, 2025. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 1302, 3301, 7301. E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218, as amended. E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 198, as amended. E.O. 13488, 74 FR 4111, 3 CFR, 2010 Comp., p. 189, as amended. E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp. p. 243. Presidential Memorandum of January 31, 2014, 3 CFR, 2014 Comp., p. 340. 5 CFR parts 1, 2, 5, and 6.

SOURCE: 73 FR 20154, Apr. 15, 2008, unless otherwise noted.

Subpart A—Scope

EFFECTIVE DATE NOTE: At 89 FR 102691, Dec. 18, 2024, subpart A of part 731 was revised, effective Jan. 17, 2025. For the convenience of the user, the new subpart A of part 731 follows the text of this subpart.

§ 731.101 Purpose.

(a) The purpose of this part is to establish criteria and procedures for making determinations of suitability