



**Defense Civilian Personnel Advisory Service
Field Advisory Services
Labor and Employee Relations Division**

REFERENCE GUIDE

**Changes to 5 CFR 731 Suitability Reinvestigation Requirements
Effective December 9, 2011**

Purpose

The purpose of this reference guide is to provide the Department of Defense agencies guidance on meeting the new requirements of [5 CFR 731](#) based on changes enforced by [Executive Order \(E.O.\) 13488](#), Granting the Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust, which requires suitability investigations and subsequent reinvestigations every five years for all incumbents of positions of Public Trust as determined by the Director of the Office of Personnel Management (OPM).

Background

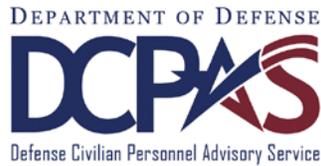
Under E.O. 13488, agencies are required to conduct suitability investigations and subsequent reinvestigations for all incumbents of positions of Public Trust as determined by OPM. As published in the Federal Register on Wednesday, November 9, 2011, Vol. 76, No. 217, **OPM has updated 5 CFR 731 effective December 9, 2011.** The new regulation also requires that Agencies:

- provide notice to their employees regarding the reinvestigation requirements,
- follow the specified procedure to handle change in Position Risk Levels, and
- report investigative determinations to OPM.

What are the New Requirements of 5 CFR 731?

- 731.106(d) (1) requires incumbents of Public Trust positions to undergo Suitability reinvestigations at least once every five years.
- § 731.104(a) clarifies that a new investigation is not required when there has been a break in service of less than 24 months.





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- 731.106(e) requires an investigation be initiated within 14 days of change to a higher risk level of a position, or of a personnel action that increases an employee or appointee's risk level.
- 731.106 (f) requires the agency to provide a determination of each suitability investigation (or reinvestigation) completed under the new provisions that would justify an action under applicable authority, such as part 731, 315, 359, or 752 of 5 CFR.
- 731.106 (d) (3) requires Agencies to notify all covered employees of the reinvestigation requirements.
- 731.206 requires Agencies to report to OPM the level or nature, result, and completion date of each background investigation or reinvestigation, each agency decision based on such investigation or reinvestigation, and any personnel action taken based on such investigation.

When is a Suitability Reinvestigation Required?

5 CFR 731 applies reinvestigation requirements to ensure the character and conduct of individuals incumbering covered positions supports the efficiency of the federal service.

§ 731.106 defines Public Trust positions as positions of moderate or high risk level determined by the position's potential for adverse impact to the efficiency or integrity of the service. Agency heads are responsible for determining risk designations for all covered positions, using OPM's guidance to evaluate the core duties of each. Within DoD, these determinations are made using the OPM Position Designation Tool found at: <http://www.opm.gov/investigate/resources/position/index.aspx>

To minimize costs, agencies are encouraged to apply reciprocity with regard to investigatory determinations made where the investigation level met or exceeded the requirements for a Public Trust reinvestigation. As an example: An individual who was placed into a Moderate Risk Public Trust position in November 2007 and was subsequently investigated for a Top Secret security clearance in January 2010, does not require reinvestigation until January 2015 because an intervening investigation was conducted at a higher level than was necessary for the Public Trust reinvestigation. Investigation levels can be found at the OPM web site at:





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http://www.opm.gov/investigate/fins/2010/Aligning_OPM_Investigative_Levels.pdf and <http://www.opm.gov/investigate/fins/2011.aspx>. Information can also be found in DoD Standardized Investigation Request Procedures Memorandum from Deputy Under Secretary of Defense Laurence K. Burgess, HUMINT, Counterintelligence & Security dated November 4, 2010.

Additionally, a new investigation is not required when a break in service has been less than 24 months in accordance with the new § 731.104(a) (5):

“Appointment to a covered position where there has been a break in service of less than 24 months, and the service immediately preceding the break was in a covered position, an excepted service position, or a contract employee position described in paragraphs (a)(1) to (a)(4) of this section.”

When is Notice to Employees Required?

According to 731.106(d) (3) “agencies must notify all employees covered by this section of the reinvestigation requirements...” The notice should inform incumbents of Public Trust positions and appointments to covered positions as defined by 731 that they are subject to reinvestigation at least every five years in order to maintain employment in the current position.

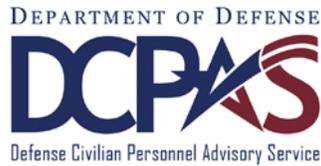
What if a Position Risk Level Changes?

If an employee or appointee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk level of the employee’s or appointee’s position is changed to a higher level, the employee or appointee may remain in or encumber the position pending the outcome of the investigation. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

What must the Agency report to OPM regarding Suitability investigations?

Agencies are required to report to OPM:





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- “the level or nature, result, and completion date” of every investigation and reinvestigation;
- every agency investigative decision related to investigations and reinvestigations; and
- any personnel action the agency takes based on the agency’s investigative decision.

Note that OPM has reserved the authority to take suitability actions under 5 CFR 731 against an employee, which means that the agency is not permitted to take suitability actions under 5 CFR 731 against employees. In general, barring the limited circumstances described in 731.105(d), the subject of a reinvestigation, if a suitability issue is found in an investigation or reinvestigation, if the involved individual is an employee as defined by 5 USC § 7511, the agency may elect to initiate an adverse action under 5 CFR 752, which is distinct from a suitability action that OPM would initiate under 5 CFR 731.

References

5 CFR 731

5 CFR 752

Executive Order 13488, Granting the Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust

Executive Order 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information

