

(2) Ensure that all applicable administrative procedural requirements provided 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.

(b)(1) OPM or an agency with delegated suitability authority may investigate and take a suitability action against an applicant, appointee, or employee in accordance with § 731.105. There is no time limit on the authority of OPM or an agency with delegated suitability authority to conduct an investigation of an applicant who has been appointed to a position.

(2) An employee does not have to serve a new probationary or trial period merely because his or her appointment is subject to investigation under this section. An employee's probationary or trial period is not extended because his or her appointment is subject to investigation under this section.

(3) The subject to investigation condition also does not eliminate the need to conduct investigations required under § 731.106 for public trust positions.

**§ 731.105 Authority to take suitability actions.**

(a) OPM may take a suitability action under this part against an applicant or appointee based on any of the criteria of § 731.202;

(b) An agency, exercising delegated authority, may take a suitability action under this part against an applicant or appointee based on the criteria of § 731.202 subject to the agency limitations prescribed in § 731.103;

(c) OPM may take a suitability action under this part against an employee only in cases involving material, intentional false statement or deception or fraud in examination or appointment, or refusal to furnish testimony as required by § 5.4 of this title, or statutory or regulatory bar. A statement may be a material statement even if an agency does not rely upon it.

(d) An agency may not take a suitability action against an employee under this part. Nothing in this part precludes, or is intended to preclude, an agency from taking an adverse action against an employee under the procedures and standards of part 752 of this title or terminating a probationary employee under the procedures of part 315 of this title.