

12 FAM 230

PERSONNEL SECURITY

(CT:DS-112; 06-15-2005)
(Office of Origin: DS/MGT/PPD)

12 FAM 231 GENERAL PROVISIONS

12 FAM 231.1 Definitions

(CT:DS-112; 06-15-2005)

The terms used herein are defined as follows:

Department and **Department of State** — *Will* be understood to include the Foreign Service of the United States.

National security — Relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any or all other illegal acts designed to weaken or destroy the United States.

Need-to-know — Refers to a determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, or knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official U.S. Government program. Knowledge or possession of, or access to, classified information *will* not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

Security clearance — A certification that a U.S. citizen, who requires access to information classified at a certain level, has been found security eligible under *Department* standards and may be permitted access to classified information at the specified level.

Security eligibility — A security status based on favorable adjudication of a required personnel security investigation. It indicates that an individual is deemed trustworthy for employment in a sensitive position, and may be granted a clearance for access to classified information up to the level of eligibility, if required in the performance of official duties.

Sensitive position — Any position in the Department the occupant of which could bring about, because of the nature of the position, a material adverse effect on the national security. Guidelines for determining

position sensitivity are provided in 3 FAM 2220. In view of the highly sensitive nature of Department operations and activities, all positions *will* be considered as critical-sensitive, except for such positions specifically designated otherwise by the Bureau of Diplomatic Security (DS). Recommendations for exceptions will be submitted to the Personnel Security/Suitability Division (DS/*SI*/PSS) with fully documented justifications, including descriptions of the position and its relative responsibilities in relation to other positions in the office's staffing pattern, security concerns relative to the mission and functions of the submitting office, and the physical floor plan and physical/procedural security environment within which the position's incumbent would work.

12 FAM 231.2 Security Authority

(TL:DS-89; 04-15-2003)

- a. The Act of August 26, 1950, Public Law 81-733 (64 Stat. 476), codified at 5 U.S.C. 7532, et seq., confers upon the Secretary of State the right, in the Secretary's absolute discretion, to suspend the employment of any officer or employee of the Department of State and, following such investigation and review as deemed necessary, to terminate the employment of the officer or employee whenever the Secretary determines such action is necessary or advisable in the interests of the national security of the United States (see 12 FAM 233.3 and 12 FAM 234). Executive Orders 10450, 10491, 10531, 10548, 11550, 11605, and 11785, dated, respectively, April 27, 1953, October 12, 1953, May 27, 1954, August 2, 1954, August 5, 1954, July 2, 1971, and June 4, 1974, relate to requirements for Government employment. In addition, Executive Order 12356, dated April 2, 1982, governs the safeguarding of national security information (to include access thereto), and 10865, dated February 20, 1960, relate to those procedures governing the utilization of persons under contract to the U.S. Government, who will be considered as applicants or employees for the purpose of these regulations. The Director of Central Intelligence (DCI) issued DCI Directive (DCID) No. 1/14, providing additional standards and procedures governing eligibility for access to sensitive compartmented information.
- b. These authorities permit the use of relevant security criteria to Federal Government applicants and employees, and to those hired under contractual arrangements (directly or through a commercial/industrial contractor) and others requiring access to national security classified information. Except as required by DCID No. 1/14, or criteria imposed by other agencies controlling certain specific special access information, the Department will use the criteria of E.O. 10450 for all such security adjudication. Subsumed within the broad authority to suspend employment under 5 U.S.C. 7532 is the authority to take more limited

measures, in the interests of the Department and the individual. Such measures may precede steps to terminate an employee or may be sufficient in themselves to protect the interests of national security. The Bureau of Diplomatic Security, acting for the Secretary of State pursuant to the above cited authorities, may take these measures administratively.

- (1) Depending on assessment of degree of risk, alternatives to, or measures preceding, suspension from employment under 5 U.S.C. 7532 could include (but are not limited to):
 - revocation or reduction of the level of security clearance and special access eligibility;
 - suspension of security clearance and applicable special access clearances pending further investigation or review; or
 - restrictions on classified access permitted or sensitive duties assigned as deemed necessary (e.g., on strict need-to-know basis, by subject matter, or to specifically designated projects/documents).
- (2) Other than the revocation or reduction of clearance for cause, DS may apply any such measures administratively as deemed necessary in the interests of national security for specific periods, pending occurrence of specific events or accomplishment of additional investigation or evaluation, or to permit a period of vetting prior to initiating follow-up investigation and/or evaluation. Such administrative measures normally result from a determination that circumstances relevant to security adjudication cannot be resolved in the employee's favor. In such cases, the interests of the Department and the individual would best be served by providing an interim resolution recognizing the legitimate concern for national security while providing for the employee's retention until such time as reevaluation is deemed appropriate. (See 12 FAM 233.5.)
- (3) DS will inform the employee by letter of such action and the reasons to the extent permitted by the national security, in accordance with procedures set forth in 12 FAM 233 below. The statement of procedures set forth herein is promulgated under the authorities referred to above. (See 3 FAM and 12 FAM 500.)

12 FAM 231.3 Policy

(CT:DS-112; 06-15-2005)

- a. The Department of State, because of its responsibility for the conduct of foreign affairs, is a vital target for persons engaged in espionage or subversion of the U.S. Government. Owing to this fact and because of

the great number of highly classified communications which pass through the Department, the security of which is essential to the maintenance of peaceful and friendly international relations, it is highly important to the interests of the United States that the Department employ and retain in its service only those persons whose employment or retention is found to be clearly consistent with the interests of the national security. Further, it *is* the policy of the Department to require the maximum obtainable security of its operations and personnel consistent with the efficient discharge of its responsibilities.

- b. To protect the security of classified information, the prudent management of risk is essential. Risk management requires a careful weighing and balancing by security officials of all factors *that* suggest that a person may not properly safeguard classified information. As a result of a security judgment based upon one or a combination of these factors, security eligibility may be denied, revoked, reduced, or temporarily suspended pending further investigation, evaluation, or a period of vetting of security concerns. No person has an entitlement or right of access to classified information or to sensitive facilities. The granting, denial, or revocation or reduction of such access, based on the analysis of available information and the weighing of applicable factors to ensure against possible threats to national security, is the responsibility of *DS*.
To wit:

- (1) In view of the low degree of acceptable risk to the national security, a critical element in granting access to classified information or to sensitive facilities is the requisite confidence in a person's ability to protect this nation's secrets of state. The protection of the national interest *must* be paramount in all security evaluations, particularly in decisions as to whether to continue or temporarily suspend a clearance pending further investigation, evaluation, or vetting (see 12 FAM 233.5). Clearance will also be suspended pending final determination regarding proposals to reduce or revoke security clearance (see 12 FAM 233.4) or to suspend the individual from employment under 5 U.S.C. 7532 (see 12 FAM 233.3).
- (2) Regarding decisions to temporarily suspend security clearance, *DS* is responsible for ensuring that any reasonable doubts concerning a person having access to classified information or to sensitive facilities *must* be resolved in favor of the national security and against the person having such access; *DS* will also resolve issues requiring the temporary suspension of clearance as quickly as possible (normally within 90 days), but will in any case continue the suspension of clearance until the relevant issues have been fully resolved.

- (3) The Department will generally base its final decisions on whether to reduce or revoke a security clearance upon the same principle, but will afford the employee opportunities to respond and request reconsideration of the proposed action, and to appeal adverse decisions by Security (see 12 FAM 233.4).
- c. DS will afford Weingarten rights (permitting union representation) to employees as set forth in the annual Department Notice governing those rights. Further, employees *may take* the opportunity to appeal in writing a decision to revoke or reduce security clearance eligibility (see 12 FAM 233.4), or to suspend employment under 5 U.S.C. 7532 (see 12 FAM 234). These procedures permit the employee to respond in detail to both the factual accuracy of the investigative reports and the validity of evaluative criteria and conclusions upon which the proposed action has been based. Employees may introduce new information, evidence, affidavits, and arguments to refute, mitigate, or provide extenuating circumstances for consideration by the appellate authority. Employee interests in the thorough review of all relevant facts and the opportunity to provide any response the employee deems appropriate are thereby fairly served, and are balanced with the Department's interests in reaching fair and objective security decisions with minimal disruption of the organization's missions and functions.
- (1) The employee may personally prepare a response or appeal, or may obtain counsel or representation to assist in such preparations. The employee may present affidavits by witnesses, experts, and references as deemed appropriate, and may challenge the accuracy or validity of charges or conclusions supporting the proposed action.
 - (2) Additionally, employees may request an audience with an appellate official to make an oral presentation if one is desired, but such an audience may be agreed to or not at the absolute discretion of the appellate official, who will agree or not depending on the sufficiency of information available for deciding the national security interests of the case.

12 FAM 231.4 Investigative Requirements

(CT:DS-112; 06-15-2005)

- a. Every appointment to a sensitive position within the Department *must undergo* a full field investigation. However, to the extent authorized by the Office of Personnel Management, a lesser investigation may suffice for per diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States or with the Foreign Service Institute (see 3 FAM). Moreover, in case of emergency, a sensitive position may be filled for a period not to exceed 180 days by a person with respect to

whom a full-field pre-appointment investigation has been initiated but not completed if the Secretary of State finds that such action is necessary in the national interest. Such finding *must* be filed in both the investigative and personnel records of the person concerned.

- b. *All aliens employed by the Foreign Service Institute must undergo initial investigations* in order to establish a valid basis for security evaluation; provided that, update full-field background investigations will subsequently be scheduled after 2 years' employment by the Department, again after an additional 3 years, and thereafter as required for the periodic reinvestigation of occupants of critical-sensitive positions.
- c. The *Bureau of Diplomatic Security (DS) must* conduct such investigations as may be required by the investigative responsibilities of the Secretary of State pursuant to law, executive order, agreement with the *Bureau of Human Resources*, or as otherwise determined by the Secretary.
- d. If, in the course of an investigation of an employee or an applicant for employment, the Diplomatic Security Service (DS) receives information of the nature described in 12 FAM 232.2 (2) through (7) of these regulations, or indicating that an employee has been subject to coercion, influence, or pressure to act contrary to the interests of the national security, the information will be referred to the Federal Bureau of Investigation for investigation.
- e. While *DS* must retain discretionary judgment to investigate allegations against employees, the private expression of foreign policy views at variance with official policy is not of itself grounds for a security investigation.

12 FAM 232 SECURITY STANDARD AND PRINCIPLES

12 FAM 232.1 Security Standard

(CT:DS-112; 06-15-2005)

The security standard for refusal of employment, removal from employment in the Department, or revocation of security clearance eligibility under the authorities referred to in 12 FAM 231.3 *will* be that, based on all the available information, the security eligibility of an individual for employment or continued employment in a sensitive position, or for continued security clearance, is not clearly consistent with the interests of national security.

12 FAM 232.2 Security Factors

(CT:DS-112; 06-15-2005)

Information about an applicant or employee of the Department of State *that* may preclude a finding that security eligibility for clearance, employment, or continued employment is clearly consistent with the interests of the national security *will* relate to, but not be limited to, the following:

- (1) Depending on the relation of the Government employment to the national security:
 - (a) Any behavior, activities, or associations *that* tend to show that the individual is not reliable or trustworthy;
 - (b) Any deliberate misrepresentation, falsification, or omission of material facts;
 - (c) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion;
 - (d) Any illness, including any medical condition of a nature *that* in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in each case;
 - (e) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause the individual to act contrary to the best interests of the national security;
- (2) Commission of any act of sabotage, espionage, treason or sedition, or attempts thereat or preparation, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition;
- (3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be *hostile* to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means;
- (4) Advocacy of use of force or violence to overthrow the Government of the United States, or the alteration of the form of government of the United States by unconstitutional means;

- (5) Knowing membership in, or *deliberate* affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons *that* is totalitarian, Fascist, Communist, or subversive, or *that* has adopted, or shows, a policy of advocating the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or *that* seeks to alter the form of government of the United States by unconstitutional means;
- (6) Intentional, unauthorized disclosure to any person of security information, or of any other information disclosure *that* is prohibited by law, or willful violation or disregard of security regulations;
- (7) Performing or attempting to perform an employee's own duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States; and/or
- (8) Refusal by the individual, on the grounds of constitutional privilege against self-incrimination, to testify before a Congressional committee regarding charges of alleged disloyalty or other misconduct.

12 FAM 232.3 Considerations in Weighing Evidence

12 FAM 232.3-1 Investigative Review

(CT:DS-112; 06-15-2005)

- a. Results of investigation concerning a proposed appointee or an incumbent employee will be reviewed on their individual merits. An affirmative determination that security eligibility meets the criterion that it be clearly consistent with the interests of national security is fundamental to each decision. A reasonable doubt that this criterion is met may be sufficient for denial or revocation of security eligibility, and could derive from a wide range of factors which must be considered in assessing potential for risk to the national security (see 12 FAM 232.2).
- b. Among the most critical considerations in weighing a case may be the inability to obtain information relevant to specific security factors. Such considerations weigh heavily if the individual refuses to answer relevant questions. Such considerations may also arise for reasons over which the individual has no control, for example when the positive resolution of a materially significant issue is difficult or impossible travel or residency, or prior nationality/residence in a foreign country (especially, criteria countries—see 11 FAM). On a case-by-case basis, such considerations may well be sufficient to preclude a favorable determination of security

eligibility by making impossible a confident affirmation that the interests of national security would clearly be served.

- c. Generally, relevant considerations relate to whether or not the person under consideration may have vulnerabilities or may engage in any exploitable personal conduct or indiscreet behavior. *At a minimum and as a prerequisite*, any person having access to classified information or to sensitive facilities *must be reliable, worthy of trust*, have excellent character, judgment, and discretion, and *is not susceptible* to undue influence, coercion, or duress, which could lead to actions otherwise uncharacteristic of the individual and harmful to the national security.
- d. In this regard, doubts concerning suitability for access to classified information or to sensitive facilities need not stem from evidence of disloyalty itself. Questions concerning the security suitability of a person may arise from any factor *that* indicates that a person could pose a security risk to the protection of classified information. For example, security officials may take into account the activities of individuals with whom the person is bound by ties of affection, or with whom the person is in close and continuing contact, to include individuals in the person's immediate family (particularly when such individuals are foreign nationals, or reside in, or work in the employ of, a foreign country).
- e. A particularly heavy burden of risk to the U.S. national security attaches to the clearance of an employee when such individuals with whom the employee has close ties are employed in the foreign service, military, or intelligence agencies of a foreign country. Access to classified information or to sensitive facilities can be denied, revoked, or reduced if such circumstances preclude a determination that a person meets the criterion for security eligibility, taking into account all of the factors discussed above, or when it is determined that sufficient information cannot be developed to allow a favorable evaluation under the criterion for security eligibility.

12 FAM 232.3-2 Standard for Security Eligibility

(CT:DS-112; 06-15-2005)

No decision *will* be made to appoint, retain in employment, or sustain continued clearance for access to classified information (as defined by E.O. 12356) any person if, on the basis of competent investigation, reasonable doubt exists that such appointment, continued employment, or continued clearance for access to classified information, is clearly consistent with the interest of the national security.

12 FAM 232.3-3 Determinations of Employment Suitability and Security Eligibility

(CT:DS-112; 06-15-2005)

- a. In adjudicating investigation results, *DS* will judge, insofar as possible, the impact of material issues on both an applicant's or employee's ability to promote the efficiency of the Service, and the question whether an individual's appointment, retention, or continued clearance for access to classified information is clearly consistent with the interest of the national security. *Medical issues that* may bear on determinations of security clearance eligibility *should* be referred to the Office of Medical Services for evaluation, medical inquiry, and recommendation pursuant to the criteria of E.O. 10450 and DCID 1/14.
- b. When the existence of issues, having implications regarding both the individual's security eligibility and suitability for employment, has been developed by competent investigation, those questions involving suitability matters will be referred to the Bureau of Human Resources (HR) for resolution prior to the rendering of a final security determination by *DS*. A determination that an individual is not suitable or not sufficiently well-qualified to compete with other candidates will cause the cancellation of any further security investigation or evaluation.
- c. Favorable determinations regarding qualifications and suitability concerning a candidate for employment in a sensitive position will be referred back to *DS* for a final determination as to security clearance eligibility for appointment.

12 FAM 232.4 Security Clearance Updates

(CT:DS-112; 06-15-2005)

- a. DS will periodically update every employee's security clearance, as required by E.O. 12968. When required by circumstances that in DS' view may affect security clearance eligibility, DS will conduct an appropriate investigation and evaluate the results in accordance with the security standard contained in 12 FAM 232.1.*
- b. When requested by authorized investigators to provide appropriate documentation or furnish such additional information as may be required in connection with a properly authorized investigation, employees must promptly comply.*

12 FAM 232.5 Obligation To Report Certain Potentially Derogatory Information

(CT:DS-112; 06-15-2005)

- a. *Department employees should use good judgment and discretion in recognizing and avoiding situations and/or behavior that would call into question their judgment, reliability, and trustworthiness to safeguard information and to hold a position of trust and responsibility.*
- b. *Department employees must immediately report information of a potentially derogatory nature to the Director, Office of Personnel Security and Suitability (DS/SI/PSS), concerning their:*
 - (1) *Wage garnishments, credit judgments, repossessions, tax liens, bankruptcies and/or intentions to file for bankruptcy, or*
 - (2) *Adverse involvement with law enforcement agencies, to include:*
 - (a) *Arrests, other than minor traffic violations, for which a fine or forfeiture of \$150 or less was imposed; or*
 - (b) *Arrests for "driving under the influence" or "driving while intoxicated."*
- c. *Arrests must be reported in a timely fashion (within 72 hours) and must not be delayed pending the conclusion of any judicial action.*
- d. *Employees knowledgeable of any information that they believe may have a bearing on another individual's eligibility for access to classified information, as listed in 12 FAM 232.2, should report that information to the Director, DS/SI/PSS.*
- e. *Reporting pursuant to this section should be in writing and directed to the Director, DS/SI/PSS, and may be either faxed to (571) 345-3191, sent by e-mail to Director, Office of Personnel Security and Suitability, or mailed to DS/SI/PSS, Attn: Director, 11th floor, SA-20.*
- f. *Employees and contractors granted access to Sensitive Compartmented Information have additional reporting requirements under Director of Central Intelligence Directive 6/4. You should direct all Inquiries concerning those reporting requirements and reporting channels to the Director, Office of Information Security, Special Security Office (DS/SI/SSO), at: DS_SSO@state.gov.*

12 FAM 233 INITIAL CONSIDERATION AND ACTION BY THE DEPARTMENT

12 FAM 233.1 Authority

(CT:DS-112; 06-15-2005)

The Act of August 26, 1950 (64 Stat. 476), codified at 5 U.S.C. 7532, confers upon the Secretary of State the authority, in the Secretary's

absolute discretion, to suspend without pay any civilian officer or employee of the Department (including the Foreign Service of the United States) when deemed necessary in the interest of the national security (see 12 FAM 233.3 and 12 FAM 234). The Secretary delegates the authority to approve denial, revocation, or reduction of security clearance eligibility to the Assistant Secretary, Bureau of Diplomatic Security. When deemed appropriate, DS may take interim or alternative actions administratively, in accordance with 12 FAM 233.5.

12 FAM 233.2 Responsibility

(CT:DS-112; 06-15-2005)

The responsibility for the review and adjudication of the results of investigation conducted in accordance with 12 FAM 231.4, paragraph a, and 12 FAM 232.4 *will* rest with the Personnel Security *and* Suitability Division (DS/SI/PSS) *that* may:

- (1) Request further investigation, if such is required; or
- (2) Make appropriate referrals, as set forth in 12 FAM 232.3-3; or
- (3) Issue affirmative security clearance determinations or recommend denial or revocation/reduction of clearance eligibility, or suspension from employment under 5 U.S.C. 7532, if indicated; or
- (4) With reference to employees of the Department of State (to include the Foreign Service of the United States), take appropriate administrative actions as prescribed in 12 FAM 233.5, if deemed necessary or advisable.

12 FAM 233.3 Suspension from Employment Under 5 U.S.C. 7532

(CT:DS-112; 06-15-2005)

- a. The Department may not suspend an employee from employment under the authority set out in 12 FAM 233.1 pending further investigation when the information indicates that the employee could be retained in some other appropriate duty status during a continuing investigation without a material adverse effect on U.S. national security or the Department of State's effectiveness in fulfilling its responsibilities in the national interest. Absent persuasive and pressing risk to the national security, the Department *must* not suspend employment under this section based on mere suspicion, nor for matters *that* should be resolved under other authority or procedures. However, if information is received or developed at any stage of the investigation that indicates an employee's continued employment is not clearly consistent with the interests of the national

security and that immediate action is necessary to protect such interests, then nothing in these regulations *should* preclude the employee's suspension under 5 U.S.C. 7532.

- b. When deemed necessary in the interests of national security, the Assistant Secretary, Bureau of Diplomatic Security *must* submit a recommendation to suspend an employee from employment under 5 U.S.C. 7532, along with appropriate investigative materials, to the Secretary (or the Under Secretary for Management, acting in such matters as the Secretary's designee). The Secretary (or designee) *will* conduct an immediate review and evaluation, and make a positive determination as to the necessity for the recommended action. When action recommended by DS cannot be affirmatively supported, the Secretary (or designee) will provide a written statement to that effect to the Assistant Secretary, Bureau of Diplomatic Security. The statement *will also be included as* a part of the investigative file of the individual concerned; and the individual will be reinstated with any back pay due. (See 12 FAM 234.)

12 FAM 233.4 Denial, Revocation, or Reduction of Security Clearance Eligibility

(CT:DS-112; 06-15-2005)

- a. When, based on the results of competent investigation, DS concludes that issuing a security clearance for appointment, or continuing an employee's security clearance and/or employment status, is not clearly consistent with national security interests, DS/*SI*/PSS will forward their documented recommendation for denial, revocation, or reduction of security clearance eligibility, together with the entire investigative file, to the Director, Diplomatic Security Service, for approval.
- b. DS/*SI*/PSS will notify the individual of the denial of, or intent to revoke or reduce, security clearance eligibility, by letter explaining the action taken, the reasons for security concern upon which the action is based (to the extent permitted by national security considerations), and advise the individual of any recourse available, including procedures for obtaining access to the individual's investigative file (see 12 FAM 233.4 e below). Such a letter will provide as specific and detailed an explanation as permitted by security considerations, to include the mandatory protection of confidential sources of information. In the event that immediate suspension from employment under 5 U.S.C. 7532 is deemed advisable (in addition to the action to revoke security clearance eligibility), the Director, Diplomatic Security Service, will so recommend to the Assistant Secretary, Bureau of Diplomatic Security, under the provisions of 12 FAM 233.3, advising of any other actions already taken.

- c. Upon DS/*SI*/PSS's receipt of an employee's reply to a letter of intent to revoke or reduce security clearance eligibility (normally within a 30-day period, beginning with the employee's receipt of DS/*SI*/PSS's letter of intent), it will be provided with recommendations to the Director, Diplomatic Security Service, for determination. If a recommendation to revoke/reduce security clearance is sustained, the employee will be given an opportunity to appeal the decision formally. Responses to the employee's initial reply to DS, and to the employee's appeal to M, will be processed as quickly as possible (normally within 30 days).
- d. Such an appeal will be submitted within 30 days normally, and must be submitted to DS/*SI*/PSS. The Assistant Secretary for Diplomatic Security will transmit the appeal, along with the complete file and his or her recommendations, to the Under Secretary for Management, who will convene a three-person management-level panel to consider the appeal. The panel will consist of the Under Secretary for Management, the Assistant Secretary for Administration, and the Director General of the Foreign Service and Director of Human Resources. Should the Assistant Secretary or the Director General be unable to serve for any reason, the Under Secretary for Management will appoint a senior manager from that member's bureau to serve in their stead. If the Under Secretary for Management is unable to serve for any reason, the Deputy Secretary will appoint an appropriate substitute. The employee will have an opportunity to respond in writing to DS's recommendations. The panel will provide a final Department reply to the individual.
- e. Diplomatic Security will comply with requests for information from the individual's security file, or relating to criteria upon which the proposed action is based, to the extent permitted by regulation or national security considerations. Arrangements will be made as soon as possible to permit the individual (and the individual's attorney, when applicable) to review copies of DS reports of investigation. In the event that the reports contain classified information, arrangements for review will include the conduct, and evaluation for security clearance purposes, of limited security checks on the individual's attorney for the purpose of permitting classified access.

12 FAM 233.5 Administrative Alternatives to, or Interim Measures Pending, Suspension from Employment or Revocation/Reduction of Security Clearance Eligibility

(CT:DS-112; 06-15-2005)

Frequently, available information is insufficient to support summary suspension from employment under 5 U.S.C. 7532, or immediate action to

revoke or reduce clearance eligibility. Such information may nonetheless cause significant concerns requiring investigation and evaluation, or a period of vetting to resolve. In such cases, in order to provide the maximum protection to the national security, the operational effectiveness of the Department of State, or classified information or material, actions such as those described below *must* be used to the fullest practicable extent:

- (1) Suspension of an employee's clearance for access to specified levels of classified information or materials (to include any special access clearances held) and reassignment of the employee to duties involving no access or reduced access to classified information or material, and either no other sensitive duties or duties of lesser sensitivity. DS will resolve issues requiring the temporary suspension of clearance as quickly as possible (normally within 90 days); however, should additional time be required, a suspension of clearance will remain in effect until the precipitating issues can be resolved sufficiently to permit the restoration or revocation (or reduction of the level) of clearance; continuations of suspensions of clearance beyond 90 days *will* be reviewed biweekly by the Deputy Assistant Secretary for Diplomatic Security (or designee) to ensure every effort is being made to resolve the matter expeditiously; or
- (2) Use of stringent need-to-know restrictions pertaining to access to information (or assignment to duties) involving specified subject matter or specifically designated projects/documents, or other conditional or probationary terms of clearance, but without expressly suspending or reducing an employee's clearance; or
- (3) Reassignment to another post, or another position in the United States, which would remove the individual from a circumstance causing security concern and permit the employee's continued (cleared) employment in a productive capacity for the Department.

12 FAM 234 PROCEDURES AFTER SUSPENSION FROM EMPLOYMENT UNDER 5 U.S.C. 7532

12 FAM 234.1 Notice and Answer

(CT:DS-112; 06-15-2005)

After an employee's suspension under the provisions of *12 FAM 233.3 b*, the procedures stated below *must* be followed.

12 FAM 234.1-1 Statement of Charges

(CT:DS-112; 06-15-2005)

- a. A suspended employee (under 5 U.S.C. 7532), who is a citizen of the United States and who has a permanent or indefinite appointment and has completed the probationary or trial period, *will* be furnished a written statement of charges within 30 days after suspension.
- b. The statement of charges *will* be signed by the Assistant Secretary, Bureau of Diplomatic Security, and be as specific and detailed as permitted by security considerations, including the need for protection of confidential sources of information. The statement *will* be subject to amendment within 30 days of issuance.
- c. The employee *will* have the right within 30 days after issuance of the statement of charges, or any amendment thereof, to answer the charges and submit affidavits.

12 FAM 234.1-2 Notification of Suspension

(CT:DS-112; 06-15-2005)

- a. A suspended employee (under 5 U.S.C. 7532), not within the terms referenced in section 234.1-1, *will* be notified as soon as possible of the reasons for suspension.
- b. The notice *will* be signed by the Assistant Secretary, Bureau of Diplomatic Security, and *will* be as specific and detailed as permitted by security considerations, including the need for protection of confidential sources.
- c. The employee *will* have the right to submit, within 30 days after notice of the reasons for suspension, a statement with affidavits refuting or explaining the stated reasons for suspension.

12 FAM 234.2 Sufficiency of Answer

12 FAM 234.2-1 Hearing and Final Recommendations

(CT:DS-112; 06-15-2005)

Statements, affidavits, and supporting documents submitted in answer to the notice or charges referred to in 12 FAM 234.1-1 and 12 FAM 234.1-2 *must* be considered by a designated representative from the Office of the Legal Adviser for sufficiency. The Under Secretary for Management, the Legal Adviser, and the Assistant Secretary, Bureau of Diplomatic Security *will* then conduct a hearing to allow the employee to answer charges, give explanations, examine and cross-examine witnesses, and to present documentary evidence. After consultation, a joint recommendation for the

disposition of the case *will* be provided, along with all relevant documentation (including results of the hearing and any documentary evidence), to the Secretary of State (or the Secretary's designee). If the recommendations differ, both *will* be provided for consideration by the Secretary (or the Secretary's designee).

12 FAM 234.2-2 Determination

(CT:DS-112; 06-15-2005)

Upon receipt of the recommendation or recommendations referred to in 12 FAM 234.2-1, the Secretary of State (or the Secretary's designee) *must* review the entire case and make a determination of the case as follows:

- (1) If reinstatement of the suspended employee to the position from which the employee has been suspended is found to be clearly consistent with national security interests, the Secretary (or the Secretary's designee) may restore the employee to such position, and provide any compensation (back pay) lost because of the suspension; or
- (2) If reinstatement to the position from which the employee has been suspended is not found to be clearly consistent with national security interests, but it is found that employment of the suspended employee in another position in the Department of State is clearly consistent with national security interests, the Secretary (or the Secretary's designee) may restore the employee to duty in such other position, with security clearance (or none) appropriate to the new position, and provide any compensation (back pay) lost because of the suspension; or
- (3) If the Secretary does not find that reinstatement of the suspended employee to any position in the Department is clearly consistent with national security interests, the Secretary *will* terminate the employment of the suspended employee.

12 FAM 234.2-3 Notification

(CT:DS-112; 06-15-2005)

The Department *must* furnish the employee with a formal notice of the final disposition of the charges.

12 FAM 234.2-4 Applicability

(TL:DS-89; 04-15-2003)

The foregoing procedures (*see 12 FAM 234*) will be used only in case of suspension from employment under 5 U.S.C. 7532, and will in such instance

supersede the procedures set forth in 12 FAM 233.4 for revocation of security clearance eligibility.

12 FAM 235 THROUGH 239 UNASSIGNED