

# **12 FAM 230**

## **PERSONNEL SECURITY**

*(TL:DS-89; 04-15-2003)*  
*(Office of Origin: L/LM)*

### **12 FAM 231 GENERAL PROVISIONS**

#### **12 FAM 231.1 Definitions**

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

The terms used herein are defined as follows:

(1) “Department” and “Department of State” shall be understood to include the Foreign Service of the United States.

(2) “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.

(3) “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 shall not be afforded to any individual solely by virtue of the individual’s office, position, or security clearance.

(4) “Security clearance” is a certification that a U.S. citizen, who requires access to information classified at a certain level, has been found security eligible under DoS standards and may be permitted access to classified information at the specified level.

(5) “Security eligibility” is 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.

(6) “Sensitive position” shall mean any position in the Department of State 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 the operations and activities of the Department, all positions shall be considered as critical-sensitive, except for such positions as may be specifically designated otherwise by the Bureau of Diplomatic Security (DS). Recommendations for exceptions will be submitted to the Personnel Security/Suitability Division (DS/ICI/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 shall determine 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). The President has issued 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, relating to requirements for Government employment. In addition, the President has issued Executive Order 12356, dated April 2, 1982, governing the safeguarding of national security information (to include access thereto), and 10865, dated February 20, 1960, relating 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) has 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 application of applicable security criteria to applicants and employees of the Federal Government, and to individuals 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 criteria of E.O. 10450 will be used for all such security adjudication by the Department. Subsumed within the broad authority to suspend employment under 5 U.S.C. 7532 is the authority to take measures of a more limited nature, 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, and may be taken administratively by the Bureau of Diplomatic Security, acting for the Secretary of State pursuant to the above cited authorities.

(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) Any such measures, other than the revocation or reduction of clearance for cause, may be applied 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 also 12 FAM 233.5.)

(3) The employee will be informed 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**

*(TL:DS-39; 08-15-1994)*

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 shall be 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 which 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 the Bureau of Diplomatic Security. To wit:

(1) In view of the low degree of risk to the national security, which can be accepted, a critical element in granting access to classified information or to sensitive facilities is whether there exists the requisite confidence in a person's ability to protect this nation's secrets of state. The protection of the national interest shall 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 (12 FAM 233.5). Clearance will also be suspended pending final determination regarding proposals to reduce or revoke security clearance (12 FAM 233.4) or to suspend the individual from employment under 5 U.S.C. 7532 (12 FAM 233.3).

(2) Regarding decisions to temporarily suspend security clearance, the Bureau of Diplomatic Security is responsible for ensuring that any reasonable doubts concerning a person having access to classified information or to sensitive facilities shall be resolved in favor of the national security and against the person having such access; the Bureau of Diplomatic Security 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) Final decisions as to whether or not the Department of State should reduce or revoke a security clearance will be based generally upon the same principle, but will afford the employee opportunities to respond to the Bureau of Diplomatic Security to 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 will be given 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 are designed to 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 missions and functions of the organization.

(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**

a. Every appointment to a sensitive position within the Department of State shall be made subject to a full field investigation; except that, 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). It is further provided that, 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 preappointment investigation has been initiated but not completed if the Secretary of State finds that such action is necessary in the national interest. Such finding shall be filed in both the investigative and personnel records of the person concerned.

b. The employment of aliens by the Foreign Service Institute will initially be subject to such investigation as may reasonably be expected to provide a valid basis for security evaluation; provided that, update full-field background investigations will subsequently be scheduled when the employee has been employed by the Department for two years, again after an additional three years, and thereafter as required for the periodic reinvestigation of occupants of critical-sensitive positions.

c. The Diplomatic Security Service (DSS) shall conduct such investigations as may be required by the investigative responsibilities of the Secretary of State pursuant to law, executive order, agreement with the Office of Personnel Management, or as otherwise determined by the Secretary.

d. If, in the course of an investigation of an employee or an applicant for employment, or otherwise, information is received by the Diplomatic Security Service 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 shall be referred to the Federal Bureau of Investigation for investigation.

e. While the Diplomatic Security Service 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**

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

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 shall 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**

*(TL:DS-16; 10-31-1991)*

Information about an applicant or employee of the Department of State which may preclude a finding that security eligibility for clearance, employment, or continued employment is clearly consistent with the interests of the national security shall 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 which 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 which 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 thereof 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 inimical 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 knowing affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which 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 which 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 of which 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, upon the ground 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**

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

a. Results of investigation concerning a proposed appointee or an incumbent employee will be reviewed on their individual merits. Fundamental to each decision to grant security eligibility is an affirmative determination that security eligibility meets the criterion that it be clearly consistent with the interests of national security. 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, such as 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, it shall be a prerequisite for any person having access to classified information or to sensitive facilities to be trustworthy and reliable, to have excellent character, judgment, and discretion, and to be without susceptibility 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 which 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, reside in a foreign country, 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**

(TL:DS-16; 10-31-1991)

No decision shall be made to appoint, retain in employment, or sustain continued clearance for access to classified information (as defined by Executive Order 12356) regarding 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**

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

a. In adjudicating the results of investigation, the Bureau of Diplomatic Security 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 as to whether an individual's appointment, retention, or continued clearance for access to classified information is clearly consistent with the interest of the national security. Questions of a medical nature, which may bear on determinations of security clearance eligibility, may 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 the Bureau of Diplomatic Security. 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 the Bureau of Diplomatic Security for a final determination as to security clearance eligibility for appointment.

## **12 FAM 232.4 Security Updating**

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

The Diplomatic Security Service will update the security clearances of all employees periodically, or as required by changed circumstances or information which could affect security clearance eligibility, by conducting appropriate investigations and evaluating the results in accordance with the security standard contained in 12 FAM 232.1. When requested by the Diplomatic Security Service to provide appropriate documentation, or furnish such additional information as may be required by authorized investigators, in connection with a properly authorized updating investigation, employees will comply promptly in accordance with the provisions of 3 FAM.

## **12 FAM 233 INITIAL CONSIDERATION AND ACTION BY THE DEPARTMENT**

### **12 FAM 233.1 Authority**

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

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 of State (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 authority to approve denial, revocation or reduction of security clearance eligibility, is delegated by the Secretary to the Assistant Secretary, Bureau of Diplomatic Security. When deemed appropriate, interim or alternative actions may be taken administratively by the Bureau of Diplomatic Security in accordance with 12 FAM 233.5.

### **12 FAM 233.2 Responsibility**

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

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 shall rest with the Personnel Security/Suitability Division, Bureau of Diplomatic Security (DS/ICI/PSS) which 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**

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

a. An employee may not be suspended from employment under the authority set out in 12 FAM 233.1 pending further investigation when the information indicates that retention in some other appropriate duty status during a continuing investigation could be arranged without a material adverse effect on the national security of the United States or the effectiveness of the Department of State in fulfilling its responsibilities in the national interest. Absent persuasive and pressing risk to the national security, employment shall not be suspended under this section based on mere suspicion, nor for matters which should be resolved under other authority or procedures. However, nothing in these regulations shall be construed to preclude the suspension of an employee under 5 U.S.C. 7532 at any stage of investigation if information is received or developed which indicates that the continued employment of such employee is not clearly consistent with the interests of the national security and which reflects that immediate action is necessary to protect such interests.

b. When deemed necessary in the interests of national security, the Assistant Secretary, Bureau of Diplomatic Security shall submit a recommendation that an employee be suspended 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) who shall conduct an immediate review and evaluation, and shall make a positive determination as to the necessity for the recommended action in the interest of the national security. When action recommended by the Bureau of Diplomatic Security cannot be affirmatively supported, a written statement to that effect will be provided to the Assistant Secretary, Bureau of Diplomatic Security, and shall be made a part of the investigative file of the individual concerned; and the individual will be reinstated with any back pay due. (Also, see 12 FAM 234.)

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

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

a. When, on the basis of the results of competent investigation, it is concluded that the issuance of security clearance for appointment, or the continuation of an employee's security clearance and/or employment status, is not clearly consistent with the interest of the national security, the documented DS/ICI/PSS recommendation for denial, revocation, or reduction of security clearance eligibility, together with the entire investigative file, will be forwarded to the Director, Diplomatic Security Service, for approval.

b. The individual will be notified by DS/ICI/PSS 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 advising of any recourse available to the individual, to include procedures for obtaining access to the individual's investigative file (see also paragraph e of this section). 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/ICI/PSS's receipt of a 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/ICI/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 an 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/ICI/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 be afforded an opportunity to respond in writing to the recommendations provided to the panel by the Assistant Secretary for Diplomatic Security. The panel will provide a final Departmental reply to the individual.

e. The Diplomatic Security Service 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**

*(TL:DS-32; 08-05-1993)*

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 shall 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 shall 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**

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

After an employee has been suspended under the provisions of *12 FAM 233.3b*, the procedures stated below shall be followed.

#### **12 FAM 234.1-1 Statement of Charges**

*(TL:DS-32; 08-05-1993)*

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 shall be furnished a written statement of charges within 30 days after suspension.

b. The statement of charges shall be signed by the Assistant Secretary, Bureau of Diplomatic Security, and shall be as specific and detailed as permitted by security considerations, including the need for protection of confidential sources of information. The statement shall be subject to amendment within 30 days of issuance.

c. The employee shall 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**

*(TL:DS-39; 08-15-1994)*

a. A suspended employee (under 5 U.S.C. 7532) not within the terms of reference of section 234.1-1 shall be notified as soon as possible of the reasons for suspension.

b. The notice shall be signed by the Assistant Secretary, Bureau of Diplomatic Security, and shall be as specific and detailed as permitted by security considerations, including the need for protection of confidential sources.

c. The employee shall 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**

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

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 shall 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 shall then conduct a hearing to allow the employee to answer charges, give explanations, to examine and cross-examine witnesses, and to present documentary evidence, prior to submitting recommendations to the Secretary of State (or the Secretary's designee). After consultation, a joint recommendation for the disposition of the case shall 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 shall be provided for consideration by the Secretary (or the Secretary's designee).

### **12 FAM 234.2-2 Determination**

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

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

(1) If reinstatement of the suspended employee in the position from which the employee has been suspended is found to be clearly consistent with the interests of the national security, the Secretary (or the Secretary's designee) may restore the employee in such position, and provide any compensation (back pay) lost because of the suspension; or

(2) If reinstatement in the position from which the employee has been suspended is not found to be clearly consistent with the interests of the national security, but it is found that employment of the suspended employee in another position in the Department of State is clearly consistent with the interests of the national security, 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 of State is clearly consistent with the interests of the national security, the Secretary shall terminate the employment of the suspended employee.

**12 FAM 234.2-3 Notification**

*(TL:DS-16; 10-31-1991)*

The employee shall be furnished 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**