

SUITABILITY

*The Office of Personnel Management (OPM) has provided the following information to give a broad overview of the Federal employment suitability program and processes to our industry partners. It is excerpted from current guidance distributed by OPM to Executive Agencies. Although not mandated by formal policy, agencies often apply similar requirements for suitability to contractors who have staff-like access.**

The civil service requires high standards of integrity and trust to promote the interests of the public. OPM established a suitability program in the Federal competitive service to reduce the potential for abuse of the public trust, to ensure government-wide uniformity and fairness for applicants, appointees, and employees, and to determine suitability for employment. The requirements of this program apply to applicants for employment and to individuals already employed.

Suitability refers to identifiable character traits and conduct sufficient to decide whether an individual is likely or not likely to be able to carry out the duties of a Federal job with appropriate integrity, efficiency, and effectiveness. Suitability is distinguishable from a person's ability to fulfill the qualification requirements of a job, as measured by experience, education, knowledge, and skills. Suitability actions include the following:

- Cancellation of eligibilities
- Debarment
- Removal

A non-selection for a specific position is not a suitability action unless one or more of the above actions is taken.

Appointments Subject to Investigation

As required in 5 CFR 731, persons appointed in the competitive service must undergo an investigation by OPM or by an agency conducting investigations under delegated authority from OPM. Except when required because of risk level changes, a person in the competitive service who has undergone a suitability investigation need not undergo another investigation simply because the person has been:

- Promoted;
- Demoted;
- Reassigned;
- Converted from career-conditional to career tenure;
- Appointed (or converted to an appointment) when that employee has been serving with that agency for at least one year in one or more positions under an appointment subject to investigation; or,
- Transferred, provided the individual has served continuously for at least one year in a position subject to investigation.

Reemployment

Reemployment is not one of the general exceptions listed above. When individuals are reemployed in Federal service, they should complete a new Declaration for Federal Employment (OF 306). They should also complete new investigative questionnaires (or update their prior form if the public trust or sensitivity level of their new position is the same as their previous one). If suitability issues are admitted on the OF 306 or investigative questionnaire, or if they are otherwise developed, they should be investigated and adjudicated.

If there are no suitability issues, and there has not been a break in service of longer than 24 months, a new investigation is not necessary unless it is required under 5 CFR 732, or other authority, or because of a higher public trust risk level. The adjudicative guidelines established by 5 CFR 731 will be used for all reemployments that are subject to investigation and adjudication.

Adjudicative Standards

The objective in adjudicating national security is to establish a reasonable expectation that employment or continued employment of the person would or would not be clearly consistent with the interests of national security. This security determination is an individual agency responsibility that is made in addition to the suitability determination and is separate and distinct from the suitability determination.

A major difference between suitability adjudication and security adjudication is that suitability adjudication considers only an individual's personal conduct while security concerns may go beyond the individual's conduct to that of (for example) their associates or relatives, or the influence of foreign contacts. (5 CFR 732, EO 10450, EO 12968, and related authorities provide more detailed guidance on adjudicating for national security.)

Many security issues may also be disqualifying under suitability. OPM recommends that each case be adjudicated under suitability criteria prior to adjudication under security criteria. An adverse suitability determination may result in a decision that a period of debarment for up to three years from all positions in the competitive Federal service is warranted. An agency may deny a security clearance based in part on the presence of a previous negative determination, but there is no administrative procedure mandating automatic government-wide debarment for security clearance determinations.

Public Trust

Designation of Public Trust Positions Agencies are responsible for designating each competitive service position within the agency based on the documented duties and responsibilities of the position. Each position will be designated at the High, Moderate, or Low risk level depending on the position's potential for adverse impact to the integrity and efficiency of the service (5 CFR 731.106). Positions at the High and Moderate risk levels are referred to as "Public Trust" positions. These positions generally involve the

following duties or responsibilities:

- Policy making
- Major program responsibility
- Public safety and health
- Law enforcement duties
- Fiduciary responsibilities
- Other activities demanding a significant degree of public trust.

Public Trust positions also involve access to, operation or control of proprietary systems of information, such as financial or personal records, with a significant risk for causing damage to people, programs or an agency, or for realizing personal gain.

Risk Levels. The three suitability position risk levels are defined and explained in the table below.

RISK LEVELS	DEFINITIONS AND REPRESENTATIVE DUTIES OR RESPONSIBILITIES
<p>HIGH (HR)</p> <p>Public Trust Position</p>	<p>Positions with the potential for <i>exceptionally serious impact</i> on the integrity and efficiency of the service.</p> <p>Duties involved are especially critical to the agency or program mission with a broad scope of responsibility and authority. Positions include:</p> <ul style="list-style-type: none"> • Policy-making, policy-determining, and policy-implementing; • Higher level management duties or assignments, or major program responsibility; • Independent spokespersons or non-management position with authority for independent action; • Investigative, law enforcement, and any position that requires carrying a firearm; and • Fiduciary, public contact, or other duties demanding the highest degree of public trust
<p>MODERATE (MR)</p> <p>Public Trust Position</p>	<p>Positions with the potential for <i>moderate to serious impact</i> on the integrity and efficiency of the service.</p> <p>Duties involved are considerably important to the agency or program mission with significant program responsibility or delivery of service. Positions include:</p> <ul style="list-style-type: none"> • Assistants to policy development and implementation; • Mid-level management duties or assignments; • Any position with responsibility for independent or semi-independent action; and • Delivery of service positions that demand public confidence or trust.
<p>LOW (LR)</p>	<p>Positions that involve duties and responsibilities of <i>limited relation</i> to an agency or program mission, with the potential for <i>limited impact</i> on the integrity and efficiency of the service.</p>

Investigative Requirements Pursuant to the authority delegated by the President of the United States under 5 U.S.C. sections 1104 and 3301, and Executive Order 10577, OPM requires individuals seeking admission to the civil service to undergo investigation to establish their suitability for employment. OPM has determined that varying levels of investigation are appropriate, depending on the responsibilities of the position. The minimum level of investigation required for entry into the Federal service is the National Agency Check with Inquiries (NACI). OPM recommends that individuals in contract and excepted service positions also be investigated appropriately in order to ensure they are suitable to carry out their duties and responsibilities in a manner that will protect the integrity and promote the efficiency of the service. The same method of determining which level of investigation to conduct on competitive service positions (i.e., Risk

Designation System) should be used for contractors or excepted service positions.

The type of investigation to conduct is a product of the risk level designation of a position and, if appropriate, National Security requirements. OPM has established the following **minimum** levels of **required** investigation for positions at the Low, Moderate, and High risk levels:

RISK LEVEL		MINIMUM REQUIRED INVESTIGATION
LOW Risk	→	NACI – National Agency Check and Inquiries
MODERATE Risk	→	MBI – Minimum Background Investigation
HIGH Risk	→	BI – Background Investigation

An MBI is essentially an NACI plus a Subject Interview. A BI is essentially an MBI plus 5 years of personal coverage of a person’s employment, residential and educational history.

In some cases, OPM recommends a more comprehensive investigation to take into account unique factors specific to the duties and responsibilities of a position, the organizational need for uniformity of operations, or National Security considerations.

Relationship of Suitability Risk and National Security Sensitivity to Investigation Type

Basic suitability screening is required for all positions. The first determination an agency must make is whether the person has the character traits and past conduct expected of someone who is to carry out the duties and responsibilities of a Federal job in order to protect the integrity and promote the efficiency of the service.

Once a suitability determination is made, if appropriate, the person then can be screened based on National Security considerations, including considerations for access to classified information and sensitive, restricted facilities (as outlined in 5 CFR 732). Because Public Trust duties and responsibilities may outweigh National Security considerations at the lower access levels (Secret and Confidential), agencies must consider both suitability and security aspects of a position in determining the appropriate type of investigation to conduct.

For example, if a position is designated High Risk under suitability, but the incumbent of that position needs a Secret clearance; a Background Investigation (BI) is required. A BI is the minimum investigation required for a position designated High Risk. So although an Access National Agency Check with written inquiries (ANACI) is the appropriate level of investigation for the Secret clearance, it would not be appropriate in this instance because a BI is required for the High Risk under suitability. Of the two investigation types, ANACI and BI, the BI provides the higher level of screening required for the High Risk position. The BI also meets the investigative requirement

for Secret access. The ANACI does not meet the screening requirements for a High Risk position.

Timing of Investigations Investigations should be initiated before appointment or, at most, within 14 calendar days of placement in the position. If, at any time, it is determined that a required investigation has never been conducted for the initial subject to investigation appointment, the appropriate required investigation must be conducted even if there have been subsequent personnel actions that would not be subject to investigation (such as transfers, promotions, or reassignments).

Change in Position Risk Level All employees moving to a new position at a higher risk level than the risk level of the position they left must meet the investigative requirements of the risk level designation of the new position. Any required higher level investigation must be initiated within 14 working days of the date the new position is occupied. If the risk level of an incumbent's position is increased due to a change in duties and responsibilities, the incumbent may remain in the position, but the investigation required by the higher risk level should be initiated within 14 working days of the effective date of the new position designation. This guidance applies to details as well as permanent reassignments.

If there are new potentially disqualifying suitability issues after such an investigation, the authority the agency uses to adjudicate will depend on the subject's employment status: 5 CFR 315, to terminate a temporary appointment; 5 CFR 752, if an adverse action under that authority is warranted; etc.

Exceptions to Investigative Requirements Exceptions to the investigative requirements are made in the following positions at the Low risk level: intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments. *The agency must still conduct sufficient checks to ensure that the employment or retention of the individual is clearly consistent with the integrity and efficiency of the service (5 CFR 732.202).*

Questionnaires for Suitability Investigations Use the Standard Form 85 (SF 85) *Questionnaire for Non-Sensitive Positions* for all positions designated Low Risk. For positions designated Moderate or High Risk, use the Standard Form 85P (SF 85P) *Questionnaire for Public Trust Positions*. The Standard Form 86 (SF 86) *Questionnaire for National Security Positions* is to be used for positions involving the National Security with sensitivity level designations. Permission to use the SF 86 for positions with other than sensitivity level designations (i.e., public trust positions) must be obtained from OPM prior to using the form to initiate investigations. The Standard Form 85P-S (SF 85PS) *Supplemental Questionnaire for Selected Positions* contains additional questions and is used only when an agency requests, and is granted, OPM approval to use it (by Special Agreement with OPM).

If a new investigation is needed because of a risk or sensitivity level change, the person should complete a new investigative form. A previously completed investigative form may be updated for this purpose only when the same form is required for the new investigation (and the form has not been revised or replaced with

a newer version).

Suitability Reinvestigations Although OPM has no authority to require agencies to conduct reinvestigations in suitability cases, we recommend reinvestigations for certain Moderate and High Risk public trust positions. Lacking a requirement to request reinvestigations, agencies must ensure they have appropriate authority, such as the Computer Security Act of 1987, OMB Circular No. A-130, agency-specific regulations, or written policy. When the authority exists, OPM recommends a minimum of a Periodic Reinvestigation (PRI) for High Risk positions, a National Agency Check with Credit (NACC) investigation for Moderate Risk positions.

Agencies may request variations in the type of reinvestigations from OPM and may make their requirements appropriate to specific positions. For example, for a position with access to money where there is a potential for theft, such as an Imprest Fund Manager or Bank Examiner, the appropriate reinvestigation could be a credit search, Subject interview, and residence coverage.

**The implementation of Homeland Security Presidential Directive 12(HSPD-12) has extended the basic investigative requirement to uncleared contractors. These persons must, under HSPD-12, receive at least a NACI level investigation. Therefore, agency discretion with regard to the investigation of this population has been greatly reduced. Official guidance with regard to HSPD-12 implementation is available from OMB.*