



Tips and Tidbits Issue #: 8-2011



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Question: What is suitability for employment and how is it determined? By what authority must this determination be made? What happens if this determination is unfavorable?

The civil service requires high standards of integrity and trust to promote the interests of the public. To ensure this, by law, the Office of Personnel Management (OPM) is authorized to establish and carry out a program for investigating and adjudicating the suitability of applicants for, and appointees to, the Federal competitive service*. As required in 5 Code of Federal Regulations (CFR) 731, persons subject to appointment in the competitive service must undergo an investigation and are required to furnish information, testimony, documents and materials to OPM [or an agency conducting investigations under delegated authority from OPM], to carry out suitability program responsibility.

Suitability is defined as an individual's identifiable:

- character traits and conduct that is sufficient to decide whether the individual's employment or continued employment would or would not
- protect the integrity or promote the efficiency of the Federal service

Suitability does not evaluate an individual's education, skills, knowledge, or experience. Rather, it requires that the Employer investigate the background of each applicant, appointee, and/or employee to determine the degree of risk the individual brings to the position; and, certify that the individual's past conduct would not interfere with his/her performance of duties and responsibilities of the position and that the individual's presence on the job would not create an immediate or long-term risk that inhibits other employees or the Agency from performing their functions.

Proper position designation is the foundation of an effective and consistent suitability program as it determines the type of investigation required and how closely an individual is screened for a position. In concert with HR Specialists, Management officials are responsible for designating risk levels for each competitive service position within the Agency. This designation is based on the position's documented duties and responsibilities and is designated as high, moderate, or low risk depending on the position's potential for adverse impact to the integrity and efficiency of the service. Also to be taken into consideration when determining risk, as authority and responsibility become greater, character and conduct become more significant in deciding whether employment and/or continued employment would protect integrity and promote efficiency.

All appointments, transfers, and conversions to a covered position require completion of an investigation except that such appointments, transfers and conversions are not subject to an investigation when a prior investigation resulted in favorable suitability determination and the person has been serving continuously for a least one year in a covered position. The exception does not apply however, in any instance when movement is to a position with a higher risk level of investigation than previously conducted for the individual; new information obtained by the Agency subsequent to investigation calls into question the person's suitability; a position designation change increases the risk level of the position; and when the position is low risk, intermittent, seasonal, per diem, or temporary not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments**. Additionally, 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***.

In making determinations, all the information of record, both favorable and unfavorable, is considered and assessed. As outlined in 5 CFR § 731.202(c), other criteria/information factors deemed pertinent to the individual case such as the nature of the position for which the person is applying or in which the person is employed; nature and seriousness of the conduct; circumstances surrounding the conduct; recency of the conduct; age of the person involved at the time of the conduct; contributing societal conditions; and, absence or presence of rehabilitation or efforts toward rehabilitation, should also be considered.

Depending on the results, suitability action against an applicant/employee may be warranted. An unfavorable suitability determination may result in rating an applicant ineligible, canceling any eligibility an applicant may have been afforded, removing the individual from Federal service, and/or debaring the individual from future Federal employment. Examples of cause for action resulting from a suitability investigation may include but are not limited to a conviction not reported; intentional fraud in the employment process (e.g. experience not reported on questionnaire); credit reports/personal debt; arrest records; driving related incidences (i.e. DWI, DUI, loss of license); drug use; dishonest conduct; domestic violence; previous employment misconduct; knowing and willful engagement in acts or activities designed to overthrow the United States Government; and, any statutory or regulatory bar which prevents the lawful employment of the individual involved in the position in question.

An individual who has been found unsuitable for employment may appeal the decision to the Merit System Protection Board (MSPB).

For additional information, please contact your servicing CPAC Human Resources Specialist.

*Positions covered include the competitive service, career appointments in the Senior Executive Service, and excepted service positions that can be non-competitively converted to competitive service.

** 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).

*** The adjudicative guidelines established by 5 CFR 731 will be used for all reemployments that are subject to investigation and adjudication.

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