

Introduction to Suitability Adjudications for the DOD **Student Guide**

March 2024

Center for Development of Security Excellence

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Lesson 1: Course Overview

Course Introduction

Course Overview

Imagine three individuals: Ernie, Tracey, and Lynn. Ernie has recently been laid off from his job in the private sector and is looking for civilian employment within the Department of Defense (DOD). Years ago, Ernie was convicted of driving while intoxicated. He completed an alcohol treatment program, but he struggles with alcohol use disorder. Tracey is an experienced billing systems specialist applying for a position at a military installation. This position requires a high degree of public trust. Tracey has a history of theft in the workplace and was terminated from her last job. Lynn is applying for an executive administrative assistant position within the Defense Counterintelligence and Security Agency (DCSA). Her resume lists a master's degree from a prestigious university, but a background investigation reveals that she never actually attended college.

Which of these individuals is suitable for federal employment? How will you decide?

The individuals in these examples are applying for civilian positions that require varying degrees of trust, but each of them also has character flaws and a history of conduct that could affect his or her ability to perform federal job duties with appropriate integrity, efficiency, and effectiveness. As a suitability adjudicator for the DOD, it is your job to determine whether people like these are suitable for employment in the DOD.

Welcome to the Introduction to Suitability Adjudications for the DOD course.

NOTE: This course provides an introduction to DOD Suitability Adjudications. Per DODI 1400.25, Volume 731, DOD Suitability Adjudicators are required to use the U.S. Office of Personnel Management, Federal Investigative Services Division "Suitability Processing Handbook", dated September 2008 when making all suitability determinations for covered positions. Designated DOD Suitability Adjudicators can obtain the OPM handbook from their designated agency/component suitability point of contact (POC). The POC will release the handbook after validating need and obtaining the appropriate signed receipt and agreement from the requesting adjudicator.

Course Objectives

The overarching purpose of adjudications is to ensure that all individuals working in the DOD are loyal, trustworthy, and of good conduct. In this course you will learn about suitability adjudications in the DOD and the role that suitability plays in protecting the integrity of the federal civil service. You will learn the basic phases of suitability and the responsibilities of OPM and the employing agency or component during each of these phases. Finally, you will learn the specific role the DOD adjudicator plays in conducting suitability adjudications.

Here are the course objectives:

- Identify the purpose of suitability adjudications
- Recognize the legal and regulatory framework that governs suitability adjudications

- Identify the responsibilities and processes of OPM, the agency, and the adjudicator in determining suitability
- Identify the types of investigations used to support suitability adjudications
- Recognize the five personnel vetting scenarios
- Identify the basic evidence standards for suitability actions
- Identify the eight suitability factors and seven additional considerations used in suitability adjudications

Lesson 2: Introduction to Suitability

Introduction

Objectives

Suitability refers to identifiable character traits and conduct that indicate whether an individual is likely to be able to carry out the duties of a federal job with integrity, efficiency, and effectiveness. At the most fundamental level, the suitability program has one purpose: to ensure that individuals are suitable for employment in the federal government.

This lesson will briefly review the three main types of adjudications and will then focus on suitability and fitness trust determinations or adjudicative decisions. It will discuss the purpose and the elements of Federal personnel vetting. Finally, it will review the legal and regulatory foundations of suitability adjudications that govern Federal personnel vetting.

Here are the lesson objectives:

- Identify the purpose of suitability review and adjudications
- Identify the basic elements of the suitability process
- Identify the legal and regulatory foundations of suitability adjudications

Overview of Adjudications

Purpose of Adjudications

In order to access classified information, perform sensitive duties, work in the competitive or excepted federal service, or receive credentials to access DOD-controlled facilities or information systems, DOD employees and contractor personnel must undergo investigation and adjudication by trusted government personnel.

During an adjudication, trusted government personnel evaluate pertinent information obtained from background investigations and other reliable sources to ensure that all individuals who work for the DOD are loyal, trustworthy, and of good conduct.

Types of Adjudications

There are three main types of adjudications in the DOD: national security, suitability and fitness, and Homeland Security Presidential Directive, HSPD-12, Credentialing. National security adjudications determine whether an individual is eligible to access classified information or perform sensitive duties that could result in an unacceptable adverse effect on national security.

Suitability adjudications determine whether the character and conduct of an individual may have an adverse impact on the integrity or the efficiency of the federal service. In some cases, the suitability adjudication is more extensive and may determine whether an individual should be allowed to hold a position requiring public trust. Along the lines of suitability adjudications, fitness determinations ensure that individuals working in excepted service positions or as defense contractors have the character or conduct necessary to perform work for, or on behalf of, a federal agency.

Finally, HSPD-12 adjudications determine who may be issued credentials for physical access to DOD-controlled facilities or logical access to information systems such as secure computers and networks. Note that in some cases, individuals must receive trust determinations for both national security and suitability. In these cases, the suitability trust determination occurs first to ensure that the individual is suitable for employment before valuable time and resources are invested in a national security trust determination.

Although this course focuses specifically on suitability trust determinations, it is important for you to be aware of the other types of trust determinations so that you can better understand how suitability fits into the bigger picture of protecting the interests of the federal government.

Under the Trusted Workforce 2.0 (TW 2.0), the Common Principles in Applying Federal Personnel Vetting Adjudicative Standards (Common Principles) were issued by the Director of the Office of Personnel Management as the Suitability and Credentialing Executive Agent. The Common Principles outline an adjudicative process framework to promote consistency and fairness in the adjudication process across all personnel vetting domains (suitability, fitness, national security, and credentialing). The framework includes the following five components: Investigation, Order of Operation, Risk Assessment, Preliminary Determination, and Trust Determination. The Common Principles reiterate the requirement of adjudicative entities to record personnel vetting trust determinations, and emphasize that accurate recording promotes transparency, enhances mobility, and facilitates information-sharing.

Five Components of the Common Principles Framework

- (1) Investigation: Investigative Service Providers (ISPs) collect information and provide adjudicators with a report needed to support a trust determination.
- (2) Order of Operation: Trust determinations are made in the following sequence:
 - (a) Suitability or fitness trust determination, if applicable.
 - (b) National security trust determination, if applicable.
 - (c) Credentialing trust determination, if needed.
- (3) Risk Assessment: Adjudicators will analyze investigative and/or developed information to determine the likelihood an individual presents or will present an unacceptable risk to people, property, information, or mission.

- (4) Preliminary Determination: Using the adjudicative criteria for the applicable personnel vetting domain(s) to assess the results of high-yield checks, Departments and Agencies may make a preliminary determination to onboard the individual, prior to completing the investigative coverage requirements and making the trust determination.
- (5) Trust Determination: When the investigation meets the requirements in the Federal Personnel Vetting Investigative Standards and there are no issues, a Favorable trust determination is made. When issues are present, the adjudicator will conduct further analysis.

What are Suitability Adjudications?

Recall that the fundamental purpose of the suitability program is to determine suitability for federal employment. To be considered suitable for employment in the federal competitive service, individuals must meet certain criteria established by the Office of Personnel Management (OPM). They must demonstrate that they will maintain high standards of conduct. They must be of good character and reputation. They must be trustworthy and be suitable to perform the duties of the position.

Suitability applies to several categories of employees. Related to suitability is the concept of fitness, which applies to different categories of employees but often holds people to standards similar to those used for suitability. Note that suitability and fitness determinations are distinct from the assessment of an individual's job qualifications. Although an individual may have the skills necessary for federal employment, that person will not be eligible for federal employment unless also demonstrating appropriate standards of conduct.

Subjects of Suitability

The requirements of the suitability program apply to all applicants for employment as well as all appointees and employees already serving in covered positions that are subject to investigation. These covered positions include positions in the federal competitive service, excepted service positions that can be converted to competitive service positions, and career appointments to positions in the Senior Executive Service (SES). Depending on the position's level of risk, some of these covered positions may also be considered positions of public trust, which are often subject to stricter adjudicative standards.

Subjects of Fitness

SM text level 2 (Use for popup content) Fitness determinations apply to defense contractors who need regular access to federally controlled facilities or information systems, as well as excepted service employees whose positions cannot be converted to the competitive service. Because they fall outside the requirements of OPM's suitability program, fitness determinations are not necessarily subject to the same adjudicative criteria. However, within the DOD, fitness criteria are left to the discretion of individual agencies and components, which are strongly advised to follow the suitability criteria in their fitness determinations.

NOTE: The information below will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

Applicant: A person who is being considered or has been considered for employment

Appointee: A person who has entered the service and is in the first calendar year of a subject-to-investigation appointment

Employee: A person who has completed the first year of a subject-to-investigation appointment

Competitive service: Federal competitive service jobs are subject to the civil service laws passed by Congress to ensure that applicants and employees receive fair and equal treatment in the hiring process.

Excepted service: Federal excepted service positions are subject to rules established by the respective agencies and are not subject to federal competitive qualification requirements, appointment, pay, and classification rules.

Qualifications: A person's experience, education, knowledge, skills, and abilities related to his or her ability to perform the duties of the job.

SES: Senior Executive Service

Elements of the Suitability Process

Determining an individual's suitability for federal employment includes five main elements: position designation, pre-screening, investigation, adjudication, and reinvestigation. For each position, DOD personnel must evaluate its risk level and sensitivity to determine what type of investigation is required and how closely the subject should be screened.

A pre-screening review, called the Applicant Suitability Review and Evaluation, is then conducted based on the applicant's employment documents and other pre-screening materials. If the review is favorable, the applicant completes the appropriate investigative forms, which DOD personnel also review for potential suitability issues. If no issues are present, an investigation is initiated. The actual investigation is conducted by an Investigative Service Provider (ISP), who gathers various types of information based on the type of investigation required. Once all required information has been collected, an adjudicator from the DCSA Consolidated Adjudications Services (CAS), initially reviews and assesses it to make a suitability trust determination. Cases that cannot be determined favorable by the DCSA CAS will be transferred to the employing component or agency for adjudication.

All individuals in public trust positions are subject to periodic reinvestigation every five years. And all other positions are subject to reinvestigation as needed based on various factors, such as risk-level changes, reemployment, or the discovery of new information that raises questions about a person's suitability. Any time a reinvestigation occurs, a new adjudication must follow to review and assess the new information and make a new suitability determination. Later lessons will cover each of these elements in more detail.

Legal Foundations of Suitability Adjudications

Authority for Suitability

The authority to adjudicate suitability is documented in several key laws and regulations. Congress granted the ultimate authority for suitability to the President in Title 5 of the United States Code. Sections 3301 and 7301 authorize the President to ascertain the fitness of applicants for federal employment.

Presidential Authority

- Regulates admission of individuals into the civil service
- Ascertains applicant fitness
- Regulates employee conduct in Executive Branch

In 1954, President Dwight D. Eisenhower delegated this authority to OPM with Executive Order 10577, which established OPM's jurisdiction over appointments to the competitive service. Congress further defined OPM's authority over the suitability program in several laws, which authorize OPM to enforce civil service rules, to regulate examinations for federal employment, and to evaluate the effectiveness of agency compliance with suitability program requirements.

OPM Authority

- Has jurisdiction over appointments to competitive service
- Enforces civil service rules
- Regulates examinations for federal employment
- Evaluates the effectiveness of agency compliance with suitability program requirements

Together, these policy documents grant agencies like the DOD the authority to administer and implement the suitability program within their respective components.

Agency Authority

- Delegates to the heads of agencies the authority for making suitability determinations and taking suitability actions

Term and Definition

OPM: Office of Personnel Management

Other Laws and Regulations

In addition to the laws authorizing responsibility for suitability adjudications, there are several other key policy documents that further expand and define the suitability program.

Two recent executive orders expand the scope of the suitability program. In 2008, President George W. Bush issued Executive Order 13467 as amended by Executive Order 13764, established alignment and reciprocity of suitability investigations and adjudications across all federal agencies. The following year, he issued Executive Order 13488, as amended by Executive Order 13764, which

authorized reinvestigations for certain positions and established reciprocity for fitness determinations. Order 13764 amends these Executive Orders and calls for efficiency and automation.

The regulations governing the suitability program appear in Title 5 of the Code of Federal Regulations (CFR). Five CFR part 731 establishes and maintains OPM's policies and procedures governing suitability investigations and adjudications, including the procedures for taking suitability actions and the general process for appealing a suitability action. Five CFR part 1201 provides procedures for appeals of suitability actions to the Merit Systems Protection Board (MSPB).

In August 2012, a new DOD Instruction was issued which established and implemented policy for suitability and fitness adjudications for DOD civilian employees. DODI 1400.25 establishes procedures, provides guidelines and model programs, delegates authority and assigns responsibilities regarding suitability and fitness adjudications within the DOD.

In May 2022, new Federal Personnel Vetting Investigative Standards were approved by the Director of National Intelligence (DNI) in their role as the security executive agent and the Director of OPM in their role as the suitability and credentialing executive agent.

The Federal Personnel Vetting Investigative Standards created a new three-tier investigative model, which aligns and standardizes Federal personnel vetting for suitability, fitness, national security, and credentialing decisions. These standards are designed to ensure that departments and agencies have the necessary data to derive the needed information for making a determination of whether an individual is trusted to protect people, property, information, and mission.

These new standards map the investigative requirements for five personnel vetting scenarios based on mission needs, position designation, and an individual's relevant personnel history information. The five personnel vetting scenarios are: Initial Vetting, Continuous Vetting, Upgrades, Transfer of Trust, and Re-establishment of Trust.

Precedent-Setting Cases

The OPM suitability program has been shaped by more than just policy. Throughout the program's history, many people have appealed unfavorable suitability determinations, and the resulting decisions have influenced both the nature and the scope of the suitability program.

A suitability case may set a precedent when it is appealed beyond the initial decision to the full board of the MSPB, or to the federal court system. These decisions fall into different categories, addressing different aspects of the suitability process. Some decisions have helped to define the evidence standards, not only establishing the standards for how evidence is collected but also shaping the ways in which evidence is evaluated. And yet others have served to uphold the established evidence standards. Others have addressed the credibility of witness testimonies as a form of evidence. In addition to cases related primarily to evidence standards, some decisions have affirmed the authority of the MSPB. And finally, several decisions have addressed the issue of falsification as it relates to an individual's suitability for federal employment.

NOTE: The information below will not be on the test but is included here as additional information that may provide useful background and insight.

Cases on standards of evidence

1981: Borninkhof v. Dept. of Justice

- Set forth the evidence standards
- Evaluated the probative value or substantiation of hearsay evidence

1986: Patch v. OPM

- An allegation made in a notice of proposed removal is not evidence that the allegation is true
- Claims of rehabilitation of employment issues cannot be considered unless evidence is provided
- Past conduct can be considered regardless of actions taken by previous employers

1997: Woodward v. OPM

- Discussed how the factors from Borninkhof should be applied to the evidence in an investigation to determine probative value or substantiation bullet

2006: Doerr v. OPM

- An agency or component must demonstrate by preponderant evidence that the appellant's conduct or character may have a negative effect on the integrity or efficiency of the service bullet

Cases on credibility of witness testimony

1987: Hillen v. Dept. of Army

- Discussed the factors upon which a determination concerning the credibility of a witness is based

2004: Jones v. Dept. of Interior

- A sworn statement has greater evidentiary weight than an unsworn statement

Cases on the authority of the Merit Systems Protection Board

1997: Harker v. Dept. of Treasury

- Law enforcement positions require a higher standard of conduct/degree of public trust
- In the absence of a plausible explanation, the MSPB may infer an intent to deceive

2005: Folio v. Dept. of Homeland Security

- Addressed the MSPB's review of the additional considerations and the relationship between them and the specific suitability factors

Cases on falsification

1980: Tucker v. United States

- To sustain a charge of submitting false information on government documents, the agency or component must prove that the employee knowingly supplied incorrect information with the intent to defraud

1985: McCreary v. OPM

- A sworn statement has greater evidentiary weight than an unsworn statement
- Removal for falsification of government documents promotes the efficiency of the service because it raises serious doubt about honesty and fitness
- Successful performance has no relevance if employee was appointed as a result of falsification

1985: DeAngelis v. OPM

- Falsification raises serious doubts as to honesty and fitness for employment
- Hindsight is not an argument in defense of falsification

1986: Kissner v. OPM

- A false statement in an application need not be contained in the application for the position from which the employee is being removed
- Nexus may be presumed between intentional falsification of an employment application and the efficiency of the service
- An employee later correcting false information on an employment document is not absolved from previous false statements

Review Activities

Review Activity 1

The purpose of suitability adjudications is to ensure that all applicants, appointees, and employees of the federal government _____.

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

- ☐ Are suitable to perform duties of the position
- ☐ Are qualified for the position
- ☐ Are trustworthy
- ☐ Demonstrate high standards of conduct
- ☐ Are of good character and reputation

Review Activity 2

1 of 5. Which element of the suitability process involves gathering information on the subject's background to meet the investigative requirements of the position?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

2 of 5. Which element of the suitability process involves evaluating a position's levels of risk and sensitivity to determine the type of investigation required?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

3 of 5. Which element of the suitability process occurs as needed based on factors, such as risk-level changes, reemployment, or the discovery of new information?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

4 of 5. Which element of the suitability process applies suitability criteria to the subject's investigation to make a suitability determination?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

5 of 5. Which element of the suitability process involves reviewing employment documents and other pre-screening materials for potential suitability issues?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

Review Activity 3

Which of the following would you consult for regulations governing suitability adjudications?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Executive Order 13488
- ☐ Title 5, Code of Federal Regulations, part 731
- ☐ Executive Order 10577
- ☐ Title 5, U.S. Code

Lesson 3: Overview of the Suitability Process

Introduction

Objectives

The suitability process has four distinct phases: activities that occur before the investigation, the investigation itself, the adjudication, and the activities that occur after the adjudication.

Before we can fully examine each of these phases, it is important to understand who is responsible for what parts of the suitability process and what tools are available to support this process.

This lesson will take a broad look at each of the phases. It will discuss the responsibility and processes of the Office of Personnel Management (OPM) and the DOD in determining a person's suitability. It will also review the main DOD and OPM information systems used in suitability review and adjudication.

Here are the lesson objectives:

- Identify the phases and the general timeline of the suitability process
- Identify the responsibilities and processes of OPM, the agency, and the adjudicator in carrying out key steps of the suitability process
- Identify databases and information systems used in suitability adjudications

Suitability Basics

When Does Suitability Apply?

As you have learned, suitability applies to all applicants, appointees, and employees of the federal competitive service. But who are these people? And when does suitability actually apply?

Consider John Ryan, a recent college graduate embarking on his first job in the real world. He is applying for a position as a program analyst for the U.S. Marine Corps that will require him to work on base at Quantico, Virginia.

Now consider Carol Phelps, a former recruiter for the Defense Acquisition University who left the federal service eight years ago to care for her family. Now that her kids have reached school age, she is looking to resume her career by re-establishment of trust in the federal workforce.

Finally, consider Ray Miller, a long-time finance analyst for the Defense Logistics Agency who has recently been promoted to chief accounting officer, a more sensitive position that carries with it a higher level of risk, requiring an upgrade.

Which of these individuals is subject to the requirements of the suitability program? The answer is: they all are.

As an applicant for new employment in the federal competitive service, Mr. Ryan is the most obvious subject of a suitability adjudication. However, Ms. Phelps is also subject because she is seeking

reemployment after a break in service of more than three years. Finally, even though Mr. Miller has been continuously employed with the DOD, he too is subject to a suitability adjudication because his new position has a higher level of risk than his previous position did. Mr. Miller requires an upgrade. Other conditions that could require a new suitability adjudication for an existing employee include changes in duty, changes in assignment, or the discovery of new information that may come to light through self-reporting, in the media, or continuous vetting.

Alignment and Reciprocity

Let's consider another civilian employee of the DOD. Lucy Day, a new contract specialist at the Defense Contracting Management Agency, recently transferred from the General Services Administration, where she had worked for four years as a contract specialist. As a new employee of the DOD, is Ms. Day subject to a new suitability adjudication?

The answer is no.

In this case, the laws governing alignment and reciprocity come into play. Established by Executive Order 13467, alignment and reciprocity of adjudications serve to ensure fair treatment of all federal employees and prevent costly duplication of effort across agencies. Alignment refers to the consistent standards and methods that are employed across all federal agencies to ensure that all federal employees receive equal treatment regardless of which agency conducts the adjudication.

Reciprocity, also known as Transfer of Trust, refers to the mutual acceptance of a suitability determination by all government agencies regardless of which agency issued the determination, as long as it meets or exceeds the suitability requirements of the new position. Sometimes, however, reciprocity won't apply.

Take the example of Joe Roberts:

- Current Position: Criminal Investigator at the Defense Criminal Investigative Service
- Previous Position: Intelligence Analyst at the Department of Homeland Security

His new position involves duties that have a higher level of risk than his previous position. For this reason, a higher level of investigation is required, and, therefore, a new suitability adjudication.

The Suitability Process

Phases of Suitability

Remember Mr. Ryan, our applicant for new employment? Let's follow him as he goes through the initial vetting for a suitability trust determination. Even before Mr. Ryan submits his application for employment, the suitability process is underway. DOD personnel have already evaluated the position's risk and sensitivity levels to determine what type of investigation will be required for the successful applicant.

Once Mr. Ryan submits his application, HR personnel will review it not only to assess his ability to perform the job duties, but also to identify any information that would automatically disqualify him from federal employment. This pre-screening review is called the Applicant Suitability Review and Evaluation. Assuming that no presumptively disqualifying information arises, Mr. Ryan will receive a

tentative job offer. HR or security personnel will then initiate his background investigation and ask Mr. Ryan to submit an electronic investigative questionnaire. At this point, the Investigative Service Provider (ISP) will conduct the investigation based on the requirements of the position. When the investigation is complete, the ISP will send it back to the DOD for adjudication.

If Mr. Ryan is deemed suitable for employment, then the initial vetting process ends and a favorable suitability trust determination is made. Mr. Ryan becomes a trusted insider. Depending on the circumstances, Mr. Ryan may be subject to investigation through Continuous Vetting (CV). CV assesses risk in near real-time to provide insight into trusted insider behavior. Continuous Vetting replaces the five-year and ten-year periodic re-investigations with ongoing, and often automated, determinations of a person's security risk. If Mr. Ryan was deemed unsuitable for employment, then he will be subject to a suitability action, such as cancellation from eligibility for federal employment or debarment. If he is deemed unsuitable, then Mr. Ryan will have the opportunity to appeal the resulting suitability action using established due process procedures.

Pre-screening

- Position designation
- Pre-screening
- Tentative job offer* (*pending interim suitability determination)
- Investigation initiation

Investigation

- Investigation of subject based on position requirements

Adjudication

- Application of suitability criteria to determine suitability

Post adjudication

- Continuous Vetting (CV)
- Suitability action
- Due process

Terms and Definitions

Pre-screening: Application Suitability Review and Evaluation

Suitability action: Examples: cancellation from eligibility for federal employment or debarment.

Continuous Vetting: CV assesses risk in near real-time to provide insight into trusted insider behavior. CV replaces five-year and ten-year re-investigations, with ongoing and often automated determinations of a person's security risk.

Suitability Timeline

So how much time is typically required to complete the full adjudication process? The typical turnaround time for a suitability determination is approximately 80 days from the time of a tentative offer of employment. The 80-day period covers both the investigation and the adjudication, with each phase taking approximately 40 days. Typically, a tentative offer of employment precedes the suitability adjudication, but the employee may not begin working until the adjudication is complete.

However, agencies use an interim suitability process to the greatest extent practical to allow an appointee to begin work before a full investigation and adjudication have occurred. In such cases, the appointee is still subject to fingerprinting and initial checks, such as FBI and law enforcement checks, before he or she can begin working. And even though the appointee may begin working, his or her continued employment is still contingent on a favorable suitability determination. Interim suitability is not usually granted for sensitive positions, but the decision is left to the discretion of individual agencies, which have their own lists of preliminary checks.

Roles and Responsibilities in Suitability

OPM and the DOD

Let's look at the roles and responsibilities of OPM and the DOD in the suitability process. The overall responsibility for suitability adjudication falls to OPM. OPM is authorized to delegate this responsibility, to other agencies, as it has done for the DOD. However, OPM remains actively involved in several capacities.

As the designated suitability authority, OPM provides oversight of the entire DOD suitability program. For the most part, DOD agencies and components conduct their own adjudications. However, in cases involving evidence of material, intentional false statements, deception or fraud in examination or appointment, or refusal to furnish testimony, OPM must conduct the adjudication.

OPM is also responsible for issuing government-wide debarments and conducting suitability investigations.

OPM and Suitability

OPM Role:

- Bullet Has overall responsibility for suitability
- Oversees agency adjudications

OPM Responsibilities

- May delegate suitability authority to agency
- Adjudicates cases involving material, intentional false statement, deception, or fraud in examination or appointment or evidence of a refusal to furnish testimony
- Issues government-wide debarments
- Conducts investigations for some federal agencies

Agencies and components have their own distinct responsibilities in supporting suitability adjudications. They must adhere to OPM's procedural and reporting requirements. They must also inform OPM of any cases requiring OPM adjudication. And lastly, they are responsible for keeping records of all suitability determinations and actions.

DOD and Suitability

Agency / Component Role:

- Adjudicates suitability of all DOD covered positions unless there is evidence of material, intentional false statement deception or fraud in examination or appointment, or evidence of a refusal to furnish testimony

Agency / Component Responsibilities

- Adheres to OPM procedural and reporting requirements
- Informs OPM of cases requiring OPM adjudication
- Keeps records of DOD suitability determinations and actions

Information Systems Used in Suitability

Introduction to Information Systems

Several different information systems support the suitability process. Some are electronic tools used early in the suitability process to enter information for later use. And others are database systems that store information and facilitate information sharing to support reciprocity across federal agencies. OPM and DOD each have unique systems that support suitability.

OPM Systems

OPM also provides two centralized database systems that support the remaining phases of suitability by communicating and storing investigative records and adjudicative results.

These centralized database systems are the Central Verification System (CVS) and the Personnel Investigations Processing System (PIPS).

PDT

OPM developed the PDT to ensure a systematic and consistent position designation process. The PDT is a standalone tool that agencies and components use to assess a position's level of risk and sensitivity to determine the position's designation. That designation determines the type of investigation required for the position.

Electronic Application (eApp)

Electronic application (eApp) is a secure, web-based system that completely automates the application process. Authorized individuals use it to initiate investigations. Subjects then use it to enter their personal information directly into the system.

CVS

Text The CVS is OPM's centralized database supporting reciprocity and information sharing within the federal government. The CVS houses information on all types of investigations and adjudications, including those used to support suitability and fitness determinations.

Because multiple federal agencies use the CVS, it supports reciprocity of security and suitability determinations. Before requesting an investigation, agencies should check the CVS to see whether an existing adjudication or investigation meets the current need. In the future CVS will transition to its successor system, the National Background Investigation Services (NBIS).

PIPS

OPM's PIPS system maintains the Security/Suitability Investigations Index (SII) a centralized database that records investigations conducted by OPM and other authorized investigative agencies.

PIPS provides an agency or component's security office direct access to OPM records and allows agencies to monitor the progress of their cases and report adjudicative decisions.

Through PIPS, adjudicators query the SII database before initiating any adjudicative actions to ensure the records they have received are correct and up to date. DOD Suitability Adjudicators may access PIPs through CVS. In the future, PIPS will transition to its successor system, NBIS.

DOD Systems

In addition to the OPM systems, the DOD has its own centralized databases and systems to support security and suitability adjudications. The Defense Civilian Personnel Data System (DCPDS) is a human resources information support system for civilian personnel operations in the DOD. It captures position information to include position risk and sensitivity. The Defense Information System for Security (DISS) serves as the system of record for personnel security, suitability, and credential management of all DOD employees, military personnel, civilians, and DOD contractors. DISS also provides secure communications between Adjudicators, Security Officers, and Component Adjudicators in support of eligibility and access management. In the future, DISS will transition to its successor system, NBIS.

Review Activities

Review Activity 1

1 of 4. Which phase of the suitability process involves adjudicating a subject's investigation based on suitability criteria?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Post adjudication

2 of 4. Which phase of the suitability process includes position designation, pre-screening, and initiation of the investigation?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Post adjudication

3 of 4. Which phase of the suitability process includes reinvestigation and suitability actions?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Post adjudication

4 of 4. Which element of the suitability process investigates a subject's background based on position requirements?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Post adjudication

Review Activity 2

Who performs the adjudicative responsibilities listed below?

Maintains the CVS database

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ DOD

Adjudicates suitability of DOD covered positions not involving evidence of material, intentional false statement deception or fraud in examination or appointment, or refusal to furnish testimony as required by 5 CFR 731, section 5.4

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ DOD

Has the authority to issue a government-wide debarment

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ DOD

Adjudicates cases involving deception or fraud in examination or appointment

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ DOD

Review Activity 3

To determine John Ryan's suitability, several information systems will be used at different stages of the suitability process.

1 of 4. Which of these systems will be used to initiate Mr. Ryan's investigation?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

2 of 4. Which of these systems is the information system that manages security clearance eligibility, suitability and HSPD-12 actions and determinations for the DOD?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

3 of 4. Which of these systems will be used to determine what type of investigation is required for Mr. Ryan?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

4 of 4. Which of these systems should be checked to determine whether Mr. Ryan has any previous investigations or adjudications that meet the current need?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

Lesson 4: Pre-screening Activities

Introduction

Objectives

The pre-screening phase of the suitability process includes all of the activities that occur before the investigation, from position designation to pre-screening to the initiation of the investigation.

This lesson will take a closer look at each of these steps. Here are the lesson objectives:

- Identify the purpose of position designation
- Identify the purpose of pre-screening
- Identify the process for initiation of the investigation using eApp
- Identify the responsibilities of individuals within the agency or component in carrying out position designation, pre-screening, and the initiation of the investigation

Term and Definition

eApp: Electronic Application

Step 1: Position Designation

Overview of Position Designation

The first step in the suitability process, position designation evaluates a position's level of risk and sensitivity to determine what type of investigation is required and how closely to screen an applicant for a position. The responsibility for position designation falls to the agency or component's hiring manager, who will receive guidance from the Human Resources office and, as appropriate, security personnel.

Position Risk

Every covered position must be designated as low, moderate, or high risk. This determination is based on the position's potential to adversely affect the efficiency and integrity of the federal government and, by extension, the employing agency or component. As a position's levels of authority and responsibility increase, the character and conduct of the individual become more significant in deciding whether that individual's employment will protect the integrity or promote the efficiency of the service. Positions at the moderate and high risk levels are considered positions of public trust. These positions carry a significant risk of causing damage to people, programs, or the agency or component.

NOTE: The following information will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

Low Risk: Positions with the potential for limited impact on a DOD program or mission, or the integrity or efficiency of the service.

Moderate Risk: Positions with the potential for moderate to serious adverse effects on the mission of the DOD

High Risk: Positions with the potential for exceptionally serious adverse effects on the mission of the DOD

Positions of Public Trust: Moderate- and high-risk positions that may involve access to, operation of, or control of:

- Policy
- Programs
- IT systems
- Public safety and health
- Law enforcement
- Financial or personal records
- Other duties requiring a significant degree of public trust

Position Sensitivity

Every covered position must be designated as non-sensitive, non-critical sensitive, critical sensitive, or special sensitive. This determination is based on the position's potential to adversely affect national security. The position sensitivity designation must take into consideration the position's need to access classified information or perform sensitive duties that could adversely affect national security.

NOTE: The information below will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

Non-sensitive: Positions that do not require access to classified information and do not involve the performance of sensitive duties

Non-critical Sensitive: Positions with the potential to cause significant or serious damage to national security

Critical Sensitive: Positions with the potential to cause exceptionally grave damage to national security

Special Sensitive: Positions with the potential to cause inestimable damage to national security

The Position Designation System

So — how do hiring managers determine the proper position designation?

To support this determination and ensure a systematic and consistent position designation process across all federal agencies, OPM developed a four-step system called the Position Designation System. The first step is to assess the nature of the position in terms of both its national security requirements and its suitability requirements. The second step is to determine the position's risk – that is, its potential to adversely affect the mission of the agency or component. The third step is to adjust the total risk score based on the program designation and the position's level of supervision. And finally, the fourth step is to determine the final position designation, which in turn determines the investigative requirements.

The PDS is supported by the Position Designation Tool (PDT) which is a computer-based tool that simplifies and automates the position designation process to achieve greater efficiency. Use of the automated PDT is required within the DOD. DOD personnel should also refer to DOD's Position Designation Guidance and their agency or component guidance when using the PDT.

Step 1: Assess Nature of Position

Step 1 assesses the nature of the position in terms of its national security and suitability requirements. First, the position must be designated as special sensitive, critical sensitive, non-critical sensitive, or non-sensitive. Next, positions designated as noncritical sensitive or non-sensitive must be further assessed based on their public trust responsibilities.

NOTE: The following information will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

SS: Special Sensitive CS: Critical Sensitive

NCS: Non-critical Sensitive NS: Non-sensitive

Public trust responsibilities:

- Policy or program
- Public safety and health
- Hazardous materials
- Law enforcement/security
- Investigation/adjudication
- Financial or personal records
- IT systems
- Other duties

Step 2: Assess Position Risk

Step 2 determines the potential impact of the position on the mission of the agency or component and on public trust. In this step, the public trust responsibilities identified in Step 1 are assessed for the degree of potential damage that could result from misconduct in the position. For each applicable category of public trust responsibility, one of five degree ratings will be assigned: not applicable, limited impact, moderate impact, severe impact, or automatic high-

risk condition. These ratings will combine to provide a total risk rating that carries forward into Step 3.

Step 3: Adjust Points

Step 3 adjusts the total risk rating to account for the scope of the program and the level of supervision and control. First, the risk points will be adjusted based on whether the program operations have the potential for worldwide or government-wide impact, multi- agency impact, or agency impact. Next, the risk points will be adjusted based on whether the position has limited supervision, periodic supervision, or close technical supervision.

Step 4: Position Designation

Step 4 determines the final position designation, which in turn determines the type of investigation required and the appropriate investigative form for initiating that investigation.

Investigative Forms

Position designation determines what type of investigation will be required and which form must be completed to initiate the investigation. There are several different types of investigations, but all are initiated with one of only three distinct investigative forms. All national security positions, regardless of the level of position risk, will require Standard Form (SF) 86, the Questionnaire for National Security Positions. Of the remaining non- sensitive positions, those designated as Moderate or High Risk positions will require SF 85P, the Questionnaire for Public Trust Positions. Those designated as Low Risk will require SF 85, the Questionnaire for Non-sensitive Positions. Applicants will be able to complete all of these forms using eApp.

Steps 2 and 3: Pre-screening and Initiation

Pre-screening

The second step in the Pre-screening phase is pre-screening. In this step, applicants are screened for any information that would automatically disqualify them from suitability.

Pre-screening allows the DOD to discover any presumptively disqualifying information before devoting valuable time and resources to a full investigation. The responsibility for pre-screening typically falls to the human resources office at the hiring agency or component. This office will review the applicant's resume, OF-306, interview details, employment references, and other applicable documentation to verify the accuracy of all information presented as fact. This may include verification of the applicant's education, employment history, and references as well as local investigative checks.

If any suitability issues are found during the pre-screening, the file is then referred to the adjudication office or the suitability adjudicator to assess issues based on applicable suitability factors. The agency or component may then find the applicant unsuitable and withdraw the offer. The agency may also initiate agency-wide debarment or refer to OPM based on seriousness of issues. Both of these steps prevent applicants applying elsewhere within an organization or within the federal government.

Initiating the Investigation

The final step in the Pre-screening Phase is the initiation of the investigation. This is typically the responsibility of the agency or component's human resources or security office. After the applicant has accepted the tentative offer of employment, an authorized agency or component initiator checks the Central Verification System to determine whether the applicant has any prior investigations that meet the criteria of the position. The Defense Information System for Security (DISS) may be queried to validate that there are no suspensions or holds due to pending or unresolved incident reports.

If a new investigation is indeed required, then the authorized initiator initiates the appropriate investigation in eApp. Next, the applicant enters his or her personal information directly into the eApp. The authorized initiator reviews the application for completeness and possible suitability issues before submitting it to the ISP to conduct the investigation. This is a key step, as the investigation will not begin if the information is incomplete.

If serious suitability issues exist, the employment offer may be withdrawn and/or applicable suitability referrals and debarment actions started. Note that the investigation should be initiated before appointment or within 14 days of placement in the position.

Review Activities

Review Activity 1

1 of 6. The purpose of this step is to discover any presumptively disqualifying information before conducting a full investigation.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

2 of 6. The position description is reviewed during this step.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

3 of 6. During this step, the applicant enters personal information into eApp.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

4 of 6. The purpose of this step is to determine what type of investigation will be required.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

5 of 6. The applicant's resume and employment references are reviewed during this step.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

6 of 6. A position's levels of risk and sensitivity are assessed during this step.

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening
- ☐ Initiation of investigation

Review Activity 2

Which of the following are responsibilities of individuals within the agency or component?

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

- ☐ Position designation
- ☐ Pre-screening the applicant
- ☐ Initiating investigation in eApp
- ☐ Entering personal information in eApp
- ☐ Reviewing eApp application for completeness

Lesson 5: Investigations and Evidence Standards

Introduction

Objectives

The investigation phase of the suitability process supplies the information that will eventually be used to determine a subject's suitability for federal employment.

This lesson explores the types of investigations that are used for suitability, the five personnel vetting scenarios, as well as the basic evidence standards used to conduct the investigation. Here are the lesson objectives. Take a moment to review them.

- Identify the types of suitability investigations and their uses in suitability adjudications
- Recognize the five personnel vetting scenarios
- Identify the basic evidence standards for suitability adjudications

Overview of Suitability Investigations

The evidence to support DOD suitability adjudications comes from investigations that DCSA conducts on behalf of the DOD. Not all investigations are equally detailed, however. As you have learned, the type of investigation conducted depends on the level of risk and sensitivity of a particular position. In order to protect individuals from unnecessary exposure, the level of investigation conducted may never be higher than what is required for the position. Note that certain low-risk positions are exempt from the investigative requirement. These exemptions include intermittent, seasonal, per diem, or temporary positions of less than 180 days.

Depending on the type of investigation required, the evidence collected may come from many different sources, such as agency, credit, and law enforcement checks, written inquiries, record searches, and testimonies.

As a suitability adjudicator, you need to understand the various types of investigations and the basic evidence standards, because they provide the information that you will use to determine whether an individual is suitable for federal employment.

Types of Suitability Investigations

Introduction to Investigations

As you have seen, the higher a position's risk and sensitivity levels, the more stringent the investigation that DCSA performs on an applicant for that position. Also consider that the more thorough the investigation, the more evidence you will have to consider in determining the subject's suitability. Because you rely on these investigations to make your suitability determinations, you need to understand the various types of investigations so you know what kind of information you'll be basing your decision on. Let's take a look at the investigation types used for suitability determinations.

Five-Tiered Investigative Model

On June 30, 2008, President George W. Bush signed Executive Order 13467, as amended by Executive Order 13764. This executive order calls for an efficient, reciprocal, and aligned system to be used across the government to investigate and determine eligibility for logical and/or physical access to federally controlled facilities and information systems, also known as Homeland Security Presidential Directive 12 (HSPD)-12; suitability for federal employment and fitness to perform work on behalf of the Federal Government as a contractor employee; and eligibility for access to classified information, or to hold a sensitive position.

In December 2012, Federal Investigative Standards (FIS) were approved by James Clapper, the Director of National Intelligence (DNI) and John Berry, the former Director of the Office of Personnel Management (OPM). The FIS, implemented in October 2017, established a new investigative model, which aligns and standardizes background investigation requirements for HSPD-12, suitability and fitness, and national security, into five tiers. This new five-tiered model facilitates reciprocity, uses a build-upon, but not duplicate investigative principle, and facilitates the use of automation.

DCSA is responsible for conducting investigations at all five tiers. Tiers 1, 2, and 4 are the investigations designated for suitability determinations. Tiers 3 and 5 are used for national security positions to grant eligibility to classified information and/or assignment to a national security sensitive position. Although you usually will not use these investigations to render your suitability determinations, you should be familiar with them.

Under TW 2.0, all Federal personnel vetting will fall within one of five scenarios depending on the mission need, the relevant circumstances of the individual being vetted, the duties and responsibilities of the position, and the management of human risk. The five personnel vetting scenarios are: Initial Vetting, Continuous Vetting, Upgrades, Transfer of Trust, and Re-establishment of Trust.

Terms and Definitions

E.O. 13467: Executive Order 13467

FIS: Federal Investigative Standards

DNI: Director of National Intelligence

OPM: Office of Personnel Management

Low Tier: This level of investigation is used for granting physical and/or logical access or credentialing determinations.

Moderate Tier: For noncritical-sensitive positions, this level of investigation can be used to grant eligibility and access to classified information at the Confidential or Secret level, or L access.

High Tier: For critical or special sensitive positions, this level of investigation can be used to grant eligibility and access to classified information at the Top Secret level, access to Sensitive Compartmented Information, or Q access.

Low Tier (LT)

Under TW 2.0, investigations conducted to the Low Tier (LT) standard are for positions designated as low-risk, non-sensitive. This is the minimum tier for physical and logical access (HSPD-12) credentialing.

Moderate Tier (MT)

Investigations conducted to the Moderate Tier (MT) standard are for positions designated as moderate-risk public trust and/or noncritical-sensitive. For noncritical-sensitive positions, this level of investigation can be used to grant eligibility and access to classified information at the Confidential, Secret, or L access.

High Tier (HT)

Investigations conducted to the High Tier (HT), standard are for positions designated high-risk public trust and/or critical sensitive, or special sensitive. For critical or special sensitive positions, this level of investigation can be used to grant eligibility and access to classified information at the Top Secret level, or access to Sensitive Compartmented Information, or Q access.

Tier 1

Tier 1 investigations are conducted for positions designated as low risk, non-sensitive, and for physical and logical access—that is, HSPD-12 credentialing. The investigative form is the Standard Form (SF)-85.

Tier 2

Tier 2 investigations are conducted for positions designated as non-sensitive, moderate risk public trust. The investigative form is the SF-85P.

Tier 3

Tier 3 Investigations are conducted for positions designated as non-critical sensitive, and/or requiring Confidential, Secret or "L" access eligibility. The investigative form is the SF-86.

Note: A Tier 3 investigation could be used for a suitability determination if a prospective employee had a current Tier 3 investigation and was entering the Federal Service for the first time. A new investigation would not be run, and the current investigation would be used to make the suitability determination.

Tier 4

Tier 4 investigations are conducted for positions designated as non-sensitive high risk public trust. The investigative form is the SF-85P.

Tier 5

Tier 5 investigations are conducted for positions designated as critical-sensitive or special-sensitive and/or requiring "Q" access or access to Top Secret or Sensitive Compartmented Information (SCI). The investigative form is SF-86.

Note: A Tier 5 investigation could be used for a suitability determination if a prospective employee had a current Tier 5 investigation and was entering the Federal Service for the first time. A new investigation would not be run, and the current investigation would be used to make the suitability determination.

Periodic Reinvestigations

In addition to initial suitability investigations, some positions require periodic reinvestigations to support ongoing determinations of suitability. Specifically, designated high- and

moderate-risk positions of public trust are subject to a periodic reinvestigation every five years. Like the initial investigations, these reinvestigations are conducted by the ISP and are based on the risk and sensitivity of a position.

The Tier 2 Reinvestigation (T2R) is a suitability reinvestigation for employees assigned to non-sensitive, moderate-risk public trust positions. The Tier 4 Reinvestigation (T4R) is for employees in non-sensitive, high-risk public trust positions. Per the FIS, periodic reinvestigation for Tier 2 and Tier 4 are conducted at least once every five years. Tier 1 does not have a mandatory reinvestigation requirement. Per DOD Implementation of Trusted Workforce 2.0, Continuous Vetting replaces periodic investigations.

NOTE: Per DNI Memorandums dated Feb 16, 2017, and Feb 27, 2019, the DOD will delay the 5-year reinvestigation cycle for Tier 3 and increase the Tier 5 reinvestigation timeline to six years until further notice.

Former Background Investigations

The five-tier investigative model replaced several investigations that were previously used to make suitability determinations. Although these previously used initial and periodic investigations have been phased out, adjudicators should be aware of them.

Tier 1 investigations replaced the National Agency Check with Inquiries (NACI). The NACI was an initial investigation used for basic suitability and HSPD-12 credentialing determinations. Tier 2 replaced two investigations used for moderate risk public trust positions: the Moderate Risk Background Investigation (MBI) and the National Agency Check with Law and Credit (NACLC). The MBI was the initial investigation, and the NACLC was used as a periodic reinvestigation for the MBI. Finally Tier 4 replaced the Background Investigation (BI), which was used for high risk public trust positions and the Periodic Reinvestigation (PRI), which was used for reinvestigations of these positions.

View the Job Aid to compare the new and old investigative standards: 2012 Revised Federal Investigative Standards (FIS) Crosswalk, Introduction to Suitability Adjudications, v2.

Evidence in Suitability Adjudications

Role and Standards of Evidence

Evidence plays an important role in the suitability process, both during and after the adjudication. Initially gathered as part of a subject's background investigation, evidence is evaluated by the suitability adjudicator, who uses it to determine whether an individual is suitable for federal employment. Later, in the event that a suitability determination is appealed, additional evidence

may be required to shed more light on any disputed facts. Throughout the suitability process three basic principles apply to the evidence that is collected.

The first is that evidence must exist to establish the individual's conduct. As an adjudicator, you cannot simply assume that something is true. You must have concrete evidence to prove that the conduct occurred in order to use it in your decision.

Second, the government carries the burden of proving that something is true. It is not the individual's responsibility to prove whether something did or did not occur. Rather, the government's investigation files need to contain sufficient information to prove that the conduct occurred. How much evidence does the government need to meet this burden? The standard of proof in suitability cases is that claims must be supported by a preponderance of evidence. That is, the evidence presented must be enough that a reasonable person would find it more likely to be true than untrue.

Types of Evidence

So, what kind of evidence can you expect to see in the investigative files that you receive? Let's take a look at some of the most common types of evidence that support suitability investigations. The first piece of evidence collected for any investigation is the investigative form, which contains information provided directly by the subject of the investigation. The most basic investigations will go on to collect federal agency search records, employment records, local law enforcement records, and credit reports. These investigations may also collect written inquiries and correspondence.

As the complexity of the investigation increases to meet the requirements of higher levels of position risk and sensitivity, the types of evidence collected expand to reflect a deeper investigation of the subject. For example, instead of written inquiries, the investigation may include telephone inquiries or face-to-face interviews. Higher levels of investigation also contain additional elements that expand the scope of the investigation, such as financial records and records of previous court actions.

When Facts are Disputed

Later in this course, you will see how individuals who disagree with an unfavorable suitability determination can appeal that decision. This is where the evidence is really put to the test because an individual may call into question some of the facts that were used to support the

initial determination. In these situations, the evidence may be subject to greater scrutiny, and additional information may be required to enhance its value.

The value of the evidence may be enhanced by obtaining affidavits and unsworn declarations, certifying previous testimony, and obtaining supporting documentation. Also consider that in the context of an appeal, some types of evidence carry more weight than others. For example, the live, sworn testimony of a witness carries greater weight than a certified copy of a record. The relative weight, or value, that the Merit Systems Protection Board and the court system place on various kinds of evidence is known as the probative weight of evidence.

Take a look at the relative values of several different types of evidence.

Probative Weight of Evidence

1. Sworn witness testimony at hearing
2. Signed, sworn affidavits
3. Unsworn declarations
4. Certified records
5. Investigative reports

As an adjudicator, it is important for you to understand the critical role that evidence plays after the adjudication, because you want your suitability determinations to be based on strong, substantiated evidence that will be hard to dispute.

Review Activities

Review Activity 1

1 of 4. Ali is a DOD contractor who requires physical access to federally controlled facilities and logical access to DOD networks, but not classified information in order to perform her new job. What tier investigation will Ali need?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Tier 1
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

2 of 4. Zack is about to start work as an accountant at a DOD agency. He is in a non-sensitive, designated high risk public trust position that does not require access to classified information. What tier investigation will Zack need?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Tier 1
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

3 of 4. Sally just accepted a job with the Federal Government. It is a non-sensitive position designated as moderate risk public trust. What tier investigation will Sally need?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Tier 1
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

4 of 4. Jeanne has worked in her position for the Federal government for over 5 years. Based on her non-sensitive, low-risk position, she is not required to undergo periodic reinvestigation. To what tier does Jeanne's position align?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ Tier 1
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

Review Activity 2

Which of the following are standards of evidence in suitability cases?

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

- ☐ The government has the burden of proof
- ☐ The evidence must establish the conduct
- ☐ All facts must be proven beyond a reasonable doubt
- ☐ All facts must be supported by a preponderance of evidence

Lesson 6: Suitability Adjudications

Introduction

Objectives

The adjudication phase of the suitability process is when an applicant's suitability for employment is actually adjudicated. This lesson will review the role and responsibilities of the adjudicator and discuss the two steps of suitability adjudication -- the basic suitability evaluation and the full, job-specific suitability adjudication. It will present the eight suitability factors and seven additional considerations used to adjudicate suitability. And finally, it will discuss the various possible outcomes of suitability adjudication.

Here is the lesson objective:

- Identify the eight suitability factors and seven additional considerations used in suitability adjudications

The Adjudicative Process

Adjudicator Role and Responsibilities

Once DCSA completes the investigation, it forwards the results to the DCSA Consolidated Adjudications Services (CAS) for adjudication. The DOD CAS suitability adjudicator determines whether a favorable determination can be made for the suitability case. If a favorable determination cannot be made, the DCSA CAS sends the case to the applicable DOD Component or Agency. The Component or Agency suitability adjudicator will examine the issues to make a final suitability determination.

Whether you are a DCSA CAS or DOD Component or Agency suitability adjudicator, your responsibilities are otherwise the same. You will examine these investigative results and evaluate the applicant against a specific set of criteria to make a suitability determination. Your primary responsibility as an adjudicator is to protect the interests of the federal government. However, because the decisions that adjudicators make can also have tremendous effects on the lives of individuals, you must ensure that you make these decisions fairly. Your final responsibility is to report the outcome of the adjudication.

The final suitability determination, along with all other records of the subject's investigation and adjudication, will be submitted to OPM, where it will be stored for use in future investigations or assignments. Recall that this step of reporting back to OPM is the key to reciprocity. The final suitability determination will also be reported to the applicant.

Basic and Job-Specific Adjudications

Let's look at the two steps in suitability adjudication.

The first step is a basic evaluation of an individual's suitability for entry into federal employment. The adjudicator considers a subject's conduct in the context of his or her suitability for all covered positions in the DOD. It involves an assessment of all issues, in and of themselves, with no reference to the specific requirements of the position. During this step, the adjudicator reviews the investigative report to identify any obvious disqualifying issues. Individuals found unsuitable during the basic suitability evaluation may be unsuitable for any covered position. Cases may result in an agency-wide debarment or may even be referred to OPM for government-wide debarment.

If basic evaluation reveals no issues then the adjudicator may proceed with a full, job-specific adjudication. The adjudicator evaluates information about the subject's character and conduct in relation to the specific requirements of the position. The adjudicator will also revisit any items of concern identified in the basic evaluation in light of the position's specific duties, responsibilities, and level of public trust as well as the agency mission.

Suitability Criteria

Introduction to Suitability Criteria

So - how do adjudicators actually make suitability decisions?

To make decisions fairly, adjudicators must carefully and objectively examine the investigative results in the context of eight suitability factors, each of which addresses a specific concern. If any issue raises a red flag, then the adjudicator will dig deeper to analyze the subject's conduct in light of seven additional considerations.

These additional considerations help the adjudicator to weigh all information, both favorable and unfavorable, compiled from a subject's past and present, in a manner that takes the whole person into consideration.

Suitability Factors

The criteria for making suitability determinations are established in 5 CFR 731. Each of the eight suitability factors identifies a potential concern that may indicate that an individual is unsuitable for employment. Some of them address conduct that calls into question a subject's judgment, reliability, and trustworthiness. Some address an individual's ability or willingness to perform job duties with integrity, efficiency, and effectiveness. Some relate to a subject's ability or willingness to comply with laws, rules, and regulations. And finally, one factor addresses conduct that raises questions about a subject's loyalty to the United States.

Suitability Factors (5 CFR 731.202)

1. Misconduct or Negligence in Employment
2. Criminal or Dishonest Conduct
3. Material Intentional False Statement, or Deception, or Fraud in Employment
4. Refusal to Furnish Testimony as required by 5 CFR 731, section 5.4

5. Excessive Alcohol Use
6. Illegal Drug Use
7. Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
8. Statutory or Regulatory Bar to Employment

Factor 1: Misconduct or Negligence in Employment

The first factor, misconduct or negligence in employment, examines the subject for evidence of intentional wrongdoing on the job or any other conduct that would be considered contrary to an employer's reasonable expectations. Such conduct may include poor attendance without cause, insubordination, and other suitability issues occurring in the workplace, such as theft. Issues arising under this factor can raise questions about an individual's ability and willingness to carry out the duties of a federal job with appropriate integrity, efficiency, and effectiveness.

Factor 2: Criminal or Dishonest Conduct

The second factor, criminal or dishonest conduct, examines the subject for past criminal activity or evidence of conduct that demonstrates deliberate lies, fraud, or deceit. Examples of such conduct may include illegal activities, intentional falsification, or deliberate financial irresponsibility. All of these can raise concerns about a person's judgment, reliability, and trustworthiness. Unlawful or dishonest behavior, by its very nature, calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Factor 3: Material, Intentional False Statement or Deception or Fraud in Employment

Federal hiring procedures exist to ensure fair and open competition in employee selection. The third factor, material, intentional false statements, or deception or fraud in examination or employment, examines whether the subject has attempted to circumvent these procedures by intentionally providing false information or intentionally withholding relevant information in the employment process. Examples of such behavior include falsifying qualifications in an application or committing deception or fraud in examination or appointment. Such behaviors call into question a person's ability or willingness to comply with laws, rules, and regulations and to perform the duties of the position with integrity. Note that any issues related to this suitability factor must be referred to OPM for adjudication.

Factor 4: Refusal to Furnish Testimony as required by 5 CFR 731 (Section 5.4)

The fourth factor, refusal to furnish testimony, examines a subject's failure to comply when requested to provide testimony in matters related to the civil service laws, rules, and regulations as required by section 5.4 of 5 CFR 731. Note here again that any issues that arise in reference to this suitability factor must be referred to OPM for adjudication.

Factor 5: Alcohol Abuse

The fifth and sixth factors deal with issues related to substance abuse without evidence of substantial rehabilitation. Factor 5 examines an applicant's history of excessive alcohol use.

Conduct to look out for includes ongoing, continuing alcohol misuse, a pattern of alcohol-related arrests, a pattern of alcohol-related problems in the workplace, and a lack of substantial rehabilitation efforts. Such conduct can interfere with an individual's ability to perform work duties in a satisfactory manner, lead to impaired judgment, raise questions about an individual's reliability and trustworthiness, and result in behaviors that put people, property, and information systems at risk.

Factor 6: Illegal Drug Use

Factor 6 examines an applicant's history of illegal drug use. Conduct to watch for includes illegal use of narcotics, drugs, or other controlled substances, current or recent use, a pattern of drug-related arrests, a pattern of drug-related problems in the workplace, and a lack of substantial rehabilitation efforts. Like for Factor 5, conduct related to this factor can interfere with an individual's ability to perform work duties in a satisfactory manner, lead to impaired judgment, raise questions about an individual's reliability and trustworthiness, and result in behaviors that put people, property, and information systems at risk. Illegal drug use can also raise questions about an individual's ability or willingness to comply with laws, rules, and regulations.

Factor 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force

Factor 7 examines an applicant's loyalty to the United States. It looks for past or present behavior that provides evidence of knowing and willful involvement in acts or activities designed to overthrow the U.S. government by force. The focus here is on the actions the individual takes or prepares to take -- not what the individual believes. Individual expression is protected by freedom of speech, even if those views are unpopular or convey an antigovernment agenda. Membership in an organization alone is not disqualifying. A loyalty issue arises only when a person actually acts upon those beliefs in a manner that violates the law.

Factor 8: Statutory or Regulatory Bar to Employment

The final factor, statutory or regulatory bar to employment, examines whether the applicant may be barred from employment due to violation of federal statutes and regulations.

Examples of such violations include participation in a strike against the government, employment that violates the anti-nepotism statute, and, for positions requiring access to or possession of firearms, misdemeanor conviction for crimes of domestic violence.

As the adjudicator, your first concern is to verify whether an existing debarment is in place for the applicant. Generally, if a government-wide debarment is already in place, then it would have been discovered long before the adjudication phase of the suitability process. However, if any conduct that may result in debarment is identified during the investigation, then you should contact the OPM to verify the individual's eligibility.

Additional Considerations

To take the whole person into account when making their adjudicative decisions, adjudicators use several tools to sort through the investigative information. In addition to the eight suitability factors, which address specific categories of information, adjudicators also use seven additional considerations to evaluate both the positive and negative information about a subject's conduct. Let's take a look at how these considerations apply to an adjudication.

Candace King has applied for the position of criminal investigator. On her OF-306 she admits to having been arrested for driving while intoxicated. But what else do you need to consider in evaluating whether this issue might disqualify her from suitability?

First, you must consider the nature of her position. Does her alcohol-related conduct and arrest have any direct bearing on the duties of the position? What if she were applying for a position that involved operating a motor vehicle or other heavy machinery? Next, weigh the circumstances surrounding the conduct itself. How serious was the incident? Did her conduct result in injury to people or property? What exactly happened? Had she been drinking heavily prior to the incident? How high was her blood-alcohol level? How long ago did the incident occur? Was it a one-time thing? Or does she have a history of other alcohol-related problems with the law or in the workplace? Are the charges still pending?

Consider her age and life stage when the conduct occurred. Would it make any difference if the conduct occurred when she was younger and not yet aware of her professional future? Did it occur during a time when many of her peers may have been exhibiting similar behavior, such as during her college years? Finally, consider whether she has sought rehabilitation for alcohol use disorder and if she has been successful in her rehabilitation. Any issues that arise related to any of the first seven suitability factors should be examined through the filter of these additional considerations. Note that these considerations do not apply to the eighth suitability factor, which addresses statutory or regulatory bars to employment.

Additional Suitability Considerations (5 CFR 731.202)

- Nature of the position
- Nature and seriousness
- Circumstances surrounding the conduct
- Recency of the conduct
- Age at the time of conduct
- Contributing societal conditions
- Rehabilitation

View the Suitability Criteria Job Aid to see an excerpt from the DOD Instruction: DODI 1400.25, Volume 731, August 24, 2012.

Adjudicative Outcomes

Suitability Determinations

Every suitability adjudication will result in one of two possible outcomes. The subject will be found suitable, or the subject will be found unsuitable for federal employment. A subject will be found suitable when the case is either clean, with no significant issues or disqualifying adverse information, or when any derogatory information has been mitigated. Alternately, a subject will be found unsuitable when the case contains reliable, significant, disqualifying, adverse information that cannot be mitigated. All unfavorable suitability determinations will result in a suitability action as defined in 5 CFR 731.

Sometimes, cases may contain issues that are of concern to the agency but aren't serious enough to warrant an unfavorable suitability determination. In these cases, a letter of advisement may be issued to advise the subject of the favorable determination and that any future problems in the area of concern may negatively affect future suitability determinations.

Review Activities

Review Activity 1

1 of 4. Subject: Jacob Fisher

- Status: Applicant
- Position: Contract specialist
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Termination from previous employment

Additional facts:

- Terminated 18 months ago from position as auditing clerk
- Cause: frequent lateness; not reporting as scheduled twice in a month; not reporting reason for absence

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☐ 2: Criminal or Dishonest Conduct
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

2 of 4. Subject: Patrice Green

- Status: Applicant
- Position: Personnel Security Specialist
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Termination from previous employment

Additional facts:

- Terminated 4 years ago from administrative assistant position
- Cause: theft of 2 computers and 4 calculators (value: \$1800.00)

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☐ 2: Criminal or Dishonest Conduct
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

3 of 4. Subject: Fred Martin

- Status: Applicant
- Position: Law Enforcement Officer
- Position Grade: GS-12
- Position Risk: High
- **Issue:** Pending charges for domestic violence

Additional facts:

- Facing charges for domestic violence
- Position requires ability to carry a weapon, both on-duty and off

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☐ 2: Criminal or Dishonest Conduct
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

4 of 4. Subject: Doris Brown

- Status: Applicant
- Position: Electrical Engineer
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Lying on employment application

Additional facts:

- Listed master's degree in mechanical engineering on investigation paperwork
- Investigation revealed she did not receive a degree and had never even been enrolled

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☐ 2: Criminal or Dishonest Conduct
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

Review Activity 2

1 of 3. Subject: Franklin Jones

- Status: Applicant
- Position: Chief Scientist
- Position Grade: GS-14
- Position Risk: High
- **Issue:** Admission to prior arrest and conviction for embezzlement (Factor 2, Criminal or Dishonest Conduct)

Additional facts:

- Embezzlement occurred during his employment at a retail pharmaceutical sales company
- Arrest occurred 2 years ago and he served 6 months in jail

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Additional Considerations

- ☐ 1: Nature of the position
- ☐ 2: Nature and seriousness of the conduct
- ☐ 3: Circumstances surrounding the conduct
- ☐ 4: Recency of the conduct
- ☐ 5: Age at the time of the conduct
- ☐ 6: Contributing societal conditions
- ☐ 7: Rehabilitation

2 of 3. Subject: Ted Morris

- Status: Applicant
- Position: Administrative Assistant
- Position Grade: GS-11
- Position Risk: Low
- **Issue:** Admission to prior arrest for DWI (Factor 5, Excessive Alcohol Use)

Additional facts:

- Arrest occurred 20 years ago when he was 19
- Completed a court-mandated alcohol treatment program
- Has had no additional alcohol-related arrests or incidents

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Additional Considerations

- ☐ 1: Nature of the position
- ☐ 2: Nature and seriousness of the conduct
- ☐ 3: Circumstances surrounding the conduct
- ☐ 4: Recency of the conduct
- ☐ 5: Age at the time of the conduct
- ☐ 6: Contributing societal conditions
- ☐ 7: Rehabilitation

3 of 3. Subject: Kathy Dunn

- Status: Employee
- Position: Operations Research Analyst
- Position Grade: GS-14
- Position Risk: High
- **Issue:** Former roommate disclosed that Subject had close ties to a known terrorist group (Factor 7, Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force)

Additional facts:

- Position requires a Top Secret clearance
- Position requires frequent travel to agency offices overseas
- She was in college at the time
- She financed the group's purchase of explosives

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

Additional Considerations

- ☐ 1: Nature of the position
- ☐ 2: Nature and seriousness of the conduct
- ☐ 3: Circumstances surrounding the conduct
- ☐ 4: Recency of the conduct
- ☐ 5: Age at the time of the conduct
- ☐ 6: Contributing societal conditions
- ☐ 7: Rehabilitation

Lesson 7: After the Adjudication

Introduction

Objectives

The post-adjudication phase of the suitability process includes all of the activities that occur after an individual's suitability has been determined. This lesson will cover the different types of suitability actions, addressing the responsibilities of both the DOD and OPM in taking suitability actions and in reporting the outcome of the adjudication. It will describe the suitability appeals process. And it will discuss the various conditions that require suitability reinvestigations.

Here are the lesson objectives:

- Identify the different types of suitability actions
- Identify agency and OPM responsibilities in reporting and suitability action procedures
- Identify the role of the Merit Systems Protection Board (MSPB) in the suitability appeals process
- Identify conditions that do and do not require suitability reinvestigations

Suitability Actions

Introduction to Suitability Actions

All suitability determinations, whether favorable or unfavorable, must be reported to OPM and documented within the appropriate personnel system of record for your agency or component. If the suitability determination is favorable, then this is where your adjudicative responsibilities end. However, if the determination is unfavorable, then in addition to reporting the determination to OPM, you must also take a suitability action against the subject. Let's take a look at the various types of suitability actions and the procedures involved in taking them.

Types of Suitability Actions

A suitability action under 5 CFR 731 is an outcome taken against a subject in cases of unfavorable suitability determinations. There are several possible suitability actions.

Cancellation of eligibility applies to applicants and means that the individual has been found ineligible to hold the position for which he or she applied. Removal from employment applies to appointees and employees and requires that the individual be removed from Federal service. Cancellation of reinstatement eligibility applies to applicants for reemployment whose reinstatement eligibility was earned through a fraudulent appointment. And finally, debarment, the most serious of the suitability actions, may apply to anyone who is adjudicated for suitability, whether they are an applicant, an appointee, or an employee.

Depending on the nature and seriousness of the disqualifying conduct, debarment may be imposed by OPM, by the DOD, or by the agency or component.

Recall that suitability is measured independently of job qualifications. This is important because in some cases, an individual may be found suitable for employment but still not be selected for the job. Likewise, further investigation of an individual's qualifications may result in the withdrawal of a job offer. Keep in mind that non-selection or withdrawal of a job offer is NOT a suitability action.

NOTE: The following information will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

Applicant: A person who is being considered or has been considered for employment

Appointee: A person who has entered the service and is in the first calendar year of a subject-to-investigation appointment

Employee: A person who has completed the first year of a subject-to-investigation appointment

NOT a suitability action: Nonselection or cancellation of eligibility for a specific position based on an objection to an eligible or passover of a preference eligible under 5 CFR

332.406 is not a suitability action even if based on suitability reasons. (5 CFR 731.203 (b))

Agency/Component-wide debarment: Bans an individual from employment in specific covered positions across that particular agency or component

DOD-wide debarment: Bans an individual from employment across all agencies and components of the DOD

OPM debarment: Bans an individual from employment in all covered positions within the entire federal government

Debarment Period

Whether imposed by OPM, by the DOD, or by a specific agency or component, the initial period of debarment can last for up to three years. The exact duration is left to the discretion of the debarring agency or component. After the debarment expires, an additional period of debarment may be imposed. However, this can be done only if the individual again becomes an applicant, appointee, or employee subject to OPM or DOD suitability requirements

Authority for Suitability Actions

Both OPM and the agency or component have responsibilities for suitability actions. These responsibilities overlap to some extent, but there are some distinct differences. In order for OPM or the agency or component to take a suitability action, the position must be subject to investigation under 5 CFR Part 731. OPM may take action against applicants and appointees based on any of the suitability criteria. OPM may also take action against employees who are found unsuitable due to falsification, refusal to furnish testimony, or a statutory or regulatory bar to employment.

In contrast, the agency or component may take action against applicants and appointees only. Under 5 CFR 731, the agency or component may not take action against any employees for any reason.

Furthermore, the agency or component is prohibited from taking action under Factors 3 or 4, because that authority is reserved for OPM. Note that agencies and components may take action for character or conduct issues under other appropriate authorities.

NOTE: The following information will not be on the test but is included here as additional information that may provide useful background and insight.

Terms and Definitions

Other authorities:

- CFR 315 applies to appointees
- CFR 359 applies to Senior Executive Service
- CFR 752 applies to employees

Suitability Factors 3, 4, and 8:

- 3. False Statements, Deception, or Fraud in Employment
- 4. Refusal to Furnish Testimony
- Statutory or Regulatory Bar to Employment

Suitability Action Procedures

As you know, suitability actions may be taken either by OPM or by the agency or component. Every suitability action begins with a notice of proposed action. The subject is then afforded a period of time in which to answer the notice. Finally, as appropriate, OPM or the agency or component issues a final suitability decision. Like the authority for taking suitability actions, the procedures for taking suitability actions also overlap somewhat between OPM and the agency or component. However, again there are some distinct differences.

Notice of Proposed Action

The first step in taking a suitability action is to notify the subject of the proposed action. This notice must be in writing and must contain several key pieces of information. It must detail the charges against the subject. It must advise the subject of his or her right to review the materials that were used to reach the unfavorable determination. It must inform the subject of the 30-day time limit in which to respond. And it must inform the subject of his or her right to representation. The notice of proposed action must be served no less than 30 days before the effective date of the proposed action. Note that the process for notification is the same whether the notice is issued by OPM or by the agency or component. The only difference is that when OPM issues a notice of proposed action, it must also provide a copy of the notice to the employing agency or component. Employees and appointees may be retained in pay status during the notice period.

Answer

The second step in the suitability action procedure is to allow the subject the opportunity to answer the charges made in the notice of proposed action. This answer must meet several requirements. It must be in writing and may include documentation to support the subject's

answer. Answers must be submitted within 30 days of the date of the notice. Like the process for notification, the process for answering is essentially the same whether the notice was issued by OPM or by the agency or component. The only difference is that answers to OPM notices may come from either the subject or the employing agency or component.

Decision

The final step in the suitability action procedures is the decision. The final decision must be in writing, must be dated, must explain the reasons for the decision, and must notify the subject of his or her appeal rights. If the final agency or component decision requires removal from the position, then the agency or component must remove the person from the rolls within five work days. If the final OPM decision requires removal from the position, then OPM must notify the agency or component of the decision, and the agency or component must remove the person from the rolls within five work days of receiving OPM's final decision.

Reporting the Determination

What, Why, and How to Report

Let's take a closer look at what is involved in reporting your final suitability determination. First, you will report to OPM the level and result of each background investigation, the final suitability determination, and any suitability actions that are taken against the subject. Recall that this step of reporting to OPM is the key to reciprocity. This is because all personnel information reported to OPM is stored in OPM's centralized databases, where it is kept available to all agencies that may need access to it in the future. Consider, however, that these databases are only as strong as the information they contain. If you fail to report your findings to OPM, then the information will not be available to other agencies in the future.

It is critical to the efficiency of the civil service that you report your adjudicative results. Understanding the importance of reporting is only part of your final responsibility as an adjudicator. Knowing how to report is essential to ensuring that the reporting actually occurs.

You may report to OPM using one of several methods. You may submit a hard copy of the Investigative Form 79A, Report of Agency Adjudicative Action on OPM Personnel Investigations. Alternately, if you have access, you may upload computerized batch files directly into OPM's Personnel Investigations Processing System (PIPS) or you may enter individual adjudicative determinations into PIPS using the agency menu. Finally, you may report the determination in OPM's Central Verification System (CVS).

Appeals to Suitability Determinations

Role of the MSPB

All subjects of suitability actions under 5 CFR 731 have the right to appeal the final suitability decision to the Merit Systems Protection Board (MSPB). The role of the MSPB is not to adjudicate the case and issue a new decision. Rather, the MSPB's role is to decide whether the original determination is sustainable. The MSPB will review the case file to determine whether the charges brought against

the subject are sustainable. If the MSPB finds that all of the charges are sustainable, then it will affirm the original determination. If it finds that any of the charges are not sustainable, then it will remand the case back to the agency or component that issued the original suitability determination to review the case and determine whether the suitability action is appropriate. No matter what the agency or component decides in its final review, the decision is final. The individual has no further right to appeal to the MSPB. Any further appeals of the suitability determination must be pursued through the court system.

Reinvestigation

Overview of Reinvestigation Requirements

You learned earlier in this course that reinvestigations are required for various reasons. And like initial suitability investigations, all reinvestigations are conducted by an Investigative Service Provider (ISP). But why are reinvestigations conducted? What conditions require a reinvestigation? Note that any time a reinvestigation occurs, a new adjudication must follow to review and assess any new information and issue a new suitability determination. Let's look at some conditions that may require a reinvestigation.

Conditions Requiring Reinvestigation

Civilian DOD employees may go through any number of personnel status changes during their federal careers. Some of these changes create conditions that may require reinvestigation; however, others do not. First, all positions of public trust are subject to mandatory periodic reinvestigations every five years. Reinvestigation may be required for position risk-level changes, reemployment, or new information that raises questions about an individual's suitability. Personnel changes that do not require reinvestigation include promotion, demotion, and reassignment, as long as the risk level remains the same. Other changes that do not require reinvestigation are conversion from a career-tenure to a career-conditional position, appointment to service of more than one year, and transfer to service of less than one year.

Risk-level Changes

Risk-level changes may be due to an existing position being redesignated at a higher risk level or an existing employee being hired into a higher-risk position. Consider the example of Dan Hampton. Though he may have been found suitable for federal employment when he first came to the DOD four years ago, if he is promoted into a position that carries a higher level of risk or sensitivity, then he is subject to a new investigation at a level that matches the requirements of his new job.

Reemployment

Reemployment may require a reinvestigation depending on how long the applicant has been away from the civil service. Reemployment after a break in service of longer than two years requires a new investigation. Remember Carol Phelps? She had left her job as a recruiter for the DAU eight years ago to pursue family obligations. Now that her children are in school full time,

she is applying to return to the DOD workforce. Because she has been away for more than two years, she must undergo a new investigation.

Term and Definition

DAU: Defense Acquisition University

New Information

A federal employee may be subject to reinvestigation if new information calls into question the individual's suitability. This information may be related to any of the suitability factors. Consider Joanie Hall. She may have been found suitable for employment when she first came to the DOD a decade ago, but what if evidence suddenly surfaced to reveal recent misconduct that casts her suitability in a different light?

Review Activities

Review Activity 1

Which of the following are types of suitability actions?

Select all that apply. Then check your answers in the Answer Key at the end of this Student Guide.

- ☐ Cancellation of eligibility
- ☐ Non-selection for position
- ☐ Cancellation of reinstatement eligibility
- ☐ Debarment from DOD employment
- ☐ Withdrawal of job offer
- ☐ Removal from position

Review Activity 2

1 of 4. Which of the following can issue a notice of proposed action?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ Agency / component
- ☐ Both OPM and the agency / component
- ☐ Neither

2 of 4. Which of the following, in addition to the Subject, can file a response to an OPM notice of proposed action?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ Agency / component
- ☐ Both OPM and the agency / component
- ☐ Neither

3 of 4. Which of the following can appeal the final suitability determination?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ Agency / component
- ☐ Both OPM and the agency / component
- ☐ Neither

4 of 4. Which of the following is responsible for reporting a suitability determination?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ OPM
- ☐ Agency / component
- ☐ Both OPM and the agency / component
- ☐ Neither

Review Activity 3

Which statement best describes the role of the Merit Systems Protection Board (MSPB) in appeals to suitability actions?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

- ☐ The role of the MSPB is to re-adjudicate unsustainable suitability determinations.
- ☐ The role of the MSPB is to decide whether the original suitability determination is sustainable.
- ☐ The role of MSPB is to affirm the original suitability determination.
- ☐ The role of MSPB is to issue final suitability determinations

Review Activity 4

For each employment condition listed below, decide whether it requires reinvestigation?

Select the best response. Check your answer in the Answer Key at the end of this Student Guide.

1 of 6. Demotion, with no change in risk level

- ☐ Yes
- ☐ No

2 of 6. New information that raises suitability questions

- ☐ Yes
- ☐ No

3 of 6. Reemployment after 2 year break in service

- ☐ Yes
- ☐ No

4 of 6. Reassignment, with no change in risk level

- ☐ Yes

☐ No

5 of 6. Risk-level changes

☐ Yes

☐ No

6 of 6. Promotion, with no change in risk level

☐ Yes

☐ No

Lesson 8: Course Conclusion

Conclusion

Course Summary

In this course you learned about suitability adjudications in the DOD and the role suitability plays in protecting the integrity of the federal civil service. You also learned about the four phases of the suitability process and the responsibilities of OPM and the agency or component during each of these phases.

Lesson Review

Here is a list of the lessons in the course:

- Lesson 1: Course Introduction
- Lesson 2: Introduction to Suitability
- Lesson 3: Overview of the Suitability Process
- Lesson 4: Pre-screening Activities
- Lesson 5: Investigations and Evidence Standards
- Lesson 6: Suitability Adjudications
- Lesson 7: After the Adjudication
- Lesson 8: Course Conclusion

Course Objectives

Congratulations! You have completed the *Introduction to Suitability Adjudications for the DOD* course. You should now be able to:

- Identify the purpose of suitability adjudications
- Recognize the legal and regulatory framework that governs suitability adjudications
- Identify the responsibilities and processes of OPM, the agency, and the adjudicator in determining suitability
- Identify the types of investigations used to support suitability adjudications
- Recognize the five personnel vetting scenarios
- Identify the basic evidence standards for suitability actions
- Identify the eight suitability factors and seven additional considerations used in suitability adjudications

To receive course credit, you must take the *Introduction to Suitability Adjudications for the DOD* examination. If you accessed the course through the Security Training, Education, and Professionalization Portal (STEPP), please use that system to access the online exam.

Appendix A: Review Activities – Answer Key

Lesson 2 Review Activities

Review Activity 1

The purpose of suitability adjudications is to ensure that all applicants, appointees, and employees of the federal government _____.

- ☒ Are suitable to perform duties of the position (correct)
- ☐ Are qualified for the position
- ☒ Are trustworthy (correct)
- ☒ Demonstrate high standards of conduct (correct)
- ☒ Are of good character and reputation (correct)

Feedback: *The purpose of suitability adjudications is to ensure all applicants, appointees, and employees of the federal government demonstrate high standards of conduct, are of good character and reputation, are trustworthy, and are suitable to perform the duties of the position. Ensuring DOD employees are qualified to perform their job duties is not a purpose of suitability adjudications.*

Review Activity 2

1 of 5. Which element of the suitability process involves gathering information on the subject's background to meet the investigative requirements of the position?

- ☐ Position designation
- ☐ Pre-screening
- ☒ Investigation (correct)
- ☐ Adjudication
- ☐ Reinvestigation

Feedback: *During the investigation, an investigator gathers information on the subject's background to meet the investigative requirements of the position.*

2 of 5. Which element of the suitability process involves evaluating a position's levels of risk and sensitivity to determine the type of investigation required?

- ☒ Position designation (correct)
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

Feedback: During the position designation, DOD personnel evaluate the position's levels of risk and sensitivity to determine what type of investigation is required.

3 of 5. Which element of the suitability process occurs as needed based on factors, such as risk-level changes, reemployment, or the discovery of new information?

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☒ Reinvestigation (correct response)

Feedback: Reinvestigation occurs as needed based on changes in a position's risk or sensitivity, reemployment, or discovery of new information.

4 of 5. Which element of the suitability process applies suitability criteria to the subject's investigation to make a suitability determination?

- ☐ Position designation
- ☐ Pre-screening
- ☐ Investigation
- ☒ Adjudication (correct)
- ☐ Reinvestigation

Feedback: During the adjudication, an adjudicator applies suitability criteria to the subject's investigation to make a suitability determination.

5 of 5. Which element of the suitability process involves reviewing employment documents and other pre-screening materials for potential suitability issues?

- ☐ Position designation
- ☒ Pre-screening (correct)
- ☐ Investigation
- ☐ Adjudication
- ☐ Reinvestigation

Feedback: A pre-screening review, called the Applicant Suitability Review and Evaluation, is conducted based on the applicant's employment documents and other pre-screening materials. If the review is favorable, the applicant completes the appropriate investigative forms, which DOD personnel also review for potential suitability issues. If no issues are present, an investigation is initiated.

Review Activity 3

Which of the following would you consult for regulations governing suitability adjudications?

- ☐ Executive Order 13488
- ☒ Title 5, Code of Federal Regulations, part 731 (correct)
- ☐ Executive Order 10577
- ☐ Title 5, U.S. Code

Feedback: Title 5 CFR Part 731 outlines OPM regulations for suitability investigations and adjudications.

Lesson 3 Review Activities

Review Activity 1

1 of 4. Which phase of the suitability process involves adjudicating a subject's investigation based on suitability criteria?

- ☐ Pre-screening
- ☐ Investigation
- ☒ Adjudication (correct)
- ☐ Post adjudication

Feedback: The phase that adjudicates the subject's investigation based on suitability criteria is called the Adjudication phase.

2 of 4. Which phase of the suitability process includes position designation, pre-screening, and initiation of the investigation?

- ☒ Pre-screening (correct)
- ☐ Investigation
- ☐ Adjudication
- ☐ Post adjudication

Feedback: The phase that includes position designation, pre-screening, and initiation of the investigation is the Pre-screening phase.

3 of 4. Which phase of the suitability process includes reinvestigation and suitability actions?

- ☐ Pre-screening
- ☐ Investigation
- ☐ Adjudication
- ☒ Post adjudication (correct)

Feedback: The phase that includes reinvestigation and suitability actions is the Post adjudication phase.

4 of 4. Which element of the suitability process investigates a subject's background based on position requirements?

- ☐ Pre-screening
- ☒ Investigation (correct)
- ☐ Adjudication
- ☐ Post adjudication

Feedback: *The phase that investigates subject's background based on the requirements of the position is the Investigation phase.*

Review Activity 2

Who performs the adjudicative responsibilities listed below?

Maintains the CVS database

- ☒ OPM (correct)
- ☐ DOD

Feedback: *Maintaining the CVS database is a responsibility of OPM.*

Adjudicates suitability of DOD covered positions not involving evidence of material, intentional false statement deception or fraud in examination or appointment, or refusal to furnish testimony as required by 5 CFR 731, section 5.4

- ☐ OPM
- ☒ DOD (correct)

Feedback: *Adjudicating the suitability of DOD covered positions not involving evidence of material, intentional false statement deception or fraud in examination or appointment, or refusal to furnish testimony as required by 5 CFR 731, section 5.4 is a DOD responsibility.*

Has the authority to issue a government-wide debarment

- ☒ OPM (correct)
- ☐ DOD

Feedback: *Issuing a government-wide debarment is an OPM responsibility.*

Adjudicates cases involving deception or fraud in examination or appointment

- ☒ OPM (correct)
- ☐ DOD

Feedback: *Adjudicating cases involving deception or fraud in examination or appointment is an OPM responsibility.*

Review Activity 3

To determine John Ryan's suitability, several information systems will be used at different stages of the suitability process.

1 of 4. Which of these systems will be used to initiate Mr. Ryan's investigation?

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☒ Electronic Application (eApp) (correct)
- ☐ Defense Information System for Security (DISS)

Feedback: eApp is used to initiate all investigations.

2 of 4. Which of these systems is the information system that manages security clearance eligibility, suitability and HSPD-12 actions and determinations for the DOD?

- ☐ Central Verification System (CVS)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☒ Defense Information System for Security (DISS) (correct)

Feedback: DISS is DOD's information system that manages security clearance eligibility, suitability and HSPD-12 actions and determinations.

3 of 4. Which of these systems will be used to determine what type of investigation is required for Mr. Ryan?

- ☐ Central Verification System (CVS)
- ☒ Position Designation Automated Tool (PDT) (correct)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

Feedback: The PDT is used to determine what type of investigation will be required based on the position's levels of risk and sensitivity.

4 of 4. Which of these systems should be checked to determine whether Mr. Ryan has any previous investigations or adjudications that meet the current need?

- ☒ Central Verification System (CVS) (correct)
- ☐ Position Designation Automated Tool (PDT)
- ☐ Electronic Application (eApp)
- ☐ Defense Information System for Security (DISS)

Feedback: The CVS is OPM's key centralized database supporting reciprocity and information sharing within the federal government. Agencies should check the CVS to see whether an existing adjudication or investigation meets the current need.

Lesson 4 Review Activities

Review Activity 1

1 of 6. The purpose of this step is to discover any presumptively disqualifying information before conducting a full investigation.

- ☐ Position designation
- ☒ Pre-screening (correct)
- ☐ Initiation of investigation

Feedback: *The purpose of the pre-screening step is to discover any presumptively disqualifying information before conducting a full investigation.*

2 of 6. The position description is reviewed during this step.

- ☒ Position designation (correct)
- ☐ Pre-screening
- ☐ Initiation of investigation

Feedback: *The position description is reviewed as part of the position designation process.*

3 of 6. During this step, the applicant enters personal information into eApp.

- ☐ Position designation
- ☐ Pre-screening
- ☒ Initiation of investigation (correct)

Feedback: *The applicant enters his or her personal information into eApp during the initiation of the investigation.*

4 of 6. The purpose of this step is to determine what type of investigation will be required.

- ☒ Position designation (correct)
- ☐ Pre-screening
- ☐ Initiation of investigation

Feedback: *The purpose of position designation is to determine what type of investigation will be required.*

5 of 6. The applicant's resume and employment references are reviewed during this step.

- ☐ Position designation
- ☒ Pre-screening (correct)
- ☐ Initiation of investigation

Feedback: *The applicant's resume and employment references are reviewed as part of the pre-screening process.*

6 of 6. A position's levels of risk and sensitivity are assessed during this step.

- ☒ Position designation (correct)
- ☐ Pre-screening
- ☐ Initiation of investigation

Feedback: A position's levels of risk and sensitivity are assessed as part of the position designation process.

Review Activity 2

Which of the following are responsibilities of individuals within the agency or component?

- ☒ Position designation (correct)
- ☒ Pre-screening the applicant (correct)
- ☒ Initiating investigation in eApp (correct)
- ☐ Entering personal information in eApp
- ☒ Reviewing eApp application for completeness (correct)

Feedback: Position designation, pre-screening, initiating the investigation, and reviewing the applicant's eApp are all responsibilities of the agency or component. Entering personal information into eApp is a responsibility of the applicant.

Lesson 5 Review Activities

Review Activity 1

1 of 4. Ali is a DOD contractor who requires physical access to federally controlled facilities and logical access to DOD networks, but not classified information in order to perform her new job. What tier investigation will Ali need?

- ☒ Tier 1 (correct)
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

Feedback: Positions that need physical/logical access (HSPD-12 Credentialing) require a Tier 1 investigation.

2 of 4. Zack is about to start work as an accountant at a DOD agency. He is in a non-sensitive, designated high risk public trust position that does not require access to classified information. What tier investigation will Zack need?

- ☐ Tier 1
- ☐ Tier 2

- ☐ Tier 3
- ☒ Tier 4 (correct)
- ☐ Tier 5

Feedback: Tier 4 is the appropriate investigation for non-sensitive, high risk public trust positions.

3 of 4. Sally just accepted a job with the Federal Government. It is a non-sensitive position designated as moderate risk public trust. What tier investigation will Sally need?

- ☐ Tier 1
- ☒ Tier 2 (correct)
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

Feedback: Non-sensitive, moderate risk public trust positions require a Tier 2 investigation.

4 of 4. Jeanne has worked in her position for the Federal government for over 5 years. Based on her non-sensitive, low-risk position, she is not required to undergo periodic reinvestigation. To what tier does Jeanne's position align?

- ☒ Tier 1 (correct)
- ☐ Tier 2
- ☐ Tier 3
- ☐ Tier 4
- ☐ Tier 5

Feedback: There is no requirement for periodic reinvestigation at Tier 1, i.e., for non-sensitive, low risk positions or HSPD-12 credentialing.

Review Activity 2

Which of the following are standards of evidence in suitability cases?

- ☒ The government has the burden of proof (correct)
- ☒ The evidence must establish the conduct (correct)
- ☐ All facts must be proven beyond a reasonable doubt
- ☒ All facts must be supported by a preponderance of evidence (correct)

Feedback: The standard of evidence for suitability cases maintains that the evidence must establish the conduct, the government has the burden of proof, and all facts must be supported by a preponderance of evidence. It does not require that facts be proven beyond a reasonable doubt.

Lesson 6 Review Activities

Review Activity 1

1 of 4. Subject: Jacob Fisher

- Status: Applicant
- Position: Contract specialist
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Termination from previous employment

Additional facts:

- Terminated 18 months ago from position as auditing clerk
- Cause: frequent lateness; not reporting as scheduled twice in a month; not reporting reason for absence

Suitability Factors (5 CFR 731.202)

- ☒ 1: Misconduct or Negligence in Employment (correct)
- ☐ 2: Criminal or Dishonest Conduct
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

Feedback: *Poor work attendance without cause falls under Factor 1.*

2 of 4. Subject: Patrice Green

- Status: Applicant
- Position: Personnel Security Specialist
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Termination from previous employment

Additional facts:

- Terminated 4 years ago from administrative assistant position
- Cause: theft of 2 computers and 4 calculators (value: \$1800.00)

Suitability Factors (5 CFR 731.202)

- ☒ 1: Misconduct or Negligence in Employment (correct)
- ☒ 2: Criminal or Dishonest Conduct (correct)
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment

- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

Feedback: *Theft of employer property falls under Factors 1 and 2.*

3 of 4. Subject: Fred Martin

- Status: Applicant
- Position: Law Enforcement Officer
- Position Grade: GS-12
- Position Risk: High
- **Issue:** Pending charges for domestic violence

Additional facts:

- Facing charges for domestic violence
- Position requires ability to carry a weapon, both on-duty and off

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☒ 2: Criminal or Dishonest Conduct (correct)
- ☐ 3: Material, Intentional False Statement or Deception or Fraud in Employment
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☒ 8: Statutory or Regulatory Bar to Employment (correct)

Feedback: *Conviction of misdemeanor crimes of domestic violence falls under Factor 2 and Factor 8. This issue applies to applicants for positions that require access to or possession of firearms.*

4 of 4. Subject: Doris Brown

- Status: Applicant
- Position: Electrical Engineer
- Position Grade: GS-12
- Position Risk: Moderate
- **Issue:** Lying on employment application

Additional facts:

- Listed master's degree in mechanical engineering on investigation paperwork
- Investigation revealed she did not receive a degree and had never even been enrolled

Suitability Factors (5 CFR 731.202)

- ☐ 1: Misconduct or Negligence in Employment
- ☐ 2: Criminal or Dishonest Conduct
- ☒ 3: Material, Intentional False Statement or Deception or Fraud in Employment (correct)
- ☐ 4: Refusal to Furnish Testimony as Required by 5 CFR 731, section 5.4
- ☐ 5: Excessive Alcohol Use
- ☐ 6: Illegal Drug Use
- ☐ 7: Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force
- ☐ 8: Statutory or Regulatory Bar to Employment

Feedback: *Intentional falsification of qualifications falls under Factor 3. Any issues related to this suitability factor must be referred directly to OPM for adjudication.*

Review Activity 2

1 of 3. Subject: Franklin Jones

- Status: Applicant
- Position: Chief Scientist
- Position Grade: GS-14
- Position Risk: High
- **Issue:** Admission to prior arrest and conviction for embezzlement (Factor 2, Criminal or Dishonest Conduct)

Additional facts:

- Embezzlement occurred during his employment at a retail pharmaceutical sales company
- Arrest occurred 2 years ago and he served 6 months in jail

Additional Considerations

- ☒ 1: Nature of the position (correct)
- ☒ 2: Nature and seriousness of the conduct (correct)
- ☐ 3: Circumstances surrounding the conduct
- ☒ 4: Recency of the conduct (correct)
- ☐ 5: Age at the time of the conduct
- ☐ 6: Contributing societal conditions
- ☐ 7: Rehabilitation

Feedback: *The fact that his arrest was just 2 years ago relates to the recency of his conduct. The 6-month jail term relates to the nature and seriousness of the conduct. The position is also a high risk chief scientist position which relates to the nature of the position.*

2 of 3. Subject: Ted Morris

- Status: Applicant

- Position: Administrative Assistant
- Position Grade: GS-11
- Position Risk: Low
- **Issue:** Admission to prior arrest for DWI (Factor 5, Excessive Alcohol Use)

Additional facts:

- Arrest occurred 20 years ago when he was 19
- Completed a court-mandated alcohol treatment program
- Has had no additional alcohol-related arrests or incidents

Additional Considerations

- ☐ 1: Nature of the position
- ☐ 2: Nature and seriousness of the conduct
- ☐ 3: Circumstances surrounding the conduct
- ☐ 4: Recency of the conduct
- ☒ 5: Age at the time of the conduct (correct)
- ☐ 6: Contributing societal conditions
- ☒ 7: Rehabilitation (correct)

Feedback: *The long-ago arrest when he was 19 relates to his age and maturity at the time of the conduct. Completing a treatment program and having no additional alcohol-related arrests or incidents relates to rehabilitation.*

3 of 3. Subject: Kathy Dunn

- Status: Employee
- Position: Operations Research Analyst
- Position Grade: GS-14
- Position Risk: High
- **Issue:** Former roommate disclosed that Subject had close ties to a known terrorist group (Factor 7, Knowing and Willful Engagement in Acts/Activities Designed to Overthrow the U.S. Government by Force)

Additional facts:

- Position requires a Top Secret clearance
- Position requires frequent travel to agency offices overseas
- She was in college at the time
- She financed the group's purchase of explosives

Additional Considerations

- ☒ 1: Nature of the position (correct)
- ☒ 2: Nature and seriousness of the conduct (correct)
- ☒ 3: Circumstances surrounding the conduct (correct)
- ☐ 4: Recency of the conduct
- ☒ 5: Age at the time of the conduct (correct)

- ☐ 6: Contributing societal conditions
- ☐ 7: Rehabilitation

Feedback: *The nature of her position would be an additional consideration. The fact that she was in college may relate to the circumstances surrounding the conduct and her age and maturity at the time of the conduct. The fact that she helped the group obtain explosives relates to the conduct's seriousness.*

Lesson 7 Review Activities

Review Activity 1

Which of the following are types of suitability actions?

- ☒ Cancellation of eligibility (correct)
- ☐ Non-selection for position
- ☒ Cancellation of reinstatement eligibility (correct)
- ☒ Debarment from DOD employment (correct)
- ☐ Withdrawal of job offer
- ☒ Removal from position (correct)

Feedback: *Cancellation of eligibility, cancellation of reinstatement eligibility, removal from position, and debarment from DOD employment are all types of suitability actions. Non-selection for a position and withdrawal of a job offer are NOT suitability actions.*

Review Activity 2

1 of 4. Which of the following can issue a notice of proposed action?

- ☐ OPM
- ☐ Agency / component
- ☒ Both OPM and the agency / component (correct)
- ☐ Neither

Feedback: *Both OPM and the agency/component can issue a notice of proposed action. The only difference is that OPM notices must be sent to the agency/component as well as the subject.*

2 of 4. Which of the following, in addition to the Subject, can file a response to an OPM notice of proposed action?

- ☐ OPM
- ☒ Agency / component (correct)
- ☐ Both OPM and the agency / component
- ☐ Neither

Feedback: Both the subject of the action and the employing agency/component can file a response to an OPM notice of proposed action.

3 of 4. Which of the following can appeal the final suitability determination?

- ☐ OPM
- ☐ Agency / component
- ☐ Both OPM and the agency / component
- ☒ Neither (correct)

Feedback: Only the subject of the suitability determination can appeal the final suitability decision.

4 of 4. Which of the following is responsible for reporting a suitability determination?

- ☐ OPM
- ☒ Agency / component (correct)
- ☐ Both OPM and the agency / component
- ☐ Neither

Feedback: Reporting to OPM is the key to reciprocity. The agency/component must report to OPM the result of the background investigation, the final suitability determination, and any suitability actions that are taken against the subject.

Review Activity 3

Which statement best describes the role of the Merit Systems Protection Board (MSPB) in appeals to suitability actions?

- ☐ The role of the MSPB is to re-adjudicate unsustainable suitability determinations.
- ☒ The role of the MSPB is to decide whether the original suitability determination is sustainable. (correct)
- ☐ The role of MSPB is to affirm the original suitability determination.
- ☐ The role of MSPB is to issue final suitability determinations

Feedback: The MSPB's role is to decide whether the original suitability determination is sustainable. It does not adjudicate cases or issue suitability determinations.

Review Activity 4

For each employment condition listed below, decide whether it requires reinvestigation?

1 of 6. Demotion, with no change in risk level

- ☐ Yes
- ☒ No (correct)

Feedback: Reinvestigation is not required for cases involving demotion as long as the risk level does not increase.

2 of 6. New information that raises suitability questions

- ☒ Yes (correct)
☐ No

Feedback: *Reinvestigation is required when new information arises that calls an individual's suitability into question.*

3 of 6. Reemployment after 2 year break in service

- ☒ Yes (correct)
☐ No

Feedback: *Reinvestigation is required in cases of reemployment after a break in service of more than two years.*

4 of 6. Reassignment, with no change in risk level

- ☐ Yes
☒ No (correct)

Feedback: *Reinvestigation is not required for reassignment to a new position at the same risk level.*

5 of 6. Risk-level changes

- ☒ Yes (correct)
☐ No

Feedback: *Reinvestigation is required when an existing position is re-designated at a higher risk level or an existing employee is hired into a higher-risk position.*

6 of 6. Promotion, with no change in risk level

- ☐ Yes
☒ No (correct)

Feedback: *Reinvestigation is not required for cases involving promotion as long as the risk level does not increase.*

Appendix B: Job Aid

2012 Revised Federal Investigative Standards (FIS) Crosswalk

For this Position Designation and Risk/Sensitivity Level:	Use This Standard Form:	Prior Investigations:	Revised FIS Investigations and Implementation Dates:
Non-Sensitive Position (Low Risk/HSPD-12 Credential) (No national security sensitivity)	SF 85 (Questionnaire for Non-Sensitive Positions)	National Agency Check and Inquiries (NACI) Note: no credit check and no reinvestigation requirement	Tier 1 (T1) IOC (Initial Operating Capability) 10/01/2014 FOC (Full Operating Capability) 09/30/2017
Moderate Risk Public Trust Position (No national security sensitivity)	SF 85P (Questionnaire for Public Trust Positions)	Moderate Risk Background Investigation (MBI)	Tier 2 (T2) IOC 10/01/2014 FOC 09/30/2017
High-Risk Public Trust Position (No national security sensitivity)	SF 85P	Background Investigation (BI)	Tier 4 (T4) IOC 10/01/2016 FOC 09/30/2017
Secret/Confidential Clearance Eligibility (Military/Contractor)	SF 86 (Questionnaire for National Security Positions)	National Agency Check with Law and Credit (NACLC)*	Tier 3 (T3) IOC 10/01/2015 FOC 09/30/2017
Noncritical-Sensitive Position and/or Secret/Confidential Clearance Eligibility (For Civilians)	SF 86	Access National Agency Check and Inquiries (ANACI)	Tier 3 (T3) IOC 10/01/2015 FOC 09/30/2017
Critical-Sensitive Position and/or Top Secret (TS) Clearance Eligibility Special-Sensitive Position and/or Top Secret Clearance Eligibility with Sensitive Compartmented Information (SCI)	SF 86	Single Scope Background Investigation (SSBI)	Tier 5 (T5) IOC 10/01/2016 FOC 09/30/2017

For this Position Designation and Risk/Sensitivity Level:	Use This Standard Form:	Prior Investigations:	Revised FIS Investigations and Implementation Dates:
Moderate Risk Public Trust Position Reinvestigation (No national security sensitivity)	SF 85P	NACLC	Tier 2 Reinvestigation (T2R) IOC 10/01/2014 FOC 09/30/2017
High-Risk Public Trust Position (No national security sensitivity)	SF 85P	Periodic Reinvestigation (PRI)	Tier 4 Reinvestigation (T4R) IOC 10/01/2016 FOC 09/30/2017
Noncritical-Sensitive Position and/or Secret/Confidential Clearance Eligibility periodic reinvestigations (PR)	SF 86	NACLC	Tier 3 Reinvestigation (T3R) IOC 10/01/2015* FOC 09/30/2017 *(five year reinvestigation not required until FOC)
Critical-Sensitive Position and/or Top Secret (TS) Security Clearance Special- Sensitive Position and/or Top Secret Clearance Eligibility with SCL periodic reinvestigation	SF 86	SSBI-PR or Phased PR	Tier 5 Reinvestigation (T5R) IOC 10/01/2016 FOC 09/30/2017