SENIOR EXECUTIVES ASSOCIATION

The voice of career federal executives since 1980

July 2, 2025

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U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

RE: Senior Executives Association comments on OPM proposed rule, "Suitability and Fitness," RIN 3206-AO84, Docket No. OPM-2025-0007

Dear Acting Director Ezell:

The Senior Executives Association (SEA) is a nonprofit, nonpartisan professional association which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders. Since the association's founding in 1980, directly following the establishment of the SES as one of the government's three career personnel services via the Civil Service Reform Act of 1978, SEA has served as "the voice of the SES" before OPM, administrations, courts, and the Congress. Today, SEA's members include active members of the SES, Senior Professionals, as well as GS 12-15 employees who are aspiring future executives, as well as retired career federal leaders.

SEA has strong concerns with and opposes OPM's proposed rule, "Suitability and Fitness," and encourages OPM to withdraw it in its entirety or make significant revisions to address obvious concerns. The association's comments are organized around five major themes of concern:

1) centralization of authority,
2) lack of specificity, and lack of CSRA-type of protection,
3) workload projections,
4) limitations on MSPB authority, and
5) additional considerations and concerns.

I. Centralization of Authority with OPM

OPM argues that they could but are not prepared to delegate decision-making authority for post-appointment suitability actions because this policy is new and OPM is interested in establishing standards and ensuring consistency in decisions.

OPM must develop standards without regard to the decision maker - OPM or an agency head. These standards should also contemplate the essential role of managers who are responsible for assessing employees' conduct and performance. OPM could establish clearly defined standards that can be used across the government. If these standards are developed through the CHCO Council, then OPM could reasonably expect buy-in from agency human capital leaders when the standards are published.

To ensure consistency in decisions, OPM can link the standards to a decision tree and publish it for use by agency heads. A quarterly or semi-annual report on cases would help agencies understand what is expected in similar cases and provide a means for transparency and accountability.

Centralizing authority away from agencies requires additional OPM resources. Leaving the decisions with agency heads reduces costs and manpower requirements outlined in this proposed rule. Further, agency heads should retain the authority to manage their workforce to meet the needs of their organization. This proposed rule interferes with the employment relationship between agencies and their employees.

Moreover, the proposal to centralize authority adds an unnecessary handicap to agency heads, and threatens the politicization, or perception of politicization, of the process. Additionally, since OPM appears not have the infrastructure in place to take on this new work, what types of backlogs could be created? This proposed rule could greatly delay agency decision making while the suitability action is under review by OPM.

II. Lack of Specificity

OPM proposes adding additional reasons for agencies and OPM on which to base post-appointment suitability determinations and decisions. These lack definition, which could easily result in overzealous implementation or politicization of suitability actions. OPM, through the Chief Human Capital Officers (CHCO) Council, should provide definitions of each additional reason to at least the same level as outlined in 5 USC § 2302(b) (Prohibited Personnel Actions) and 5 USC 2301 (Merit System Principles).

As discussed in Centralization of Authority, OPM, through the CHCO Council, should clearly define standards used for post-appointment suitability actions.

III. Rule Bypasses CSRA and Employee Due Process

OPM states that the "…Chapter 75 process is perceived as too difficult" without substantiation. We challenge this rationale for this change. If OPM refers to the protections offered individuals under Chapter 75 vs the proposed rule, except for a limitation placed on MSPB (addressed elsewhere), the proposed rule provides notice, response by the accused, and right to appeal – all similar to CSRA requirements. Additionally, the Administration has issued guidance that progressive discipline is not required and that action should be taken based on the individual's conduct. This appears to make Chapter 75 actions just as expeditious as outlined in the proposed rule.

What is problematic about this rule is the mirage of due process under post-appointment suitability actions proposed by OPM, compared with the CSRA provisions outlined in Title 5. Unlike those CRSA provisions, the MSPB is unable to mitigate suitability determinations. Moreover, the MSPB currently lacks a quorum to adjudicate Board level appeals.

Because MSPB cannot adjudicate suitability appeals in the same manner as other conduct appeals, appellants' rights are compromised. The proposed rule should be modified to give MSPB the same authority it has for post-appointment suitability cases as it does for conduct cases under Chapter 75. Doing so would ensure protection against possible abuse of the proposed rule.

Beyond the above, OPM also lacks the authority to eradicate career SES of adverse action procedures. Two of the three statutory authorities OPM relies on for this rule do not apply to the SES, but OPM extends them to the SES in this rule. Should OPM wish to change the law, it lacks the power to do so and must engage Congress to initiate legislation to do so.

IV. Workload Projections

OPM estimates that 50% of Chapter 75 actions will be taken under the proposed rule but offers no evidence for this estimate. Thus, additional OPM resource requirements to implement this proposed rule are not data-driven, which conflicts with the Administration's overall decision-making guidance. The proposed rule indicates an estimated $35M annual savings from implementing the rule, but no source for this estimate is provided.

If OPM's estimates are correct, shifting workload to OPM will inevitably increase the timeline for agencies to take appropriate action under the proposed rule. Other OPM-managed centralized processes can be examined for comparisons, such as retirement processing, disability retirement processing, and QRB processing. Given OPM's history with centralized processing – one of delays, backlogs, and poor customer service – we can expect no difference under the proposed rule.

Keeping the final decision-making at the agency level will eliminate the additional OPM resource requirement and ensure more timely processing of actions. Agency managers and leaders are also in the best position, and most accountable for, assessing their employees. Inserting OPM in between this employer-employee relationship is not efficient or effective line-policy.

V. Other Considerations

The proposed rule states, "Agencies have frustration with not being able to take the next logical step, a suitability action after finding an employee unsuitable for continued employment." The proposed rule continues with the current circumstance, with the decision-making resting with OPM, not with agencies. The proposed rule does nothing to ameliorate agency frustration.

OPM proposes to add violations under 5 CFR 5.4 as a reason for suitability action, including removal from service. We can anticipate circumstances when OPM and other organizations

covered by 5 CFR 5.4 request testimony from an agency employee and the agency head declines. Under these circumstances, the employee could be removed from service for following orders by the chain of command. We see this potential conflict as unfair to the employee, and the proposed rule should include an exception for this circumstance.

The proposed rule includes changing 5 CFR 731.202(d) related to training requirements against "national training standards for suitability adjudicators." The proposed rule does not explain how these standards will be developed, how long agencies have to ensure the training is provided, if there is a recurring training requirements, who provides the training, source of funds for the training, whether a contractor can provide the training, how often the standards will be reviewed and updated, who will perform that review, how review results will be published and if changed, how long agencies have to train up to the new standards. More work is needed in the proposed rule to address this issue.

The proposed rule does not address the use of the Douglas Factors for post-appointment suitability actions. The rule should specify the deciding official must consider the Douglas Factors when deciding a post-appointment suitability matter.

SEA strongly believes there are a myriad of more effective ways to improve government performance and responsiveness to political direction than advancing this regulation. Effecting these regulations would centralize novel new authorities and responsibilities within OPM and deprive employees of their basic merit system rights and due process.

The Senior Executives Association continues to seek opportunities to collaborate with the Office of Personnel Management during the development of policies such as this one as opposed to only commenting on the unilaterally developed proposed regulations afterward.

Thank you for the opportunity to submit comments on this proposed rule.

Sincerely,

Marcus L. Hill
President