



EMPLOYEE RELATIONS' NEW TOOL: THE NEXT EVOLUTION OF FEDERAL SUITABILITY

Office of Personnel Management's expanded suitability authority for post-appointment conduct, the implications for agencies implementing Trusted Workforce 2.0, and the key policy decisions that will determine its impact on the federal personnel security landscape.

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EXECUTIVE SUMMARY

The Office of Personnel Management's recent revisions to 5 CFR 731 represent one of the most significant changes to federal suitability authorities in decades. For the first time, OPM may take suitability actions based on misconduct that occurs after an employee enters federal service. As agencies expand continuous vetting under Trusted Workforce 2.0, this new authority could fundamentally alter how misconduct is addressed across the federal workforce.

Whether this authority becomes a limited enforcement mechanism or a widely used personnel management tool will depend largely on how OPM chooses to implement it in practice.

A LONG-STANDING GAP IN FEDERAL PERSONNEL MANAGEMENT

For decades, federal agencies faced a familiar challenge: what do you do when a trusted employee breaks your trust by engaging in serious misconduct? The long-standing answer has been that you navigate the adverse action process, many view as cumbersome, time-consuming, and often falling short of resolving the problem. The process leaves some involved wondering about an apparent incongruity: if a job candidate with a recent past of employment misconduct, such as time theft, would be found unsuitable by the agency's security office and never even allowed to start working for the government, why is time theft by a trusted employee not considered a suitability concern.

The reason is that legal and regulatory authorities have historically drawn a distinction between suitability authorities and adverse action authorities based on when an individual's misconduct occurred. If conduct occurred before hiring, suitability authorities could come into play. If it happened after an employee entered federal service (post-appointment), suitability authorities were generally not available, and agencies typically relied on traditional adverse action procedures.

A recent Office of Personnel Management (OPM) update¹ to the federal suitability regulation at Title 5, Code of Federal Regulations, part 731 (5 CFR 731) has now flipped the script. OPM's update to 5 CFR 731 gives the agency authority to

take suitability actions based on post-appointment conduct. While the change may sound technical, it has the potential to reshape how agencies respond to misconduct identified through continuous vetting and other personnel security programs.

The timing is significant. As agencies continue to implement Trusted Workforce 2.0 and expand continuous vetting enrollment across the federal workforce, they are receiving more timely information about employee misconduct and risk indicators. Continuous vetting identifies potentially concerning conduct using automated records checks, traditional investigative activity at certain time intervals or in response to certain life events, and information maintained locally at the agency, like disciplinary complaints or security incidents. The question is no longer whether concerning conduct will be identified; it is how agencies and OPM will respond when it occurs.

For the approximately 1.1 million federal employees who serve in the competitive service, OPM's implementation decisions could determine whether the new suitability authority becomes an infrequently used enforcement tool or a significant new component of the federal personnel vetting landscape.²

¹ United States, Office of Personnel Management. Suitability and Fitness. Public Inspection Document No. 2026-13154, Federal Register Public Inspection, June, 29, 2026, <https://public-inspection.federalregister.gov/2026-13154.pdf>. Accessed 29 June 2026

² Office of Personnel Management. Workforce Size & Composition. Federal Workforce Data, U.S. Office of Personnel Management, <https://data.opm.gov/explore-data/analytics/workforce-size-and-composition>. Accessed 24 June 2026

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THE REGULATORY CHANGE: WHAT CHANGED IN 5 CFR 731

OPM's authority to take suitability actions against employees in the competitive service and career Senior Executive Service (SES) is not new. Historically, however, suitability actions were tied to conduct that occurred before appointment.

Once an individual entered federal service, agencies generally relied on adverse action procedures to address misconduct. This remained true even when concerning information surfaced through periodic reinvestigations or continuous vetting. Agencies could evaluate the conduct using suitability adjudicative standards, but they lacked authority to take a suitability action based on newly discovered post-appointment misconduct. The revisions to 5 CFR 731 change that framework.

OPM can now take suitability actions based on conduct that occurs after an employee has already entered federal service. Importantly, OPM reserved this authority for itself. While agencies can identify employee misconduct and refer the matter to OPM for action, only OPM has the authority to pursue a post-appointment suitability action. For employee relations and personnel security offices, that distinction matters. Agencies may identify conduct they believe renders an employee unsuitable for continued service, but OPM retains sole discretion regarding whether to pursue a suitability action. If OPM declines to act, agencies must rely on traditional adverse action procedures.

OPM can now take suitability actions based on conduct that occurs after an employee has already entered federal service.

WHY AGENCY REFERRALS MATTER

A suitability action can carry significant consequences, including removal from federal employment, cancellation of certain employment eligibility, and debarment from future federal employment for up to three years.

Historically, OPM has exercised its suitability authority only in cases where it determined a government-wide debarment was warranted. Across the personnel security community, many practitioners have viewed OPM's threshold for government-wide action as relatively high. In fact, in response to OPM's proposed rule, one comment claiming to represent the Veterans Health Administration stated that when suitability referrals to OPM are made, OPM has "rarely assumed jurisdiction or taken action", and that OPM declines to act in many cases where it's warranted due to limited resources, using a "bigger fish to fry" approach.³

As a result, agencies have frequently expected OPM to decline action unless the conduct was particularly serious, prompting some personnel security practitioners to question the value of even sending OPM a referral.

That historical practice becomes especially important when evaluating the potential impact of OPM's new authority.

³ VHA. "Comment on Suitability and Fitness." Regulations.gov, Docket No. OPM-2025-0007, Comment No. OPM-2025-0007-0004, June 4, 2025, <https://www.regulations.gov/comment/OPM-2025-0007-0004>. Accessed 24 June 2026





UNDERSTANDING THE TRADITIONAL FRAMEWORK

Consider an applicant from a state where recreational marijuana is legal who admits to using marijuana for several years during a background investigation for a federal police officer position. Imagine he states he was aware that marijuana use is illegal federally and that he will stop using marijuana if he gets the federal police officer job. The marijuana use in question would be considered pre-appointment conduct.

The agency may find the applicant admitting to routine marijuana use over several years concerning and can refer the case to OPM for a government-wide suitability evaluation. OPM may find the conduct troubling and may even agree with the agency's assessment that the individual should not serve in a law enforcement position where a willingness to disregard federal laws is at odds with the core duties of the job. OPM may find, however, that given evolving societal norms around marijuana, the conduct still does not warrant a government-wide debarment from all federal jobs.

In that situation, the agency still retains authority to act on its own. If the agency's mission places special emphasis on drug enforcement, for example, it may determine that the applicant is unsuitable for employment within that organization and impose an agency-specific debarment under suitability authorities.

That flexibility largely disappears in the post-appointment context.

Because OPM reserved authority over post-appointment conduct for itself, agencies lack the same agency-specific suitability fallback option. If OPM chooses not to pursue a suitability action, the agency must use standard adverse action procedures through human resources or employee relations channels.

TWO POSSIBLE PATHS FORWARD

The update to 5 CFR 731 does not require OPM to limit post-appointment suitability actions to cases warranting government-wide debarment. In fact, it never has. OPM's practice of setting that high threshold for acting has been a choice, not a regulatory requirement.

With its new authority for post-appointment suitability actions, OPM could continue following its historical practice and reserve suitability actions for only the most egregious cases. If that occurs, agencies will likely see only a modest increase in suitability action activity, while traditional employee relations processes remain the primary mechanism for addressing misconduct discovered through continuous vetting.

However, OPM could choose a broader approach.

OPM could use suitability authorities in cases that warrant removal but not government-wide debarment. If that happens, personnel vetting offices may become involved in substantially more misconduct cases than they are today.

Misconduct matters that historically remained within HR or employee relations offices could increasingly move into personnel vetting channels before being referred to OPM.

For security managers and personnel vetting professionals, that would represent a substantial operational change.

There is a wildcard factor worth noting: OPM has wide latitude in defining what conduct warrants a governmentwide debarment. The traditional threshold for debarment-worthy conduct is included in OPM's Suitability and Fitness Processing

Manual. OPM includes tables in the manual to help agencies identify situations that may warrant government debarments. For example, OPM identifies the following conduct as potentially debarment-worthy:

- Homicide, drug or alcohol addiction, or gross misconduct or negligence in employment;
- Two or more instances of: grand theft, assault, or prescription fraud.
- Three or more instances of: shoplifting, driving under the influence, or minor disruptive behavior (e.g., disorderly conduct, criminal mischief).⁴

OPM could redraw the line in the sand, if it desired. It could decide that a single instance of an offense like shoplifting or driving under the influence warrants a governmentwide debarment.

To be clear, there has been no indication that OPM intends to lower the bar and impose debarments for minor infractions. The simple fact that it could, though, raised serious concerns among those who submitted over 1,400 public comments when OPM first proposed the regulation update.⁵

OPM normally updates its suitability manual after a significant update to the regulation. If it does, any updates to the tables within could indicate whether the thresholds might change.

⁴ United States, Office of Personnel Management. Suitability and Fitness Processing Manual. 17 Jan. 2025, <https://www.opm.gov/media/zrondtwf/suitability-and-fitness-processing-manual-jan-2025.docx>. Accessed 24 June 2026.

⁵ United States, Office of Personnel Management. Suitability and Fitness. Docket No. OPM-2025-0007, Regulations.gov, 3 June 2025, <https://www.regulations.gov/docket/OPM-2025-0007>. Accessed 24 June 2026.

KEY CONSIDERATIONS FOR FEDERAL AGENCIES

If OPM ultimately adopts a broader implementation approach, taking suitability actions in situations that do not warrant government-wide debarment, agencies will need additional guidance on:

- Referral thresholds and case-selection criteria.
- Information sharing between personnel security and employee relations offices.
- Evidence requirements supporting suitability referrals.
- Coordination best practices among HR, employee relations, and personnel vetting functions.
- The relationship between continuous vetting findings and suitability actions.

Trusted Workforce 2.0 has already increased the speed at which agencies receive information about potential risk indicators. OPM's implementation decisions will determine whether the government's response mechanisms evolve at a similar pace.



THE BOTTOM LINE

The regulatory update to 5 CFR 731 answers only part of the question. The larger question is how frequently OPM will use the authority and what types of cases it chooses to pursue.

As agencies continue to implement Trusted Workforce 2.0 and expand continuous vetting programs, OPM's early decisions will provide the first indication of whether post-appointment suitability actions become an enforcement tool that is the exception to the norm, or a routine part of the federal personnel security landscape.

The rule is final. The practical impact will depend on how OPM chooses to use its new authority.

And the story may soon have a next chapter. Today, both adverse actions and suitability actions come with the right to appeal to the Merit Systems Protection Board

(MSPB). In February 2026, OPM proposed a separate update to 5 CFR 731 that would change the venue where appeals of suitability actions are heard.⁶ Instead of appealing to the MSPB, individuals subjected to suitability actions would appeal to OPM.

Could moving suitability appeals from MSPB to OPM alter OPM's implementation approach to post-appointment conduct actions? If OPM elects to take actions even in cases that do not warrant a government-wide debarment from the beginning, the outcome of its suitability appeals proposal is unlikely to change that approach. If, however, OPM initially takes a conservative approach and uses its post-appointment suitability authority only in the most egregious cases warranting debarment, a move of suitability appeals from MSPB to OPM could embolden OPM to revisit that conservative approach and adopt the more aggressive approach.

⁶ Office of Personnel Management, "Suitability Action Appeals," Federal Register 91, no. 25 (February 6, 2026): 5352-5365. <https://www.federalregister.gov/documents/2026/02/06/2026-02449/suitability-action-appeals>.

The rule is final. Its practical impact remains to be seen.



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