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# Understanding the Role of Suitability in the Employment Process

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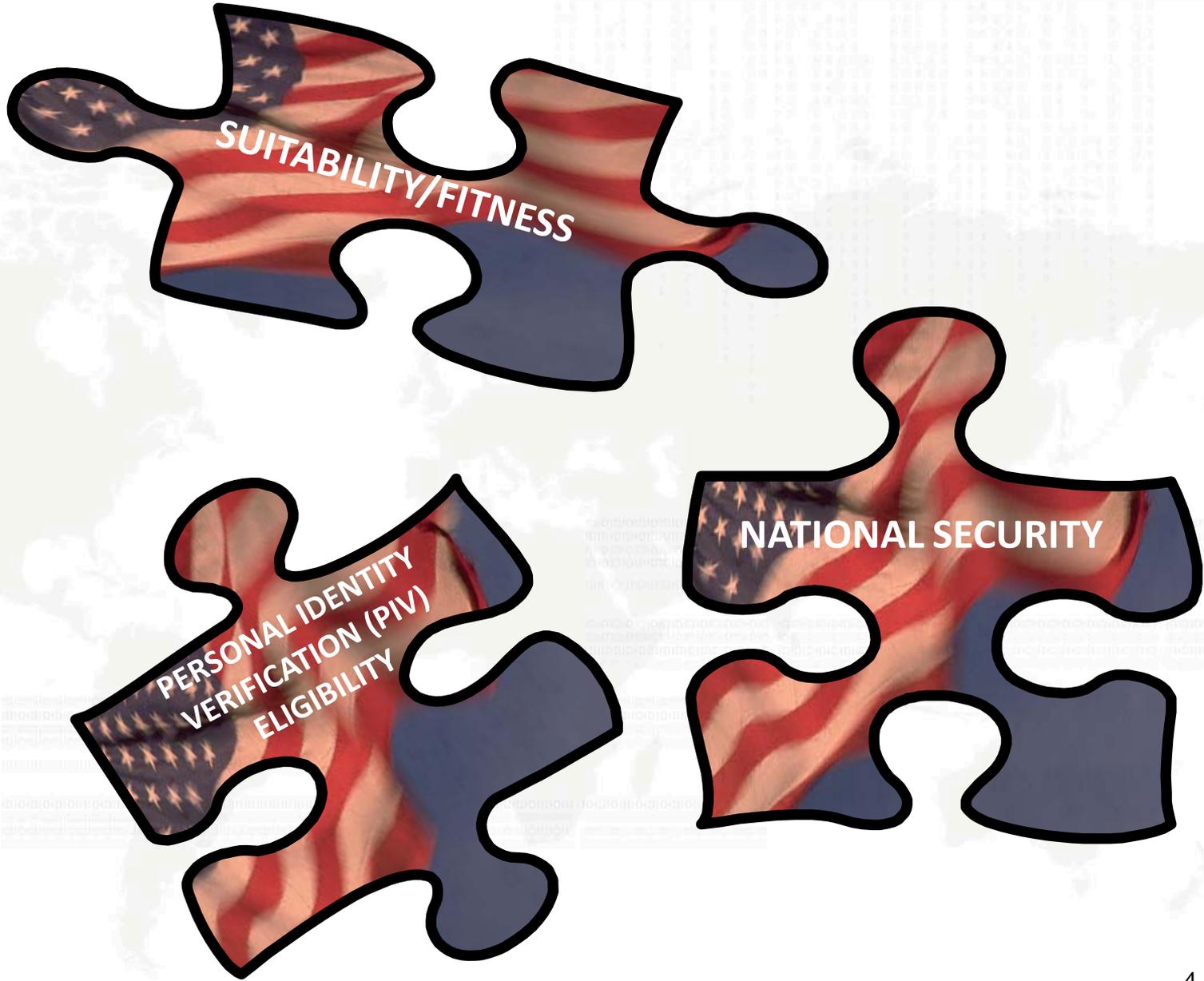
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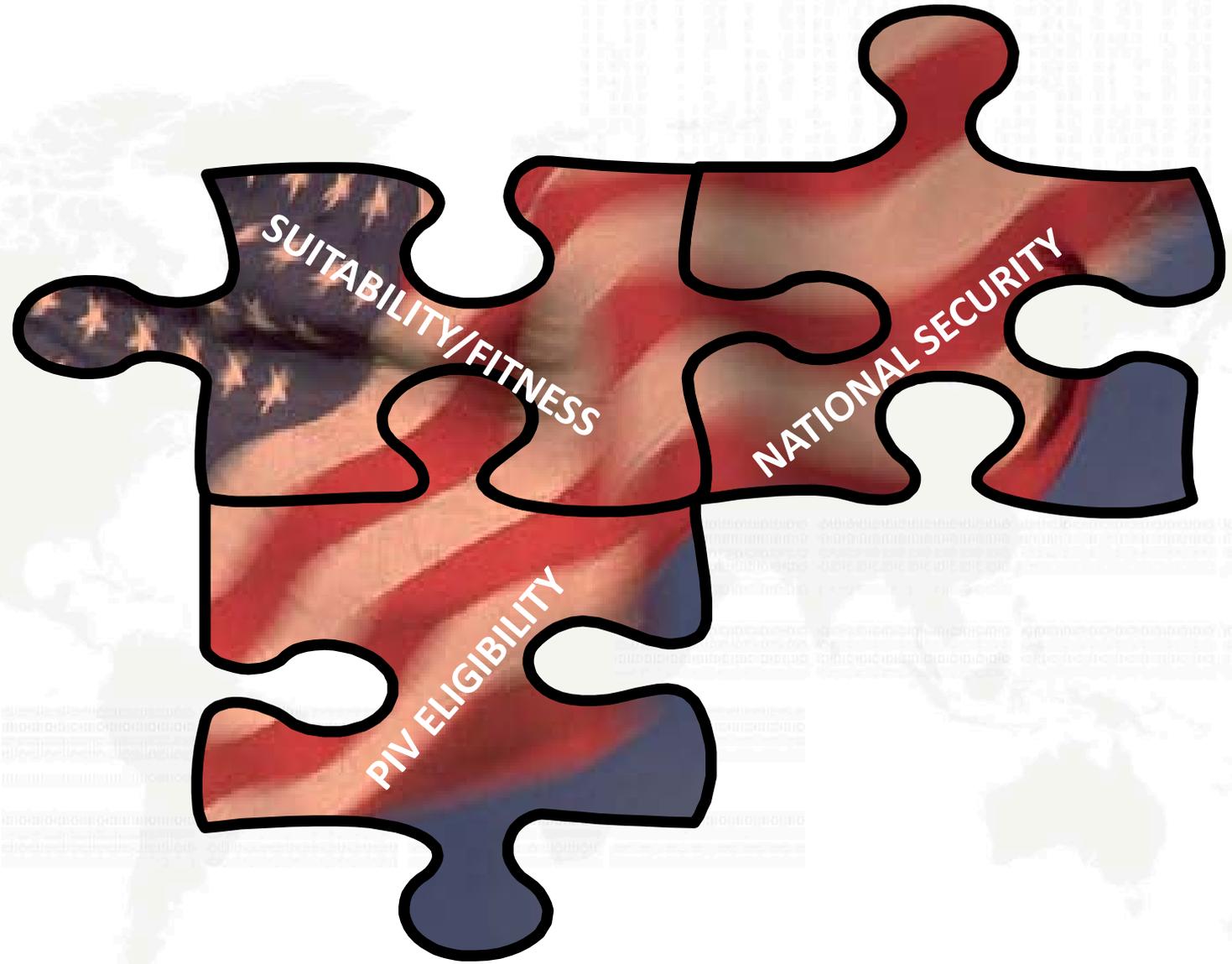
## Goals of This Presentation

- Discuss the various purposes for personnel investigations
- Discuss the distinctions between Credentialing, Suitability, and Security policies and guidance
- Outline agency authorities and options for adjudication
- Discuss how these processes impact the hiring process

## Regulatory Drivers

- Requirement for access to Federal facilities and logical systems
  - Eligibility for a Personal Identification Verification (PIV) card as mandated by HSPD 12
- Need to evaluate character and conduct of Government workers
  - Suitability determinations for positions covered by 5 CFR 731
  - Continuous evaluation through reinvestigation of individuals in positions of public trust as required by E.O. 13488
  - National Security determinations are covered by 5 CFR 732







## What is HSPD-12?

- Mandatory, Governmentwide standard for a secure and reliable form of identification issued by the Federal Government for employees and contract employees
  - Physical access to Federally controlled facilities
  - Logical access to Federally controlled information systems
- Requirements established in Federal Information Processing Standards (FIPS) publication 201-1
  - Completion and successful adjudication of National Agency Check with Written Inquiries investigation or other investigation as required for Federal employment

## HSPD-12 Adjudication

- 7/31/08 Final Credentialing Standards for Issuing PIV Cards under HSPD-12 issued by OPM
- No PIV card may be granted if:
  - Known or reasonable suspicion of terrorism
  - Unable to verify identity
  - Fraudulent identity information submitted
  - Reasonable belief attempt will be made to gain unauthorized access to sensitive or protected information
  - Reasonable belief credential will be used unlawfully or inappropriately
  - Reasonable belief individual will use Federally-controlled information systems unlawfully, make unauthorized modifications, corrupt or destroy, or inappropriately use such systems

## HSPD-12 Adjudication

- Agencies may use Supplemental Credentialing Standards when position is not covered by other adjudicative criteria. These include reasonable basis to believe there is an unacceptable risk due to:
  - Misconduct or negligence in employment
  - Criminal or dishonest conduct
  - Material, intentional false statement, deception or fraud
  - Alcohol abuse without substantial rehabilitation
  - Illegal use of narcotics, drugs, or other controlled substances without substantial rehabilitation
  - Statutory or regulatory bar
  - Willful engagement in acts or activities designed to overthrow the U.S. Government by force
- Equivalent to suitability factors in 5 CFR 731

## What is Suitability?

**“Suitability” refers to a person’s identifiable character traits and conduct sufficient to decide whether employment or continued employment would or would not protect the integrity or promote the efficiency of the service**

# Suitability Requirements

- Code of Federal Regulations (5 CFR 731) establishes criteria and procedures for suitability investigations, determinations, and actions
- Covered positions include only:
  - Competitive service positions
  - Career appointments in the Senior Executive Service
  - Excepted service positions that can be non-competitively converted to competitive service
- Suitability investigations are conducted under this authority for all covered positions. Agency suitability actions under 5 CFR 731 are limited to applicants and appointees

# Suitability Risk Levels

- **High Risk (HR)**
  - **Moderate Risk (MR)**
  - **Low Risk (LR)**
- } Public Trust Positions

**Level of investigation depends on risk level of position**

## What is Fitness?

**“Fitness” refers to the level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a Federal agency as an employee in the excepted service (other than in a position subject to suitability) or as a contractor employee**

- Excepted service positions are covered by 5 CFR 302
- Contracts should specify investigative and adjudicative requirements for contract employees

## Establishing Fitness Criteria

- Agency heads have the authority to establish fitness criteria and make fitness determinations based on them
- Agency heads have discretion to determine if their criteria is equivalent to suitability standards under 5 CFR 731
- Agency heads shall take into account OPM guidance when determining whether their criteria is equivalent

# Reciprocity of Prior Investigations

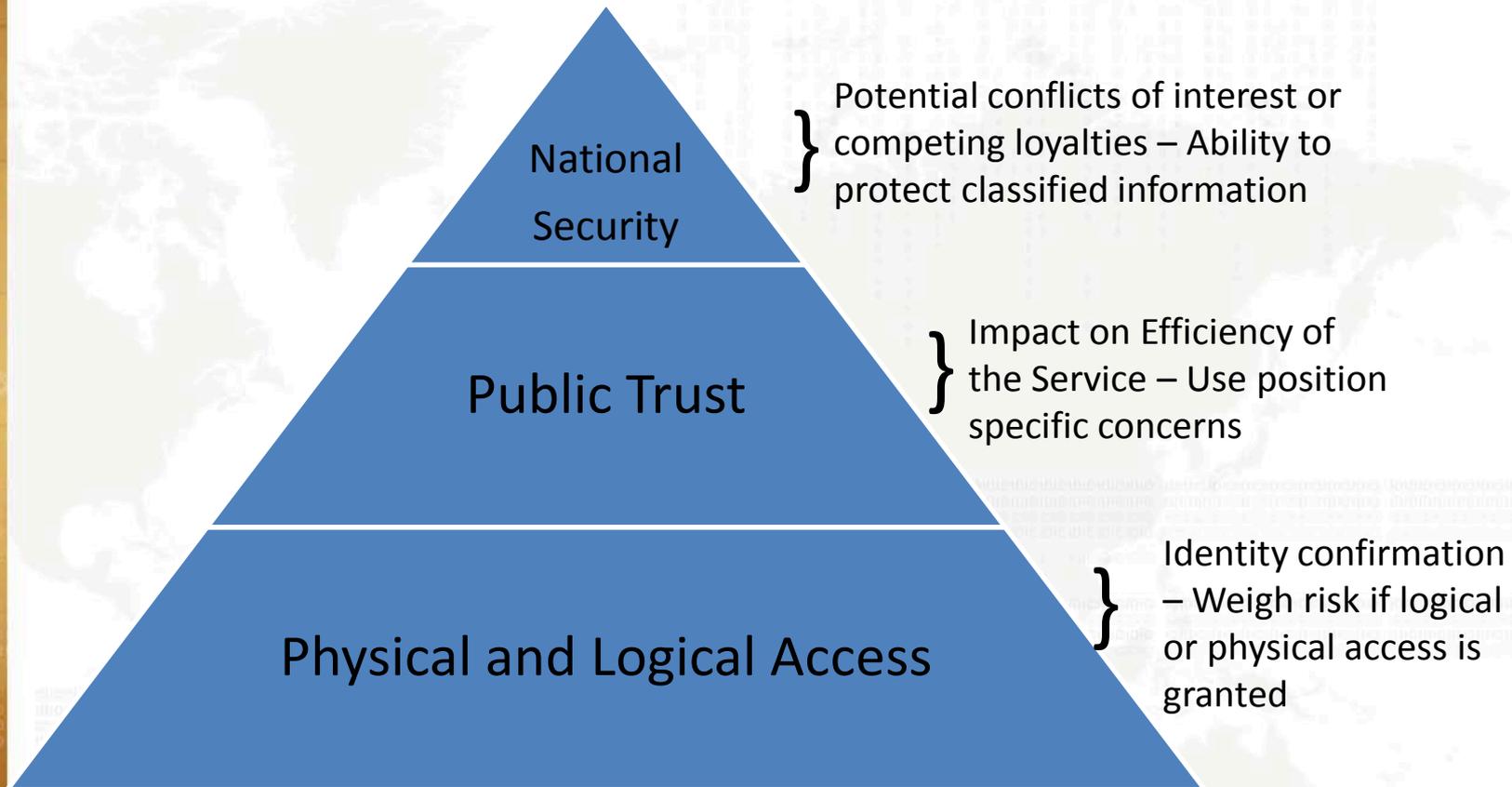
- Reciprocity Applies if:
  - The person has already undergone an investigation; **and**
  - Is being appointed, converted, or transferred with one year of continuous service; **and**
  - Has been previously determined suitable or fit under criteria equivalent to 5 CFR 731 (adequate assurance of suitability for covered positions, as determined by OPM)
- When the above conditions apply, investigation may be required when:
  - Position requires higher level of investigation
  - New information raises suitability questions

## What is Security?

**“Security” refers to a reasonable expectation that the employment or continued employment of an individual would or would not be clearly consistent with the interests of National Security**

# Suitability/Fitness vs. Security

<b>SUITABILITY/FITNESS</b>	<b>SECURITY</b>
<p><b><u>Objective</u></b> – The examination of individual personal character and conduct</p> <p><b>Suitability</b> – Would the person’s employment in a covered position promote the efficiency and protect the integrity of the Service?</p> <p><b>Fitness</b> – Does the person have the <u>required level of character and conduct</u> necessary to perform work for or on behalf of a Federal agency?</p>	<p><b><u>Objective</u></b> – A determination regarding whether employment would constitute a risk to National Security. Influences such as foreign associates or ties are also considered in this determination</p> <p>Does the person have <u>personal conduct or influences</u> that could affect or potentially affect his or her trustworthiness?</p>



## Why is the Proper Application of Suitability Policy so Important?

- Suitability Policy :
  - Saves money when the appropriate level of investigation is conducted
  - Saves time when hiring decisions are made using the right information in a timely manner
  - Protects the Hiring Official from making bad hiring decisions
  - Protects the Agency from litigation risk from 'overinvestigation'
  - Protects the Federal Government from hiring the wrong person again and again

## Origins of Suitability Issues

- Application or appointment forms
- Interviews/examinations
- Pre-employment inquiries\*
- Investigative data forms
- Personal subject interview (PRSI)
- Investigation

\* Reference checks are a vital part of the hiring process that can identify problem areas early.

# Specific Suitability Factors

## 1. Misconduct or negligence in employment

Qualification issues are not the same as suitability issues

## 2. Criminal or dishonest conduct

Financial irresponsibility is included only if dishonesty is established

## 3. Material, intentional false statement, or deception or fraud in examination or appointment\*

- A statement capable of influencing, affecting or having a natural tendency to affect an official decision

## 4. Refusal to furnish testimony as required by 5 CFR 5.4\*

- Limited to testimony required by the Office of Personnel Management, Office of the Special Counsel, or Merit Systems Protection Board

## Specific Suitability Factors

- 5. Alcohol abuse, without evidence of substantial rehabilitation, of a nature and duration that suggests that the applicant or appointee would be prevented from performing the duties of the position in question or would constitute a direct threat to the property or safety of the applicant or appointee or others\***
- 6. Illegal use of narcotics, drugs or other controlled substances without evidence of substantial rehabilitation\***

\* Neither factor applies if there is clear evidence of substantial rehabilitation (measurable efforts and noticeable results)

## Specific Suitability Factors

- 7. Knowing and willful engagement in acts or activities designed to overthrow the United States Government by force**
  - Membership in an organization, alone, is not disqualifying
  
- 8. Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question**
  - There must be a specific legal restriction to employment

## Additional Considerations

**OPM and agencies must consider a list of additional considerations to the extent OPM or the relevant agency, in its sole discretion, deems any of them pertinent to the individual case**

- 1. Nature of the position**
- 2. Nature and seriousness of the conduct**
- 3. Circumstances surrounding the conduct**
- 4. Recency of the conduct**
- 5. Age of person at time of conduct**
- 6. Contributing societal conditions**
- 7. Absence or presence of rehabilitation or efforts toward rehabilitation**

# Nature of the Position

## Examples of core duties

- Law Enforcement positions – misdemeanor domestic abuse
- Drug Enforcement positions – sale of narcotics
- Fiduciary positions - embezzlement
- Motor Vehicle Operator - habitual traffic offender
- Computer Security Manager - using company computer to access porn sites
- Staffing Specialist - prohibited personnel practices

NOTE: LIST IS NOT ALL-INCLUSIVE

# What is NOT a Suitability Action?

- Non-selection, including:
  - the cancellation or rescission of a tentative offer for a **single** position
  - cancellation of eligibility for a **specific** position based on an objection to an eligible or pass over of a preference eligible under 5 CFR 332.406
    - Non-selection, objection to eligibility, or pass-over of preference eligible candidate decisions are not appealable to the Merit Systems Protection Board
- Actions taken under other adjudicative authorities

# Applying Suitability Factors to the Hiring Process

- Position Descriptions should include Sensitivity and Risk levels
- Agencies should begin to determine an applicant's suitability early in the hiring process
- Agencies are encouraged to use interim results to on-board, where appropriate
- Hiring Officials should always conduct reference checks to look for inconsistencies

# Agency Responsibilities

- Agencies are required to:
  - Ensure all HR or Security Personnel who access investigative data are properly screened
  - Ensure all HR and Security Personnel who conduct Suitability Adjudication are properly trained
  - Follow 5 CFR 732 requirements for documentation of Suitability determinations and other related records

# HR Roles in the Suitability Process

- HR Specialists should :
  - assist Hiring Officials in understanding the importance of proper Position Sensitivity and Risk Designations
  - assist applicants in understanding the importance of complete and accurate information submitted for investigation
  - check available information to ensure that the applicant is suitable for the position based on information available (Bogus degree, Core duties incompatible with prior conduct, Debarred)

# Reporting

- 5 CFR 731 requires all Agencies to report:
  - all actions taken as a result of an OPM suitability investigation
  - to OPM when they believe a Government wide debarment might be appropriate in a specific case
  - information about the level and result of each background investigation, suitability determination, and suitability action taken to OPM



# Contact Information

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