



SENIOR EXECUTIVES ASSOCIATION

SEA - The Voice of Senior Executives

March 9, 2026

Joe Knouff
Suitability Executive Agent Programs
Office of Personnel Management
SuitEA@opm.gov

Re: Comments on Proposed Rule, Suitability Action Appeals, RIN 3206-AO97, 91 FR 5352 (Feb. 6, 2026)

Dear Mr. Knouff:

The Senior Executives Association (SEA) submits these comments on OPM's proposed rule governing suitability action appeals, 91 FR 5352 (Feb. 6, 2026). SEA represents Senior Executive Service members and other career federal executives and has advocated for a professional, merit-based, and nonpartisan civil service since 1980. We write to raise concerns about the proposal's elimination of independent review and judicial access, and to offer recommendations for achieving OPM's efficiency goals without compromising due-process protections.

SEA Recognizes the Importance of Effective Suitability Procedures

SEA acknowledges that effective procedures for determining one's suitability for employment in the competitive service or career SES are essential to protecting the integrity of the federal workforce and the missions agencies are entrusted to carry out. We do not dispute that the current MSPB appeals process for suitability actions has genuine shortcomings, including prolonged timelines, recurring quorum failures, and high settlement rates that may discourage agencies from pursuing warranted actions. Our concerns are with whether the specific reforms chosen serve the interests of a fair and effective merit system.



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Moving Appeals to OPM Eliminates Independent Review

The proposed rule would transfer suitability action appeals from MSPB to OPM's own adjudicative office. OPM simultaneously establishes suitability standards, conducts suitability determinations, and, under this proposal, would adjudicate appeals from those determinations. Regardless of the internal separation OPM describes between its policymaking and adjudicative functions, this consolidation does not constitute independent review. The credibility of an appeals process depends on the adjudicator's independence from the agency whose decisions are being reviewed.

A suitability action can result in removal from federal employment or debarment from future federal service. These are significant consequences for career professionals, many of whom are SEA members or serve alongside them. The gravity of these consequences warrants adjudication by a body that is structurally independent of the agency initiating the action. OPM's proposal does not meet that standard.

Eliminating Judicial Review Is Not Justified

The proposed rule would foreclose judicial review of OPM's final suitability decisions. SEA strongly objects to this provision. Suitability actions can result in career-ending consequences, including permanent debarment from federal service. Removing access to Article III courts eliminates the most fundamental check on executive branch adjudication.

An employee or applicant who believes a suitability action was based on erroneous facts, applied incorrect legal standards, or was taken for improper reasons would have no recourse outside OPM under this proposal. That outcome is inconsistent with basic principles of due process and the merit system values SEA exists to advance. We urge OPM to preserve judicial review as a final check on suitability decisions, particularly in cases involving removal or debarment.



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Written-Record Review Without Hearings Creates Risk of Factual Error

The proposed rule replaces mandatory hearings and discovery with written record review, leaving OPM sole discretion to order a hearing only when it deems one necessary and efficient. SEA recognizes that written record review is appropriate for many administrative adjudications and that the current MSPB process can be streamlined. However, suitability determinations often turn on credibility assessments and factual disputes that are difficult to resolve solely on paper. An individual who has been removed or debarred based on a factual error has no effective mechanism to develop a record that challenges that error if both hearing rights and discovery are eliminated.

SEA recommends that the final rule establish objective criteria for when a hearing will be ordered, rather than vesting that determination solely in OPM's discretion, and that a baseline right to present testimony on disputed factual issues be preserved in cases involving removal or debarment.

The Interaction with the June 2025 NPRM Warrants Careful Scrutiny

OPM has presented this proposed rule as limited to suitability appeals procedures, separate from the June 2025 NPRM that would expand the substantive grounds for suitability actions, including by adding post-appointment conduct as a basis for suitability-based removal. SEA is concerned that the two rulemakings, viewed together, represent a significant and coordinated reduction in protections for career federal employees. Broadening the substantive grounds for suitability actions while simultaneously eliminating independent appellate review and judicial access creates a compound risk that is greater than either change alone.

OPM should consider the cumulative effect of these two rulemakings on employee due-process protections and should not finalize this appeals rule without accounting for the full landscape of changes being made to the suitability framework.



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Recommendations

SEA urges OPM to:

- Retain independent adjudication of suitability appeals, ideally through a reformed MSPB.
- Preserve judicial review of final suitability decisions, particularly in cases resulting in removal or debarment.
- Establish objective, defined criteria for when a hearing will be ordered rather than leaving the determination entirely to OPM's discretion.
- Assess the combined due-process impact of this rulemaking and the June 2025 NPRM before finalizing either.
- Provide a meaningful transition period so that pending MSPB appeals are not disrupted by any change in the appeals framework.

SEA shares OPM's commitment to a trusted, effective federal workforce and to suitability procedures that are rigorous and timely. We do not share the view that these goals require eliminating independent review or foreclosing judicial recourse. Reforms that streamline procedures while preserving the core safeguards of the merit system will produce better outcomes for agencies, employees, and the public alike. We urge OPM to revise this proposed rule accordingly.

Respectfully submitted,

Marcus L Hill

Marcus Hill
President
Senior Executives Association