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The Office of Personnel Management (Agency) hereby respectfully submits a notice to the Board and to the parties in the consolidated appeal of Aguzie, et al. v. OPM, Nos. DC-0731-09-0261-R-1, DC-0731-09-0260-R-1, AT-0731-09-0240-I-1, and CH-0731-09-0578-I-1.

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UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

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Office of the
General Counsel

Honorable William D. Spencer
Clerk of the Board
U.S. Merit Systems Protection Board
1615 M Street, NW
Washington, DC 20419

OCT 6 2010

Re: Aguzie, et al. v. OPM, Nos. DC-0731-09-0261-R-1, DC-0731-09-0260-R-1,
AT-0731-09-0240-I-1, and CH-0731-09-0578-I-1.

Dear Mr. Spencer:

In connection with the above-referenced appeals, the Office of Personnel Management wishes to bring to the Board's and the parties' attention certain regulations, which counsel discovered in the course of preparing for oral argument, and upon which OPM may rely at the oral argument. The regulations, which are set forth at 5 C.F.R. § 22.1(c) (1946 Ann. Supp.); 5 C.F.R. §§ 5.4, 5.5, 9.102, 22.1(c) (1947 Ann. Supp. & 1949 Ed.); 5 C.F.R. §§ 05.2, 05.4(a), (d)-(e), 9.102(a), 22.101(a) (1960 Cum. Supp.); 5 C.F.R. §§ 22.103(b)(1)-(2), 22.201(b) (1963 Cum. Supp.); 5 C.F.R. §§ 5.2, 5.4(a), (d)-(e), 731.302 (1964 Ed.); and 5 C.F.R. §§ 731.302, 754.101 *et seq.* (1966 Cum. Supp.), reveal that the Civil Service Commission continuously regulated suitability actions as actions distinct from adverse actions initiated by agencies, subject to distinct procedural requirements, since at least 1946. OPM cites this history in support of the arguments in its briefs that such distinction is deeply rooted in the civil service laws and that when it enacted the Civil Service Reform Act, Congress did not intend to relegate OPM-initiated suitability actions to the procedures established at Chapter 75 for agency-initiated adverse actions.

Respectfully submitted,

Elaine Kaplan
General Counsel

Enclosure