



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, October 10, 2018

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MARGARET WEICHERT
ACTING DIRECTOR

Subject: Interpretive Guidance on Section 5 Ensuring Integrity of Personnel Files
Contained in Executive Order 13839

Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: <https://www.chcoc.gov/content/guidance-implementation-executive-order-14003-protecting-federal-workforce>

Section 5 of Executive Order (EO) 13839

Section 5 of Executive Order 13839 of May 25, 2018, Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles, provides as follows:

Sec. 5. Ensuring Integrity of Personnel Files. Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

Section 5 of EO 13839 is intended to promote the highest standards of integrity and accountability in the federal workforce by requiring agencies to maintain accurate personnel records and to not alter the information contained in those records in connection with a formal or informal complaint or adverse personnel action. It is further intended to ensure that those records are preserved so that agencies can make appropriate and informed decisions regarding an employee's qualification, fitness, and suitability as applicable to future employment. It is for this reason that agencies are directed not to remove or otherwise modify information contained in a personnel file as a means of resolving an employee-initiated action.

Application of Section 5 of EO 13839

The following guidance is intended to further clarify the application of Section 5 of EO 13839:

Corrective Action Based on Discovery of Agency Error

Section 5 requirements should not be construed to prevent agencies from taking corrective action should it come to light, including during or after the issuance of an adverse personnel action, that

the information contained in a personnel record is not accurate or records an action taken by the agency illegally or in error. In such cases, an agency would have the authority, unilaterally or by agreement, to modify an employee's personnel file to remove inaccurate information or the record of an erroneous or illegal action. An agency may take such action even if an appeal/complaint has been filed relating to the information that the agency determines to be inaccurate or to reflect an action taken illegally or in error. In all events, however, the agency must ensure that it removes only information that the agency itself has determined to be inaccurate or to reflect an action taken illegally or in error. And an agency should report any agreements relating to the removal of such information as part of its annual report to the OPM Director required by Section 6 of EO 13839. Documents subject to withdrawal or modification could include, for example, an SF-50 issuing a disciplinary or performance-based action, a decision memorandum accompanying such action, or an employee performance appraisal.

Corrective Action Based on Discovery of Material Information Prior to Final Agency Action

When persuasive evidence comes to light prior to the issuance of a final agency decision on an adverse personnel action casting doubt on the validity of the action or the ability of the agency to sustain the action in litigation, an agency may decide to cancel or vacate the proposed action. Additional information may come to light at any stage of the process prior to final agency decision including during an employee response period. To the extent an employee's personnel file or other agency records contain a proposed action that is subsequently cancelled, an agency would have the authority to remove that action from the employee's personnel file or other agency files. Section 5's requirements would, however, continue to apply to any accurate information about the employee's conduct leading up to that proposed action or separation from federal service.