



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Friday, December 11, 2020

**MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

**FROM:** MICHAEL J. RIGAS, ACTING DIRECTOR

**Subject:** Issuance of Regulations on Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions

*Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: 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>*

The U.S. Office of Personnel Management (OPM) is pleased to announce the issuance of its final regulations governing probation on initial appointment to a competitive position, performance-based reduction in grade and removal actions, and adverse actions. The regulations are effective on November 16, 2020, and are accessible at <https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-20427.pdf>. The regulations assist agencies in carrying out, consistent with law, certain of the President's directives to the Executive Branch in Executive Order (EO) 13839. To comply with EO 13839 agencies must revise agency policies within 45 days of the issuance of the final OPM regulations.

The regulations update current procedures to make them more efficient and effective. These revised regulations also amend references and language due to statutory changes unrelated to EO 13839. To maximize the effectiveness of the probationary period, the revisions to 5 CFR part 315 provide a new requirement regarding probationary periods. The revisions to 5 CFR parts 432 and 752 also clarify procedures and requirements to support managers in addressing unacceptable performance and promoting employee accountability for performance-based reduction in grade and removal actions, and adverse actions. Ultimately, these changes support President Trump's goal of effective stewardship of taxpayers' money by our government.

To provide additional perspective, the following information highlights of some of the areas covered by the revised regulations. OPM amends the regulations at subpart H of 5 CFR part 315 to provide for timely agency notifications to supervisors at designated intervals that an employee's probationary period is ending and that an affirmative supervisory decision is required. At 5 CFR part 432, OPM clarifies the requirements of the opportunity period that agencies must provide to employees who have unacceptable performance before imposing a reduction in grade or removal. Also, 5 CFR part 752 now effectuates the requirements of 5 U.S.C. 7515, which provides agencies the ability to address retaliation by supervisors for whistleblowing. The regulations also explain the information that must be provided in a notice of proposed action taken under 5 CFR part 752, including detailed information with respect to any

right to appeal the action pursuant to Public Law 115-92, section 1097(b)(2)(A). Further, among other amendments, the regulations provide clarity on the use of progressive discipline and tables of penalties. Finally, please note that the OPM Director and the Chief Human Capital Officers Council will work together to educate Federal supervisors about holding employees accountable for unacceptable performance or misconduct under these regulations.

OPM will submit a report to the President, through the Office of Management and Budget, within 15 months of the final rule issued pursuant to the EO. This report will evaluate the effect of the final regulations, including its effect on a supervisor's ability to hold employees accountable for their performance.

To gather the information for the report to the President, we will be requesting information from agencies at the headquarters level. Please be prepared to report the impact of the rule on your agency's ability to make effective use of the probationary period, as well as to address unacceptable performance and misconduct. OPM will provide additional guidance on this in the future.

Attached is a document to provide informative highlights of both the regulation amendments and the portions of the Executive Order that were previously enjoined. Although the revised regulations were not intended to implement those portions of the Executive Order, the previously enjoined sections are now fully effective and binding on executive agencies. The attached question and answer reference document is not intended to be comprehensive, but rather to call attention to topics that may be of interest to agencies. You should consult your human resources office or OPM with any questions.

Agency Chief Human Capital Officers and/or Human Resources Directors should contact OPM's Employee Services, Accountability and Workforce Relations, Employee Accountability, at (202) 606-2930 or [employeeaccountability@opm.gov](mailto:employeeaccountability@opm.gov) for additional information. Employees should contact their agency human resources offices for assistance.

Attachments:

- [Video highlighting key changes to OPM regulations at 5 CFR 315; 5 CFR Part 432; and 5 CFR 752](#)
- Questions and Answers on Revised Regulations for 5 CFR 315, 432, and 752 and the Sections of Executive Order 13839 Previously Enjoined (see 508-conformant PDF below)

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors