

PERFORMANCE MANAGEMENT SYSTEMS

1. REASON FOR ISSUE: To revise Department of Veterans Affairs (VA) procedures regarding performance management systems.

2. SUMMARY OF CONTENTS/MAJOR CHANGES: This handbook contains VA policy on performance management. The pages in this issuance replace the corresponding page numbers in VA Handbook 5013. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5013 that is maintained on the [Office of Human Resources Management Web site](#). Significant changes include:

- a. Adds processes for addressing performance deficiencies;
- b. Abolishes duplicative appeal rights; and
- c. Realigns reconsideration and appeal rights language applicable to the failure to satisfactorily complete a supervisory probationary period.

3. RESPONSIBLE OFFICE: The Employee Relations and Performance Management Service (051), Office of the Deputy Assistant Secretary for Human Resources Management.

4. RELATED DIRECTIVE: VA Directive 5013, Performance Management Systems.

5. RESCISSIONS: None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

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PERFORMANCE MANAGEMENT SYSTEMS

PART I. TITLE 5 PERFORMANCE APPRAISAL PROGRAM

CONTENTS

PARAGRAPH	PAGE
1. <u>COVERAGE</u>	I-1
2. <u>EXCLUSIONS</u>	I-1
3. <u>GENERAL PROVISIONS</u>	I-2
4. <u>EVALUATION</u>	I-2
5. <u>DEFINITIONS</u>	I-2
6. <u>PLANNING PERFORMANCE</u>	I-3a
7. <u>MONITORING PERFORMANCE</u>	I-3c
8. <u>APPRAISING PERFORMANCE</u>	I-3c
9. <u>[PROCEDURES FOR ADDRESSING UNACCEPTABLE PERFORMANCE]</u>	I-4]
[10]. <u>PROCEDURES FOR DETAILS, TRANSFERS AND OTHER CIRCUMSTANCES</u>	I-[4g]
[11]. <u>REWARDING PERFORMANCE</u>	I-[5]
[12]. <u>PERFORMANCE RATING GRIEVANCES AND APPEALS</u>	I-[6]
[13]. <u>WITHIN-GRADE INCREASES – GENERAL SCHEDULE</u>	I-[7]
[14]. <u>WITHIN-GRADE INCREASES – PREVAILING RATE</u>	I-[14]
[15]. <u>FAILURE TO COMPLETE A SUPERVISORY PROBATIONARY PERIOD SATISFACTORILY</u>	I-[15]
[16]. <u>APPEALING REQUIREMENT TO SERVE SUPERVISORY PROBATIONARY PERIOD</u>	I-17]
 APPENDICES	
I-A. <u>PERFORMANCE APPRAISAL SYSTEM APPROVED BY OPM</u>	I-A-1
I-B. <u>OPM APPROVAL OF VA PERFORMANCE APPRAISAL SYSTEM</u>	I-B-1
I-C. <u>SAMPLE PERFORMANCE IMPROVEMENT PLAN</u>	I-C-1
I-D. <u>APPRAISAL PROGRAM FOR VETERANS BENEFITS ADMINISTRATION</u> <u>NON-EXECUTIVE DIRECTORS</u>	I-D-1
I-E. <u>VBA NON-EXECUTIVE DIRECTOR COMMON MANAGERIAL ELEMENTS</u>	I-E-1
I-F. <u>PERFORMANCE APPRAISAL PROGRAM FOR VHA EMPLOYEES IN THE</u> <u>EXECUTIVE CAREER FIELD</u>	I-F-1

j. Approval Officials will be informed when the final review and approval process for ratings and awards has been completed and certified. At this point, the Approval Officials and Raters will ensure that all ratings documented on the original rating form are forwarded to the servicing Human Resources (HR) office and/or fiscal office for processing. The Approval Official is responsible for ensuring that the Rater provides the employee with a copy of the completed rating form no later than 60 days following the end of the appraisal period, and discusses the basis for the rating with the employee. If the employee is dissatisfied with the appraisal/rating, he/she may informally discuss the matter with the Rater and/or Approval Official. If still dissatisfied, the employee may formally grieve the rating under the appropriate negotiated procedure, if applicable, or paragraph 12 of this part.

k. The servicing HR office will code approved performance ratings and awards into the PAID system as soon as possible but not later 90 days following the end of the rating period.

l. Performance under critical and noncritical elements will be used in deriving a summary level.

m. The performance appraisal and rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

n. The method for deriving and assigning a summary level may not limit or require the use of particular summary levels. Forced distribution of performance ratings is prohibited.

9. [PROCEDURES FOR ADDRESSING UNACCEPTABLE PERFORMANCE]

a. **Determining Unacceptable Performance.** The supervisor is responsible for monitoring and evaluating performance throughout the appraisal period. When deficiencies arise, the supervisor must determine if the deficiencies are performance-based or whether they result from other causes such as technological barriers, negligence, or misconduct. To determine this, the supervisor should consider:

(1) Whether the employee possesses the knowledge, skill or ability to perform the duties of the position at a satisfactory level;

(2) Whether the employee is able to do the job or has demonstrated this ability in the past; and

(3) Whether the performance deficiencies appear to be a matter of the employee's inability to perform versus a matter of the employee's unwillingness to appropriately perform the assigned duties (e.g. performance versus conduct issue).

b. **Applicable Regulations and Policies**

(1) **Employees covered under VHA's Executive Career Field (ECF).** Title 5 and Hybrid Title 38 employees covered under VHA's ECF performance system fall under the provisions of Appendix F of this part. However, for matters not specifically covered by Appendix F, the provisions of this part shall apply. Title 38 employees covered under VHA's ECF performance system fall under the provisions of this part for purposes of planning, monitoring, and evaluating performance; performance deficiencies are to be addressed under the applicable provisions of Part II of this handbook and the counseling program requirements contained therein.

(2) **Title 5 and Hybrid Employees Serving a Probationary or Trial Period.** Employees serving a probationary period or trial period may normally be terminated due to work performance anytime during the probationary period. (For those employees serving a supervisory probationary period, refer to paragraphs 15 and 16 of this part.) Termination is usually appropriate when the employee fails to demonstrate fitness and qualifications for continued employment. The provisions of VA Handbook 5005, Part II, Chapter 2, paragraphs 9 and 10 also apply to employees serving a probationary or trial period. While supervisors should make every effort to monitor performance during the probationary period and provide feedback and corrective measures to employees, the requirements for a formal performance improvement plan (PIP) do not apply to employees serving a probationary or trial period (unless the employee otherwise meets the coverage outlined in 5 CFR 432.102). These employees may be terminated in accordance with the procedures outlined in 5 CFR, part 315 and/or VA Handbook 5021, Part III.

NOTE: *Some employees serving a probationary or trial period have obtained the rights and protections of non-probationary employees based on prior Federal service and are entitled to the procedures outlined below prior to effecting a reduction in grade or a removal from Federal service based on unacceptable performance under either Chapter 43 or Chapter 75 of Title 5 of the United States Code (U.S.C.). Therefore, you must refer to the definitions and coverage under 5 U.S.C. 7511(a)(1), 5 CFR 432.102 and 5 CFR 752.401 in determining applicable procedures.*

(3) **Title 5 and Hybrid Employees Who Have Completed a Probationary or Trial Period**

(a) The procedural requirements for responding to unacceptable performance for those employees who have completed a probationary or trial period are contained in either Chapter 75 or Chapter 43 of Title 5 of the U.S.C. While a performance-based adverse action, i.e. reduction in grade/pay, or removal from Federal service, may be taken under either authority, normally, such actions are taken under the authority of Chapter 43, which requires application of the procedural requirements contained in its implementing regulations found in 5 CFR, part 432. These requirements include, but are not limited to providing the employee a reasonable opportunity to improve (a performance improvement period or PIP) prior to proposing a performance-based adverse action for unacceptable performance in a critical element. The procedures outlined in subparagraphs c-g must be followed prior to proposing a performance-based adverse action under the authority of Chapter 43.

(b) Supervisors and managers are not precluded from proposing a reduction in grade/pay or removal based on unacceptable performance under the authority and procedures of Chapter 75 and 5 CFR, part 752, which do not require a PIP. However, failure to provide the reasonable opportunity to improve, as outlined in subparagraphs c-g, when effecting an adverse action under Chapter 75 will most likely be considered a mitigating factor by the Merit Systems Protection Board (MPSB) in determining if the reduction in grade/pay or removal was warranted. Your servicing Regional Counsel or the Office of Human Resources Management, Employee Relations and Performance Management Service should be consulted prior to a decision to propose a reduction in grade/pay or removal under Chapter 75 based on unacceptable performance.

(4) **Bargaining Unit Employees.** In addition to any procedural requirements outlined in this paragraph, all applicable provisions of collective bargaining agreements must be followed when addressing the unacceptable performance of covered employees. In some instances,

bargaining unit employees may be entitled to a reasonable opportunity to improve or other process prior to the assignment of an unsatisfactory rating, even if not required in policy or regulation.

c. **Steps to Responding to Unacceptable Performance.** If at any time it is determined that an employee for whom these procedures apply (see paragraph 9b) is not performing at least at the Fully Successful level in one or more performance elements, the supervisor shall initiate one of the following courses of action as appropriate:

(1) When Unacceptable Performance Directly Corresponds with the Employee's Performance Standards, and:

(a) **Performance is Unacceptable in One or More Critical Elements.** The supervisor must afford the employee a reasonable opportunity to improve by placing the employee on a PIP before the employee can be removed from the position involuntarily through a reduction in grade/pay or removal from Federal service. **NOTE:** *The PIP shall include an opportunity to demonstrate acceptable performance in each critical element in which the employee's performance is unacceptable.* Under Chapter 43 of Title 5 of the U.S.C., the reasonable opportunity to demonstrate acceptable performance is required prior to proposing an adverse action based on unacceptable performance (and an Unacceptable rating).

(b) **Performance is Unacceptable in One or More Non-Critical Elements.** The supervisor must give written notice to an employee whose performance is unacceptable in one or more non-critical elements. While a formal PIP is not required, the memorandum must explain how the employee's performance is unacceptable in the non-critical element, and what specific assistance will be provided to assist the employee in improving his or her performance. The employee may be assigned an overall Minimally Satisfactory rating as the rating of record. While a Minimally Satisfactory rating cannot serve as the sole basis for an adverse action, it may serve as a basis to reassign the employee to another position without a reduction in grade or rate of basic pay.

(2) When Performance Does Not Directly Correspond with the Employee's Performance Standards. Circumstances may arise in which it may be more appropriate to propose an action for unacceptable performance under Chapter 75 of Title 5 of the U.S.C. Such action may be taken for failure to satisfactorily perform certain aspects of an employee's position that may fall outside of the employee's performance elements and standards. While there is no requirement that an employee be provided a reasonable opportunity to improve prior to proposing an action, the action must be supported by a preponderance of the evidence (e.g. it is more likely than not that the conclusion reached was correct.) Examples of the appropriate evidence includes that the work expectations were communicated to the employee; the employee was aware of the consequences of failure to perform at the expected level; the employee failed to perform; and there is a nexus between the failure to perform and the efficiency of the service. These procedures should not be used to hold the employee to a higher standard of performance than that required in the employee's performance standards, or to circumvent the procedural requirements of taking a performance-based action under the authority of Chapter 43 of Title 5 of the U.S.C.

(a) In cases where a performance-based action is being proposed under the authority of Chapter 75 of Title 5 of the U.S.C., the employee is provided the procedural entitlements under VA Handbook 5021, Part II, and 5 CFR, part 752.

(b) Such actions should be taken in consultation with your Regional Counsel or the Office of Human Resources Management, Employee Relations and Performance Management Service.

d. Developing the PIP. Once it has been determined that an opportunity to improve is required or warranted due to poor performance in a critical element, the supervisor must provide the employee with a copy of the PIP notice. The notice must:

- (1) Identify the element(s) for which performance is unacceptable;
- (2) Provide specific examples of the performance deficiencies for each element/standard for which performance has been determined to be unacceptable;
- (3) Clarify performance expectations;
- (4) Indicate the length of the PIP to include the beginning and ending date. (Unless otherwise indicated in a collective bargaining agreement, the supervisor shall afford a reasonable opportunity not to exceed 90 calendar days). The length of the PIP may depend on the position of the employee, the nature of work, and the deficiencies involved, but is normally 90 days;
- (5) Identify what the employee must do to achieve the Fully Successful level for each element and successfully complete the PIP;
- (6) Identify how the employee's work will be monitored;
- (7) Establish a time, place, and degree of frequency for meetings to be held with the supervisor and the employee to discuss the employee's progress;
- (8) Identify who will be available (e.g. the supervisor, or another individual) to provide assistance if needed (e.g. answer questions, provide guidance); and,
- (9) Describe other assistance that may be made available to the employee, if applicable. Examples of assistance that may be provided, but are not required, include:
 - (a) Assignment of a mentor;
 - (b) Classroom training;
 - (c) Closer supervision;
 - (d) Increased interaction with subject matter experts;
 - (e) Self-study; and/or
 - (f) Research assignments.

e. **Successful Performance at the End of the PIP.** If the employee's performance has reached the Fully Successful level at the completion of the PIP, the employee will be allowed to resume duties and responsibilities as assigned by the supervisor with normal supervision.

f. **Successful Performance at the End of the PIP and Faltering after 12 Months.** If the employee performed at a Fully Successful level for the 12 months following the issuance of the PIP, and the employee's performance again becomes unacceptable in a critical element, the supervisor must afford the employee a new opportunity to demonstrate acceptable performance. Only if the performance becomes unacceptable within the 12 months from the issuance of the PIP *and* in the same critical element for which a PIP was provided, can a performance-based adverse action be proposed without a new opportunity period. An employee may be reassigned (with no reduction in grade/pay) at any time as long as applicable collective bargaining procedures are followed.

g. **Unsuccessful at the End of the PIP or Within 12 Months.** If at any time during or within 12 months from the issuance of the PIP, the employee fails to perform at the Fully Successful level in the critical element(s) for which the employee was given an opportunity to improve, the supervisor must take action to remove the employee from the position. The employee may be reassigned to another position or issued a proposed reduction in grade/pay or removal from Federal service, as outlined in paragraph i. below, without the benefit of an additional opportunity period. While reassignment to another position without a reduction in grade/pay may be effected immediately and without adverse action procedures, any applicable collective bargaining requirements must be met.

h. **Less than Fully Successful Performance in a Non-Critical Element at Any Time.** If the employee's performance is unacceptable in a non-critical element at any time, the provisions of paragraph c(1)(b) above apply.

i. **Proposing a Performance-Based Adverse Action.** Performance-based adverse actions include involuntary reductions in grade, reductions in the rate of basic pay, and removals from Federal service based on a rating of record of Unacceptable. An employee is determined to be unacceptable if he or she performs at an unacceptable level in one or more critical elements.

(1) If the employee was provided with an opportunity to improve performance (i.e., PIP) for each critical element for which his or her performance was unacceptable, and he or she failed to improve to a Fully Successful level, the supervisor must initiate action to remove the employee from the position. The appropriate management official (as identified in (2) below) may propose to demote the employee to a lower graded position or propose to remove the employee from Federal service. **NOTE:** *If a supervisor determines that an employee should be reassigned to another position without a reduction in grade/pay, based on the employee's unacceptable performance, a proposed notice is not required. However, effecting such a reassignment must be done in accordance with applicable negotiated agreements or local policy.*

(2) Authority to propose and decide performance-based adverse actions is delegated to officials as outlined in VA Handbook 5021, Part I, Chapter 1.

(3) In instances where it is decided that an employee should be demoted or removed from service, the employee is entitled to 30-day written advance notice of the proposed action that identifies both the

critical element(s) of the employee's position that are considered unacceptable and the specific deficiencies or instances of unacceptable performance. The notice of proposed action should include:

- (a) The action being proposed (i.e., demotion or removal), whether the action is being taken under the authority of Chapter 43 or Chapter 75 of Title 5 of the U.S.C., and when the action, if taken, will be effected (i.e., no earlier than 30 days from the date of the notice);
- (b) Each critical element(s) that is determined to be unacceptable;
- (c) For each of the critical elements identified, specific deficiencies or examples of unacceptable performance during the opportunity period that formed the basis for the determination of unacceptable performance and the proposed action. (You may also cite deficiencies or unacceptable performance that occurred during the one-year period that preceded the proposal notice. However, there must be sufficient deficiencies during the opportunity period to warrant the determination of unacceptable performance.)
- (d) A detailed summary of any counseling or assistance provided as well as the notice of poor performance and PIP, including any assistance that was provided;
- (e) The employee's right to review the record, obtain representation, have a reasonable amount of time to make an oral or written response, and receive a written decision: and
- (f) A place for the employee to acknowledge receipt of the Notice of Proposed Action.

j. Extending the 30-Day Advance Notice Period

(1) A written final decision shall be made within 30 days after expiration of the initial advance notice period. However, this notice period may be extended not to exceed an additional 30 days in the following instances without prior approval from the Office of Personnel Management (OPM):

(a) To obtain and/or evaluate medical information when the employee has raised a medical issue in his or her reply. In this instance, the supervisor shall allow an employee who wishes to raise a medical condition which may have contributed to his or her unacceptable performance to furnish medical documentation (as defined in 5 CFR 339.104) of the condition for management's consideration. Whenever possible, the employee shall supply this documentation following the organization's notification of unacceptable performance. If the employee offers such documentation after management has proposed a reduction in grade or removal, he or she shall supply this information in accordance with 5 CFR 432.105. In considering documentation submitted in connection with the employee's claim of a medical condition, the organization may require or offer a medical examination in accordance with the criteria and procedures of 5 CFR, part 339, and shall be aware of the affirmative obligations of 29 CFR 1613.704. If the employee who raises a medical condition has the requisite years of service under the Civil Service Retirement System or the Federal Employees Retirement System, management shall provide information concerning application for disability retirement. As provided at 5 CFR 831.501(d), an employee's application for disability retirement shall not preclude or delay any other appropriate organizational decision or personnel action. (See 5 CFR 432.105);

(b) To arrange for the employee's travel to make an oral reply;

- (c) To arrange for the deciding official's travel to hear the employee's oral reply;
 - (d) To consider the employee's request for an extension for his or her reply due to an illness or incapacitation;
 - (e) To consider reasonable accommodation of a handicapping condition;
 - (f) To consider positions to which the employee might be reassigned or demoted; or
 - (g) To comply with a stay ordered by the Merit System Protection Board under 5.U.S.C. 1208(b).
- (2) If an extension is needed for reasons other than identified above, the extension must be requested and approved by OPM, and an informational copy must be sent to OHRM Employee Relations and Performance Management Service.
- (a) Send the extension request to Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415.
 - (b) Send an informational copy to Office of Human Resources Management, Employee Relations and Performance Management Service (051), 810 Vermont Avenue N.W., Washington, DC 20420.
- k. **Employee Reply.** The supervisor will afford the employee a reasonable opportunity to respond to the proposed notice orally or in writing.
- (1) A response period should not exceed 14 days except in rare and unusual circumstances. **NOTE:** *Most collective bargaining agreements provide a minimum reply period.*
 - (2) The employee will be allowed to be represented by an attorney or other representative. A representative may be disallowed in instances where there is a conflict of interest or where an employee whose release from his or her official position would give rise to unreasonable costs to the government or whose priority work assignment precludes his or her release from official duties.

1. Final Decision

- (1) Unless the action was proposed by the Secretary, the decision shall be issued, or concurred in, by a management official who is in a higher position than the proposing official.
- (2) In arriving at a final decision, the deciding official should take into consideration the employee's reply. The final decision will normally be issued to the employee prior to the effective date.
- (3) The decision shall specify the instances of unacceptable performance by the employee on which the action is based, and shall inform the employee of any applicable appeal and/or grievance rights.

m. Appeal and Grievance Rights

(1) **Reassignment.** An employee who has been reassigned as a result of unacceptable performance and who has not suffered a reduction in grade or reduction in rate of basic pay may file a grievance under the agency grievance procedures outlined in VA Handbook 5021, Part IV, or under the applicable negotiated grievance procedures, if covered.

(2) Adverse Action

(a) **Bargaining Unit Employees.** A bargaining unit employee who has been involuntarily reduced in grade or removed from Federal service as a result of unacceptable performance, and who otherwise meets the coverage described under 5 CFR 432.106 may either appeal to MSPB or file a grievance under the applicable negotiated grievance procedures, if otherwise covered. However, the employee cannot file both and must elect whether to appeal to MSPB or file a grievance.

NOTE: *Bargaining unit employees who are non-preference eligibles in the excepted service who have completed one year of current continuous service in the same or similar position are covered under the procedures outlined in this paragraph, i.e. reasonable opportunity to perform, proposed notice of performance-based adverse action, etc. However, such employees do not have the right to appeal an adverse action to MSPB until they have completed 2 years of current and continuous service in the same or similar position under other than a temporary appointment limited to 2 years or less. Therefore, these employees are entitled to file a negotiated grievance if otherwise covered.*

(b) **Non-Bargaining Unit Employees.** A non-bargaining unit employee, who has been involuntarily reduced in grade or removed from Federal service as a result of unacceptable performance, and who otherwise meets the coverage described under 5 CFR 432.106 may appeal to MSPB.

10.] PROCEDURES FOR DETAILS, TRANSFERS AND OTHER CIRCUMSTANCES. The intent of the performance appraisal is to appraise an employee's performance covering an entire rating period. To do so, the following procedures will be used to assure continuity throughout the appraisal process:

a. **Employee Position Changes.** When an employee changes positions within VA, a performance (summary) rating will be prepared by the Rater, shared with the employee and forwarded to the servicing human resources office or to the gaining organization.

b. **Rater Leaves or Changes Positions.** Before a Rater leaves or changes positions, he/she will prepare a summary rating for each employee under his/her supervision, provide a copy of the rating to his/her employees and will forward the completed rating form to the servicing human resources office or higher level management official within the organization.

c. **Employee Transfers to Another Agency.** Before an employee transfers to another Federal agency, the Rater will complete a performance (summary) rating and forward it to the servicing human resources office for inclusion in the employee's Employee Performance File.

d. **Employee Not Under Performance Plan for Minimum Appraisal Period.** When an employee has not served under a performance plan for his/her position of record for 90 days by the end of the appraisal period because of a position change, career promotion, appointment or any other reason, either:

(1) The appraisal period will be extended to provide for the minimum appraisal period and a rating of record will be prepared at that time. The Rater may take into consideration any summary ratings provided by the employee's previous Rater(s) in determining the rating of record; or

(2) The Rater may utilize any performance rating prepared by a previous Rater as the rating of record by concurring with it.

e. **Employee Changes Performance Appraisal Programs in VHA.** When an employee changes performance appraisal programs in VHA, e.g., Executive Career Field (ECF), a performance (summary) rating will be prepared by the Rater, shared with employee and forwarded to the servicing human resources office.

f. **Rater Not in Position for Minimum Appraisal Period.** As long as sufficient information is available on which to appraise an employee's performance that covers a 90-day minimum period, there is no requirement that a Rater occupy his/her position for a specific length of time. However, if a performance rating is not available or is not sufficiently developed to permit an appraisal, the appraisal period will be extended to provide for performance under the Rater for the minimum appraisal period.

g. **Employee Detailed or Temporarily Promoted.** When an employee is detailed or temporarily promoted, a performance plan will be provided for the position to which he or she is detailed or promoted. If the detail or temporary promotion lasts for 120 days or more, a performance rating will be prepared at the conclusion of the detail or temporary promotion that appraises the employee's performance while in the temporary position. A copy of this rating shall be shared with the employee and then forwarded to the servicing human resources management office or employing organization for consideration at the end of the appraisal period. For employees temporarily assigned outside VA, every effort will be made to obtain similar information about the employee's performance.

h. **Employee Service on a PIP.** Employees who have been given a notice of unacceptable performance and an opportunity to improve performance, will have their ratings of record postponed until the performance improvement period expires.

[11.] REWARDING PERFORMANCE. Eligibility for performance awards and quality step increases will be based on annual ratings of record. These awards are described in VA Handbook 5017, employee Recognition and Awards.

a. Performance appraisal information will be considered in merit promotions, reassignments, or other placement actions, to the extent that performance elements are related to the knowledge, skills, abilities and other characteristics of the position being filled.

b. Performance appraisal information can assist in the identification of specific training needs that, if met, can improve and enhance employee work skills. It can also be used by supervisors in formulating individual development plans for their employees.

c. Annual performance ratings of record are one of several factors that determine retention standing in an employee's competitive level in reduction in force (RIF). (See 5 CFR 351.504.) Additional service

credit is granted for ratings of Fully Successful or better. Only ratings of record are creditable for the RIF process. Special ratings of record prepared in connection with an acceptable level of competence determination, and for other special circumstances, are not creditable for this purpose. No rating of record will be assigned for the sole purpose of affecting an employee's RIF retention standing (see 5 CFR 351.504).

[12.] PERFORMANCE RATING GRIEVANCES AND APPEALS. These procedures apply to performance appraisals or overall ratings that are not covered by a negotiated grievance procedure. An employee who is dissatisfied with a performance appraisal or overall rating may grieve the rating, justification and/or elements at issue using this procedure or a locally established alternative dispute resolution process. Negotiated grievance procedures are outlined in the grievance articles of appropriate collective bargaining agreements.

NOTE: *In order to reduce the administrative burden associated with the grievance process and to minimize the loss of staff productivity while participating in that process, the utilization of existing ADR programs as a means to streamline appeals is highly encouraged.*

a. Informal Grievance Procedure

(1) Consistent with the principle that grievances shall be resolved at the lowest level possible, an employee who is dissatisfied with an assigned performance rating may grieve the rating and/or elements at issue to the Approval Official (if used), otherwise to the Rater, within 15 calendar days after receipt of the rating. The employee and the employee representative, if any, will be provided the opportunity to explain the grievance.

(2) After exploring the grievance, the official to whom the matter was grieved shall provide a written answer to the employee, through his/her representative, if any, within 10 calendar days. The response will include the decision on the grievance, supporting reasons and will include the employee's right to present a formal grievance.

(b) Formal Grievance Procedure

(1) If the employee is not satisfied with the answer at the informal stage, within 10 calendar days from the receipt of the informal response, the employee may present the grievance in writing, through supervisory channels, to the management official at the next higher level in the organization.

(a) The formal grievance will contain the date of the performance rating, the elements at issue and the reasons for seeking reconsideration for each element at issue, the performance rating desired and the decision at the informal stage.

(b) A grievance file will be established that will contain a copy of the performance rating, a copy of the formal grievance, a copy of the informal decision and related documentation, and any additional information that is appropriate for consideration in making a decision based on the record. Do not keep items in the file that would not be otherwise reviewable by the employee and/or the employee's representative.

(2) The grievance file will be forwarded to the appropriate Approval Official to consider the grievance for a decision based on the record. A written decision will be forwarded through channels to the employee, through his/her representative, if any, usually within 10 work days. This is the final administrative appeal for performance appraisal disagreements.

(3) If the performance rating or narrative justification on the appraisal is changed as a result of the decision, all official records and personnel actions (e.g., within grades) will be changed, as applicable, with the employee being notified.

[13.] WITHIN-GRADE INCREASES – GENERAL SCHEDULE

a. Definitions

(1) **Acceptable Level of Competence.** Successful performance by an employee of the duties and responsibilities of his or her assigned position as evaluated against his or her performance plan which warrants advancement of the employee's rate of basic pay to the next higher step or the grade of his or her position, subject to the requirements in VA Handbook 5013, Part I, subparagraph [13b(2)].

(2) **Equivalent Increase.** Unless otherwise excepted, increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the General Schedule grade and step rate occupied by an employee and the rate of pay for the next higher step rate of that grade.

(3) **Permanent Position.** A position filled by an employee whose appointment does not have a definite time limitation of 1 year or less. Permanent position includes competitive or excepted service term appointments of more than 1 year (5 CFR 316.305) and positions to which employees are promoted on a temporary or term basis of at least 1 year.

b. General Policies and Principles

(1) To be awarded a within-grade increase, an employee must meet all the following requirements established by 5 U.S.C. 5335:

(a) The employee must have completed the required waiting period of advancement to the next higher step rate of the grade of his or her position;

(b) The employee must not have received an equivalent increase during the waiting period;

(c) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence. To be determined at an acceptable level of competence, the employee's most recent rating of record must be at least "Fully Successful" (See VA Handbook 5013, Part I, subparagraph [13c].)

h. **Continuing Evaluation After Withholding a Within-Grade Increase.** When a within-grade increase has been withheld, it may be awarded whenever a subsequent rating of record (annual or special) indicates that the employee has demonstrated sustained performance at the successful level. Generally, a new determination will be made no sooner than 90 days from the original eligibility date of the within-grade increase. For as long as the within-grade continues to be denied, each subsequent progress review and annual rating of record will be considered to be a new determination and an appropriate notice will be prepared to inform the employee in accordance with paragraph d above. If the progress review indicates that the employee is performing at the successful level, a special rating of record must be prepared to support granting the within-grade increase. Any time the within-grade is subsequently granted, the supervisor must prepare SF-52 and forward it to the servicing personnel office for processing. The effective date of the within-grade increase will be the first pay period on or after the last date of the performance period upon which the favorable determination is based.

[14.] WITHIN-GRADE INCREASES - PREVAILING RATE

a. Eligibility Criteria

(1) Employees covered by this paragraph will be advanced to the next higher rate of their grades at the beginning of the first applicable pay period following completion of the required waiting period, provided their performance is satisfactory and they have not received an equivalent increase in pay during their waiting period.

(2) Waiting periods, creditable service, equivalent increases and effective dates will be determined in accordance with VA Handbook 5007.

(3) An employee's performance is satisfactory when he or she achieves or maintains a performance rating of record of successful based on a performance plan established in accordance with paragraph 6.

b. General Procedures

(1) Raters will receive advance notice from the PAID system when a within-grade increase is due for an employee under their supervision.

(2) Determinations concerning whether a prevailing rate employee has achieved and maintained a performance rating of record of successful and should be advanced to the next higher step of his or her grade are similar to acceptable level of competence determinations for General Schedule employees. These determinations will, therefore, be made using the procedures established in [13c] for acceptable level of competence determinations.

(3) Anytime a special rating of record is prepared to support a determination on a within-grade increase which is inconsistent with the last annual rating of record, the supervisor must prepare and forward SF-52 to the servicing Human Resources Management Officer for processing.

(4) The notice of determination will be as provided in [13d].

(5) Prevailing rate employees may request reconsideration of a negative determination under the procedures established in [13e]. The decision will be made in accordance with the procedures established in [13f].

(6) If a negative determination is sustained after reconsideration, the employee, if covered by a bargaining agreement, may grieve the decision under the negotiated procedure. If not covered by a bargaining agreement, the employee may grieve the decision under the agency grievance procedure in VA Handbook 5021.

c. **Special Procedures for Probationary Employees.** At least 1 month before the within-grade from step 1 to step 2 is due, the Rater shall review the performance of a probationary employee to assure that he or she is performing satisfactorily. If performance is not satisfactory and if employment is not being terminated before the within-grade increase is due, a special rating of record shall be prepared to document performance deficiencies. At least 2 weeks before the due date, SF-52 will be prepared to withhold the within-grade increase and the special rating of record will be forwarded to the servicing human resources office for processing and filing. The employee will be given the SF 50-B, a copy of the special rating of record, and a written notice of the negative determination as provided in [13d(3)].

d. **Continuing Evaluation After Withholding a Within-Grade Increase.** When a within-grade increase has been withheld, it may be awarded whenever a subsequent rating of record (annual or special) indicates that the employee has achieved and maintained performance at the successful level. New determinations will be made in accordance with [13h].

[15.] FAILURE TO COMPLETE A SUPERVISORY PROBATIONARY PERIOD SATISFACTORILY

a. Initiating Action

(1) If, after a reasonable trial during the probationary period, the new supervisor's or manager's performance demonstrates supervisory or managerial deficiencies which make him or her unsuitable for continued employment in the position, action must be taken to remove the employee from the position. Such action shall be taken as soon as these facts become apparent and in sufficient time for the probationer to be notified and removed from the position before the probationary period expires.

(2) When an employee serving under both 5 CFR, part 315, subparts H and I, procedures fails to complete the subpart H probationary period satisfactorily, action must be taken to separate the person under the subpart H procedures [and in accordance with VA Handbook 5021, Part III].

(3) Employees who fail to complete the subpart I probationary period required under 5 U.S.C. 3321 and are returned to nonsupervisory or nonmanagerial positions of no lower grade and pay than that previously held before the supervisory or managerial assignment do not become entitled to grade and pay retention as a result of these placements. However, employees who entered a supervisory or managerial position with grade and/or pay retention due to a previous personnel action do not lose the retention as a result of failure to complete the probationary period. For example, an employee who formerly held a GS-13 position is placed through reduction-in-force (RIF) procedures in a GS-11 position with grade and pay retention. Three months later the employee is placed in a GS-12 supervisory position. After 6 months in the GS-12 position, the employee fails the probationary period and is placed in a GS-11 position. The employee is still entitled to the 15-month balance of his 2 years of GS-13 grade retention.

e. **Effecting the Personnel Action.** An action to reassign or demote an employee for not satisfactorily completing the probationary period must be documented in accordance with the requirements in OPM’s Guide to Processing Personnel Actions.

[f. **Reconsideration Request**

(1) An employee being returned to a nonmanagerial or nonsupervisory position may request a reconsideration, based on the record, of the decision, and a review of the decision, and a review of the return action. The reconsideration will be done by the next higher supervisor or managerial official within the facility, staff office or Administration, above the person who made the determination under paragraph [15b]. If there is no "next higher" official, then the reconsideration will be done by the person making the paragraph [15b] determination. The affected employee may also request a meeting with the reconsideration official to discuss the matter in person if both are at the same location. If at different locations, the employee may discuss his/her request with the reconsideration official by telephone. The reconsideration request, citing the specific reasons the employee believes the action should not be taken, must be submitted within 10 calendar days following the written decision of the return action. The reviewing official will make the decision based on a complete review of the record, including any discussions with the employee, and notify the employee in writing within 30 calendar days following receipt of the employee's reconsideration request.

(2) This reconsideration request will not postpone the effective date of the return action unless the higher level reviewing official grants an extension. In no case will an extension serve to retain such an employee in a position beyond the completion date of the probationary period. The proposed return action must be completed prior to the end of the probationary period.

(3). Per 5 CFR 315.908, an action to return or reassign a supervisory/managerial probationary employee to a nonsupervisory or nonmanagerial position is not appealable.

(4) Employees alleging discrimination due to race, color, religion, sex, national origin, physical handicap or age in connection with such a return action may file a complaint in accordance with agency discrimination complaints procedures. Final agency action on such complaints is appealable to the Equal Employment Opportunity Commission.]

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[16. APPEALING REQUIREMENT TO SERVE SUPERVISORY PROBATIONARY PERIOD].

Applicability of the probationary period requirements will be determined by management. Employees who believe that they have served in a supervisory or managerial position as defined in VA Handbook 5005, appendix III-A, and who wish to contest a determination that a probationary period is required by appendix III-A may grieve management’s determination under the provisions of VA Handbook 5021, part IV, chapter 2. There is, however, no right to appeal such determination to the MSPB.

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