
CHAPTER 1. GENERAL PROVISIONS

1-1 Purpose

- A. This Handbook establishes policy and guidance regarding proposing and effecting reduction in grade and removal actions based solely on unacceptable performance. It supersedes previous policy guidance prescribed by Chapter 4 of Handbook 752.2 REV-2, Personnel Actions Taken for Unacceptable Performance and Misconduct, dated January 17, 1984.
- B. Performance-based actions may be taken by using either the procedures of Handbook 0752.02 REV-3, Adverse Actions or this Handbook. Before initiating a performance-based disciplinary action, the policy and procedural requirements of Handbook 0752.02 REV-3, and those of this Handbook must be considered. Of particular importance, note the differences in the evidentiary standards or "degree of proof" required under two pertinent regulatory procedures in order to support the action. 5 CFR Part 432, requires **substantial evidence**; conversely, 5 CFR Part 752, requires **preponderance of the evidence**.
- C. Requirements stated in this Handbook are consistent with law, regulations, and Agency policy applicable at the time of its issuance. It is essential that current rules be researched, and that this Handbook be used in conjunction with the Department's Performance Management System plan and applicable negotiated agreements for employees in an exclusive bargaining unit, in order to ensure adherence to unique provisions, procedures, and time frames.

1-2 Authorities

- A. The Civil Service Reform Act (CSRA) of 1978, P.L. 95-454.
- B. Office of Personnel Management (OPM) Regulations, 5 CFR Part 432.

1-3 Exceptions to Handbook Provisions. The Director, Office of Human Resources, Office of Administration, may authorize waivers to the provisions of this Handbook insofar as the waivers are consistent with applicable law, regulations, agency policy and negotiated agreements. Any request for a waiver must be made in writing and must contain sufficient justification to support the need for the exception.

1-4 Definitions. For purposes of this Handbook, the following definitions are used:

- A. **Acceptable performance** means performance that meets an employee's performance requirement(s) and/or standard(s) at or above the marginally successful level in the critical element(s) at issue.
- B. **Critical element** means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.
- C. **Days** mean "calendar" days.
- D. **Merit Systems Protection Board (MSPB)** is an independent Federal agency used by an employee to seek adjudicative review of reduction in grade or removal actions taken against the employee by the Department. The agency is also empowered to enforce compliance with its final decisions and orders.
- E. **Appeal** means a request by an employee to the MSPB for an impartial review of the Department's reduction in grade or removal action.
- F. **Performance-based action** means reduction in grade or removal based on unacceptable performance.
- G. **OPM** means the Office of Personnel Management.
- H. **Current continuous employment** means a period of employment or service, immediately preceding a performance-based action, in the same or similar position without a break in Federal civilian employment of a workday.
- I. **Opportunity to demonstrate acceptable performance** means a reasonable opportunity for the employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in each critical element at issue.
- J. **Reasonable time period** means a specified time period no less than 30 days for the employee to demonstrate acceptable performance of the job duties and responsibilities of the critical element(s) at issue. This time period is established by management and must be of an appropriate duration to enable the employee to demonstrate such acceptable performance.
- K. **Opportunity to Improve Performance (OIP) Notice** provides written notice to the employee of each critical element on which performance is determined to have

reached the unacceptable performance level, and advises of performance requirements or standards that must be reached for retention in the position. It also affords the employee an opportunity to demonstrate acceptable performance within a specified time period.

- L. **Performance** means accomplishment of work assignments or responsibilities.
- M. **Performance standards** mean the expressed measure of the level of achievement established by management for the duties and responsibilities of a position or group of positions. A performance standard may be expressed in, but is not limited to, measurements such as quality, timeliness, cost-effectiveness, quantity, manner of performance, effects desired, etc., or any combination thereof.
- N. **Reduction in grade** means the involuntary assignment of an employee to a position at a lower classification or job grading level.
- O. **Removal** means the involuntary separation of an employee from employment with the Department.
- P. **Similar positions** means positions in which the duties performed are similar in nature and character and require substantially the same or similar qualifications, so that the incumbents could be interchanged without significant training or undue interruption to the work.
- Q. **Management Official** means a personnel specialist, Administrative Officer, supervisor, manager, or HUD attorney whose duties include representation of management in administrative cases.
- R. **Unacceptable performance** means performance of an employee that fails to meet, at least, the marginally successful performance standard established for one or more critical elements of the employee's position.
- S. **Department** means the Department of Housing and Urban Development (HUD).
- T. **Reasonable accommodation** means a logical adjustment or modification to a job and/or the work environment that would enable a qualified handicapped person to perform the duties of his or her position.

1-5 Employee Coverage

- A. This Handbook applies to all Department employees, except those persons who

are specifically excluded by law, regulation, or elsewhere in this Handbook; and

- B. Non-preference eligible employees who serve on excepted service appointments and who have completed one year of current continuous employment in the same or similar position are entitled only to the procedural protections of this Handbook. Conversely, these employees are covered by all provisions of this Handbook if they have completed two years of current continuous employment.

1-6 Employees Excluded

- A. Employees in the competitive service who are serving a probationary or trial period under an initial appointment.
- B. Employees in the competitive service serving in a type of appointment that requires no probationary or trial period (e.g., status quo or TAPER) who have not completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less.
- C. A manager or supervisor who has not completed the one year probationary period under 5 U.S.C. 3321(a)(2), if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b).
- D. Employees in the excepted service who have not completed one year of current continuous employment in the same or similar positions.
- E. Employees occupying a position not in the competitive service excluded from coverage by regulations of the OPM.
- F. Employees occupying a position in Schedule C as authorized under 5 CFR Part 213.
- G. Administrative Law Judges appointed under 5 U.S.C. 3105.
- H. Employees in the Senior Executive Service.
- I. Employees appointed by the President.
- J. Re-employed annuitants.

1-7 General Standards. A performance-based action may not be taken against an employee

if the action is based on unlawful discrimination or a personnel practice prohibited by any law, rule, or regulation, including reprisal for engaging in whistle-blowing activity.

1-8 Delegation of Authority

- A. Any supervisor or manager at or above the level of Branch Chief is authorized to issue a notice of proposed performance-based action to an employee whose performance does not meet the acceptable performance level in one or more of the critical element(s) at issue.
- B. The decision on a proposed performance-based action must be made by a supervisor or manager who is at an organizationally higher level of the Department, when that exists, than the official who proposed the action. Normally, the Deciding Official should be in the chain of command of the employee subject to the performance-based action.
- C. When the Secretary or Deputy Secretary is the Deciding Official, he/she may designate an appropriate official to serve in his or her stead. However, the designee's position must be either equivalent to, or organizationally higher than the position of the person who proposed the action.
- D. When the Deputy Secretary is both the Proposing and Deciding Official, the written decision must be concurred in by either an organizationally higher level official, when that exists or the Secretary.
- E. The Secretary may serve as both the Proposing and Deciding Official on a performance-based action.
- F. The Assistant to the Deputy Secretary for Field Policy and Management is authorized to issue a Decision Notice in the case of an employee to whom a Secretary's Representative issued a notice of proposed performance-based action.
- G. Refer to the Department's current, applicable Delegations of Authority for guidance when initiating or taking an action covered by this Handbook.

1-9 Pre-Decision Review Option

- A. Before issuing a Decision Notice, the Deciding Official may designate an appropriate official to carry out a review of the proposed performance-based action in such a manner or form as the Deciding Official prescribes, and to report the results of the review to that official. The review may include handling the receipt of written and/or oral replies, conducting inquiries to obtain whatever

additional information is deemed necessary and appropriate, reviewing documentation, making a written report of the results, making a pre-decision recommendation, or any combination thereof.

- B. The individual designated to carry out a review of the proposed action shall be an official of the Department who took no part in the events that led to issuance of the Proposal Notice, and who is not subordinate to the Proposing Official.
- C. The Deciding Official is not required to carry out a review through a designated official. The decision to carry out such a review is discretionary and rests with the Deciding Official.

1-10 Distribution of Proposal and Decision Notices

- A. The original to the employee;
- B. Employee's attorney or other representative, if any (decision notice only);
- C. The Proposing and Deciding Officials;
- D. Appropriate Administrative Service Center's Human Resources Division in the Field when the proposing and/or deciding official is a Field manager; the Office of Human Resources' Labor and Employee Relations Division in Headquarters when the Proposing and/or Deciding Official is a Headquarters manager in an action taken against a Field employee.
- E. Appropriate Administrative Officer in Headquarters (Decision Notice Only).

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- F. Appropriate Field Assistant General Counsel or in Headquarters, the Associate General Counsel for Human Resources Law (to alert counsel in the event the action is appealed to the MSPB or reviewed in a negotiated grievance procedure).

1-11 Timing of Actions

- A. Action may be initiated to reduce-in-grade or remove an employee at any time during the performance appraisal cycle when employee's performance in one or more critical elements of the job reaches the unacceptable performance level. (See paragraph 1-4R for definition of unacceptable performance.)
- B. A notice of proposed action may not be issued until the employee has been issued an opportunity to improve performance (OIP) notice in writing and has been given a reasonable time to demonstrate acceptable performance. (See paragraph 1-4J for definition of reasonable time.)
- C. An advance notice of proposed removal or reduction in grade may consider only instances of performance that are one year old or less at the time the advance notice is issued.
- D. The decision to retain, reduce-in-grade, or remove an employee shall be made within 30 days after the expiration of the 30-day advance notice period. Further extension beyond this 60-day period is authorized under the limited circumstances that follow:
1. to obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;
 2. to arrange for the employee's travel to make an oral reply to an appropriate Departmental official, or the travel of a Departmental official to hear the employee's oral reply;
 3. to consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);
 4. to consider reasonable accommodation of a handicapping condition;
 5. to consider positions to which the employee might be reassigned and/or

reduced-in-grade; and

6. to comply with a stay ordered by a member of the Merit Systems Protection Board under 5 U.S.C. 1208(b).

The Office of Human Resources' Labor and Employee Relations Division staff will coordinate requests to the OPM for extensions beyond 60 days when the need is for reasons other than those specifically authorized above.

- E. The decision on a notice of proposed action must be delivered to the employee on or before the effective date of the reduction in grade or removal. If actions are effected on the delivery date, diligence must be taken to ensure the decision notice cites the **exact time** of the effected action. This time must be earlier than the end of the employee's tour of duty on that given day. Consequently, the employee's work schedule (e.g., flextime, etc.) is an important factor.

1-12 Records

- A. The Department shall make as part of its records, copies of the following:
1. The Notice of Proposed Action;
 2. The employee's written reply and/or summary of any oral reply;
 3. Decision Notice;
 4. Any supporting material relied upon by HUD to support the decision (including documentation regarding the opportunity afforded the employee to demonstrate accepted performance); and
 5. The employee's performance elements and standards, including the date of communication.
- B. Departmental records shall be furnished to the MSPB or other third party forum, and to the affected employee or his or her designated attorney or other representative, upon request.
- C. Appropriate servicing Administrative Services Center's Human Resources Division in the Field, and Office of Human Resources' Labor and Employee Relations Division in Headquarters are responsible for proper establishment, maintenance, and availability of records relating to performance-based actions covered by this Handbook.
- D. When a performance-based action is effected, and the employee has not appealed the action, records shall be retained for four years after the effective date of the action. If the action is appealed, records shall be maintained for four years after

the case is closed, unless a request is received to retain records for use in another forum (e.g., Equal Employment Opportunity Commission).

- E. When an employee is not reduced-in-grade or removed because of improved performance shown during the advance notice period, and the employee's performance continues to be acceptable for one year from the date of the advance written notice, any entry or other notation of the performance for which the action was proposed shall be removed from the Department's records.
- F. Upon completion of a performance action decided on by a HUD manager or supervisor in Headquarters, the official case file shall be forwarded to, and remain in the custody of, the employee's servicing human resources office.