

Streamlining Probationary and Trial Period Appeals

Frequently Asked Questions

1. What does this rule do?

The rule establishes a limited administrative appeal process for certain probationary and trial period actions. It explains who may appeal, what issues may be appealed, and how OPM processes appeals.

2. When does the rule apply?

The rule applies prospectively to covered actions that become effective on or after the regulation's September 2, 2026, effective date. Any actions pending before the Merit Systems Protection Board (MSPB) prior to the effective date of the regulation will be processed by the MSPB and not OPM.

3. Who may appeal?

Only four groups of employees identified under 751.101(f) may appeal. These are employees appointed:

- a) to the competitive service described in 5 CFR 11.2 who have not completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;
- b) to the competitive service and serving a probationary period on an initial appointment to a supervisory or managerial position;
- c) to the competitive service under an emergency-indefinite appointment in a national emergency serving a probationary period under subpart D of part 230 and who is in the first year of service; and
- d) To the excepted service before the end of their first year on an initial appointment under 5 CFR part 307 (Veterans Recruitment Appointments).

No other types of employees may file an appeal under this final rule.

4. What issues may be appealed?

Appeals are limited to the grounds identified in the regulation: discrimination based on partisan political reasons or marital status, and agency compliance with specified procedures for a termination based in whole or in part on pre-appointment reasons

5. What special procedures apply to pre-appointment conditions?

If a termination is based in whole or in part on conditions arising before appointment, the agency must provide:

- a) advance written notice stating the reasons, specifically and in detail, for the proposed action;

- b) a reasonable time for filing a written answer to the notice of proposed termination and for furnishing affidavits in support of his or her answer. If the employee answers, the agency shall consider the answer in reaching its decision; and
- c) a written decision at the earliest practicable date delivered at or before the effective date of the action. The decision shall inform the employee of the reasons for the action, the right to appeal to OPM, the need to include documented supporting facts, and time limits within which the appeal must be submitted under this section.

6. Which issues may not be appealed?

The regulation does not provide a forum for general disagreements with management decisions, performance assessments, or claims that belong in other forums. For example, allegations of discrimination based on a protected characteristic under the purview of the Equal Employment Opportunity Commission (EEOC) must be filed with the EEOC, not OPM.

7. What records should agencies maintain and provide to OPM during an appeal?

Should an employee file an appeal, agencies will be responsible for providing a record of the action to OPM that must include:

- a) all documents considered or relied upon by the agency in taking the action;
- b) the notice of action and effective date;
- c) documents showing the appellant's appointment, service history, and probationary or trial period status;
- d) any written certification, noncertification, or failure-to-certify record under 5 CFR part 11;
- e) any documents supporting the agency's basis for the action under appeal; and
- f) a certification that the agency has produced the complete record considered by the deciding official or otherwise relied upon by the agency.

8. How does an employee file an appeal?

Appeals must be filed electronically unless OPM approves another method for good cause. To file an electronic appeal, employees should visit: <https://opmefile.opm.gov>.

9. When must an appeal be filed?

An appeal must be filed by 11:59 p.m. Eastern Standard Time on the 30th calendar day after the effective date of the action.

10. What should an appeal include?

The appeal must be in writing and state the basis of the employee's appeal; the name, address, and email address or phone number of the employee and his or her representative, if any; and any documentation supporting the appeal.

11. May an employee have a representative?

Yes. Employees may choose a representative but must submit his or her designation of representative in writing related to the specific appeal. OPM or the employee's agency may disallow a chosen representative when the representative is an employee of the employee's

agency or OPM and the representative's activities would cause a conflict of interest or position. Also, any chosen representative who is a federal employee may not perform representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), nor may the representative claim agency reimbursement for any expenses incurred while performing such representational function.

12. How does OPM decide appeals?

OPM will render a decision based on the written record unless the record is insufficiently developed to make a determination regarding one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility that is material to the outcome of the appeal.

13. Will an employee or agency have an opportunity to conduct discovery?

No, discovery is unavailable during the adjudicative process. OPM, however, retains the discretion to conduct an investigation or audit of the agency's action to resolve material issues that cannot be resolved on the existing record.

14. Who has the responsibility to prove their case?

The burden is on the employee to demonstrate by the preponderance of the evidence that he or she filed a timely appeal; OPM possess jurisdiction over the appeal; and the agency's action was discriminatory based on partisan political reasons or marital status or failed to follow the procedures for terminating the employee for reasons based in whole or in part on conditions arising before the employee's appointment.

15. What remedies may OPM order?

If the appeal is sustained, OPM may order the reinstatement of the employee and any back pay, interest, and reasonable attorney fees consistent with 5 CFR part 550, subpart H.

16. Can an employee pursue other claims?

Yes. The rule does not affect independent rights under EEOC, MSPB, Department of Labor, Office of Special Counsel, or other authorities.

17. Can an employee or agency appeal a decision?

The regulation provides an opportunity for either party to file a request for reconsideration of an initial decision before finality. Any request must be filed within 30 calendar days from issuance of the decision. Procedures for filing a request and the scope of review are covered under 5 CFR 751.107. The regulations also provide that the Director of OPM may on the Director's own initiative review an initial decision before it becomes final.