

## Office of Personnel Management

### Implementation Guide

New OPM Appeals Programs: Suitability, Reduction in Force, and Probationary/Trial Period  
August 2026

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#### Overview

OPM has issued final rules that make OPM, rather than the Merit Systems Protection Board (MSPB), the adjudicator for three categories of appeals: suitability actions, reduction in force (RIF) actions, and probationary and trial period actions. Each rule takes effect 30 days after publication in the Federal Register and applies prospectively.

This guide explains how the new appeal process works, how the transition from MSPB will be handled, what OPM has done to stand up the function, what agencies should do to prepare, and what OPM will be providing to support the transition.

#### The Three Programs at a Glance

| Program                    | Adjudicating OPM office                           | Covered actions                                                                                                                                                                                                                                                                                                                                   | Which cases the new rule covers                                                                                                                                       |
|----------------------------|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Suitability</b>         | Suitability Executive Agent (SuitEA)              | Suitability actions taken under 5 CFR part 731                                                                                                                                                                                                                                                                                                    | Appeals filed with MSPB before the rule's effective date are not subject to the new rule. Appeals filed on or after the rule's effective date must be filed with OPM. |
| <b>RIF</b>                 | Merit System Accountability and Compliance (MSAC) | Furloughs over 30 days, separations, and demotions by RIF                                                                                                                                                                                                                                                                                         | RIF actions for which the specific RIF notice (5 CFR 351.802) is issued on or after the effective date.                                                               |
| <b>Probationary period</b> | Merit System Accountability and Compliance (MSAC) | Terminations, noncertifications, and failures to certify or finalize initial probationary period actions (and trial period actions for employees covered by 5 CFR part 307); supervisory/managerial probationary actions. Appeals limited to actions based on partisan political reasons/marital status or conditions arising before appointment. | Actions effected on or after the rule's effective date.                                                                                                               |

#### How OPM Appeals Will Work

All three programs use a common, record-based process with uniform timelines:

- **Filing.** Appellants file through OPM's electronic filing system within 30 calendar days of the effective date of the action (for suitability applicants, the date of the notice of final action). A filing is timely if submitted by 11:59 p.m. Eastern Time on day 30. Untimely appeals are dismissed absent good cause.
- **Agency response.** Within 30 calendar days, the agency must file a response that states the reasons for the action and includes the complete agency record, with a certification that the record is complete.

The record is served on the appellant, subject only to legally required disclosure limits. Instructions for completing the Agency Response File — including record content requirements specific to each program — will be posted on OPM.gov at a later date.

- **Reply.** The appellant may reply within 15 calendar days and may raise new allegations if they rest on information first disclosed in the agency response or with OPM's leave for good cause.
- **Adjudication.** Appeals are decided on the written record by OPM adjudicators who are insulated from anyone involved in the challenged action. OPM may require additional information, investigation to resolve a material fact, and hold a hearing when the written record cannot resolve a material factual or credibility dispute. Appeals filed by OPM's own applicants, appointees, and employees are assigned to an administrative law judge. A hearing is required—not merely available—when resolution of a material factual dispute requires evaluation of witness credibility. Hearings are presided over by an administrative judge and are limited to the material factual issues identified as necessary to resolve the appeal; there is no categorical right to a hearing in every case.
- **Decision and finality.** OPM issues a written initial decision. Either party may request reconsideration within 30 calendar days, and the OPM Director may reopen a nonfinal decision on defined grounds (for example, clear legal error or an issue of exceptional importance). The decision becomes final 30 calendar days after issuance if no party timely requests reconsideration and the Director does not reopen the decision before it becomes final. If an appellant prevails and reconsideration is pending, ordered relief continues; no stay may deprive the individual of pay and benefits.
- **Transparency.** OPM will make publicly available on OPM.gov final merits decisions or de-identified summaries of final merits decisions, subject to privacy and other legal limits, so agencies, employees, and the public can see how the rules are being applied.

Claims outside these programs go to the forum that owns them. Discrimination claims under laws administered by the EEOC are filed through the EEO process, prohibited personnel practice claims go to the Office of Special Counsel, and matters within MSPB's independent statutory jurisdiction (for example, USERRA and VEOA claims) remain with MSPB.

## Notional Timeline: Filing to Decision

The appeal process generally proceeds through five stages: (1) the appellant files the appeal within 30 calendar days after the action becomes effective, subject to the rule's filing-calculation provisions; (2) OPM notifies the responsible agency, which generally has 30 calendar days to submit its response and the complete agency record; (3) the appellant generally has 15 calendar days to reply; (4) OPM reviews the record and issues a written initial decision for suitability and probationary/trial period appeals within 60 days and 120 days for RIF appeals; and (5) either party may request reopening and reconsideration within 30 calendar days after the initial decision is issued. The initial decision becomes OPM's final decision after 30 calendar days unless a party timely requests reopening and reconsideration or the OPM Director reopens the decision before it becomes final. The Director may reopen a non-final decision on the Director's own initiative. OPM will make final merits decisions or de-identified summaries publicly available, consistent with applicable law.

## How the Transition Will Work

The rules draw a clean line between old and new cases. Nothing pending is disrupted, reopened, or nullified:

- **Suitability:** For suitability actions taken before the effective date of the final rule, the correct forum depends on when the appeal is filed: if the appellant files before the effective date, the appeal goes to MSPB; if the appellant files on or after the effective date of the final rule, the appeal goes to OPM. Because the 30-day appeal window may straddle the effective date of the final rule, agencies should include filing instructions for both forums in any final action letter issued before the effective date.

Suitability actions with final written decisions issued on or after the effective date of the final rule appeal to OPM.

- **RIF:** Appeals of RIF actions for which the specific RIF notice was issued before the effective date, including appeals already pending at MSPB, continue at MSPB under the prior procedures. RIF actions noticed on or after the effective date are appealed to OPM.
- **Probationary period actions (and trial period actions for employees covered by 5 CFR part 307):** Terminations, noncertifications, and failures to certify or finalize effected before the effective date are not governed by the new rule; pending appeals and past decisions are unaffected. Covered actions effected on or after the effective date are appealed to OPM.

In practical terms, MSPB will finish the cases it has, and OPM will take new ones. Agencies should update their action notices now so that, beginning on each rule's effective date, employees are directed to OPM's filing system rather than to MSPB, with the correct grounds and deadlines for each program.

## OPM Is Ready to Take On This Function

OPM has assessed expected case volume and staffing needs for each program and determined that SuitEA and MSAC can administer these appeals from day one. The agency has long run neutral, record-based adjudication programs, including classification appeals under 5 CFR part 511, Fair Labor Standards Act claims under 5 CFR part 551, and compensation and leave claims under 5 CFR part 178. MSAC already performs external adjudicatory and compliance work and is incorporating RIF and probationary appeals into that existing framework.

Specific preparations are complete or well underway:

- A secured electronic filing and case-management system to receive, track, and manage appeals, with dedicated licensing for OPM appeal staff already budgeted and ready for deployment.
- Standardized operating procedures, adjudicative processes, decision templates, and quality-review procedures to keep decisions consistent across cases and programs.
- Training for OPM adjudicators, along with structural safeguards: adjudicators are walled off from officials involved in a challenged action, ex parte contacts on the merits are barred, and reconsideration and Director review catch material errors before finality.
- The streamlined design itself conserves capacity. Because appeals are decided on a defined record, with hearings and investigations reserved for cases that need them, OPM can concentrate resources where they matter rather than running full litigation in every case. For comparison, only 55.8 percent of MSPB's FY 2025 cases were resolved within 120 days.

OPM will monitor appeal volume, processing times, and staffing throughout implementation and adjust as needed.

## What Agencies Should Do Now

**1. Update policies and templates.** Review internal procedures, action notices, and decision templates for suitability, RIF, and probationary actions so they reflect the new appeal rights, filing deadlines, and OPM (not MSPB) as the forum.

**2. Get the record right.** Each rule specifies minimum contents of the agency record and requires a completeness certification. Build recordkeeping into the action itself, because the agency will have 30 days to produce the complete record once an appeal is served.

**3. Prepare your people.** Identify the HR, employee relations, labor relations, personnel security, and counsel staff who will handle these actions and appeals, and enroll them in OPM implementation training before the effective dates.

**4. Coordinate early.** Appeals are only as strong as the actions behind them. Establish coordination among HR, counsel, security, and management before actions are taken, not after an appeal is filed.

**5. Stay plugged in.** Participate in OPM briefings, training, and office hours. Filing instructions, FAQs, and additional guidance will be posted to OPM.gov and announced through established stakeholder channels.

**6. Designate agency representatives.** Designate agency representatives for each appeals program as applicable to your agency's workforce. Send the list of representatives, identified by appeal type, to [opmefilesupport@opm.gov](mailto:opmefilesupport@opm.gov). When the rule is effective, each agency representative will need to create an agency eFile account at <https://opmefile.opm.gov/>. Further instructions will be posted to the OPM websites.

### Agency Readiness Checklist

- ☐ Policies, notices, and decision templates updated for the new rules
- ☐ Personnel responsible for each program identified and registered for OPM training
- ☐ Administrative record requirements reviewed and built into action processing
- ☐ Internal coordination procedures established across HR, counsel, and management
- ☐ Staff prepared for OPM electronic filing and the revised appeal timelines
- ☐ Agency eFile representatives designated by case type; list submitted to [opmefilesupport@opm.gov](mailto:opmefilesupport@opm.gov)
- ☐ Implementation expectations communicated to agency leadership and practitioners

### Questions and Support

OPM will support agencies throughout the transition with implementation guidance, training, office hours, technical assistance, and public resources on OPM.gov. Program-specific implementation guidance for suitability (SuitEA), RIF (MSAC), and probationary appeals (MSAC) will follow, covering filing procedures, record requirements, and agency coordination in greater detail.