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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351, 430, and 537

[Docket ID: OPM-2025-0273]

RIN 3206-AP06

Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to increase the efficiency and effectiveness of performance management for non-Senior Executive Service (SES) employees, including General Schedule (GS) and prevailing rate employees. This final rule eliminates unnecessary summary level patterns; removes the prohibition of a forced, or standardized, distribution of performance rating levels; eliminates mandatory review of Level 1 ratings; removes the option to grieve a rating of record; requires a supervisory critical element for all supervisors covered under this subpart; and requires OPM to conduct biennial certifications of agency appraisal systems.

DATES: *Effective date*: [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance date: Compliance with § 430.208(e)(1) and (2) is required beginning January 1, 2027.

FOR FURTHER INFORMATION CONTACT: Noah Peters, Senior Advisor to the Director, 202-606-8046 or by email at *performance-management@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Civil Service Reform Act (CSRA) of 1978 established a new framework for merit-based personnel management in the Federal Government, including reforms to the performance appraisal system for Federal employees. When Congress debated and passed this legislation, a major concern was that the existing appraisal system did not meaningfully measure employee performance.[1] The Senate Committee on Governmental Affairs observed that performance ratings were frequently inflated, failed to meaningfully distinguish among levels of performance, and were often assigned without sufficient rigor or accountability. Supervisors were often reluctant to assign low ratings, so ratings were not regarded as reliable indicators of performance. Performance ratings therefore lost much of their management value. As a result, the appraisal system provided little practical support for personnel decisions and did not function as an effective tool for managing employee performance.

Pursuant to CSRA, OPM is responsible for promulgating governmentwide regulations governing Federal performance management systems under chapter 43 of title 5, United States Code. Under this authority, OPM issues regulations applicable to non-SES employees, including GS and prevailing rate employees, as well as senior-level and scientific or professional employees referred to as “senior professionals” (SP). Among its statutory responsibilities, OPM is required to review the appraisal systems covering these employees to ensure they comply with statutory requirements[2] and design personnel systems that provide governmentwide standards that sustain a culture that cultivates and develops a high-performing workforce.[3] Where OPM finds that an agency’s system fails to meet statutory and regulatory requirements, OPM is authorized to direct agencies to implement an appropriate system or correct its operations to meet those requirements.[4]

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[1] S. Rep. No. 95-969, at 44-45 (1978), reprinted in *Legislative History of the Civil Service Reform Act of 1978*, Vol. 2 (1979).
[2] 5 U.S.C. 4304(b)(1).
[3] 5 U.S.C. 1103(c)(2)(D).
[4] 5 U.S.C. 4304(b)(3).

Throughout the 1980s and early 1990s, Federal performance management operated under a centralized regulatory framework established by OPM in 1983.[5] The system standardized appraisal processes through establishment of a five-level rating structure and by formally tying performance ratings to pay, awards, and promotion decisions. While intended to strengthen accountability and create a performance-based civil service, the framework often produced limited differentiation among employees, administrative complexity, and inconsistent enforcement of performance standards. By the early 1990s, policymakers increasingly viewed the system as overly rigid and insufficiently responsive to agency management needs, prompting calls for greater flexibility and decentralization. When developing the non-SES performance appraisal regulations at part 430, subpart B, in 1995, OPM adopted recommendations by the National Performance Review for flexible, decentralized performance management.[6] This move towards agency flexibility and decentralization was a stark contrast to the highly detailed regulatory requirements of the mid-1980s—a time when there was a strong policy interest in achieving governmentwide uniformity. Aside from a few minor changes in the late 1990s, the appraisal regulations at part 430, subpart B, have remained in place and unchanged, failing to adapt to the evolving mission needs of the Federal workforce.

For decades, oversight agencies have specifically identified performance management as an area that requires improvement and reform. As early as the 1980s, the Merit Systems Protection Board (MSPB) reported that Federal performance appraisal systems often failed to meaningfully distinguish between levels of performance and that ratings were frequently concentrated at higher levels.[7] More recently, the Government Accountability Office (GAO) has noted the challenges and failures of the current performance management appraisal system.[8]

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[5] 48 FR 49472 (Oct. 25, 1983).

[6] 60 FR 43936 (Aug. 23, 1995).

[7] U.S. Merit Systems Protection Board, *Toward Effective Performance Management in the Federal Government: A Report to the President and the Congress of the United States*, at V (July 1988), https://www.mspb.gov/studies/studies/Toward_Effective_Performance_Management_in_the_Federal_Government_317713.pdf.

[8] GAO, *Federal Workforce, Opportunities Exist for OPM to Further Innovation in Performance Management*, at 2 (Nov. 2018), https://www.gao.gov/assets/700/695639.pdf.

Notably, a 2016 GAO report found that 99% of permanent, non-SES employees received performance ratings at or above Fully Successful.[9] This inflation in performance ratings continued into the 2020s as detailed in the proposed rule.[10] OPM has attempted to curb ratings inflation and increase accountability through non-regulatory efforts, including issuing a 2019 memorandum encouraging agencies to increase rigor in performance management through well-developed performance standards that make clear distinctions among what is required to achieve performance at the various performance levels.[11] Despite these recent attempts, data from the Federal Employee Viewpoint Survey (FEVS) and GAO show that only 42-51% of Federal employees believe that their supervisors distinguish and recognize performance in a meaningful way.[12] It is clear that doing more of the same is not going to improve performance management in the Federal Government.

Recognizing that reforms to Federal performance management are long overdue, President Trump issued Presidential Memoranda and Executive Orders that establish a high-performing Federal workplace culture where excellent performance is celebrated and rewarded, and low performance is swiftly addressed by appropriate actions.[13] Accordingly, OPM issued a memorandum titled "Performance Management for Federal Employees."[14] In that guidance, OPM noted that it is "reforming employee performance management across the Federal Government to ensure that it shall reward individual initiative, skills, performance and hard work."[15] OPM further stated that "performance management across the Federal workforce has

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[9] GAO, *Federal Workforce: Distribution of Performance Ratings Across the Federal Government, 2013*, at 5 (May 9, 2016), https://www.gao.gov/assets/680/677016.pdf.
[10] 91 FR 8780, 8782 (Feb. 24, 2026).
[11] OPM, *Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce*, at 1-2 (July 12, 2019), https://www.opm.gov/chcoc/transmittals/2019/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.
[12] OPM, *OPM FEVS Dashboard* (last accessed June 1, 2026), https://www.opm.gov/fevs/reports/opm-fevs-dashboard/; note 8 at 19.
[13] *See, e.g.*, E.O. 14284, *Strengthening Probationary Periods in the Federal Service*, 90 FR 17729 (April 24, 2025); E.O. 14171, *Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce*, 90 FR 8625 (Jan. 20, 2025); *Restoring Accountability for Career Senior Executives*, 90 FR 8481 (Jan. 30, 2025); *Return to In-Person Work*, 90 FR 8251 (Jan. 28, 2025).
[14] OPM, *Performance Management for Federal Employees* (June 17, 2025), https://www.opm.gov/chcoc/latest-memos/performance-management-for-federal-employees.pdf.
[15] *Id*. (internal quotation marks omitted).

fallen short" and "has resulted in a lack of accountability and inflated performance ratings."[16] OPM also designed an extensive performance management toolkit and playbook providing all employees with critical performance management best practices.[17]

In response to these historical and enduring challenges, OPM determined that updates to its performance appraisal regulations for non-SES employees are necessary. On February 24, 2026, OPM issued a proposed rule at 91 FR 8780 pursuant to its regulatory authority at 5 U.S.C. 4305. As described in the proposed rule, these updates will strengthen agencies' ability to evaluate performance accurately and fairly, ensure that high performance is recognized and rewarded, and align workforce management with mission accomplishment. These changes are necessary to promote a culture of accountability and excellence across the Federal workforce—one that reflects both the Government's evolving operational demands and its longstanding commitment to a merit-based civil service.

Digest of Public Comments

In response to the proposed rule, OPM received 626 comments during the 30-day public comment period. These responses came from a range of sources: 602 individuals—including current and former civil servants, scientists, attorneys, and researchers—plus 4 Federal agencies, 11 organizations such as employee advocacy groups and professional associations, 8 unions, and a member of Congress.

Of the 626 comments received, all were posted and made available to the public in the docket at https://www.regulations.gov/docket/OPM-2025-0273. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. Comments on the rule ranged from supportive to categorical rejection.

The comments are summarized below, together with suggestions for revisions that were considered and either fully or partially adopted, or declined, along with OPM's reasoning. The

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[16] *Id*. at 2.
[17] www.opm.gov/policy-data-oversight/performance-management/

first section addresses general or overarching comments, while subsequent sections discuss feedback related to specific parts of the regulation that OPM proposed to revise.

General Comments

Some commenters were supportive of the rule, such as Commenter 0332[18] who stated, "These are great changes proposed. Please move forward." Commenter 0008 expressed support for OPM updating the "antiquated evaluation system" currently in place. Several commenters, such as 0072, 0044, 0161, 0101, and 0225, acknowledged that performance appraisal reform is warranted and that improvements to the current system may be needed; however, these commenters also generally opposed the approaches taken in the proposed rule, particularly the use of standardized distribution and modifications to the procedures for assigning employee ratings. Most commenters either opposed the rule as a whole or objected to one or more of the major provisions of the rule, such as standardized distribution, elimination of negotiated grievance procedures under 5 U.S.C. 7121, and elimination of the requirement for mandatory review of a Level 1 ("Unacceptable") rating of record.

Commenters 0517, 0549, 0554, and others argued that OPM failed to provide sufficient time to address the proposed rule given its "foundational change in the appraisal of federal employees." The commenters suggested that at least another 60 days should be provided to allow those impacted and other interested parties to provide substantive comments. Respectfully, OPM provided sufficient time for the public to review the proposed rule and submit comments. As multiple appellate courts have held, a 30-day comment period is generally the minimum needed to comply with the Administrative Procedure Act (APA).[19] Moreover, the more than 600 comments received during the public notice period raised a variety of issues and arguments, as

[18] References to comments provide the location of the item in the public record (that is, the four-digit number associated with the location in the docket). Comments filed in response to the proposed rule are available at *https://www.regulations.gov/comment/OPM-2025-0273-nnnn,* where nnnn is the comment number.
[19] *See Chamber of Com. of the U.S.* v. *U.S. Sec. & Exch. Comm'n,* 85 F.4th 760, 779 (5th Cir. 2023) (". . . the APA generally requires only a minimum thirty-day comment period."); *see also Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1484 (9th Cir. 1992) ("Although the APA mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment.").

further explored below, which indicates that the comment period provided adequate opportunity for the public to provide meaningful input into the rule.

In the subsequent sections, we discuss and address comments related to the specific portion of the regulation to which each comment applied.

Standardized Distribution

In the proposed rule, OPM proposed removing the existing prohibition on a forced, or standardized, distribution of performance ratings, and instead proposed to authorize OPM to establish and maintain a standardized distribution of some or all rating levels that agencies must apply.

Consistency with 5 U.S.C. 4302

A number of commenters, including 0004, 0011, 0101, 0115, 0161, 0377, 0468, and others, asserted that the use of a standardized distribution of performance ratings conflicts with 5 U.S.C. 4302(c), which requires that performance appraisal systems permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question. Commenters argued that standardized distribution requires supervisors to rate employees relative to one another rather than against established performance standards, thereby introducing non-performance-based factors into rating determinations. These commenters further stated a standardized distribution approach may result in employees receiving inaccurate ratings that do not reflect their actual job performance.

OPM respectfully disagrees that the final rule is inconsistent with 5 U.S.C. 4302. The statute requires that appraisal systems "**to the maximum extent feasible**, permit the accurate evaluation of job performance on the basis of objective criteria . . . related to the job in question for each employee or position under the system"[20]; it does not prescribe or prohibit a specific rating methodology or preclude the use of a standardized distribution to differentiate among levels of performance. Under this final rule, agencies remain responsible for establishing

[20] 5 U.S.C. 4302(c)(1) (emphasis added).

performance plans with clear, job-related expectations and for evaluating employees against those expectations. The phrase "to the maximum extent feasible" allows for the performance standards to include a standardized distribution framework. This framework provides a structured mechanism to support consistent application of performance distinctions; it does not authorize ratings based on non-performance factors or require agencies to disregard evidence of individual performance against established performance standards.

OPM rejects commenters' arguments that comparative judgments through the implementation of standardized distribution will lead to inaccurate ratings. As explained in the proposed rule, any human judgment is by nature comparative.[21] Thus, the quality of an evaluation is improved by ensuring that it is comparative in nature (that is, involving relative judgments of a target in comparison to other individuals and groups), instead of absolute (that is, involving judgments on scales that do not reference others).[22] One study, for example, concluded that "[t]he relatively few studies that have investigated the validity of comparative performance appraisal methods have tended to support their validity."[23] It found significant evidence from "at least three important and quite different domains that comparative evaluative judgments of the self or others may be more advantageous than absolute evaluative judgments."[24] This suggests that comparative judgments among employees, by utilizing a standardized distribution of ratings, will more accurately and objectively measure individual performance than one that prohibits any comparative judgments between employees and requires that any measurement of employee performance be framed in absolute terms.

Further, OPM intends to require agencies to apply a standardized distribution at the appropriate aggregate level as opposed to supervisors applying the rating limits within their own work unit or office. Therefore, the requirement to differentiate between relative levels of

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[21] Kedia G, Mussweiler T, Linden DE. *Brain mechanisms of social comparison and their influence on the reward system*. Neuroreport. 2014 Nov 12;25.
[22] Goffin RD, Olson JM. *Is It All Relative? Comparative Judgments and the Possible Improvement of Self-Ratings and Ratings of Others*. Perspect. Psychol. Sci. 2011 Jan; 6(1):48-60.
[23] *Id*. at p. 50.
[24] *Id*. at 53.

performance through the use of a standardized distribution operates only after employees are assessed against established performance standards, as required by 5 U.S.C. 4302(c)(3), and, consequently, does not replace or supplant those standards. The concern put forth by commenters claiming that distributional requirements create tension with statute because they involve relative comparison is baseless. The final rule does not require the mechanical application of quotas without regard to objective, job-related performance evidence. Rather, it requires agencies to exercise informed judgment in the evaluation of rigorous performance objectives aligned to the duties of the position within a structured framework designed to support accurate differentiation.

Finally, OPM also notes that the current system suffers from the same flaws that the commenters warn about in adopting the proposed rule–inaccurate performance ratings. The evidence clearly shows that the Federal Government's approach to performance management has long struggled to accurately measure employee performance.[25] During the public comment period, the Departments of Labor and Treasury (Commenters 0226 and 0375, respectively) describe how they have suffered from a leniency bias that inflates performance ratings and ties their supervisors' hands when attempting to hold their employees accountable for poor performance. The Department of Labor identified how it issued 70-80% of its employees' performance ratings at the highest two levels and rarely used the lowest two rating levels. The Department of the Treasury, likewise, identified suffering from the same problem and concluded that a standardized distribution of performance ratings may be the only path forward to disrupting the persistent pattern of ratings inflation. OPM credits these agencies' experiences and agrees that this final rule is the best way to address these long-standing challenges.

Merit System Principles

Several commenters asserted that the use of standardized distribution of performance ratings conflicts with merit system principles under 5 U.S.C. 2301. They argued that the requirement to distribute ratings using a standardized distribution framework undermines the

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[25] *See* notes 7 and 9.

principle that employees should be treated fairly and equitably under section 2301(b)(2) because similarly performing employees may receive different ratings based on distribution targets rather than individual performance (e.g., commenters 0064, 0242, 0377, and 0520). Other commenters, including 0477 and 0554, asserted that standardized distribution may increase the risk of arbitrary action contrary to section 2301(b)(8)(A) by requiring supervisors to differentiate among employees even where performance differences are minimal or not clearly defined. Similarly, other commenters expressed concern that standardized distribution of performance ratings could increase the risk of bias, favoritism, retaliation, or politicization of performance evaluations (e.g., commenters 0003, 0031, 0173, 0288, 0498, and 0557).

OPM does not agree that use of a standardized rating system would deny employees fair or equitable treatment or subject them to arbitrary action. The merit system principles do not prohibit agencies from rating employees based upon a comparison of individual employee performance. They instead guard against personnel decisions based on factors other than merit. Under the final rule, supervisors will continue to evaluate employee performance based on their assessments of their employees' individual performance against established performance standards. Afterwards, agencies at the appropriate aggregate level will apply the standardized distribution of performance ratings consistent with OPM guidance. Agencies will apply OPM guidance at a higher level, which will mitigate commenters' concerns that individual supervisors will make subjective, non-merit-based judgments about employee performance when deriving comparative judgments. Moreover, by requiring agencies to limit the highest ratings to the most accomplished, agencies will be required to truly focus on mission-driven performance that contributes to organizational performance, thereby promoting the effective and efficient use of the Federal workforce and enhancing alignment with the merit system principles.[26] To further alleviate commenters' concerns, OPM will amend § 430.209 in the final rule to make clear that agency performance appraisal systems and programs must be administered consistent with the

[26] 5 U.S.C. 2301(b)(5).

merit system principles, and OPM will amend § 430.210 to make clear that OPM will enforce such compliance.

Additionally, this rule promotes fair and equitable treatment by incentivizing agencies to focus on individual performance that drives mission accomplishment and, therefore, rewards the highest performance. The current system suffers from leniency bias whereby supervisors arbitrarily issue inflated performance ratings to avoid confrontation, lack of support from management, or other factors that undermine the performance management evaluation process.[27] The current system also suffers from a sustained lack of trust that employee performance is fairly evaluated and rewarded.[28] This rule realigns incentives away from 'defensive medicine' towards an approach where agencies are incentivized to clearly define performance standards, prioritize mission objectives, and accurately evaluate and reward employees' performance. *See* 5 U.S.C. 4302(c)(4) and (6). Employee performance ratings will still be based on individual merit and individual performance—not on irrelevant factors like race, political affiliation, or religion. Supervisors who assign ratings based on personal favoritism would continue to violate merit system principles regardless of the rating structure in place, while a standardized distribution would reinforce objective, performance-based differentiation. Thus, distinguishing employees based on relative performance does not conflict with the principle of fair and equitable treatment without regard to prohibited factors such as race, color, religion, sex, national origin, age, or political affiliation (5 U.S.C. 2301(b)(2)); rather, it reflects fair and equitable treatment by basing outcomes on job-related performance. Similarly, the prohibition on arbitrary action, personal favoritism, or coercion for partisan political purposes (5 U.S.C. 2301(b)(8)) is directed at improper motives and conduct, not at performance-based distinctions.

Commenter 0161 claimed that a standardized distribution specifically conflicts with the merit system principle at 5 U.S.C. 2301(b)(6), which requires that employees be retained on the

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[27] GAO, *Issues Related to Poor Performers in the Federal Workplace*, GAO-05-812R (Jun. 29, 2005), 19-21, https://www.gao.gov/assets/gao-05-812r.pdf. S*ee* also note 6 at v-vi.
[28] *See* note 12.

basis of the adequacy of their performance. Similarly, commenters 0004 and 0248 voiced concern that adequate performers who happen to be part of high-performing teams would be particularly negatively affected by standardized distribution, presuming that supervisors may be required to rate a portion of their subordinates at Level 1 ("Unacceptable").

Any argument that this final rule negatively affects an employee's ability to be retained on the basis of the adequacy of their performance is unfounded. As previously mentioned, OPM intends that the standardized distribution will apply only to the assignment of the highest performance rating levels (Levels 4 and 5) and will not impose limitations on any of the levels at or below Level 3 ("Fully Successful"), such as a "quota" requiring the issuance of a certain amount of Level 1 ("Unacceptable") ratings. Because Level 3 represents fully adequate performance and remains unrestricted, the application of a standardized distribution will not require an employee to receive lower than a Level 3 rating, invalidating concerns over associated performance-based demotion or removal. As such, OPM concludes that a standardized distribution does not interfere with an employee's ability to be retained on the basis of the adequacy of their performance and, therefore, does not conflict with 5 U.S.C. 2301(b)(6).

Several commenters, including 0159, 0206, 0553, and 0558, objected to the proposed rule's provision that excepted service employees appointed under Schedules C and G may be excluded from the standardized distribution requirements. Commenters assumed that the exclusion was designed to provide an unfair advantage to political appointees. For example, one commenter stated, "These employees, who are in the excepted service and often political or policy-making positions (90 FR 34753), would not be subject to rating caps that career non-SES employees must follow. This exemption creates two separate systems and gives these groups a built-in advantage in obtaining higher ratings and access to awards." Comment 0206.

OPM notes that, since the publication of the proposed rule, it exempted employees appointed under Schedules C and G from the provisions of subchapter I of chapter 43 of title 5,

U.S.C.[29] Thus, such employees will no longer be required under OPM regulations to receive performance ratings. Despite this exclusion from chapter 43, Schedule C and G employees are still subject to the administrative freeze on discretionary awards, bonuses, and similar payments, such as performance awards and General Schedule quality step increases.[30] Thus, employees appointed under Schedules C and G will not be rewarded with higher performance ratings and receive greater awards.

Justification of Policy Change

Commenters 0225 and 0468 asserted that OPM's proposal to permit standardized distribution is inconsistent with OPM's prior regulatory determinations, including its 1979 and 1995 final rules in which OPM barred "preestablished distributions of expected levels of performance (such as a requirement to rate on a bell curve)" because such practices could "interfere with appraisal of actual performance,"[31] and later concluded that forced distribution systems were "incompatible with effective performance management."[32] Commenter 0615 argues that OPM did not consider OPM's prior reasons for authorizing union grievances for performance ratings. These commenters argued that OPM has not adequately explained its departure from these prior positions or provided sufficient support to justify reversing them. They further contended that the proposal reflects a change in policy that is not accompanied by a reasoned explanation addressing OPM's earlier findings and conclusions.

OPM respectfully disagrees that it has not articulated a sufficient reason for departing from its prior statements. As the Supreme Court held in *F.C.C. v. Fox Television Stations*, the APA requires, as relevant here, that OPM provide a reasoned explanation and show awareness

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[29] Scott Kupor, Memorandum, "*Exclusion of Schedule C and G General Schedule positions from Subchapter I of Chapter 43 of Title 5, United States Code: Performance Appraisal*," April 28, 2026, https://www.opm.gov/chcoc/latest-memos/exclusion-of-schedule-c-and-g-general-schedule-positions-from-subchapter-i-of-chapter-43-of-title-5-united-states-code-performance-appraisal.pdf.
[30] *Id.*
[31] 44 FR 45587, 45590 (Aug. 3, 1979).
[32] 60 FR 43936, 43936 (Aug. 23, 1995).

that there is, in fact, a change in policy.[33] The Court also held that an agency's reasoning need not prove to be a better solution than the status quo but rather that there are good reasons the agency believes support the change in policy.[34]

The 1979 and 1995 rulemakings cited by commenters reflected OPM's judgments at that time based on the record and policy considerations then before the agency. As noted above, one of the central objectives of the CSRA was to reform how Federal agencies accurately assess employee performance. Thus, it was entirely reasonable for OPM to pin its hopes on the CSRA delivering on its promise when issuing its performance appraisal regulations in 1979. And while OPM may have been persuaded in 1995 that forced distributions were incompatible with effective performance management, it is now clear to OPM that changes are necessary to address Congress' concerns of effective performance management. OPM's reevaluation of its performance appraisal system and program regulations is entirely reasonable in light of current conditions: longstanding concerns regarding the lack of meaningful differentiation in performance ratings across the Federal workforce. OPM does not agree that the final rule is unsupported by evidence or rests solely on policy preference. As discussed in the proposed rule, OPM considered multiple sources of information in crafting its determination, including governmentwide data on rating distributions and employee perceptions of performance differentiation. During the comment period agencies informed OPM they supported the proposed changes and believed they would be beneficial. (See comments 0226, 0374, and 0375). OPM credits this agency feedback. OPM has also considered commenters' arguments regarding prior policy, the available research, and potential alternatives.

Other commenters including 0101, 0157, 0161, 0521, 0553, and 0558, asserted that OPM failed to consider the potential for disparate impact on certain groups of employees. Commenters asserted that research on standardized distribution has demonstrated the potential for

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[33] *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 515-16 (2009) (explaining the requirements under the APA that an agency provide a reasoned explanation when changing its position).
[34] *Id.*

discriminatory effects and that OPM should have conducted a disparate impact analysis prior to proposing the rule. Commenter 0553 specifically cited *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), highlighting that "[f]ederal law prohibits employment practices with an unjustified disparate impact on protected classes."

OPM considered commenters' concerns regarding potential workforce impacts, including claims that standardized distribution could have differential effects across employee populations. However, the final rule establishes a facially neutral performance management framework that requires agencies to evaluate employees based on objective, job-related performance standards and does not direct or permit consideration of protected characteristics. Nothing in this final rule authorizes agencies to administer performance appraisal systems in a manner that violates Title VII, the Rehabilitation Act, the Age Discrimination in Employment Act, or any other applicable nondiscrimination requirement. The rule requires ratings to be based on job-related performance standards and objective performance evidence. OPM will consider compliance with legal requirements as part of its certification and oversight process, and may require corrective action where agency implementation is inconsistent with law, regulation, or OPM policy.

Consideration of Empirical Evidence

Although OPM has provided data demonstrating inflated performance ratings and cited empirical evidence in the proposed rule recognizing the potential benefits (and areas for caution) regarding standardized distribution, several commenters (e.g., Commenters 0005, 0082, 0101, 0225, 0468, and 0534) disagree with OPM's interpretations or conclusions and also cite research that counterargues the benefits of forced distribution systems. For example, Commenter 0082 cited studies that found standardized distribution in a team setting significantly reduces knowledge sharing (e.g., Loberg, Nüesch & Foege[35]) and that found standardized distribution

[35] Loberg, F., Nüesch, S., & Foege, J. N., *The Impact of Forced Distribution Rating Systems on Knowledge Sharing and Team Performance*, Journal of Management Control, Vol. 32, 395–423 (2021), available at https://www.sciencedirect.com/science/article/pii/S0167268121001827.

may reduce citizenship behaviors and increase counterproductive performance over time (e.g., Moon, Scullen & Latham[36]).

OPM reviewed the empirical studies and findings highlighted by the commenters. In the proposed rule, OPM noted that the literature on standardized distribution reflects a broad range of findings with respect to its efficacy and potential impacts on collaboration, morale, and perceptions of fairness. However, OPM does not agree that the existence of contrary or mixed research findings precludes adopting the changes in the final rule. The APA does not require agencies to resolve all disagreements in the academic literature or to demonstrate that a policy is supported by uniform empirical consensus. OPM has considered the evidence cited in the proposed rule and in comments and has determined that the amendments made in the final rule are necessary to address longstanding concerns regarding the lack of meaningful differentiation in performance ratings across the Federal workforce.

Assuming arguendo that the potential concerns identified in the research literature may arise to some extent or in some context(s), OPM has determined that the current degree of rating inflation has so egregiously undermined the credibility and accountability of performance appraisal systems that implementing a standardized distribution is the best alternative. Accordingly, OPM concludes that this final rule reflects a reasonable policy judgment, based on the administrative record as a whole, to improve the effectiveness and credibility of performance appraisal systems, notwithstanding some differing views expressed in the research literature.

Impact on Individual Employee Morale and Productivity

Several commenters asserted that implementing a standardized distribution would have demoralizing and demotivating effects on individual employees leading to reduced performance over time (e.g., Commenters 0002, 0003, 0004, 0013, 0037, 0105, 0159, 0294, and 0522). For

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[36] Moon, H., Scullen, S. E., & Latham, G. P., *Precarious Curve Ahead: The Effects of Forced Distribution Rating Systems on Organizational Citizenship Behavior and Counterproductive Work Behavior*, Human Resource Management Review, Vol. 26, No. 2, 166–179 (2016), available at https://www.sciencedirect.com/science/article/abs/pii/S1053482215300024.

instance, Commenter 0013 highlighted that the study by Berger, Harbring, and Sliwka cited in the proposed rule[37] found that introducing a standardized or quota-based rating system into a previously lenient rating culture can lead to an initial increase in productivity but then a drop-off. Other commenters argued that there are "more than 40 research studies" criticizing the use of "Forced Distribution Rating Systems (FDRS)" for their negative impacts on teamwork, trust, and long-term engagement. Other commenters (e.g., 0508 and 0549) asserted that the proposed rule will trigger a brain drain of technical talent.

OPM does not agree that the findings of Berger et al. (2010)[38] demonstrate that standardized distribution reduces employee motivation in the context of this final rule. To the extent the study identifies a decline in performance following the introduction of a standardized distribution, the authors attribute that effect to changes in employee expectations and reference points—specifically, where employees previously experienced more lenient ratings and higher bonus outcomes. Thus, the observed decline reflects a transitional adjustment in expectations rather than an inherent flaw in the structure of a differentiated rating system.

OPM acknowledges that some studies identify risks associated with rigid forced-ranking systems, including reduced collaboration, knowledge sharing, and morale in certain settings. OPM gives those studies limited weight here because the final rule does not require a fixed percentage of employees to receive low ratings, does not require work-unit-level stack ranking, and preserves the requirement that ratings be based on job-related performance standards and actual performance evidence. In addition, each agency will have the latitude to determine how it may apply the distribution among components, grade levels, or supervisory status. This flexibility allows a governmentwide distribution to be equitable as well as tailored to ensure optimal performance within each agency. OPM also recognizes that even upper rating caps may

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[37] Berger, J., Harbring, C., & Sliwka, D., *Performance Appraisals and the Impact of Forced Distribution: An Experimental Investigation,* IZA Discussion Paper No. 5020 (2010), available at https://www.econstor.eu/bitstream/10419/36830/1/63078180X.pdf.

[38] Some commenters cited to a 2013 study by the same authors. Berger, J, Harbring, C., & Sliwka, D., "Performance appraisals and the impact of forced distribution-an experimental investigation," Management Science, 2013, v. 59(1).

affect employee expectations and workplace culture. For that reason, OPM will monitor implementation through the biennial certification process and may refine distribution criteria based on agency data, including evidence bearing on collaboration, mission performance, rating accuracy, and merit system compliance.

Even if OPM credited commenters' citation to these various studies to support their criticisms of the rule, OPM concludes that the potential benefits of authorizing a standardized distribution of ratings outweigh the purported costs of overhauling a performance appraisal system that has failed over the last 40-plus years to enable Federal agencies to accurately assess the job performance of their employees, promote a culture of high performance, and hold employees accountable for poor performance. As Commenter 0450 points out, the private sector has not found a generally accepted or industry-specific solution to performance management and often uses different approaches in search of the same outcome. OPM believes that continuing down the same path as it has since the passage of the CSRA will only produce the same distrust and performance outcomes plaguing Federal agencies. OPM will closely evaluate implementation of this final rule through biennial certification and refine criteria as warranted by data and agency experience.

Impact on Teamwork and Cooperation

A number of commenters argued that standardized distribution will negatively affect teamwork, knowledge sharing, and cooperation (e.g., 0015, 0025, 0037, 0319, 0468, and 0524). Commenters 0015 and 0319 cited various studies on relative performance evaluation systems that report potential adverse effects on cooperation, including reduced knowledge sharing and increased competition among employees rather than contribution to collective outcomes. These commenters contend that such systems are poorly suited to Federal work, which often depends on collaboration and shared mission performance.

OPM has considered the studies cited by commenters regarding the potential effects of forced distribution systems on teamwork, collaboration, and knowledge sharing. The cited

research, including experimental research on relative performance evaluation systems, generally examines models that rely on strict rank ordering or zero-sum competition among employees. OPM does not agree that these findings are directly applicable to the approach adopted in the final rule.

The final rule does not establish a forced ranking model that must be inflexibly applied for all performance ratings and across every individual team. OPM intends only to require a limit on the upper rating levels, measured at the appropriate aggregate agency level, while continuing to require that all performance ratings be based on objective, job-related performance standards. The final rule does not require agencies to assign a fixed percentage of employees to the lowest rating level or to evaluate employees solely on a comparative basis. At this time, "OPM is not requiring or suggesting any forced ratings distributions at these levels."[39] Accordingly, OPM concludes that the potential adverse effects identified in the cited research—such as reduced knowledge sharing, diminished collaboration, and increased competition—are not relevant to OPM's approach as adopted in this final rule. Because agencies must continue to rate employees against established performance standards rather than against one another and are not required to place a fixed proportion of employees in the lowest rating category, the concerns associated with strict, zero-sum ranking systems do not apply.

In accordance with longstanding OPM and GAO guidance, individual performance appraisals should align with achievement of organizational and team goals.[40] OPM believes that by making competencies like teamwork, problem-solving, collaboration, and mentoring critical elements in individual performance plans, agencies will be able to maintain important collaborative and team-focused efforts and reward and incentivize employees to work together in support of team goals.

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[39] OPM, "Bad Management?!," *available at*: https://www.opm.gov/news/secrets-of-opm/bad-management/.

[40] GAO, Creating a Clear Linkage between Individual Performance and Organizational Success, GAO-03-488 (March 2003) (noting, as a key practice, "[a]lign[ing] individual performance expectations with organizational goals").

Concerns over teamwork and collaboration may also be ameliorated by agencies granting awards for team achievements and by applying the standardized distribution the appropriate aggregate agency level. OPM will not require agencies to apply standardized distribution at a level that is too small to support meaningful differentiation. OPM expects distribution requirements to be applied at an appropriate aggregate level and with exceptions or adjustments where warranted by mission, occupational structure, small population size, unusual rating-cycle circumstances, or other factors identified in OPM criteria. Agencies remain responsible for ensuring that ratings are based on job-related performance standards, actual performance evidence, and merit system principles, and for using awards and other forms of recognition in a way that supports collaboration and high performance.

Use in Private Industry

Commenters such as 0032, 0104, 0169, 0225, 0517, 0629 and others argued standardized distribution has been tested and abandoned by major private-sector organizations due to its negative effects, and that OPM has not explained why it would succeed in the Federal Government where it failed elsewhere. Commenter 0450 asserts that the proposed rule rests on an implied assumption that the private sector's preferred solution is forced rankings despite evidence that private sector organizations have long experimented with a variety of performance management approaches without converging on a universal or industry standard approach.

OPM notes that commenters' assertions that private sector organizations have largely abandoned standardized distribution of performance ratings are inaccurate. One recent report estimates that 30 percent of Fortune 500 companies use some form of standardized or forced distribution in their performance evaluations.[41] OPM acknowledges that certain private-sector organizations have moved away from rigid "stack ranking" systems and that systematic review

[41] "*Stack Ranking — All You Need to Know*," *Medium* (April 3, 2020) https://medium.com/@corvisio/stack-ranking-all-you-need-to-know-a5339c27ad83.

of studies on standardized distributions (e.g., Wijayanti, Sholihin, Nahartyo (2024))[42] report mixed findings regarding their effects. However, the evolution of private-sector performance management practices reflects not an abandonment of performance differentiation, but a shift away from inflexible quota systems—particularly those requiring assigning a fixed percentage of employees to the lowest rating categories. Many organizations continue to employ structured mechanisms to differentiate performance, such as placing constraints on the number of the highest ratings to ensure that ratings distributions reflect differences in contribution. Accordingly, the private-sector experience cited by commenters does not demonstrate that limiting the concentration of top performance ratings is inherently ineffective or inappropriate. Rather, it supports the conclusion that organizations continue to rely on structured differentiation to ensure that performance ratings meaningfully reflect differences in employee contributions and can be used to allocate rewards in a credible manner.

Further, even if private sector companies have abandoned standardized distributions of performance ratings, there are meaningful reasons to use standardized distributions in the specific context of the civil service. As OPM noted in its proposed rule, private sector companies do not operate under a statutory mandate requiring that they have performance appraisal systems that permit the accurate evaluation of performance. But, under 5 U.S.C. 4302(c)(1), non-SES employees operate under just such a statutory mandate. In addition, the Federal Government is entrusted with many critical responsibilities from veterans' health care to law enforcement to disaster relief to fighting pandemics. When employees in the Federal Government fail to perform at a high level, these crucial, life-or-death missions are compromised. Further, unlike the private sector, the Federal Government lacks a profit motive to ensure meaningful evaluations of its employees.

[42] Wijayanti, A., Sholihin, M., Nahartyo, E., & Supriyadi, S., *What do we know about the forced distribution system: A systematic literature review and opportunities for future research*, Management Review Quarterly (2024).

Commenter 0450 also raises concerns with OPM's focus on standardizing the distribution of performance ratings without addressing other challenges, such as supervisor quality, leniency bias, and the administrative burden of performance management. OPM agrees with the commenter that these challenges must also be addressed to reform how the Federal Government approaches performance management. OPM recently published a notice of proposed rulemaking proposing to amend parts 432 and 752 to streamline the process for holding employees accountable for poor performance and misconduct.[43] In that rulemaking, OPM also proposes to amend part 412 to improve training on performance management and employee accountability. OPM believes these two rulemakings address some of the challenges raised by the commenter. This final rule also addresses, head-on, leniency bias in agencies where supervisors issue inflated performance ratings. The final rule authorizes a standardized distribution of ratings, which OPM intends to apply only to the highest rating levels, so as to require agencies to make meaningful distinctions in employee performance ratings. Between this final rule and the proposed rulemaking, OPM is taking much needed action to address the challenges of an antiquated, failing performance management system.

Interaction with Other Rulemakings

Commenters 0104, 0157, 0468, 0520, 0616 and others claim that OPM has not adequately addressed how this rule will interact with other pending rules. For instance, OPM is simultaneously pursuing a reduction in force rule that prioritizes ratings over tenure or length of service for determining retention standing. The commenters argue this makes ratings more consequential in the event of a reduction in force. The asserted interactions with other proposed rules are less clear, but the premise appears to be that the proposed rules collectively discourage submitting public comments by demoralizing potential commenters.

OPM is committed to significant Federal workforce reforms to promote a workplace culture of high performance and employee accountability. The fact that OPM has taken action to

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[43] 91 FR 40444 (July 2, 2026).

address long-standing issues is not based on a desire to impede the public from submitting comments but rather a desire to address longstanding performance management problems plaguing Federal agencies and employees.

OPM notes that commenters had an opportunity to submit comments during the public comment period for each of its rulemakings including the proposed rule on reductions in force, and OPM continues to receive higher comment response rates than it has historically received. OPM will respond to relevant concerns if or when it issues a final rule in each rulemaking.

OPM observes, however, that performance ratings have long affected retention standing in a reduction in force. Such usage is consistent with 5 U.S.C. 3502(a), which requires that OPM issue regulations that "give due effect" to, *inter alia*, "performance ratings" in determining retention standing among competing employees in a reduction in force. *See Am. Fed'n of Gov't Emps., AFL-CIO v. Off. of Pers. Mgmt.*, 821 F.2d 761, 765 (D.C. Cir. 1987). Further, 5 U.S.C. 4302(a)(3) contemplates using appraisal results as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees. Thus, the interaction between this rulemaking and OPM's reduction in force (RIF) rulemaking does not represent an unexplained gap in OPM's reasoning, but a longstanding feature of the Title 5 statutory scheme.

Further, this rule is complementary to OPM's reduction in force proposal, as it seeks to ensure that performance appraisal systems accurately evaluate employee performance while better distinguishing levels of performance. A rule that makes performance matter more in RIF retention and a rule that seeks to improve the accuracy and differentiation of performance ratings address complementary parts of the same merit-based personnel system.

OPM appreciates all commenters submitting feedback to the proposed changes to authorize a standardized distribution of performance rating levels. While OPM acknowledges the significance of the change and for the reasons above, this final rule authorizes the use of a standardized distribution of performance rating levels. These amendments retain the longstanding requirement that a rating of record be based on the evaluation of job performance,

while removing the categorical prohibition on methods that limit or require particular summary levels. Under the final rule, agencies are required to follow OPM guidance in implementing a standardized distribution of rating levels when issuing employee performance ratings. This change permits OPM to require and enforce an agency-wide and government-wide distribution of performance ratings among all covered non-SES employees.[44] The final rule clarifies that OPM retains discretion to determine the scope and structure of any standardized distribution, including which rating levels are subject to distribution requirements. OPM intends that any standardized distribution will limit only the highest rating levels (e.g., Levels 4 and 5), rather than prescribing limits for all rating levels.

Finally, the rule text at 5 CFR 430.208(d) expressly provides that comparing, categorizing, and ranking employees on the basis of their performance are practices that may be used for the purpose of assigning a summary level. This change is necessary to support implementation of a standardized distribution of performance ratings while preserving the principle that ratings must reflect employees' demonstrated performance against established standards.

Together, these changes align the regulatory text with OPM's determination that comparative evaluation mechanisms are necessary to improve differentiation in performance ratings and to address documented rating inflation across agencies.

Summary Levels and Patterns

As discussed in the proposed rule, OPM proposed to amend 5 CFR 430.208(e) to eliminate summary level patterns with a Level 2 summary level between Level 1 ("Unacceptable") and Level 3 ("Fully Successful"), and summary level patterns in which Level 4 was the highest summary level. In effect, this change eliminates Level 2 as an available summary level and retains only those summary level patterns that meaningfully promote differentiation in

[44] OPM notes that standardized distribution for senior professionals will be addressed under separate final rule. *See* Office of Personnel Management and Office of Management and Budget, *Managing Senior Professional Performance*, 91 FR 8763 (Feb. 24, 2026) (proposed rule).

performance. Agencies retain flexibility to select among the remaining available patterns consistent with the requirements of 5 CFR part 430, subpart B.

Several commenters (e.g., Commenters 0002, 0004, 0027, 0031, 0036, and 0068) expressed concern that eliminating the Level 2 summary rating level would reduce the ability to distinguish among varying levels of performance and creates an "all-or-nothing" rating structure. Commenters argue that Level 2 provides an intermediate rating that allows supervisors to recognize gradations in performance between Level 1 and Level 3 and that removing this level could reduce the accuracy of performance evaluations.

OPM does not agree that eliminating the Level 2 summary rating level results in a meaningful loss of nuance in performance evaluations. The purpose of summary ratings is to provide a clear, meaningful assessment of whether an employee meets established performance expectations. Arguments that eliminating the Level 2 summary rating will remove important granularity in rating employee performance are not supported given the extremely infrequent use of that rating level. OPM's oversight of agency non-SES performance appraisal systems revealed that, for agencies using a five-level summary rating system, only 0.3 percent of non-SES employees were rated at Level 2 for the fiscal years 2022 to 2024.[45] The minimal use of a Level 2 rating indicates that agencies rarely rely on this summary level to distinguish performance. Supervisors remain responsible for identifying and addressing performance deficiencies at the element level, including providing feedback, documenting deficiencies, and taking appropriate corrective action where needed. Accordingly, OPM does not believe that eliminating the Level 2 rating will prevent agencies from identifying or addressing performance issues or providing employees with required opportunities to improve.

Commenters 0098 and 0206 asserted that a Level 2 rating serves as a mechanism for identifying employees whose performance requires improvement but is not "Unacceptable," thereby allowing agencies to address marginal performance without resorting to adverse action.

[45] Non-SES/SP ratings data submitted by individual agencies.

This commenter further stated that "Under 5 U.S.C. chapter 43 and established merit system principles, agencies must be able to identify and develop employees whose performance is inadequate but recoverable," implying that there is a statutory basis for continued use of the Level 2 summary level.

OPM respectfully disagrees. Neither chapter 43 nor the merit system principles require use of a Level 2 summary level or any particular number or naming of summary levels. The statutory obligation to identify, assist, and, where necessary, take action with respect to employees whose performance does not meet required standards does not depend on the availability of a separate Level 2 summary rating. This is reflected in the fact that the currently existing rating patterns of A, B, C, and E do not provide for a Level 2 summary rating.[46] This rule does not create new ratings patterns but merely limits agency selections from among the existing ratings patterns.

The final rule eliminates Level 2 as a summary rating level. It does not prevent agencies from providing feedback, coaching, or assistance before performance becomes unacceptable. When an employee's performance fails to meet established standards in one or more critical elements, agencies remain required to provide assistance consistent with 5 U.S.C. 4302(c)(5) and § 430.207(c), as redesignated.

Also, merit system principle #6 (5 U.S.C. 2301(b)(6)) states that "employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards."[47] This principle conveys that an employee's retention should be based on the adequacy of performance and does not require the use of a Level 2 summary rating level between "Unacceptable" and "Fully Successful." Under the final rule, "adequate performance" is considered performance that meets the "Fully Successful" performance

[46] 5 CFR 430.208(d)(1).
[47] 5 U.S.C. 2301(b)(6).

standards. As OPM explained in the proposed rule, any pattern of summary levels that has two levels below "Fully Successful" creates unnecessary complexity without meaningful distinction. The Merit Systems Protection Board (MSPB) also noted the failings of a Level 2 rating, noting it "is a difficult level of performance to define" because "it makes possible a situation that managers, employees, and members of the public may find intolerable: an employee who is not performing the job satisfactorily, yet cannot be removed for performance and who remains in the position at a full salary."[48]

A few commenters (e.g., Commenters 0055, 0226, 0374, 0375, and 0621) expressed support for the proposed change, stating that reducing the number of summary rating levels would simplify performance appraisal systems, improve clarity, and help address rating inflation. Commenter 0621 further recommended that, if the Level 2 summary rating is eliminated, OPM should also eliminate the use of "non-critical elements" because current regulations preclude assigning a Level 1 ("Unacceptable") summary rating based on consideration of non-critical elements.[49]

OPM agrees that eliminating redundant patterns of summary levels will improve clarity and promote more meaningful distinctions in performance outcomes. A more streamlined rating framework reduces ambiguity and supports more consistent application of performance standards across organizations. However, OPM does not agree that elimination of the Level 2 summary rating level warrants the removal of non-critical elements. Non-critical elements serve an important and distinct function within performance appraisal systems for employees covered by this subpart. Specifically, they allow agencies to assess and communicate expectations related to important aspects of performance that, while not rising to the level of a critical element, contribute to overall effectiveness, teamwork, and mission accomplishment.

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[48] MSPB, *Determining an Acceptable Level of Competence for Step Increases* (Apr. 2021), https://www.mspb.gov/studies/researchbriefs/Determining_an_Acceptable_Level_of_Competence_for_Step_Increases_1823371.pdf.
[49] 5 CFR 430.208(b)(2).

Lastly, a few commenters (e.g., 0022 and 0587) expressed concerns about the readiness of agencies to implement the reforms under the proposed rule. OPM considered these concerns and determined it appropriate to delay compliance with 5 CFR 430.208(e)(1) and (2) until January 1, 2027, as described in the effective date of the rule. This delay will allow agencies to complete Fiscal Year 2026 performance appraisals using all five summary level ratings, including Level 2, as appropriate. Under the final rule, agencies will move to new performance appraisal systems without a Level 2 rating beginning at the start of Fiscal Year 2027. Agencies currently using a summary level pattern with Level 2 will have sufficient time to complete the performance appraisal cycle for Fiscal Year 2026 including issuing ratings of record with the option of assigning a Level 2 rating. OPM believes this additional time will allow agencies to complete the transition to a new performance appraisal system including making appropriate changes to their human resources information systems, policies, and procedures.

After consideration of the comments, OPM has determined that eliminating summary level patterns that utilize a Level 2 summary level will promote clearer and more consistent application of performance standards. Under the final rule, there is only one summary rating level – Level 1 ("Unacceptable") – that represents when a non-SES employee's performance fails to meet the fully successful standards. This amendment aligns with OPM's statutory mandate to improve the accuracy and consistency of performance appraisal systems. By eliminating unnecessary patterns of summary levels, agencies will be better positioned to make clear and accurate distinctions between performance that is "Fully Successful" and "Unacceptable." The rule also eliminates ambiguity with respect to "Outstanding" performance, which under the final rule is identified only by a Level 5 rating. Accordingly, OPM removes Patterns C, D, F, G, and H, retains Patterns A and B, and redesignates Pattern E as C.

Eliminate Assistance for Marginal Performance

Since OPM is eliminating the Level 2 summary rating, OPM is also removing the provision at 5 CFR 430.207(c), which required appraisal programs to provide assistance

whenever performance is determined to be below "Fully Successful" or equivalent but above "Unacceptable."

A number of commenters, including 0062, 0068, 0206, 0240, 0285 and others, objected to removing this requirement because they perceive it as reducing the opportunity for employees to receive assistance if their performance drops below "Fully Successful." Relatedly, Commenter 0521 questioned how eliminating the provision for assistance under 5 CFR 430.207(c) complies with the statutory requirement that performance appraisal systems provide for "assisting employees in improving unacceptable performance." 5 U.S.C. 4302(c)(5).

OPM emphasizes that the regulation at 5 CFR 430.207(c) stated that appraisal programs should provide assistance whenever performance is determined to be below "Fully Successful" or equivalent but above "Unacceptable." Because the final rule eliminates the Level 2 summary level, there are no corresponding performance standards defining Level 2 performance. Therefore, any time an employee's performance is determined to be below "Fully Successful," agencies are required under 5 U.S.C. 4302(c)(5) to provide assistance to improve the unacceptable performance. Hence, opportunity for assistance is not diminished under the final rule. Additionally, employees who demonstrate unacceptable performance remain entitled to an opportunity to demonstrate acceptable performance before being reassigned, reduced in grade, or removed.[50]

Furthermore, OPM's performance management guidance emphasizes the importance of communication between supervisors and employees, and OPM instructed agencies to establish policies that require more frequent check-ins to ensure supervisors are providing necessary performance-related feedback to their subordinates.[51] These resources for agencies, combined with the increased emphasis on frequent communication and performance feedback, address

[50] 5 U.S.C. 4302(c)(6) and 5 CFR 430.204(b)(1)(v).
[51] *See* note 14.

commenters' concerns regarding employees whose performance falls below "Fully Successful" during the appraisal period.

Limited Use of Pattern A

OPM determined that use of Pattern A ("pass/fail") is reasonable for a limited number of populations in which comparing, categorizing, and ranking of employees is impractical or impossible. In the final rule, Pattern A may only be used for seasonal employees, teachers, General Schedule grades 1-4, and Federal Wage System employees. This change promotes meaningful performance-based differentiation by ensuring the vast majority of employees covered by this rulemaking are subject to a summary level pattern other than Pattern A.

OPM received little feedback on this provision. Commenter 0206 argues that restricting Pattern A to the aforementioned groups creates structural inequity by making rating options tied to grade level as opposed to job characteristics. Commenter 0206 also asserts that employees subject to this rating pattern may have limited recognition and award opportunities. Other commenters asserted that the proposed rule would impose costly system changes.

OPM disagrees that this provision creates structural inequities based on grade level. OPM's intent is for agencies to utilize summary level patterns that, to the greatest extent possible, promote differentiation in performance, while reserving Pattern A for positions where a more detailed rating structure is not practicable. The regulatory framework is designed to provide flexibility while ensuring that performance appraisal systems are appropriate to the nature of the work being performed, and agencies retain discretion to design rating structures consistent with regulatory requirements and organizational needs. Limiting Pattern A to specified categories of employees reflects longstanding practice in which simplified rating structures have been appropriate for these positions. This does not preclude agencies from utilizing Patterns B or C for these groups of employees or from recognizing or rewarding high performance through the use of Pattern A.

OPM also acknowledges that this rule may require agencies to modify their human resources information systems to accommodate the changes in this rule. However, commenters fail to provide any specific reason or argument that these changes may be costly. While OPM believes that agencies may incur some non-zero cost to adjust their information systems, such costs are de minimis. Even so, OPM views the costs of these changes as necessary to free agencies from the burden of a performance management appraisal system that has proven ineffective for the last 40-plus years. For these reasons, OPM is adopting in the final rule its proposal limiting the use of Pattern A.

Higher-Level Review and Approval

OPM proposed eliminating the requirement for mandatory higher-level review and approval of a Level 1 ("Unacceptable") rating of record to further streamline performance appraisal processes and eliminate procedural hurdles that impede accountability. Several commenters expressed concern that eliminating this requirement removes an important safeguard against error, inconsistency, and potential abuse (e.g., Commenters 0030, 0098, 0152, 0203, 0224, and 0289). Commenters argued that higher-level review provides a critical check on supervisory decisions and helps ensure that highly consequential Level 1 ratings are applied accurately and consistently.

OPM recognizes the importance of ensuring that all performance ratings, including Level 1 ratings, are applied accurately and consistently. However, OPM does not agree that mandatory higher-level review in all cases is necessary to achieve these objectives. As explained in the proposed rule, mandating an additional level of review and approval adds unnecessary complexity, delays corrective action, and may be redundant in streamlined agency structures. For example, where the rating official is already a senior leader or where the agency structure does not support additional layers of review, a mandatory higher-level review requirement may provide little incremental value. It is also important to note that this change does not prohibit higher-level review or approval of a Level 1 rating of record; it simply removes the regulatory

mandate that such review and approval occur in every case. Agencies retain discretion to establish internal review processes where appropriate, including authorizing the use of the administrative grievance procedures to review performance ratings, and OPM expects agencies to maintain effective oversight of performance management practices. Further, OPM notes that Level 1 ratings are extremely rare. Relevant data[52] show that only approximately 0.1 percent of employees receive an "Unacceptable" rating. Given this very limited usage, removal of a mandatory review step for such ratings will not have a widespread impact on Federal employees. Instead, the change targets a narrow category of clearly defined poor performance while preserving all substantive statutory protections and allowing agencies to tailor their oversight mechanisms to their organizational structures.

Some commenters, including 0159, 0553, and 0558, asserted that eliminating the requirement for mandatory higher-level review of Level 1 ratings raises due process concerns because such ratings may ultimately serve as the basis for a performance improvement plan (PIP), demotion, or removal action under chapter 43 of title 5, United States Code. Commenter 0159 specifically cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), arguing that higher-level review helps satisfy constitutional due process protections before an employee may be deprived of continued Federal employment.

OPM respectfully disagrees that eliminating mandatory higher-level review of a Level 1 rating of record deprives employees of constitutionally required due process protections. A rating of record, by itself, does not constitute an adverse action or independently deprive an employee of a protected property interest in continued employment. Commenters' reliance on *Loudermill* is misplaced. *Loudermill* does not establish that employees have a vested property interest in higher-level review of a performance rating. Rather, it addresses the minimum procedural protections required before a tenured public employee may be deprived of continued employment. A Level 1 summary rating by itself does not remove an employee from Federal

[52] *See* note 45.

service or otherwise deprive the employee of a property interest. Instead, it initiates a process governed by chapter 43 of title 5, United States Code,[53] and OPM's regulations at 5 CFR part 432, under which employees are provided notice of unacceptable performance and an opportunity to demonstrate acceptable performance before any performance-based action may be taken. If an employee fails to improve to the "Fully Successful" level, the agency must then provide notice of the proposed action and comply with applicable statutory and regulatory procedures, including concurrence by a higher-level official before a removal or reduction in grade may occur.

Further, although the final rule removes the governmentwide requirement for mandatory higher-level review of all Level 1 ratings, agencies remain free to establish such review requirements through internal policy or procedure where appropriate. Employees also retain multiple avenues to raise concerns regarding allegedly arbitrary, retaliatory, or discriminatory ratings, including administrative grievances, whistleblower disclosures, prohibited personnel practice complaints, and equal employment opportunity complaints. Accordingly, OPM concludes that the final rule does not eliminate or otherwise conflict with constitutional due process requirements.

Commenter 0152 argued that higher level review is necessary because "performance issues are a result of systemic failures, such as inadequate training or a lack of clear guidance, which cannot be solved by penalizing the employee."

OPM disagrees that performance issues are generally the result only of systemic failures. While OPM acknowledges that there are several factors that play a role in whether an employee is successful in his or her position, OPM is unpersuaded by Commenter 0152's broad, unsupported assertion that poor performance is primarily attributable to such factors. That is not to say OPM is not addressing systemic issues that may affect performance management outcomes. As noted above, OPM is proposing regulatory reforms intended to improve how

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[53] *See* 5 U.S.C. 4303.

agencies recognize excellence and address poor performance. In addition, OPM has taken separate action to improve hiring processes and outcomes[54] and to hold supervisors accountable for addressing poor performance within their organizations.[55] These efforts complement, rather than substitute for, agency responsibility to evaluate and address individual performance consistent with statutory and regulatory requirements.

OPM has carefully considered these comments and concludes that eliminating the requirement for mandatory higher-level review of Level 1 ratings does not impede due process, nor will it reduce fairness or accuracy in performance evaluations. The final rule provides agencies with appropriate flexibility to manage performance appraisal processes, including the discretion to provide higher-level reviews of any rating level through internal policy. Therefore, OPM is not adopting commenters' recommendations to retain the mandatory higher-level review and approval of Level 1 ratings of record.

Eliminate Negotiated Grievance Procedures

OPM proposed amending 5 CFR 430.208 to clarify the finality of a rating of record and to establish explicit limitations on the mechanisms by which such ratings may be challenged. Specifically, the amendment provides that a rating of record, once issued with all appropriate reviews and approvals, constitutes the agency's final determination of an employee's performance for the appraisal period, subject only to those reconsideration processes expressly provided by regulation. As a result, ratings of record are not subject to negotiated grievance procedures or arbitration under 5 U.S.C. 7121, regardless of collective bargaining coverage. This change represents a departure from prior practice, under which a rating of record could, in certain circumstances, be modified as a result of a grievance, complaint, or other formal proceeding. OPM notes, however, that the revision to 5 CFR 430.208 does not preclude the use of negotiated grievance procedures established under 5 U.S.C. 7121 to challenge a rating of

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[54] OPM, Memorandum, "*Merit Hiring Plan*," May 29, 2025, https://www.opm.gov/chcoc/transmittals/2025/Merit%20Hiring%20Plan%205-29-2025%20FINAL.pdf.
[55] *See* note 14.

record in all cases. Where a collective bargaining agreement contains a provision that permits a bargaining unit employee to grieve a rating of record and the agreement is in effect before the date this rule is prescribed, such a grievance will continue up until the term of the agreement expires.[56] Once the term of the agreement expires, grievances over ratings of record will no longer be subject to any negotiated grievance procedures or arbitration under 5 U.S.C. 7121.

Several commenters (e.g., Commenters 0161, 0165, 0569, and 0421) asserted that OPM lacks statutory authority to prohibit employees from contesting ratings of record through negotiated grievance procedures. Commenters argued that under the Federal Labor Relations Authority's decision in *Nat'l Treasury Emps. Union and Internal Revenue Serv.*, 31 FLRA 181 (1988) (*NTEU*), OPM cannot prohibit grievances under a negotiated grievance procedure through a governmentwide regulation unless expressly authorized by Congress under 5 U.S.C. 7121, and that ratings of record are not among the matters excluded in section 7121(c).

OPM disagrees that the FLRA's decision is controlling as it is no longer good case law. In *NTEU*, the FLRA held that OPM's governmentwide regulation prohibiting grievances over non-selections for promotion was inconsistent with 5 U.S.C. 7121. The FLRA's holding relied on an earlier D.C. Circuit's opinion in *EEOC v. FLRA*, 744 F.2d 842 (D.C. Cir. 1984) (*EEOC*) where that court stated that there is no evidence that Congress intended for governmentwide regulations to limit the scope of the negotiated grievance procedure under section 7121.[57] Five years after *NTEU*, the D.C. Circuit revisited *EEOC* in *Dep't of Treasury v. FLRA*, 996 F.2d 1246 (D.C. Cir. 1993) (*Treasury*) to determine whether a governmentwide regulation barring grievances is consistent with section 7121.[58] The D.C. Circuit overturned *EEOC* and held that under 5 U.S.C. 7117(a)(1) an agency may "pull a subject out of the bargaining process by issuing a government-wide rule that creates a regime inconsistent with bargaining."[59]

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[56] *See* 5 U.S.C. 7116(a)(7).
[57] *NTEU* at 200 (citing *EEOC v. FLRA*, 744 F.2d 842, 851 (D.C. 1984)).
[58] *Treasury* at 1251-53.
[59] *Id.*

Consistent with the D.C. Circuit's opinion in *Treasury*, OPM is prohibiting labor unions from negotiating and agencies agreeing to a proposal that authorizes grievances over ratings of record under section 7121. In doing so, OPM notes that performance ratings, in and of themselves, do not constitute adverse actions subject to independent statutory appeal rights. To the extent a rating of record is used as the basis for a subsequent personnel action that is otherwise appealable or able to be grieved under applicable law, employees retain any applicable procedural rights attached to that action. However, the rating of record itself will not be subject to challenge through negotiated grievance procedures. Accordingly, OPM concludes that the final rule establishes reforms consistent with 5 U.S.C. 7121 and falls within OPM's statutory authority to regulate performance appraisal systems under chapter 43.

Several commenters (e.g., Commenters 0002, 0044, 0053, 0206, 0288, 0377, 0418, and 0616) asserted that eliminating the opportunity to challenge performance ratings through negotiated grievance procedures undermines due process protections. These commenters argued that grievance procedures provide employees with a meaningful opportunity to contest inaccurate or unfair ratings and serve as an important safeguard against arbitrary decision-making. Commenter 0377 asserted that prohibiting labor union grievances over ratings of record is contrary to law under *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

OPM does not agree that the final rule eliminates any required due process protections or is inconsistent with *Loudermill*. *Loudermill* addresses the procedural protections required when the government seeks to deprive an employee of a protected property interest and requires notice and an opportunity to respond prior to such deprivation. Ratings of record, standing alone, do not constitute an adverse action or a deprivation of a property interest and therefore do not independently trigger the due process protections described in *Loudermill*. Moreover, where a performance rating forms the basis for a subsequent performance-based or adverse action under 5 U.S.C. chapters 43 or 75, respectively, employees retain all applicable procedural protections provided by Congress. This includes entitlement to advance notice, an opportunity to respond, a

right to representation, and a decision taking into account the employee's response. Most employees also benefit from the ability to appeal such actions to the Merit Systems Protection Board. The proposed rule does not alter these protections. Further, employees continue to enjoy protections against prohibited personnel practices under 5 U.S.C. 2302 including filing complaints with the Office of Special Counsel. Employees also retain protections under the many anti-discrimination laws enforced by the Equal Employment Opportunity Commission. Taken together, these statutory protections ensure that eliminating challenges to ratings through negotiated grievance procedures does not undermine due process or reduce the integrity of the performance appraisal process.

Other commenters, including 0003, 0007, 0031, 0059, 0206, 0288, 0498, and 0629, claim that challenging ratings through negotiated grievance procedures is a necessary check on supervisory inaccuracy and bias, including favoritism, retaliation, or arbitrary decision-making. Others characterize the procedures as necessary for ensuring fair and equitable treatment required by merit system principles (e.g., Commenters 0053, 0288, and 0319).

OPM acknowledges the importance of fair and accurate performance appraisals but disagrees that negotiated grievance procedures are an appropriate or necessary mechanism to achieve that objective. As OPM explained in the proposed rule, grievance arbitrators are poorly positioned to substitute their judgment for that of supervisors in these areas, particularly where the dispute centers on the relative level of performance (e.g., "Fully Successful" versus "Outstanding") rather than a clear procedural or legal violation. These arbitrators are particularly ill-equipped to assess performance ratings assigned under a standardized distribution, as they generally review an individual record and may not have access to the full agencywide rating-distribution context.

OPM notes that grievances over ratings have not been limited to correcting clearly erroneous or unjustified low ratings. Instead, cases show that negotiated grievance procedures have frequently been used to contest ratings that are already at or above the "Fully Successful"

level, with the objective of obtaining the highest possible rating.[60] Such cases demonstrate the propensity to use grievance procedures not as a safeguard against improper low ratings, but as a mechanism to relitigate performance determinations. This prospect creates incentives for supervisors to avoid assigning lower ratings that may be subject to challenge, especially those that could result in adverse action. In this regard, the current system has tended to bias ratings upward, not downward, but bias in any direction nonetheless undermines the meaningful differentiation of performance that chapter 43 is intended to achieve.

Lastly, as discussed earlier, existing statutory safeguards remain in place to ensure fair and equitable treatment and address concerns regarding bias, retaliation, or improper conduct. Employees retain many paths to ensure they receive a fair assessment of their performance. Further, OPM is amending § 430.209 and § 430.210 to expressly require agencies to administer their performance appraisal systems in accordance with the merit system principles set forth in 5 U.S.C. 2301 and that OPM will take effective action to correct any violations. OPM is revising the Authority citation for part 430 to reflect this addition.

After careful consideration of the comments, OPM has determined that excluding performance ratings from negotiated grievance procedures is appropriate to promote consistency, accountability, and integrity in performance appraisal systems. OPM has considered commenters' statutory and policy concerns but concludes that the final rule reflects a reasonable and lawful exercise of its authority to regulate performance appraisal systems on a governmentwide basis. OPM concludes that the provision preserves necessary due process safeguards against supervisory bias; employees retain all procedural protections required by law in connection with adverse actions; and agencies maintain internal review mechanisms to ensure the accuracy and consistency of performance evaluations. OPM further finds that the existing grievance framework has contributed to longstanding concerns regarding rating inflation, gives

[60] *See, e.g., Def. Logistics Ag. and AFGE Local 987*, 71 FLRA 1029 (2020); *Farm Serv. Agency and AFGE Local 3354*, 56 FLRA 679 (2000); *Dep't of Veterans Affairs and NAGE Local R4-78*, 47 FLRA 797 (1993).

arbitrators with little experience in agency operations the final word on performance ratings, and has frequently been used to challenge ratings at or above the "Fully Successful" level, rather than to address clear violations of law or regulation. By clarifying the finality of ratings of record and limiting their review to appropriate internal processes, the final rule promotes supervisory accountability, supports more meaningful differentiation of performance, and aligns performance management practices with the statutory framework under chapter 43. Accordingly, OPM adopts the amendments to § 430.208 as proposed.

Supervisory Critical Element

As OPM explained in the proposed rule, supervisors are responsible for accurately assessing employee performance and play a critical role in ensuring the integrity of agency performance management systems. However, in the absence of clearly defined and consistently applied expectations for supervisory performance, agencies may lack an effective mechanism to evaluate how well supervisors carry out these responsibilities. This gap can contribute to inconsistent application of performance standards, diminished accountability, and, in some cases, inflated ratings or insufficient action to address poor performance. A supervisory critical element provides a clear, formal basis for evaluating supervisory performance management responsibilities, including setting expectations, providing feedback, and addressing performance deficiencies. Establishing such an element ensures that supervisory performance is assessed against defined criteria and reinforces the expectation that supervisors are accountable for effective performance management practices. Accordingly, to strengthen accountability and promote more consistent and accurate performance evaluations, OPM proposed amending 5 CFR 430.206(b) to require that a supervisory critical element be included in the performance plans of all supervisors covered under 5 CFR part 430, subpart B.

Several commenters, including 0002 and 0044, expressed concern that the requirement could impose unrealistic or overly burdensome expectations on supervisors, noting that supervisors already face significant administrative and operational demands. Commenter 0044

further noted that mandating a supervisory critical element across all agencies may not fully reflect the diversity of supervisory roles within the Federal Government and may reduce agencies' flexibility to tailor performance plans to mission-specific responsibilities.

Respectfully, OPM disagrees with commenters' concerns. In 2025, OPM published guidance consistent with the President's commitment to transform the Federal bureaucracy, including promoting a high-performance Federal workplace culture.[61] This guidance required agencies to take steps to improve their supervisory, managerial, and executive corps, including mandatory performance management training and tying certain supervisor and managerial performance plans to driving a culture of accountability. These requirements are not burdensome. Supervisors, managers, and executives are already subject to training requirements under OPM regulations.[62] Moreover, it is a core competency of all Federal supervisors and managers, regardless of technical specialization or the uniqueness of positions, to hold employees accountable.[63] OPM does not view linking this core competency to performance plans as unduly burdensome as these expectations have always been critical to their positions. Nonetheless, OPM will be mindful of the commenters' concerns if and when it issues new or revised guidance.

Commenter 0161 expressed support, in principle, for requiring a supervisory critical element but also voiced concern that, if supervisors are evaluated under the new critical element based on the distribution of ratings they assign, it could create an incentive for supervisors to issue lower ratings to their subordinates, regardless of the subordinates' actual level of performance.

OPM appreciates the commenter's concern and confirms that the performance of non-SES supervisors will not be evaluated based on the ratings they issue to their subordinates. OPM

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[61] *See* note 14.
[62] 5 CFR part 412, subpart A.
[63] https://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/specialty-areas/supervisory-guide/.

issued performance management guidance[64] containing the verbatim language of the new supervisory critical element titled, "Holding Employees Accountable," and its associated performance standards. The critical element focuses on process-based actions such as modeling self-accountability, holding subordinates accountable, rewarding excellent performance, addressing poor performance in a timely manner, and taking appropriate action when employees report concerns of illegal conduct or waste, fraud, or abuse. It does not involve evaluating supervisors based on the ratings distribution of their subordinates. OPM intends for agencies to apply the standardized distribution requirements at the agency or department level as opposed to the work unit level. As such, ratings issued by an individual supervisor will not need to strictly adhere to the overall rating limits that apply to the agency. OPM also notes that it is possible the commenter conflated the supervisory critical element requirement with an SES-specific requirement in the same guidance – that senior executives who supervise 10 or more subordinate SES must describe, in their annual performance narrative, the rating distribution of subordinate SES and how that distribution reflects the performance of their organization. That requirement does not apply to non-SES supervisors.

Commenter 0068 and others suggested that improvements to performance management should focus on enhanced training, clearer standards, and improved oversight, rather than the addition of new regulatory requirements. OPM agrees that improving performance management requires a multifaceted approach. To that end, as discussed above, OPM has proposed changes to other regulations that improve training for supervisory, managerial, and executive leaders. OPM also provided free training resources[65] to assist agencies and supervisors in effectively carrying out performance management responsibilities, including methods for identifying and addressing poor performance and how to develop and discuss relevant performance goals and objectives

[64] *See* note 14.
[65] OPM, *New Governmentwide Supervisory Training* (Dec. 3, 2025), https://www.opm.gov/chcoc/published-memos/new-governmentwide-supervisory-training.pdf.

with employees. In addition, OPM encourages agencies to provide supervisors with appropriate training and resources to carry out their responsibilities.

After careful consideration of the comments, OPM has determined that requiring a supervisory critical element is an appropriate and necessary component of a modern performance management system. The requirement promotes accountability, reinforces effective supervisory practices, and supports fair and consistent evaluation of supervisory responsibilities across the Federal workforce. Therefore, OPM is amending 5 CFR 430.206(b) as proposed, by adding a new subparagraph (9), requiring that a supervisory critical element be included in the performance plans of all supervisors covered under 5 CFR part 430, subpart B.

Biennial Appraisal System Certifications

In the proposed rule, OPM proposed amending 5 CFR 430.210(b) to establish a requirement that agency performance appraisal system(s) and program(s) be evaluated and certified by OPM biennially. The purpose of this requirement is to ensure that agency appraisal systems and programs are implemented in a manner consistent with statutory and regulatory requirements, as well as OPM performance management guidance. This change supports OPM's broader objective of strengthening accountability and consistency across agencies, which is particularly important given changes in this final rule, including the provision authorizing OPM to establish and maintain a standardized distribution of rating levels.

Commenter 0002 objected to the proposal, arguing that "[a]gencies already operate under strict oversight." Under 5 U.S.C. 4304(b), OPM is required to review each performance appraisal system developed by an agency and to direct agencies to make appropriate corrections where such systems do not meet statutory requirements. In practice, OPM fulfills this responsibility by reviewing and approving newly developed appraisal systems and requiring reapproval when agencies make substantive changes. However, where appraisal systems remain in place for extended periods without modification, OPM may have limited opportunity to evaluate how those systems are being applied and whether they continue to meet statutory and regulatory

requirements. The biennial review and certification requirement addresses this gap by providing for regular, structured oversight of both the design and application of agency appraisal systems.

OPM sought this certification requirement to improve its oversight of agencies' performance appraisal systems in response to surveys showing long-held skepticism among Federal employees that current performance appraisal systems meaningfully differentiate between levels of performance.[66] Coupled with ratings distribution data that consistently show dramatically inflated performance ratings,[67] these trends demonstrate that performance management systems covered by 5 CFR part 430, subpart B, are not functioning as effective instruments for performance differentiation, accountability, or workforce development. As such, additional oversight is warranted.

Commenters 0002, 0041, 0042, 0044, 0098, 0130, 0253, 0398, 0403, and 0448 argue that this requirement would impose significant administrative burden on agencies without clear benefits.

OPM acknowledges these concerns. While OPM intends for the certification requirement to build upon existing agency processes and oversight mechanisms, rather than create duplicative or unnecessarily burdensome reporting requirements, OPM agrees that there could be a substantial administrative burden if the biennial review and certification process involves evaluating all agency appraisal systems and corresponding appraisal programs. Agencies may have several appraisal programs established under a single appraisal system. OPM notes that an "appraisal system" is the agency's framework of policies and parameters (i.e., guidelines, boundaries, limits) for the administration of performance appraisal programs, and an "appraisal program" is the specific procedures and requirements established under the policies and parameters of an agency appraisal system. Historically, there has been no requirement for OPM to review or approve agency appraisal programs, and OPM is confident that sufficient oversight

[66] *See* note 12.
[67] *See* notes 9 and 45.

can be achieved solely through evaluating agencies' application of their performance appraisal systems. Therefore, OPM is finalizing the biennial review and certification requirements in 5 CFR 430.210(b) with an amendment to the proposed language to only require recertification of appraisal systems and to remove agency performance appraisal programs from the requirement.

Commenters 0206, 0421, and 0514 voiced concern over the provision in 5 CFR 430.210 authorizing OPM to recommend an agency's aggregate awards spending be reduced based on an unfavorable certification result. Commenter 0206 specifically stated it "risks penalizing employees for systemic issues related to agency leadership, training, or implementation—factors outside individual employee control."

OPM recognizes that agency leadership is primarily responsible for ensuring compliance and that any consequences of an unfavorable certification determination may affect employees. However, in exercising its review and certification authority, OPM will ensure that any recommendations or actions resulting from an unfavorable certification determination are based on data-driven criteria that OPM is required to issue. The intent is to improve system integrity, not to impose punitive measures. OPM further notes that appraisal system certification has been a longstanding requirement for SES and SP appraisal systems and that agencies have successfully implemented those requirements for many years. Furthermore, the outcomes associated with SES and SP certification determinations are significantly more consequential, as those certifications are directly tied to statutory pay limitations. Unlike SES/SP certification, the non-SES/SP certification process created by this rule does not itself impose statutory pay caps or alter individual pay entitlements. OPM may, however, recommend prospective aggregate awards spending limitations to OMB.

Conversely, Commenters 0013 and 0225 provided general support for the certification requirement or acknowledged that it could enhance consistency, oversight, and accountability across agencies, particularly when considered alongside other proposed reforms. Commenter 0013 remarked that the proposed rule improves OPM's oversight role. OPM agrees and

concludes that enhanced oversight through a required biennial review and certification process is an appropriate mechanism for improving rigor and consistency of performance management across the Federal Government. Accordingly, OPM is adopting the proposed amendment to 5 CFR 430.210 with the modification described above.

Conforming Amendments

As proposed, OPM is making conforming changes to 5 CFR parts 351 and 537 to adjust cross-references. In an unrelated rulemaking, OPM has proposed revisions to the reduction in force regulations found in 5 CFR part 351. 91 FR 10904 (March 5, 2026). If that rulemaking is finalized, these conforming changes would be incorporated into that revised text.

Finally, OPM is also making other changes to 5 CFR part 430, subpart B in this final rule. OPM is correcting references to out-of-date operating manuals at § 430.209(b) and (e). In response to comments asserting that standardized distribution could undermine merit-system principles, OPM is clarifying at 5 CFR 430.209(g) and 430.210(c) that agency appraisal systems and appraisal programs must be administered consistent with the merit system principles set forth under 5 U.S.C. 2301 and that OPM may require corrective action where systems fail to meet applicable legal and regulatory requirements.

Expected Impact of This Rulemaking

A. Statement of Need

OPM is issuing this rule pursuant to its authority to issue regulations governing performance appraisals for non-SES employees in subchapter I of chapter 43 of title 5, United States Code. As discussed in the Background, the purpose of this rule is to modernize and strengthen the performance management framework for non-SES employees under 5 CFR part 430, subpart B. The current regulatory structure has remained largely unchanged for decades. Therefore, it no longer reflects the operational realities or accountability standards necessary for today's Federal workforce. This has led to persistent issues going unaddressed—including inflated performance ratings, limited differentiation between successful and unsuccessful

performance, and uneven agency compliance with statutory performance appraisal requirements. Despite OPM's non-regulatory efforts to improve rigor in the performance management process, ratings inflation remains particularly acute, leading OPM to conclude that comprehensive regulatory reform is needed. By providing for the establishment of a standardized distribution of some or all rating levels, streamlining certain appraisal processes to strengthen accountability for poor performance, and requiring OPM to biennially review and certify agency non-SES appraisal systems, this rule is designed to promote increased accuracy and credibility in performance appraisals.

B. Impact

OPM is making these revisions to increase the efficiency and effectiveness of performance management for employees that make up the biggest percentage of all Federal employees: non-SES employees. Removing the regulatory prohibition on standardized distribution and authorizing OPM to establish and maintain a standardized distribution of some or all rating levels is expected to produce a more normalized distribution of performance ratings. These changes will require agencies to refocus efforts on ensuring that there are meaningful distinctions in non-SES performance ratings.

OPM expects that the implementation of a standardized distribution, in conjunction with the provisions in this rule that eliminate barriers to accountability, will incentivize improved performance of non-SES employees, who will no longer expect to receive the highest ratings without demonstrating superior performance relative to the other non-SES employees in their agency. Those non-SES employees who continue to perform at a level that is less than fully successful will be more swiftly held accountable. Over time, these improvements are expected to result in higher-performing organizations, more responsive public service, and renewed public trust in the integrity and effectiveness of the Federal workforce.

OPM's biennial evaluation and certification of agency appraisal systems will serve as a structured mechanism for agencies to demonstrate compliance, identify deficiencies, and receive

technical assistance from OPM regarding the operation and application of their performance appraisal system(s). OPM expects that this process will enhance interagency comparability and help ensure that non-SES appraisal systems continue to conform with applicable law, regulation, and OPM policy.

Reliance Interests

In addition to the concerns identified above, some commenters expressed concern with the impacts of the proposed rule. Commenter 0260 asked OPM to consider the impacts of the proposed rule on "technical professionals, workforce quality, and the government's ability to recruit and retain qualified engineers and other specialists." The commenter, however, did not offer more to explain how the proposed rule would impact these issues. Other commenters similarly raised issues of productivity, retention, and morale. OPM believes that the final rule will remedy the problem of inflation of performance ratings and, therefore, restore integrity and confidence in the performance management appraisal process. This, in turn, is expected to incentivize employees to focus on delivering mission-driven results and to enable agencies to better distinguish and reward high performance. As a result, the Federal workforce, including technical professionals, should see better alignment between performance expectations and mission priorities and more appropriate recognition for demonstrated performance. OPM does not foresee an impact on recruitment but acknowledges that those employees who have grown accustomed to inflated performance ratings may receive lower ratings and fewer awards. OPM views the final rule as realigning incentives so that such employees will work closely with their supervisors to understand performance expectations and identify additional ways to contribute to their agencies' success. Where employees are dissatisfied with these changes, including expectations about their individual performance, OPM anticipates some may choose to leave their current agencies for another or Federal service altogether. OPM believes it is far too speculative to estimate how many employees may leave Federal service or how that might impact agencies.

Some commenters raised concerns with the impact of the rule on collective bargaining agreements. One commenter noted that OPM explained in the preamble how a final rule would interact with collective bargaining agreements but objected that this explanation appeared in a footnote rather than in regulatory text. As discussed in the proposed rule, OPM acknowledges that a collective bargaining agreement may contain provisions that are in effect before the date the final rule is prescribed.[68] If such a conflict arises, the provisions in the collective bargaining agreement would control until the term of the agreement expires. OPM does not agree with the notion that this principle of Federal labor law should be codified in the regulatory text of the final rule. There is adequate and well-established FLRA case law that provides guidance to agencies on how to apply new governmentwide regulations.

OPM acknowledges, however, that any pending grievances or arbitrations concerning ratings of record that continue past the term of a collective bargaining agreement authorizing grievances over ratings of record may be affected by the final rule. In these situations, OPM expects agencies to assert that such grievances are no longer arbitrable and that any arbitrator therefore lacks authority to adjudicate the dispute. Agencies are encouraged, where appropriate, to convert these grievances to administrative grievances to the extent they are consistent with their internal administrative grievance policies. OPM also reminds labor unions and agencies that they may engage in collective bargaining, as appropriate, in anticipation of these changes to provide greater certainty to their employees.

C. Costs

This final rule affects most Federal agencies—ranging from cabinet-level departments to small independent agencies—that have employees covered under 5 CFR part 430, subpart B. Individuals employed by these agencies will spend time updating their performance appraisal system(s), program(s), policies, and plans to prepare for implementation before the end of Fiscal Year 2026. Typically, an agency's human resources staff are responsible for these tasks.

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[68] 5 U.S.C. 7116(a)(7).

Therefore, for this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2026 for GS-14, step 5, in the Washington, DC, locality pay table ($163,104 annual locality rate and $78.15 hourly locality rate). We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $156.30 per hour. We estimate that, in the first year following publication of the final rule, this will require an average of 22,500 hours of work governmentwide, resulting in estimated costs of about $23,445 per agency and about $3,516,750 governmentwide. Additionally, USAPerformance, an IT tool used by many agencies to service their performance management systems, will be updated to reflect the removal of summary level patterns where Level 4 is the highest summary level or that include a Level 2 summary level. We estimate that this will require 400 hours of work at the rate of $390 per hour, resulting in an estimated cost of $156,000. There are also approximately 48 other agency-specific IT systems used for performance management requiring the same update. OPM estimates the cost to each agency will be similar to that of USAPerformance, resulting in an estimated $7,488,000 in total costs to update these other systems.

To comply with the regulatory changes in this rule, OPM must evaluate and certify the operation and application of agency performance appraisal system(s) and program(s) on a biennial basis. We estimate that, in the first year following publication of the final rule, this will require 150 hours of work by OPM employees with an average hourly cost of $156.30. This work will result in estimated costs in that first year of implementation of about $23,445.

OPM anticipates that the regulatory changes in this rule will not substantially increase the ongoing administrative costs to agencies (including any administrative costs associated with OPM's biennial review of agency appraisal system(s)) because the regulation provides cost-saving provisions such as eliminating mandatory review of Level 1 ("Unacceptable") ratings of record and eliminating challenges to ratings of record through the grievance provisions of 5 U.S.C. 7121, thereby eliminating those associated labor costs.

A small number of commenters raised concerns regarding the potential costs associated with implementing the rule. Commenter 0161 asserted that the rule does not account for increased workload associated with performance improvement plans and adverse actions, while Commenter 0225 suggested that the changes could lead to increased costs related to employment disputes, including adverse action and EEO litigation.

OPM does not agree that the final rule will result in material increases in the types of costs identified by the commenters. With respect to performance improvement plans and adverse actions, these processes are already required under existing statutory frameworks and are part of routine performance management responsibilities. The final rule does not impose new requirements in these areas but is intended to improve the accuracy and credibility of performance ratings, which may reduce the need for corrective actions driven by unclear or inflated evaluations. With respect to potential litigation-related costs, OPM notes that the final rule does not alter the legal standards governing adverse actions or EEO claims, nor does it create new bases for challenge. Any such costs are contingent on agency-specific implementation and compliance with existing legal requirements, rather than the structure of the rule itself. Nor do commenters identify or explain how litigation costs may increase as a result of the proposed rule. Accordingly, OPM concludes that the cost estimates provided in the proposed rule do not need to be amended.

D. Benefits

Since 5 CFR part 430, subpart B, covers positions that include GS and prevailing rate employees, its impact is governmentwide. Non-SES employees are the backbone of the Federal Government and are, therefore, critical to the operation of an effective and efficient government. The application of a standardized distribution within the non-SES employee performance appraisal system will reinforce the understanding that success as a Federal employee is aligned to the appropriate rating at the fully successful level. By establishing a limit on the number of non-SES employees who can receive a rating above the fully successful level, there will be a clear

distinction of the highest performers across an agency and the Federal Government. Agencies will no longer be able to rate the vast majority of their non-SES employees at the highest performance ratings, thus encouraging employees to strive for increased levels of performance and ultimately provide better results for the Government and the American public.

The removal of summary level patterns that include a "Level 2" also simplifies and increases the rating accuracy of non-SES employees. A "Level 2" rating is rarely used and can be confusing because it creates a performance rating that allows an employee to remain in their position when their performance is not "Fully Successful." Its removal eliminates redundancy, simplifies rating scales, and allows agencies to more clearly distinguish between satisfactory and unsatisfactory performance. This simplification will also help supervisors communicate expectations more clearly and apply performance standards more consistently across the workforce.

The new biennial certification requirement will also strengthen OPM's oversight of non-SES employees and aid in continuous improvement. The establishment of a biennial oversight mechanism will ensure that OPM and all impacted Federal agencies are complying with the congressional requirements of 5 U.S.C. 4302. Recurring certification will aid OPM in identifying inconsistencies or deficiencies in agency appraisal systems, promote best practices across the Government, and enable OPM to provide targeted technical assistance where needed. This ongoing review process will foster greater accountability, transparency, and uniformity in the administration of performance appraisal systems, thereby improving public confidence in Federal workforce management.

E. Regulatory Alternatives

An alternative to this rulemaking is to not permit standardized distributions and instead issue further guidance encouraging agencies to be increasingly rigorous in their management of non-SES performance to promote meaningful distinctions in non-SES performance. However, OPM has concluded this is not a viable option. Previous attempts to achieve this result through

guidance have not been successful in curbing inflated non-SES employee ratings. Without the ability to place limits on the ratings of non-SES employees, there will almost certainly continue to be a pervasive inflation of ratings and a lack of accountability and meaningful distinction in performance ratings.

Another alternative to this rulemaking is to keep all patterns of summary levels that include a "Level 2." Instead, OPM could issue further guidance on the appropriate use of any ratings below a "Level 3," and instruct agencies to hold employees in this rating level more accountable. However, the use of a summary level pattern that includes a "Level 2" has not aided agencies in meaningfully distinguishing between performers at different rating levels, as evidenced by the extremely rare use of the Level 2 rating.

Another alternative to this rulemaking is to not create a biennial certification requirement. Instead, OPM could issue further guidance encouraging agencies to be increasingly rigorous in managing the performance of their non-SES employees. OPM could exercise its authority and include a more rigorous review of agency performance management results in its human capital oversight, conducted by OPM's Office of Merit Systems Accountability and Compliance. Oversight agencies have noted for decades that there are issues with the performance management of Federal employees and guidance has proven to be ineffective at materially improving an agency's performance management system. By contrast, a biennial certification requirement will guarantee a regular, recurring review of each agency's performance management system and require compliance with 5 CFR part 430, subpart B. Therefore, the biennial certification requirement will better aid OPM and the Federal Government as a whole in meeting the statutory requirements for performance management systems.

F. Severability

If any of the provisions of this rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other

persons not similarly situated or to other dissimilar circumstances. For example, if the implementation of a standardized distribution of ratings were held to be unenforceable, the remaining provisions established by this final rule would remain in effect.

Regulatory Compliance

A. Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

B. Regulatory Review

OPM has examined the impact of this rule as required by E.O.s 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for economically significant rules as defined by section 3(f)(1) of E.O. 12866. This rulemaking does not reach that threshold but has otherwise been designated a “significant regulatory action” under section 3(f) of E.O. 12866. This rule is not considered an E.O. 14192 regulatory action because it imposes no more than de minimis costs.

C. Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of E.O. 12988.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

F. Congressional Review Act

The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs has determined this rule does not meet the criteria listed in 5 U.S.C. 804(2). In addition, this is a rule relating to agency management or personnel and does not come within the meaning of the term “rule” as used in 5 U.S.C. 804(3). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

G. Paperwork Reduction Act

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Part 430

Decorations, Government employees.

5 CFR Part 537

Administrative practice and procedure, Government employees, Students, Wages.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

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Jerson Matias

Federal Register Liaison

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR parts 351, 430, and 537 as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c). Sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

Subpart E—Retention Standing

§ 351.504 [Amended].

2. In § 351.504, remove each reference to "430.208(d)" and add in its place "430.208(e)".

PART 430—PERFORMANCE MANAGEMENT

3. The authority citation for part 430 is revised to read as follows:

Authority: 5 U.S.C. 2301, chapter 43 and 5307(d).

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

4. Amend § 430.206 by revising paragraph (b)(6) and adding paragraph (b)(9) to read as follows:

§ 430.206 Planning performance.

* * * * *

(b) * * *

(6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in § 430.208(e)(1)) shall not include non-critical elements.

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(9) The performance plan of any supervisor covered under this subpart must include a supervisory critical element comprised of supervisory requirements established by OPM and agency-established criteria for protecting whistleblowers, as required by 5 U.S.C. 4302(b).

§ 430.207 [Amended].

5. Amend § 430.207 by:

a. Removing paragraph (c); and

b. Redesignating paragraph (d) as paragraph (c).

6. Revise and republish § 430.208 to read as follows:

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record must be given to each employee.

(1) A rating of record must be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency must not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in paragraph (i) of this section, a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

(b) Rating of record procedures for each appraisal program must include a method for deriving and assigning a summary level as specified in paragraph (d) of this section based on appraisal of performance on critical elements and, as applicable, non-critical elements.

(1) A Level 1 summary ("Unacceptable") must be assigned if and only if performance on one or more critical elements is appraised as "Unacceptable."

(2) Consideration of non-critical elements must not result in assigning a Level 1 summary ("Unacceptable").

(c) OPM may establish, and refine as needed, a standardized distribution of some or all rating levels which agencies must apply when rating employees, except that employees appointed under Schedules C or G in the excepted service may be excluded from such standardized distribution requirements, as determined by OPM.

(d) The method for deriving and assigning a summary level, as may be established by OPM as described in paragraph (c) of this section, may involve comparing, categorizing, and ranking employees or groups on the basis of their performance. Such procedures may also be used, where otherwise authorized by law and regulation, to inform award determinations and promotion decisions.

(e) *Summary levels.* (1) An appraisal program must use one of the following patterns of summary levels, but Pattern A may only be used for seasonal employees, teachers, General Schedule grades 1-4, and Federal Wage System employees:

Pattern	**Summary level**				
	1	**2**	**3**	**4**	**5**
A	X		X		
B	X		X		X
C	X		X	X	X

(2) Within any of the patterns shown in paragraph (e)(1) of this section, summary levels must comply with the following requirements:

(i) Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest;

(ii) Level 1 is "Unacceptable";

(iii) Level 3 is "Fully Successful" or equivalent; and

(iv) Level 5 is "Outstanding" or equivalent.

(3) The term "Outstanding" may be used only to describe the summary level "Level 5."

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under § 351.504 of this chapter.

(5) Under the provisions of § 351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

(i) In different reductions in force;

(ii) In different competitive areas; and

(iii) In different summary level patterns within the same competitive area.

(f) The rating of record or performance rating for a disabled veteran must not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(g) When a rating of record cannot be prepared at the time specified, the appraisal period must be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record must be prepared as soon as practicable.

(h) Each rating of record must cover a specified appraisal period. Agencies must not carry over a rating of record prepared for a previous appraisal period as the rating of record for a

subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(i) When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency must not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request, as specified in agency policies and procedures, by the employee;

(2) As a result of a formal proceeding permitted by law or regulation, other than a negotiated grievance procedure barred by paragraph (k) of this section, that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

(j) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.

(k) Subject to 5 U.S.C. 7116(a)(7), a rating of record may not be challenged through the negotiated grievance procedures established under 5 U.S.C. 7121.

7. Amend § 430.209 by revising paragraphs (b), (e), and (g) and adding paragraph (h) to read as follows:

§ 430.209 Agency responsibilities.

* * * * *

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another

organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Guide to Personnel Recordkeeping;

* * * * *

(e) Report ratings of record data to OPM in compliance with instructions in the OPM Guide to Human Resources Reporting;

* * * * *

(g) Ensure that agency performance appraisal system(s) and performance appraisal program(s) are administered consistent with the merit system principles set forth under 5 U.S.C. 2301; and

(h) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

8. Amend § 430.210 by revising paragraphs (b) and (c) to read as follows:

§ 430.210 OPM responsibilities.

* * * * *

(b) OPM must evaluate and certify the operation and application of an agency's performance appraisal system(s) on a biennial basis. OPM may recommend that the Office of Management and Budget limit an agency's aggregate awards spending based on an unfavorable evaluation. OPM must issue biennial certification criteria and policy.

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, including but not limited to the merit system principles set forth under 5 U.S.C. 2301, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

PART 537—REPAYMENT OF STUDENT LOANS

9. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 2301, 2302, and 5379(g). E.O. 11478, 3 CFR, 1966-1970 Comp., p. 803, unless otherwise noted; E.O. 13087, 63 FR 30097, 3 CFR, 1998 Comp., p. 191; and E.O. 13152, 65 FR 26115, 3 CFR, 2000 Comp., p. 264.

§ 537.108 [Amended]

10. In 5 CFR 537.108(b), remove the reference to “5 CFR 430.208(d)” and add in its place a reference to “5 CFR 430.208(e)”.

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