

(f) *Agency review of medical information.* When medical information is supplied by the appointee pursuant to paragraph (c)(3) of this section, the agency may, if authorized, require a medical examination under the criteria of § 339.301 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.302 of this chapter. If the appointee has the requisite years of service under the Civil Service Retirement System or the Federal Employees' Retirement System, the agency must provide information concerning disability retirement. The agency must be aware of the affirmative obligations of the provisions of 29 CFR 1614.203, which require reasonable accommodation of a qualified individual with a disability.

(g) *Agency decision.* (1) In arriving at its decision, the agency will consider only the reasons specified in the notice of proposed action and any answer of the appointee or the appointee's representative, or both, made to a designated official and any medical documentation reviewed under paragraph (f) of this section.

(2) The notice must specify in writing the reasons for the decision and advise the appointee of any appeal rights under § 752.605 of this part. The agency must deliver the notice of decision to the appointee on or before the effective date of the action.

(h) *Applications for disability retirement.* Section 831.1204(e) of this chapter provides that an appointee's application for disability retirement need not delay any other appropriate personnel action. Section 831.1205 and § 844.202 of this chapter set forth the basis under which an agency must file an application for disability retirement on behalf of an appointee.

[74 FR 63532, Dec. 4, 2009, as amended at 85 FR 65987, Oct. 16, 2020; 87 FR 67783, Nov. 10, 2022; 89 FR 102295, Dec. 17, 2024]

§ 752.605 Appeal rights.

(a) Under 5 U.S.C. 7543(d), a career appointee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) A limited term or limited emergency appointee who is covered under § 752.601(c)(2) also may appeal an action

taken under this subpart to the Merit Systems Protection Board.

§ 752.606 Agency records.

The agency must maintain copies of, and will furnish to the Merit Systems Protection Board and to the appointee upon his or her request, the following documents:

- (a) Notice of the proposed action;
- (b) Appointee's written reply, if any;
- (c) Summary of the appointee's oral reply, if any;
- (d) Notice of decision; and
- (e) Any order effecting the action, together with any supporting material.

PART 754—COMPLAINT PROCEDURES, ADVERSE ACTIONS, AND APPEALS FOR CRIMINAL HISTORY INQUIRIES PRIOR TO CONDITIONAL OFFER

Subpart A—Complaint Procedures

Sec.

- 754.101 Coverage.
- 754.102 Agency complaint process.
- 754.103 Applicant representatives.

Subpart B—Adverse Actions

- 754.201 Coverage.
- 754.202 Penalty determination.
- 754.203 Procedures.
- 754.204 Appeal rights.
- 754.205 Agency records.

AUTHORITY: 5 U.S.C. 554(a)(2), 1103(a)(5)(A), 1104(a)(2), 9201–9205, and Pub. L. 116–92, sec. 1122(b)(1).

SOURCE: 88 FR 60330, Sept. 1, 2023, unless otherwise noted.

Subpart A—Complaint Procedures

§ 754.101 Coverage.

(a) *Actions covered.* A complaint, or any other information, submitted by an applicant for an appointment to a civil service position relating to compliance with section 9202 of title 5, United States Code.

(b) *Definitions.* In this subpart, *Agency*, *applicant*, *appointing authority*, *conditional offer*, *criminal history record information*, and *employee* have the meanings set forth in 5 CFR 920.101.

§ 754.102 Agency complaint process.

(a) *Complaint intake.* (1) Within 90 days of the effective date of this part, each agency must establish and publicize an accessible program for the agency to receive a complaint, or any other information, from an applicant, and any applicable supporting material, relating to the agency's compliance with section 9202 of title 5, United States Code and part 920 of this chapter, in accordance with the guidelines and standards established in this section and the issuances described in paragraph (d)(3) of this section.

(2) An applicant may submit a complaint, or any other information, to an agency within 30 calendar days of the date of the alleged non-compliance by an employee of an agency with section 9202 of title 5, United States Code and part 920 of this chapter.

(3) The agency shall extend the 30-calendar-day time limit in paragraph (a)(2) of this section when the applicant shows that the applicant was not notified of the time limits and was not otherwise aware of them, that the applicant did not know and reasonably should not have known that the non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred, to consider a reasonable accommodation of a disability, or for other proper and adequate reasons considered by the agency.

(4) The agency must conduct outreach to inform an applicant of the procedure for submitting a complaint when it has reasonable cause to believe that the applicant is attempting to file a complaint.

(b) *Agency investigation.* (1) Acting under delegated authority from OPM and subject to the limitations and requirements of paragraph (d) of this section, the agency employing the employee against whom the complaint has been filed shall investigate the complaint, unless the employee is an administrative law judge appointed under 5 U.S.C. 3105. To carry out this function in an impartial manner, the same agency official(s) responsible for executing and advising on the recruitment action may not also be responsible for managing, advising, or overseeing the agency complaint process established in this section.

(2) In carrying out its delegated responsibilities under paragraph (b)(1) of this section, the agency shall develop an impartial and appropriate factual record adequate for OPM to make findings on the claims raised by any written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether non-compliance with 5 U.S.C. 9202 and part 920 of this chapter occurred. Agencies have discretion to determine the appropriate fact-finding methods that efficiently and thoroughly address the matters at issue.

(3) The agency must delegate to the investigator sufficient authority to secure the production, from agency employees and contractors, of documentary and testimonial evidence needed to investigate and report on the complaint.

(4) The applicant or applicant's representative must be given a reasonable time to respond to a request for documentary and testimonial evidence. This time period will not exceed 10 calendar days under ordinary circumstances. However, in the agency's discretion, an agency may grant an extension under extenuating circumstances.

(5) The agency shall complete its investigation within 60 calendar days of the date of the filing of the complaint. An agency may extend the investigation period when the agency has provided more than 10 calendar days for the applicant to respond to a request for documentary and testimonial evidence pursuant to paragraph (b)(4) of this section. Notwithstanding an extension, the agency shall complete the investigation as expeditiously as possible.

(6) Within 30 calendar days of completing its investigation, the agency shall provide to OPM an administrative report. This report should include the applicant's complaint, or any other information submitted by the applicant, the agency's factual findings, a complete copy of all information gathered during the investigation, and any other information that the agency believes OPM should consider. The report should be submitted to the Manager,

Employee Accountability, Accountability and Workforce Relations, Employee Services, Office of Personnel Management, 1900 E Street NW, Room 7H28, Washington, DC 20415 or employeeaccountability@opm.gov.

(c) *OPM adjudication.* (1) At OPM's discretion, OPM may request the agency provide additional information as necessary.

(2) OPM shall notify the agency and the subject(s) of the complaint in writing of its assessment of the complaint, including any decision to initiate adverse action proceedings under subpart B of this part.

(d) *OPM oversight.* (1) OPM may revoke an agency's delegation under this section if an agency fails to conform to this section or OPM issuances as described in paragraph (d)(3) of this section.

(2) OPM retains jurisdiction to make final determinations and take actions regarding the receipt and investigation of complaints, or any other information; record-keeping; and reporting related to an allegation of non-compliance with 5 U.S.C. 9202 and part 920 of this chapter. Paragraphs (a) and (b) of this section notwithstanding, OPM may, in its discretion, exercise its jurisdiction under this section in any case it deems necessary.

(3) OPM may set forth policies, procedures, standards, and supplementary guidance for the implementation of this section in OPM issuances.

§ 754.103 Applicant representatives.

An applicant may select a representative of the applicant's choice to assist the applicant during the complaint process. An agency may disallow as an applicant's representative an individual whose activities as a representative would cause a conflict of interest or position; an agency employee who cannot be released from official duties because of the priority needs of the Government; or an agency employee whose release would give rise to unreasonable costs to the Government.

Subpart B—Adverse Actions

§ 754.201 Coverage.

(a) *Actions covered.* This subpart applies to actions taken under 5 U.S.C. 9204.

(b) *Employees covered.* This subpart covers an employee of an agency as defined and "employee" has the meaning given the term in 5 CFR 920.101.

(c) *Definitions.* In this subpart—

Civil penalty means a monetary penalty imposed on an employee of a covered agency when it has been determined the employee has violated the Fair Chance Act.

Day means a calendar day.

Director means the Director of OPM or Director's designee.

Suspension means the placing of an employee of a covered agency in a temporary status without duties and pay when it has been determined the employee violated the Fair Chance Act.

§ 754.202 Penalty determination.

(a) *First violation.* If the Director or Director's designee determines, after OPM provides the procedural rights in § 754.203, that an employee of an agency has violated 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee shall issue to the employee a written warning that includes a description of the violation and the additional penalties that may apply for subsequent violations; and direct the agency to file such warning in the employee's official personnel record file.

(b) *Subsequent violations.* If the Director or Director's designee determines, after OPM provides the procedural rights in § 754.203, that an employee of an agency has committed a subsequent violation of 5 U.S.C. 9202 and part 920 of this chapter, the Director or Director's designee may take the following action:

(1) For a second violation, order a suspension of the employee for a period of not more than 7 days.

(2) For a third violation, order a suspension of the employee for a period of more than 7 days.

(3) For a fourth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than \$250, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(4) For a fifth violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than \$500, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(5) For any subsequent violation—

(i) Order a suspension of the employee for a period of more than 7 days; and

(ii) Order the employee's agency to collect a civil penalty against the employee in an amount that is not more than \$1,000, and remit the penalty amount to the U.S. Department of Treasury for deposit in the Treasury.

(c) *Duration of suspension and penalty amount.* The Director or Director's Designee has discretion to determine the duration of a suspension and the amount of a penalty under this section, subject only to the minimum and maximum durations and amounts specified in this section.

(d) *Agency responsibilities.* An agency shall carry out an order of the Director to suspend an employee, or to collect and remit a civil penalty, pursuant to processing and recordkeeping instructions issued by OPM.

(1) The agency shall carry out the order of the Director to suspend the employee as soon as practicable.

(2) The agency shall carry out the order of the Director to collect and remit a civil penalty as soon as practicable, unless the employee timely appeals the action under § 754.204, in which case the agency shall collect and remit the civil penalty as soon as practicable after the Merit Systems Protection Board issues a final decision sustaining the action.

(e) *Administrative law judges.* Paragraphs (a) through (d) of this section do not apply if the Director or Director's designee believes that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter. In any

such case the Director or Director's designee shall file a complaint with the Merit Systems Protection Board proposing an action set forth in 5 U.S.C. 9204 and describing with particularity the facts that support the proposed agency action, and the Board will determine whether the action is for good cause under its regulations in 5 CFR part 1201, subpart D.

§ 754.203 Procedures.

(a) *Notice of proposed action.* An employee against whom action is proposed under this subpart is entitled to at least 30 days' advance written notice. The notice must state the specific reason(s) for the proposed action and inform the employee of the right to review the material which is relied on to support the reasons for the proposed action given in the notice before any final decision is made by the Director or Director's designee.

(b) *Employee's answer.* (1) An employee may answer orally and in writing. The employee's agency must give the employee a reasonable amount of official time to review the material relied on to support OPM's proposed action, to prepare and present an answer orally and in writing, and to secure affidavits, if the employee is in an active duty status. OPM may require the employee to furnish any answer to the proposed action, and affidavits and other documentary evidence in support of the employee's answer, within such time as would be reasonable, but not less than 7 days.

(2) The Director or Director's Designee may designate an Office of Personnel Management official to hear the employee's oral answer, and confer authority on that person to make or recommend a final decision on the proposed adverse action.

(c) *Representation.* An employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as representative would cause a conflict of interest or position, or an employee of the agency whose release from the employee's official position would give rise to unreasonable costs or whose priority work assignments preclude release.

(d) *OPM decision.* (1) In arriving at a decision, the Director or Director's Designee will consider only the complaint, the applicant's supporting material, the agency's administrative file, the reasons specified in the notice of proposed action, and any oral and written answer by the employee or the employee's representative.

(2) The decision notice must specify in writing the reasons for the decision and advise the employee of any appeal rights.

(e) *Administrative Law Judges.* This section does not apply if the Director or Director's designee believes that an administrative law judge has violated 5 U.S.C. 9202 and part 920 of this chapter.

§ 754.204 Appeal rights.

(a) An employee against whom an action is taken by OPM under § 754.203 may appeal to the Merit Systems Protection Board, under the regulations of the Board, but only to the extent the action concerns suspensions for more than 14 days or combines a suspension and a civil penalty. An appeal must be filed by not later than 30 days after the effective date of the action. The procedures for filing an appeal with the Board are found at 5 CFR part 1201.

(b) If the Board finds that one or more of the charges brought by OPM against the employee is supported by a preponderance of the evidence, regardless of whether all specifications are sustained, it must affirm OPM's action. The Board may neither review whether the adverse action is for such cause as will promote the efficiency of the service, nor mitigate the duration of a suspension or the amount of a civil penalty ordered under this part.

(c) An appeal against OPM is the exclusive avenue of appeal. The employee has no right to file a separate appeal against the employing agency for processing a personnel action as ordered by OPM under § 754.202.

(d) OPM's action under § 754.202 of this part is not subject to an agency's administrative grievance procedure or a negotiated grievance procedure under a collective bargaining agreement between an exclusive bargaining representative and any agency.

§ 754.205 Agency records.

The complaint, the applicant's supporting material, the agency's administrative file, the notice of the proposed action, the employee's written reply, if any, summary or transcript of the employee's oral reply, if any, the notice of decision, and any order to the covered agency effecting the action together with any supporting material, must be maintained in the applicable Privacy Act system of records.

PART 755—APPEAL PROCEDURES FOR RECOUPMENT OF AWARDS, BONUSES, OR RELOCATION EXPENSES AWARDED OR APPROVED FOR ALL EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS (VA)

Subpart A—Awards and Bonuses

Sec.

- 755.101 Scope of subpart and definitions.
- 755.102 Procedures for submitting appeals.
- 755.103 Basis of appeal decision.
- 755.104 Form of appeal decision.
- 755.105 Finality of appeal decision.

Subpart B—Relocation Expenses

- 755.201 Scope of subpart and definitions.
- 755.202 Procedures for submitting appeals.
- 755.203 Basis of appeal decision.
- 755.204 Form of appeal decision.
- 755.205 Finality of appeal decision.

AUTHORITY: 5 U.S.C. 1103; 38 U.S.C. 721 and 723.

SOURCE: 90 FR 3608, Jan. 15, 2025, unless otherwise noted.

Subpart A—Awards and Bonuses

§ 755.101 Scope of subpart and definitions.

(a) *Employees covered.* A current or former civil service employee of the Department of Veterans Affairs (VA) as defined by title 38 of the U.S. Code, or by 5 U.S.C. 2105.

(b) *Appeals covered.* This subpart prescribes general procedures applicable to appeals, pursuant to 38 U.S.C. 721, by a covered employee to the Director of the Office of Personnel Management (OPM), or designee, regarding an order by the Secretary of the VA, or designee, directing the employee to repay