

THE PROBATIONARY PERIOD: A Critical Assessment Opportunity



A Report to the President and the
Congress of the United States by the
U.S. Merit Systems Protection Board

THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD
1615 M Street, NW
Washington, DC 20419-0001

August 2005

The President
President of the Senate
Speaker of the House

Dear Sirs:

In accordance with the requirements of 5 U.S.C. 1204(a)(3), it is my honor to submit this Merit Systems Protection Board report, "The Probationary Period: A Critical Assessment Opportunity."

The Federal Government's human capital is its most vital asset. With the wide range of increasingly complex skills needed for the 21st century public service, and the vital responsibility of civilian employees in the defense of our nation, it is more imperative than ever that candidates for Federal appointments are thoroughly assessed. The probationary period can be a highly effective tool to evaluate a candidate's potential to be an asset to the Government before an appointment becomes final. However, the probationary period is effective only if agencies use it to assess their candidates and act upon those assessments.

This report explores how agencies are using—or failing to use—the probationary period to ensure only the best candidates receive finalized appointments as Federal employees. We found that one obstacle is in the phrasing of the law regarding probationers and the limitations it effectively imposes on establishing probationary periods of more than one year. Our study also reveals that many roadblocks to successfully using the probationary period come from within the agencies themselves. An unwillingness to assess candidates, or to act upon an assessment, prevents the probationary period from being as effective as it can and should be. This report provides recommendations for changes in the law to increase the ability of agencies to use the probationary period more effectively. It also includes suggestions to assist agencies to meet their responsibility to assess probationers and act upon those assessments to ensure the American people are served by the most talented workforce possible.

I believe you will find this report useful as you consider issues affecting the Federal Government's ability to select and maintain a highly qualified workforce.

Respectfully,

A handwritten signature in black ink, appearing to read "Neil A.G. McPhie".

Neil A.G. McPhie

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U.S. Merit Systems Protection Board

Neil A. G. McPhie, *Chairman*

Barbara J. Sapin, *Member*

Office of Policy and Evaluation

Director

Steve Nelson

Deputy Director

John Crum, Ph.D.

Project Manager

Sharon Roth

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EXECUTIVE SUMMARY

Many aspects of Federal human capital management are currently being explored for potential reform. The probationary period is one of these areas. This report focuses on the original intent of the probationary period—a crucial assessment opportunity before an appointment to the civil service becomes final. While in many cases the probationary period has become a mere formality, this report by the U.S. Merit Systems Protection Board addresses how it can and should be used as a part of the process to select an applicant for an appointment. To look at a probationer as a candidate for final appointment and not as an employee with the full protections of Federal employment may require a dramatic shift in culture and mindsets. However, this change is necessary if the probationary period is to be fairly and effectively utilized as the valuable assessment tool it was intended to be.

Background

The purpose of the probationary period is to provide the Government with an opportunity to evaluate an individual's conduct and performance on the job to determine if an appointment to the civil service should become final.¹ Until the probationary period has been completed, a probationer is still an applicant for an appointment, with the burden to demonstrate why it is in the public interest for the Government to finalize an appointment to the civil service for this particular individual. Once an appointment is finalized, the probationer becomes an employee who is given a considerable level of protection under the Federal Government's merit system. But, until the appointment is finalized, a probationer has only limited job protections.

One of the primary reasons non-probationary Federal employees are granted protections related to adverse actions is to keep the civil service free from prohibited personnel practices. The requirements for due process help ensure that adverse actions such as removals are based solely on merit and support the public's interest in a capable and efficient workforce. In the case of new-hire probationers, the public interest is served by limiting certain

¹ 5 U.S.C. §3321 and 5 CFR §315.803.

rights, including the right to appeal an adverse action. These limitations ensure that agencies can promptly and effectively act upon their assessments of probationers.

The probationary period, if used fully, is one of the most valid assessment tools available for supervisors to determine an individual's potential to fulfill the needs of the specific position, the agency, and the civil service. However, this outcome requires that an agency assess its probationers to determine if they are an asset to the Government. Furthermore, the probationary period is effective only if action is taken to prevent less than fully successful individuals from becoming Federal employees—with all the rights that such an appointment entails. Without this assessment and action, the probationary period becomes meaningless.

Findings

Supervisors want to take responsibility for their probationers receiving finalized appointments as Federal employees. Our survey asked supervisors if they should be required to certify that their probationers are successful before the individual is converted from a probationary status to one that provides the full range of protections granted to Federal employees. Almost 70 percent responded they should be required to provide certification, while only 5 percent preferred the current method by which conversion is automatic based upon the passage of a set period of time.

The probationary period is not being used as a tool to assess probationers to determine if an appointment to the civil service is in the Government's best interest. Despite reporting that they understood the appointment was not final, many of the supervisors we surveyed indicated that they did not intend to remove probationers who were not an asset. Our survey asked supervisors if they would select their probationer again if given the chance to do it over. More than half of those who said they would not select their probationer—and over 80 percent of those who were not sure if they'd select their probationer—said they expected to retain the probationer beyond the probationary period.

If agencies do not address problems during the probationary period, the individual is unlikely to depart afterwards. According to the Central Personnel Data File (CPDF) maintained by the U.S. Office of Personnel Management (OPM), removal of probationers is very rare, but the removal of non-probationary employees is even rarer. Only 1.6 percent of competitive service workers are removed in their first year of service, the traditional length of the probationary period. However, after that first year of service,

the removal rate in the competitive service drops to below 0.5 percent and remains there for the next two decades of service. Resignation rates also drop after the first year of service, and remain on a downward trend for the next 20 years.

Probationers are treated as if they are not much different from non-probationers who have received a finalized appointment to the Federal service. Both agency cultures and individual supervisors may bear a degree of responsibility for this result. Some agencies informed us that they required their supervisors to use performance improvement plans and time-consuming opportunities for improvement before an action could be taken to remove a poorly performing probationer. When we asked surveyed supervisors who reported performance and conduct deficiencies by probationers how they had addressed their situations, slightly more than half reported providing additional on-the-job training beyond that which was already planned, and almost a third provided additional classroom training. Nine percent said they had reprimanded a probationer, and four percent had suspended a probationer.

Performance and conduct problems can be expected to occur, but agencies do not provide sufficient support to supervisors for them to address problem probationers. It is not uncommon for a supervisor to encounter a probationer with performance or conduct problems. When asked about the performance of all probationers they had supervised in the past 3 years, 43 percent of supervisors reported that one or more probationers had performance deficiencies. When asked about conduct in the same time period, 36 percent reported one or more probationers had deficiencies. When we asked supervisors why they kept probationers with identified deficiencies, we received a number of comments that indicated the supervisors felt pressured to either keep the person or lose the resource and have no one to do the work at all.

Supervisors want their agencies to have greater flexibility to determine the length of the probationary period. Sixty-five percent of supervisors indicated they would like to see their agency have the authority to determine the length of the probationary period. Supervisors of trainees were twice as likely to want a longer probationary period for their particular positions versus those supervisors who indicated their probationer was not a trainee. Currently, this flexibility is not an option for most agencies. OPM regulations limit the probationary period to one year, and even if that were changed, 5 U.S.C. Chapter 75 would provide full job protection appeal rights under most circumstances after one year, even if the individual was still a probationer.

Agencies often fail to communicate that the probationary period is important and will be used. A third of surveyed probationers reported that they did not know they would be required to serve a probationary period when they first began work. Almost a quarter reported that they had never been told of the consequences of being a probationer, even though they had been on board for more than 7 months when they received their surveys. Comments from probationers indicated that many did not think their agency took the probationary period seriously nor had any intent to use it to assess them or their peers.

Recommendations

- 1. The statute and regulations should be changed to better support the use of the probationary period as a time period to assess candidates before they receive finalized appointments as Federal employees. This includes providing agencies with the flexibility to set the length of the probationary period based upon the unique characteristics of their positions and training programs. Specifically:**

- Congress should amend 5 U.S.C. Chapter 75 to indicate that if an individual is in a probationary status, the individual is not entitled to the protections granted to Federal employees, even if the individual has been in service for more than 1 year. This would help support the message that appointment as a Federal employee must be earned through successful performance and is not an entitlement that automatically results from a job offer or physical presence in the workplace. Amending the statute would also enable OPM to provide all agencies with meaningful flexibility regarding the duration of the probationary period.
- OPM should establish procedures so that a probationer does not automatically become an employee in the absence of agency action. An agency should be required to certify that a probationer's conduct and performance have established that the individual will be an asset to the Government. In the absence of this certification, the probationer's employment should automatically terminate upon the expiration of the probationary period. The use of a not-to-exceed date for that period can help emphasize that the individual has not been promised a finalized appointment, but rather has been given a time-limited opportunity with the burden on the probationer to demonstrate why a finalized appointment is in the interest of the Government.

- ✓ If Congress amends 5 U.S.C. Chapter 75 as recommended above, OPM should modify 5 CFR §315.801 and §315.802 so that they will no longer set the probationary period at 1 year with a prohibition on extensions. OPM should, instead, issue regulations that permit agencies to set a probationary period of 1 to 3 years for each occupational area upon showing that the nature of the applicable positions calls for the particular length requested by the agency.

2. Agencies should create a culture in which probationers are treated with respect as candidates for an appointment, but not as Federal employees with finalized appointments. In particular:

- ✓ Performance appraisals for supervisors should include an evaluation of how thoroughly they have used the probationary period as an assessment tool. Supervisors should be held accountable for using the probationary period fairly, fully, and in the best interest of the Federal Government. This should not be considered an additional critical element, but rather should be seen as an intrinsic part of their existing responsibility to thoroughly assess their subordinates and take action when appropriate.
- ✓ Supervisors should receive training in their responsibilities to the agency, the civil service, and the probationer. They should be made aware when they have hired a probationer, and reminded that their role is to assess the individual for appointment as well as to supervise the performance of work towards organizational goals.
- ✓ Agency policies should treat unsuccessful probationers differently than Federal employees with finalized appointments. Agencies should ensure that probationers receive clear guidance and a full understanding of performance expectations, as well as the appropriate level of training for an individual with their level of experience. However, agencies should also ensure that probationers and their supervisors recognize that probationers are not similarly situated to other Federal employees and are not entitled to the same level of investment or opportunities for rehabilitation.
- ✓ Probationers should be notified, *before accepting a job offer*, that they will be probationers and what that means. Human resources staff and supervisors should ensure that probationers are aware they have been offered an opportunity to demonstrate on the job why finalizing their appointment would be in the best interests of the agency and the entire civil service—but that a finalized appointment is not guaranteed.

- ✓ In their discussions with a probationer, before and after the individual begins work, supervisors should reinforce the message that probationers are still applicants and the probationary period is an extension of the examining process, prior to finalizing probationers' appointments.

3. Agencies should use the probationary period to terminate probationers who fail to demonstrate the appropriate level of performance and conduct. For example:

- ✓ Agencies should support supervisors in their efforts to use the probationary period and avoid sending any messages that could inappropriately discourage supervisors from taking action. For example, if supervisors believe that the authorization or funding for spaces would be lost if they terminated probationers, they may be less likely to terminate marginal/unsuccessful probationers. Supervisors should be given the opportunity to recruit for the right fit, rather than being put in the position of having either the marginal/unsuccessful probationer or nobody at all.
- ✓ Supervisors should establish performance standards for probationers that address both organizational performance goals and their own expectations for their probationers. Trainees should be measured by both the performance of short-term goals as well as their demonstrated potential to advance to the full-performance level. Standards should be set based upon what could reasonably be expected of a new employee, and those standards should not be modified around the individual. Rather, the individuals should be measured against the standards.
- ✓ Supervisors should provide clear instructions to probationers as well as guidance and training in order to give probationers a fair opportunity to demonstrate why it is in the public interest to finalize an appointment to the Federal service. If, after this instruction, a probationer is not fully fit for the position, in both performance and conduct, supervisors should terminate the probationer.

INTRODUCTION

The probationary period is one of many areas of the Federal civil service currently being examined with a view towards creating a more effective public service. Using agency unique legislation or Office of Personnel Management (OPM) demonstration project authority, some agencies are modifying the probationary period to determine if an alternate length would be more effective. However, there is more to the optimum use of the probationary period than setting an appropriate length. The probationary period is one of the most valuable assessment tools available to Federal supervisors because it allows a supervisor to evaluate a candidate based upon the probationer's performance of the actual duties of the position before the appointment becomes final. However, the efficacy of the probationary period relies upon its fair and deliberative use by supervisors and their agencies. Without the use of the assessment aspects of the probationary period—and the will to act based upon the findings of that assessment—the ability of the probationary period to help create a more efficient and effective workforce is severely limited.

What Is the Probationary Period?

When examining the Federal probationary period it is important to recognize that employment under a probationary period is not the same as other Federal employment. Under statute, an appointment in the competitive service is not final until after the probationary period is complete. The purpose of this period is to provide the Government with an opportunity to evaluate the individual's conduct and performance on the job to determine if an appointment should become final. The history of the Federal probationary period goes back to the creation of the civil service in the Pendleton Act of 1883, which required that there be a period of probation before an appointment becomes final.²

Explaining the probationary period is complex, because what it means to be a probationer can vary based upon the circumstances surrounding either the

² 5 U.S.C. §3321; 5 CFR §315.803; and the Pendleton Act of 1883, sec. 2.

appointment or the individual. A newly-hired employee with no prior Federal experience will not have the same rights as coworkers who have completed their probationary periods. However, an individual who has completed a probationary period in the past can—under limited circumstances—be selected for a position through a method that creates a new probationary period. Such a person may—or may not—retain the rights they earned by previously completing a probationary period. Any situation involving a person with prior Federal service therefore must be examined on a case-by-case basis to determine the individual’s rights.

This distinction is important because probationers are not the same as employees with finalized appointments. Non-probationers are entitled to advance written notice and an opportunity to reply to a proposed adverse action, as well as the right to appeal such an action to the U.S. Merit Systems Protection Board (MSPB or the Board) for adjudication. Probationers lack these entitlements. If an agency decides to remove a probationer for post-hire performance or conduct, the agency’s only obligation is to notify the probationer in writing of the agency’s conclusions regarding the probationer’s inadequacies and the effective date of the removal.³ Anything beyond these limited entitlements is at the discretion of the agency.

This report focuses primarily upon individuals who are new to the Government and have not yet completed a probationary appointment, and are therefore not entitled to the job protection rights referenced above. Through their successful completion of the earlier assessment phases and the presentation of the job offer, these new hires have earned the opportunity to demonstrate why it is in the public interest to offer them an appointment to the civil service. However, they have not yet earned the finalization of the appointment. That can only be done over time by demonstrating proficiency on the job.

Herein lies the greatest challenge for the effective use of the probationary period as an assessment tool. Agencies—leadership, managers, first line supervisors, human resources staff, team leaders, co-workers, and the probationers themselves—must come to see the probationary period as an extension of the application process. Rather than thinking of the probationer as an employee similar to those with finalized appointments, all involved should consider the probationer as an applicant who has successfully completed several phases of the assessment process and is currently engaged in the most important assessment of all—the extended work sample test/job interview that comprises the probationary period.

³ 5 U.S.C. §7513 and 5 CFR §315.804.

This report addresses the reasons why a probationary period is so critical to establishing an effective and efficient civil service, and the changes needed in order to provide for an effective use of the probationary period. The Merit Systems Protection Board undertakes such studies as part of our statutory responsibility to conduct special reviews and studies of the civil service and other Federal merit systems.

Scope and Methodology

As a part of this study, MSPB sent a survey to approximately 1,000 new-hire probationers and their supervisors to obtain their viewpoints on the probationary period and how it is being used. (Service computation dates were used to ensure the probationers being studied did not have prior service that could have resulted in the completion of a probationary period.) Sixty percent of those who received a survey responded. The survey was conducted in late 2004.

We also consulted with human resources specialists and agency policymakers, who provided us with their insights and with examples of how their agencies manage the probationary period. In addition, we collected data from OPM's Central Personnel Data File (CPDF), which contains a record of personnel actions throughout the Government.

In our discussions, questionnaires, and evaluation of CPDF data, we limited the scope of our study to the competitive service probationary period for new hires. The excepted service has a similar period referred to as a trial period. There is also a supervisory probationary period that applies only to employees when they are first selected for a position in which they supervise other Federal employees. These periods are each designed to provide an agency an opportunity to assess the candidate's performance of the duties of the position. However, they do not all have the exact same rules, length, agency responsibilities, or potential consequences if the probationary period is not successfully completed. While many of the principles and recommendations in this report are appropriate for trial periods and probationary supervisory positions, the report relies solely upon data related to newly-hired probationers in the competitive service and targets recommendations specifically to that group.⁴

More information on our methodology can be found in Appendix A.

⁴ The use of a not-to-exceed date, the importance of a requirement for a pro-active step before conversion to a finalized appointment, and the call to amend 5 U.S.C. Chapter 75 are just a few examples of recommendations that are equally appropriate for excepted service appointments.

THE FINAL ASSESSMENT BEFORE APPOINTMENT

The probationary period is important because it is one of the most valid assessment tools available to Federal agencies. Many agencies use training and experience (T&E) to assess applicants, even though research has shown that T&E has a limited ability to predict an applicant's potential to succeed in the job.⁵ By using the probationary period, a more valid tool, agencies can increase the likelihood that applicants who receive final appointments will succeed on the job. However, the effectiveness of the probationary period relies on the agencies' willingness to act in response to their assessments. Without action, agencies lose the effectiveness of the probationary period as an assessment tool.

Selection Assessment Tools

There has been extensive study of various assessment methods to determine how to effectively predict likely success by any particular job applicant. As noted in the Board's 2004 report, *Identifying Talent through Technology: Automated Hiring Systems in Federal Agencies*, many Federal applications will ask candidates to specify whether they frequently perform a particular function, or if they have training in it, and assign a number of points to the applicant based upon the level of training and experience they identified. This method is one of the less effective assessment tools available. (The validity of assessing training or experience is greatly improved when those assessments link the training or experience to a behavior—when applicants are not just asked to indicate if they have performed a task, but are instructed to provide an example of how they used the specified task to reach a successful outcome on a particular project. This is known as the behavioral consistency model.)⁶

⁵ John E. Hunter and Frank L. Schmidt, "The Validity and Utility of Selection Methods in Personnel Psychology: Practical and Theoretical Implications of 85 Years of Research Findings," *Psychological Bulletin*, vol. 124, No. 2, pp. 262-274, 1988.

⁶ *Ibid.*

In comparison with the training and experience model, other methods for assessing applicants, such as reference checks and structured interviews, have a better likelihood of validly predicting future performance. By combining methods, agencies can increase the probability of a good selection. For this reason, the Board's reports have recommended using a "multiple hurdle" approach in which several assessment tools are used in combination. For example, a structured interview plus a work sample is more effective to assess a candidate than either tool used alone.⁷ However, ultimately, all the best methods combined can only increase the potential to select the best candidate—they cannot guarantee that the right person will be chosen. Over the long term, with tens of thousands of Federal vacancies each year, the Federal Government can increase the number of selectees who successfully match the positions for which they were chosen if agencies use the more valid assessment tools, and use them in combination with each other. However, in each individual case, there will still be a very real chance that the top candidate indicated by the assessments may not prove to be an appropriate match for the position.

Some agencies have acknowledged this inherent risk. For example, the Social Security Administration has noted, "The employee's probationary period is the last step in the examination process. It provides the final indispensable test, that of performance on the job, which no preliminary testing methods can approach in validity."⁸ It is also an opportunity to identify, before the probationer's appointment becomes final, situations where the match between the person and the employer or position is not sufficient to serve the Government's needs. Therefore, a probationer who does not prove to be a solid match should not be seen as a sign that a mistake was made or that someone did something wrong in the process. Rather, a probationer who is found to be a less than advantageous match should be seen as a sign that supervisors did something right—they continued the assessment process and reached the appropriate conclusion based upon what management observed on the job.

Implementing the Assessment

The assessment of the probationer during the probationary period can be effective only if the conclusions reached are put into effect. In their work evaluating the validity of various assessment tools, Hunter and Schmidt noted that reluctance by supervisors to terminate marginal performers hampered the effectiveness of the probationary period and made it a less valid test than it could be if used properly.⁹

⁷ U.S. Merit Systems Protection Board, *The Federal Selection Interview: Unrealized Potential*, February 2003.

⁸ Social Security Administration, "Evaluating, Retaining, and Separating the Probationary Employee," S315-1, sec III.

⁹ Hunter and Schmidt, *op. cit.*, p. 268.

Our survey responses demonstrated that this concern is well founded; some of our surveyed supervisors indicated they do not plan to act upon the assessments they have performed. One of our questions asked supervisors to indicate if, given the opportunity to do it over, they would select their probationer again. Eleven percent of surveyed supervisors either said they would not hire the probationer or said they were not sure if they would hire the probationer.¹⁰ When asked if they expected to retain their probationer beyond the probationary period (and thus provide a finalized appointment to the civil service), more than half of the same supervisors who said they would not select their probationer again reported they expected to retain the probationer, as illustrated in Table 1, below.¹¹

The questions *would you select this individual again and will you retain* are not—or should not be—divergent questions, and therefore should not produce dramatically different answers. If the answer to one question is “no” then we might expect the answer to the other question would typically be “no.” Yet, as demonstrated in Table 1, the answers clearly did not match.

Table 1: Responses from Supervisors Who Reported They Would Not Choose to Hire the Individual Again

Expect to retain the probationer	52%
Do not expect to retain the probationer	31%
Not sure if expect to retain the probationer	17%
Total	100%

¹⁰ According to OPM’s Fedscope database, in FY 2004 more than 55,000 permanent new-hires were given competitive service appointments. (From FY 2000 to FY 2003, the number of accessions ranged between 62,000 and 75,000 each year.) Thus, while the number of probationers varies from year to year, the number of supervisors who would not select the probationer again, but intend to permit the finalization of the appointment, would consistently equate to a large number of individuals, most of whom are required to serve a probationary period.

¹¹ While 575 supervisors responded to this question, more than 500 supervisors reported they would select the same individual again. Thus, there were only a small number of supervisors able to tell us what they would do with a probationer that they would not select again.

If a supervisor would not choose to select the person if they could do the recruitment process over again, then it appears inconsistent that the supervisor would select the person for the receipt of a finalized appointment. That supervisors could say they would not select the person again—and also report their intention to allow the person to attain status—could be an indication that they misunderstood the purpose of the probationary period or are deliberately not applying it for a variety of reasons.

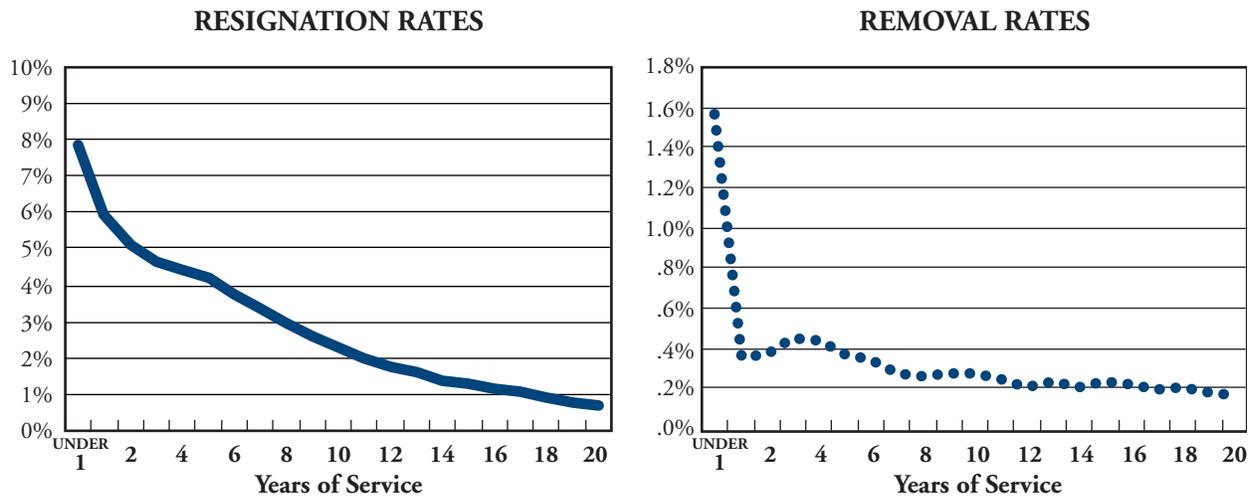
In most cases, our supervisory respondents seemed to know that probationers have not received finalized appointments as Federal employees. More than 95 percent of our supervisory respondents told us they were aware that an appointment is not final until the probationary period is complete. Thus, their retention of probationers they would not select again seems to result from a decision not to use the probationary period as an assessment tool more than from a lack of knowledge that the appointment is not yet final.

Supervisors' comments indicate that they do not see the probationary period as a real opportunity to assess the individuals for appointment. In the words of one supervisor, “[It] seems to be just a formality. Never actually used to remove an employee. [My agency] must have a really bad employee in order to remove during [the] probationary period.” Probationers have also gotten the impression that the probationary period is a mere formality. As one probationer put it, “It is my understanding that as long as you are not a screw-up you will get through the probationary period.”

Consequences of Inaction

If supervisors do not act to ensure that only well-suited, qualified candidates receive a final appointment it can have serious consequences for the civil service. History shows that once an individual has completed the probationary period, the person tends to remain in service for an extended period of time. CPDF data reveal that most resignations and removals occur in the first year. As illustrated in Figure 1, below, if individuals do not resign in their first year on the job, the likelihood that they will choose to depart is greatly reduced, and continues to decline as time passes. Similarly, supervisors become much less likely to remove an individual once the person is a Federal employee, with full appeal rights.

Figure 1: Resignation and Removal Rates Based on Length of Service*



*Central Personnel Data File, Competitive Service only, September 1998-September 2001.

As discussed earlier, the probationary period was created to provide supervisors with the opportunity to identify which individuals will be assets to the Government and which individuals are not well-suited for the positions. It is vital that supervisors make use of this period, because if there is a problem with someone, our data indicate that ignoring it is not likely to make it go away. Rather, delaying action beyond the probationary period makes it more difficult to take action.

Over the course of time, a marginal or poor performer—or a person with poor conduct—can affect the morale of the office, the effectiveness of co-workers, the reputation of the work unit or agency, and the ability of the organization to accomplish its goals. Even some probationers objected to what they saw as their agency’s reluctance to act when a probationer was a marginal or poor performer. We received comments such as:

“I don’t feel the [agency] takes full advantage of this probationary period to really come to any conclusion about some new hires. There are people from our hire group that should not have survived as an employee through this period, but did nevertheless. Why threaten people with a probationary period, where they should be doing their best and working their hardest, when it will not be followed through?”

“Nobody cares about the 1-year probationary period. The reason is that they have never seen it used and it definitely should [be]. There are some very lazy people that slow production and should be weeded out.”

“With my understanding of what the probationary period is for, it still surprises me how many people make it through this probationary period when they don’t meet the agency’s expectations. I guess what I am trying to say is, if you are going to have a probationary period, use it or get rid of it.”

Probationer Performance and Conduct

Probationers with performance or conduct deficiencies are not uncommon according to our survey participants. When asked about all probationers they had hired in the past 3 years, 43 percent of responding supervisors reported that they had experienced performance concerns about at least one of their probationers. Although performance was a more common problem than conduct, 36 percent of responding supervisors stated they had faced problems with the conduct of at least one probationer in the past 3 years. There was extensive overlap between these two responses. Of those supervisors that said at least one employee had performance deficiencies, 78 percent also said at least one employee had a conduct problem. Clearly, not all probationers are successful.

The tools supervisors used to address these problems are one more demonstration that some supervisors are not treating the probationary period as an assessment period prior to the finalized appointment. When handling the conduct and performance deficiencies reported on immediately above, a number of supervisors utilized tools that are designed for employees rather than for probationers. For example, of those supervisors who encountered conduct or performance problems with a probationer, 9 percent reported they had used a reprimand for one or more probationers in the preceding 3-year period. Four percent indicated they had suspended one or more probationers.

It is not impossible that a high quality candidate may make an error serious enough to warrant formal discipline while still showing sufficient potential to be allowed to continue the opportunity to demonstrate why it is in the Government’s interest to finalize the appointment. But, when nearly one in ten supervisors report using reprimands or suspensions (or both) on at least one or more probationers, this is a sign that some supervisors may be treating probationers as if they were similarly situated to employees who have completed a probationary period and are therefore entitled to the use of progressive discipline. (Our survey data did not permit us to identify which steps were attempted on the same individual prior to removal and which were applied to other probationers by that same supervisor.) Of those supervisors who reported removing a probationer during the prior 3 years, nearly 10 percent informed us they had used suspensions, and nearly

20 percent reported using reprimands. The use of such disciplinary methods for probationers by some supervisors is an indication that they may not be treating probationers as applicants for a finalized appointment, but rather as employees with finalized appointments, with all of the rights and responsibilities that go with such employment—including progressive discipline.

This treatment of probationers as if they were no different than non-probationers also appears to occur when the quality of work is at issue. Of those supervisors who indicated there was a problem with one or more probationers in the preceding 3 years, just over half reported using additional on-the-job training beyond what was already planned. Nearly one-third reported using additional classroom training. As with conduct issues, it may be appropriate for an otherwise successful candidate to receive some additional training if there is a strong expectation that the individual will be an asset with minor investment. However, with over half of all supervisors with performance concerns making this investment for one or more probationers, it raises a concern that probationers are not being assessed as potential assets as much as they are being treated as permanent employees with finalized appointments.

One supervisor expressed frustration at the manner in which probationers are treated in the same manner as other employees, asking, “When there is a problem with employees who are probationary, why is it so hard to remove them? There was a lot of documentation of counseling and warning letters.” Another supervisor claimed that in his agency, “There is no probationary period—any more.” This supervisor reported having a poor-performing probationer who was expected to remain beyond the probationary period. “It is hoped that she will improve with time,” the supervisor remarked.

Retaining Problem Probationers

When we asked our supervisory respondents why they kept probationers whose conduct or performance was not fully acceptable, they gave us explanations ranging from complicated regulations to fear of Equal Employment Opportunity (EEO) complaints. Several indicated that the culture in their agency did not permit them to take immediate action to address a probationer with poor performance. One supervisor reported, “The agency has complicated the dismissal procedures to the point that probationary employees are extremely difficult to get relieved if they cannot or will not do a good job. The process should be returned to the requirements we had years ago. One major infraction and they were walked out.” A supervisor in a different agency claimed, “Although the Human Resources Office had approved the dismissal of a non-performing employee, my supervisor threatened to rate me as unsatisfactory for dismissing him.”

This last comment, which we hope reflects an atypical experience, is the opposite of what supervisors should experience during the probationary period. The Code of Federal Regulations states, “The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.”¹²

Supervisors, as stewards of the public interest and representatives of the agency, should be held accountable for using the probationary period to ensure that probationers are not provided full appointments to the Federal service unless they have demonstrated that such appointments are in the public interest. Second-level supervisors, therefore, should seek to ensure that their subordinate supervisors are using the probationary period fairly and equitably to assess candidates and that supervisors are taking the appropriate measures in response to that assessment.

Unfortunately, the message that agencies appear to be sending to first-line supervisors does not support a thorough use of the probationary period. In the words of one supervisor, “Government organizations want you to overlook a lot—for the sake of filling a position. The philosophy is ‘any *body*’ to fill the position regardless if they are qualified or suited for the job.” This use of the word “body” is prevalent in a number of comments, such as “due to staff shortages, borderline performance and abuse of leave issues are overlooked to keep the ‘body’.” Also, the human resources specialists in our focus group indicated they believed that the manager’s need for “a warm body” was the overriding concern. One specialist noted that supervisors may be reluctant to give up a resource, no matter how flawed, if they have reason to believe they will not be allowed to recruit behind that person.

As we see from these findings, the successful use of the probationary period as an assessment tool relies heavily upon the agency’s culture. The probationary period cannot be used effectively if supervisors who decide to step in and prevent the full appointment of a poor or marginal performer are punished, whether through the disapproval of their own supervisor or the withdrawal of funding for a replacement.

Supervisors told us there was yet another reason for keeping a poor-performing probationer. Recruitment in the Federal system is a time- and resource-consuming process. As noted in our recent report, *Managing Federal Recruitment: Issues, Insights, and Illustrations*, some agencies spend millions of dollars per year on recruitment efforts. It is understandable that

¹² 5 CFR §315.803.

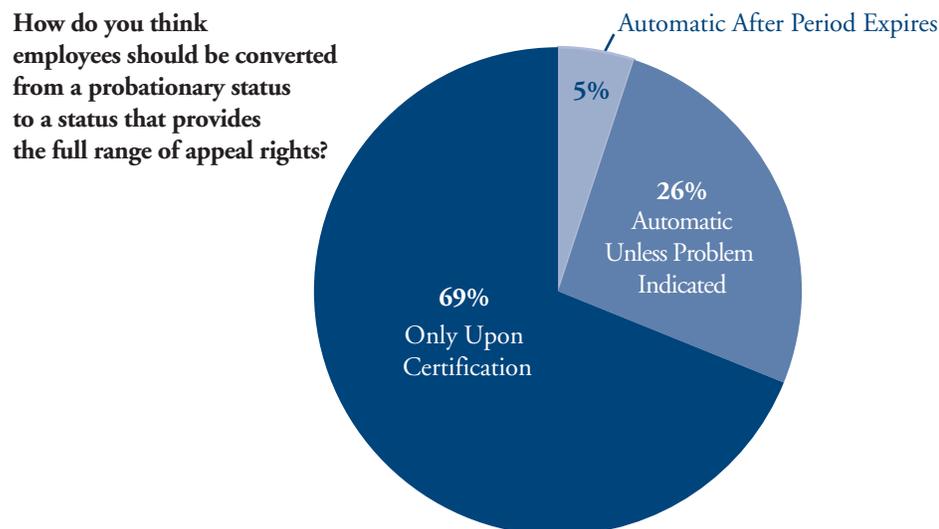
after investing so much, and waiting months to hire an employee, the supervisor may be reluctant to terminate the probationer and begin the assessment process all over again. However, as expressed earlier in this report, a Federal employee is a long-term commitment. As undesirable as it may seem to have to recruit and assess anew, the consequences of retaining a poor or marginal performer are far worse. Once the probationary period is over, such a performer is likely to stay for years. The level of investment necessary to be sure the selectee is the right person is more than offset by the scope of the long-term investment the Government makes when the appointment of a new Federal employee is finalized.

While human resources, recruitment difficulties, budget concerns, collective bargaining agreements, upper level management, and other factors can affect the environment in which the supervisor makes the decision to retain or remove a probationer, the final responsibility rests with the supervisor. If a first level supervisor is not given the full authority to make this decision, then the responsibility resides in the level of supervision that chose to retain rather than delegate this important authority. Other influences may make the process easier or more difficult for the supervisor, but supervisors are hired to manage subordinates—including making employment decisions. With authority comes responsibility. If supervisors fail to meet this responsibility, then it is the responsibility of those above them to address that failure.

Proactive Decisions to Grant Status

Once probationers have come on the rolls, they remain on the rolls unless there is an action taken to separate them—whether by termination or resignation. After 1 year, probationers are automatically granted status as full Federal employees, with all of the protections that provides. Some agencies do ask supervisors to assess their probationers as the anniversary approaches, but no requirement is built into the system to compel supervisors to certify that the probationer has been found fit for a finalized appointment before these rights are bestowed. The protections result strictly from the passage of time.

Figure 2: Supervisors' Opinions on Process to Convert Probationers to Employees



The supervisors who participated in our survey indicated a desire for certification to occur before the probationer gains status as a Federal employee. We asked our survey participants, “How do you think employees should be converted from a probationary status to a status that provides the full range of appeal rights?” As noted in Figure 2, only 5 percent supported the current process, where conversion takes place automatically unless the supervisor separates the probationer before the probationary period is completed. Approximately one-quarter approved of the idea that the conversion should be automatic unless the supervisor specifically indicates there is a problem with the employee. However, an overwhelming 69 percent declared that conversion should occur only after receipt of a supervisor’s certification that the probationer’s conduct and performance are fully acceptable.

Supervisors’ comments reflected frustration with the results of the current process. One supervisor said, “I have fairly new employees who passed the probation period but shouldn’t have. A manager should have to answer specific questions prior to [the probationer acquiring] full employee status.” Another stated, “Supervisors need to be held accountable for employees being passed from probationary to permanent status.”

Case law has established that under the current system “the employee’s separation from the rolls must be effected before the employee has completed his/her probationary or trial period. Otherwise, the procedures applicable to the separation of a career-conditional employee who has completed his probationary period are mandatory.”¹³ The probationer automatically becomes a Federal employee unless removed before the expiration of the period—the least desirable method to address conversion according to our surveyed supervisors.

In order to ensure that only qualified probationers become Federal employees, we believe the process should be changed. Rather than automatically granting status to a probationer if management fails to remove the individual before the year is finished, the probationer should receive an appointment with rights only if management has certified that, based upon the observed conduct and performance of the individual, such a conversion is in the public interest. In the absence of this certification, the relationship between the probationer and the Government would end upon the expiration of the probationary period.

This change would require that OPM alter its regulations. Instead of allowing agencies to issue a competitive service appointment on the first day of employment, which then becomes final after 1 year, we recommend that OPM create an authority under which a competitive appointment would begin with a not-to-exceed date determined by the length of the probationary period. At the end of this probationary appointment, the agency would be given the authority to convert the probationer to a permanent appointment predicated upon a certification that the individual demonstrated during the probationary period that it is in the Government’s interest to provide such an appointment into the civil service. In the absence of such a conversion action, the appointment would expire and the individual’s relationship with the Government as an employer would come to a close.¹⁴

This proposed probationary appointment would not be a temporary or term appointment; two hiring categories that currently exist to provide employment when the need for a worker is short-term and the not-to-exceed date is determined based upon the projected length of the need. Rather, the proposed probationary appointment would be a third type, one where the

¹³ *Ibrahim v. Dept. of Agriculture*, 51 M.S.P.R. 269 (1991).

¹⁴ This concept is slightly similar to a system that existed under the former U.S. Civil Service Commission, whereby individuals hired under certain methods would serve an appointment of no more than 3 years. At the end of the period, the agency was given 90 days in which it could convert the individual if several conditions were met, including a certification that the individual’s performance and conduct had been acceptable. If the certification did not occur, the individual’s appointment expired. 5 CFR §315.703a (1977), Conversion to career employment from indefinite or temporary employment.

need for a worker is permanent, and the not-to-exceed date would be based upon the time required to assess the candidate. It would be important that this probationary appointment carry with it the health insurance, life insurance, retirement, and other benefits that are important for attracting qualified candidates to the Federal service.

If the probationary appointment system is put into use, it is foreseeable that because of administrative errors or a lack of timely management action, a few successful probationers could see their probationary employment expire before a certification is processed to convert them to a finalized appointment. Thus, we would recommend that the regulations include provisions to permit the appointment of a probationer whose probationary period expires if the agency certifies that prior to the expiration of the probationary period, management found that conversion to a final appointment was in the Government's interest and the lack of conversion was due to an error or delay on the part of the agency. We expect that as with any new system, as agencies become familiar with it, the number of administrative errors or delays would be greatly reduced.

Despite the potential drawbacks that might possibly result from agency processing delays, the use of a not-to-exceed date is important—not only to compel agencies to certify if their probationers are successful, but also to help clarify that there is not yet a final appointment, and that such an appointment will be founded only upon the acceptable conduct and performance demonstrated during the probationary period. This would better support the role of the probationary period to provide “for a period of probation before an appointment in the competitive service becomes final.”¹⁵

¹⁵ 5 U.S.C. §3321.

ASSESSING PROBATIONER PERFORMANCE

Managing the performance of probationers is one of a supervisor's most important duties and one of the most complex. It requires a sufficient period of time to observe the individual, clear and measurable standards to gauge the performance against, and both the will and the ability to act upon the results of the assessment. The current statute, OPM regulations, and (in some cases) agency policies do not provide supervisors with the level of support and flexibility they need to make the most of their many performance management responsibilities. However, the most serious flaw is the extent to which these authorities fail to create sharp lines that differentiate between a probationer and a Federal employee who has a finalized appointment to the civil service. Supervisors cannot effectively manage the performance of their probationers, in keeping with the intent of the probationary period, if they find themselves hindered by requirements that are designed to protect Federal employees with finalized appointments—something that probationers are not.

Basing Assessment Length on the Position

Currently, the probationary period for most agencies is 1 year, and cannot be extended. However, there is a developing trend towards longer probationary periods when the nature of the work makes it difficult to assess a candidate in such a short period of time. The Internal Revenue Service (IRS) Restructuring and Reform Act authorized IRS to establish probationary periods of up to 3 years if “the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.”¹⁶ The Departments of Homeland Security and Defense have also been given the flexibility to move beyond a 1-year probationary period, as have several demonstration projects.

The 1-year probationary period is not always practical in today's Government, particularly if the probationer is a trainee and may not perform the full duties of a journeyman level employee for several years. When asked if the

¹⁶ Public Law No. 105-206, “Internal Revenue Service Restructuring and Reform Act of 1998,” §1201(a).

length of the probationary period was sufficient, many of our respondents told us it was not. In particular, supervisors of trainees sought a longer probationary period. In one agency, more than a third of the responding supervisors said they thought the period should be longer. This was the agency with the highest percentage of trainees. For our entire surveyed supervisory population, only 9 percent of those supervising non-trainees reported the probationary period should be longer, while 22 percent of the supervisors of trainees wanted a longer probationary period. Even those supervisors who did not want a longer probationary period for their own positions still recognized that the 1-year period may not be appropriate for all positions. Sixty-five percent of supervisors indicated they would like to see their components have the authority to determine the length of the probationary period.

Given the increasing complexity of the work performed by Federal employees, and the lengthy period of training required for some positions, a standard probationary period for all occupations and grade levels is no longer appropriate. OPM has already recognized this when it comes to the probationary period for new supervisors. For the supervisory probationary period, their regulation states,

The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.¹⁷

We recommend that the head of each agency also be authorized to determine the length of the probationary period for their non-supervisory probationers, as has already been granted to the IRS, and more recently, the Departments of Defense and Homeland Security. The need for this flexibility goes beyond agencies engaged in matters of taxes, security, or defense. All agencies should be granted the ability to set the probationary period based upon their particular needs. However, the length should be set based upon the position, not the person. Therefore, as with the supervisory probationary period, the duration should be fixed and uniformly applied to similar positions that have a similar need.

This reform will require a change in statute. While OPM has the authority to set the length of the probationary period, or to delegate it to agencies, the probationer obtains the rights of a Federal employee after 1 year, even if the individual is still a probationer. Chapter 75 of Title 5 of the United States Code currently states:

¹⁷ 5 CFR §315.905.

- (a) For the purpose of this subchapter—
 - (1) “employee” means—
 - (A) an individual in the competitive service—
 - (i) who is not serving a probationary or trial period under an initial appointment; or
 - (ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less...¹⁸

In 2002, a panel of the U.S. Court of Appeals for the Federal Circuit held that if a probationer meets either (i) or (ii) above, the individual has all of the rights of a Federal employee.¹⁹ This interpretation of the statute restricts the ability of OPM to grant agencies effective flexibility on the length of the probationary period.²⁰

We therefore recommend that Congress amend this section to reflect that an individual who is a probationer is not a Federal employee for the purpose of receiving the protections of civil service employment, regardless of the length of service. This would enable OPM to offer agencies discretion in establishing the length of the probationary period based upon the nature of the occupational field and the degree of training necessary before individuals reach the full-performance level. If the law is changed, we recommend that OPM grant to agencies the flexibility to set the length of the probationary period for a period of 1 to 3 years.

This is not to imply that the longer period is appropriate for all positions. OPM should provide agencies with guidance on how to identify when certain positions within a particular occupational field require a longer evaluation period before an informed decision can be reached on the adequacy of the candidate. The longer probationary period should be limited to such positions, and approval should be made at an appropriately high level to ensure consistency within an agency. Where an occupational field or training program is substantially similar throughout the Government, it would be beneficial if OPM issued Government-wide probationary instructions to ensure equity.

¹⁸ 5 U.S.C. §7511(a)(1)(A).

¹⁹ *McCormick v. Department of the Air Force*, 307 F.3d 1339 (Fed. Cir. 2002).

²⁰ It affects the ability of an agency to effectively use a probationary period of more than 1 year, and complicates the use of a probationary period for individuals who have previously completed a probationary period but have been given a new Federal appointment, potentially in a different career field or after an extensive break in service.

Using a Longer Probationary Period

Agencies should be aware that a longer probationary period does not alter the responsibility to assess probationers throughout the entire period. The IRS is an example of one component that has been given the authority to set longer probationary periods, and has used it with caution and deliberation.²¹

IRS has extended the length of the probationary period for Frontline Manager Trainees, Treasury Enforcement Agents, and Criminal Investigator Special Agents. However, while its legislation allowed the probationary period to be set up to 3 years long, IRS did not set all probationary periods at 3 years. Rather, it reports that probationary period lengths were set based upon the rationale for extending the probationary period. The reason for the longer period is important when deciding whether or not to use a period of more than one year. A longer probationary period is appropriate when an individual is a trainee and will not perform the journey-level work during the first year. Supervisors may be unable to fully assess a candidate until that candidate has completed training and begun performing the actual work of the position. However, a longer probationary period should not be used to delay taking action when there is sufficient data to create an informed decision at an earlier date.

In the memos authorizing the longer probationary periods, the Treasury Department noted that these extensions carry responsibilities. One such memo states, in part:

We are pleased to see that your formal training curriculum incorporates monthly documented review and feedback to the employee, and additional formal assessments every six months (provided in writing to the employee), to eliminate any potential conflicts between a two-year probationary period and annual career ladder promotions. Your training plan reflects that IRS has taken action to ensure that, for this two-year probationary period, your managers effectively communicate performance expectations to the employees, and ensure that performance elements and standards carefully document the requirements for each successive grade level. Accordingly, we are happy to approve the two-year probationary period for Frontline Manager Trainee positions in IRS, and are pleased to support your judicious use of the personnel flexibilities of 5 U.S.C. §9510.²²

²¹ The Departments of Homeland Security and Defense have not yet issued specific details on occupations and pay bands that will be subject to their longer initial service period or their processes for training and assessing individuals in these positions. As a result, these newer systems are not addressed in this report.

²² Department of the Treasury Memorandum, "Extended Probationary Period for Frontline Manager Trainee Positions," Apr. 9, 2003.

Because trainees typically do not perform journey-level work from the start, trainee positions have a particularly high potential to benefit from a longer probationary period. These are also positions with a good likelihood to have career ladder promotions. While assessment for promotion should be an ongoing process, with progress reports regularly provided to the individual, promotions occur no more often than once every 52 weeks (exceptions are possible at grades below GS-05).²³ Probationers should be assessed far more frequently than this. Thus, while assessing a probationer for finalization of the appointment and assessing an individual for a career ladder promotion may be complimentary processes, the decision to promote cannot alone fulfill the responsibility to regularly assess probationers.

A longer probationary period is an opportunity to observe the probationer as the work increases in complexity. However, if a probationer is not successful at an earlier stage, continuation of the probationary employment is not in keeping with the purpose of the probationary period. Certain aspects of conduct and work habits may become evident early in the period, and should be acted upon promptly. It is important that agencies ensure that supervisors of individuals on longer probationary periods are performing an assessment throughout the period, and not using the longer period to delay action. Otherwise, as the probationary period goes on, the agency will have invested more and more in the individual and the probationer may have a false expectation built upon the agency's lack of earlier action.

Therefore, while we recommend longer probationary periods when an agency deems it necessary to fully evaluate a probationer, we also remind agencies of their obligation to ensure that their supervisors manage the probationary period effectively for the entire length of the probationary period. Extending the period cannot resolve the problems that may have caused the agency to seek a longer probationary period unless agencies establish cultures that support the constant assessment of probationers and the separation of probationers who are not a proven asset to the Government. Without this willingness to assess and to act on the assessment, the longer period becomes meaningless.

²³ 5 CFR §300.604.

Establishing Performance Standards for Probationers

Probationers should have their performance evaluated in terms of their fitness for appointment to the civil service. At the same time, like non-probationers, they should also be assessed in light of the organization's strategic goals and the role of the position in the accomplishment of those goals. In addition, both probationers and non-probationers should be assessed for recognition, including awards (and salary in a pay-for-performance system). Thus, while the performance criteria for probationers and non-probationers can be expected to overlap, they may not necessarily be exactly the same.

According to the Code of Federal Regulations, probationers must fully demonstrate their qualifications for the position.²⁴ In our survey, we asked supervisors what standard they used to determine if a probationer should obtain status as a non-probationary employee. More than 87 percent of responding supervisors stated that, when assessing probationers, their standard was that the probationer must fully meet the established performance and conduct expectations. However, 7 percent of responding supervisors said that their measurement for continued employment was that the probationer must exceed or greatly exceed expectations. Six percent placed their requirements at a level below fully meeting the established expectations.

One possible explanation for the number of supervisors using a standard other than fully successful is that they are finding the performance standards to be inadequate. One of the most important purposes of performance standards is to identify for removal those probationers who are marginal or unsuccessful. When asked why a probationer who was considered an inadequate fit was retained, one supervisor responded, "Employee met requirements but will not perform well in position." If an individual can meet the performance requirements but be unable to perform well in the position, it can be an indication that the performance requirements are flawed and do not accurately measure the critical aspects of the position.

The supervisor quoted above reported that the probationer in question was a trainee. A trainee position is one in which an individual is selected at a level below that which has been identified as needed to support the organization's mission. The intent at the time of hire is to dedicate time and resources to give the selectee the knowledge and to help build the skills necessary to perform at the required level. This is different from a full-performance-level hire, in which the individual is immediately placed at the grade that has been identified as meeting the agency's needs.

²⁴ 5 CFR §315.803.

For trainees, it may be appropriate to measure not only the quantity and quality of the probationer's work towards mission accomplishment, but also the extent to which the probationer demonstrates the ability to learn new concepts and successfully apply them at the level required in the full-performance position the individual will one day be expected to fill. However, this does not mean requiring the probationer to be more—or less—than fully acceptable on non-trainee standards. Rather, the standards should be adjusted to measure what is actually being sought from the individual: an ability to contribute in the present capacity, as well as an ability to develop into a fully successful employee who will be an asset to the Government. This dual objective may require using different standards for probationers versus non-probationers, a practice that is fully appropriate because these two groups are not similarly situated. The standards should be fair and appropriate for each group—but not necessarily the same.

Performance Problems: Probationers Are Different

A probationer is still an applicant for a finalized appointment to a particular position as well as to the Federal service. While most fully appointed Federal employees are entitled to a performance improvement period before a performance-based adverse action may be taken, probationers are different. (It is worth noting that under alternate personnel systems such as those created by the Departments of Homeland Security and Defense, many fully appointed employees may no longer have an entitlement to a formal improvement period, although it will remain an option if a supervisor deems it appropriate.)

If a probationer is not able to perform acceptably, the Government has no obligation to extensively train the individual. Nonetheless, as noted in a previous section, we found widespread use of additional training for probationers. More than half of the supervisors who reported that they had deficient probationers said that they had used additional on-the-job training. Three in ten said that they had used additional classroom training. These additional training investments may or may not have been appropriate.

While the purpose of the probationary period is to continue the assessment process, agencies can expect that some training will be necessary, and this should be planned for when the decision is made to select a probationer. If the probationer is mostly successful with the planned level of training, a small investment in additional training, to see if the probationer can become fully successful, may be in the interest of the Government based upon the potential shown by the probationer. However, extensive training based on the needs of the particular individual is not appropriate for a probationary employee. Instead, probationers have the responsibility to demonstrate they are qualified for the position and are capable of becoming assets to the Government.

We found some indications that agencies may be making it harder on themselves than necessary by creating procedures that treat probationers with performance problems as if they are no different from appointed employees. The following is one component's explanation of how it addresses probationers with performance deficiencies:

Probationary employees, as well as the general [component] workforce, who demonstrate unacceptable performance are issued a written warning which provides the following information: describes the unacceptable performance; identifies the performance standards which must be attained in order to demonstrate acceptable performance; establishes the period of time allotted to demonstrate acceptable performance; provides a structured performance improvement plan (PIP) which may include developmental assignments, counseling, formal training, on-the-job training, etc.; and explains what actions will be taken if the unacceptable performance continues or [acceptable performance] is not demonstrated.

A component in a different agency set forth similar guidance. While the component permitted a supervisor to take action at any time during the probationary period for “problems with conduct or general character traits” the policy also stated that the probationer “must be given at least 90 calendar days to work under performance standards before action can be taken for performance problems.”

This is appropriate guidance—for addressing non-probationary employees. When it comes to probationers, however, an extensive (or resource intensive) performance improvement opportunity is counter to the intent of the probationary period. In the case of a probationer, the Government responsibility is an extension of that which is owed to an applicant. When the agency hired a probationer, it was offering an extensive job interview/work sample opportunity. Just as with a work sample test, the Government owes the applicant clear instructions and the tools to accomplish the assigned tasks. The agency does not owe the probationer the time or training that may be necessary to rehabilitate a poorly performing Federal employee.

When asked why a probationer was allowed to complete the probationary period when he was not successful, one supervisor replied, “The employee was not anywhere near where I had hoped. I gave him additional training without a lot of improvement. By then the 12-month probationary period was over. Since then his performance and conduct have both declined.” Another supervisor reported retaining a probationer who was not a good fit because it was “too hard to get [the] person retrained into something else.”

These comments are yet another indication that agencies are not treating probationers as applicants in the final assessment phase, but rather as Federal employees with finalized appointments to the civil service—something they are not.

COMMUNICATING EXPECTATIONS

Agencies should treat probationers as applicants for appointments instead of as employees. Probationers should be made to understand from the start that they are being offered an opportunity to demonstrate why it is in the Government's interest to grant them an appointment, but that the appointment will not be final until the probationary period has been successfully completed. Unfortunately, according to probationary respondents, agencies rarely communicate this. The absence of such communication is yet another indication that agencies do not intend to use the probationary period to assess probationers and act upon that assessment. The message being sent to probationers is that the probationary period is not important enough to warrant being mentioned.

Our probationary respondents to the survey provided us with comments such as:

“I had no idea there was a probationary period or if I am still on probation.”

“While there was a timely mention that it would take place, there was no effort to explain its purpose or consequences.”

“I knew there was a probationary period, but I don't know whether I'm still in a probationary period because this was never discussed.”

“I assumed there was a probation of 3 months. At 11 months I was asked to sign papers which stated that I [had] completed my [1]-year probation period.”

“I was not aware that I was still under probation or the consequences until I received this survey.”

“The only way I EVER became aware of a probationary period was when I saw it in my service record in the computer. No one ever explained to me that I could even view my service record or what any of it meant. I came upon it by chance while entering a leave request.”

“I was never fully made aware or informed as to what a probationary period is, how long, or even its purpose and what or who decides what happens at the end. I knew of it, that it existed and I was on it, but no more or what I need to do to successfully complete it.”

One probationer summed up our point particularly well: “This topic should be discussed thoroughly with the new employee. This would leave no doubt in the new employee’s mind of what was expected of him or her. This was never discussed with me.”

An agency’s silence about the probationary period before bringing a probationer on board speaks volumes about the extent to which the agency’s culture fails to take the probationary period seriously.

Communications Prior to Selection

The message that the probationary period is not a serious matter begins with the first communications between the agency and potential applicants. As noted in our report *Help Wanted: A Review of Federal Vacancy Announcements* (April 2003), vacancy announcements are typically too long and filled with fine print that few people want to read. However, much of that fine print exists because there is important information the Government needs to communicate. One piece of critical information is the notification that a new Federal employee will be required to complete a probationary period.

Not all vacancy announcements carry a notice that the applicant may be required to serve a probationary period, and the announcements that do have this information vary in specificity.²⁵ Below are a few examples of the language we found on OPM’s USAJOBS website.

- Selectee may be required to serve a probationary/trial period.
- One-year trial/probationary period is required.
- New Appointees will be subject to a probationary/trial period. The 1st year of service of an employee who is given a career or career-conditional appointment is probationary when the employee is appointed from a competitive list of eligibles. Reinstatement applicants will be required to serve the 1-year probationary period unless the probationary period has been completed. Employees appointed under the Veterans Recruitment Authority will require 2-year trial period.

The first example does not explain the length, purpose, or potential consequences of being a probationer. The second implies that a trial period is 1 year—not accurate information based upon the hiring authorities advertised in the area of consideration for that announcement. The third example gives the accurate length of the probationary and trial periods, and enough details to confuse some readers who are not familiar with the Federal

²⁵ OPM’s Delegated Examining Operations Handbook addresses what must be included in a vacancy announcement. There are both required and recommended items; the probationary period is not mentioned.

civil service. It does not inform the reader that the appointment is not final, or that the probationer does not have the same rights as a Federal employee. It also may imply that the full appointment status automatically comes with the initial selection.

Our survey responses indicated some probationers did notice the references to the probationary period in the vacancy announcements. Specifically, 3 out of every 10 surveyed probationers indicated that the vacancy announcement had informed them that they would be required to complete a probationary period. However, fewer than 1 in 10 reported that they had learned of the potential consequences of being a probationer through the vacancy announcement.

One possible explanation for this lack of emphasis on the probationary period may be an expectation that the performance assessments either will not occur or will not be acted upon. If the human resources staff who create the vacancy announcement believe the probationary period is a mere routine that will not be used to assess an applicant for appointment, it could explain why there does not seem to be a sense of urgency to communicate expectations and consequences in the vacancy announcement.

The vacancy announcement is not the only pre-hire opportunity to communicate with applicants. Some of our surveyed probationers noted that the interview was when they first heard of the probationary period. The interview is an opportunity to describe the probationary period as an assessment period. The supervisor can let the applicant know what the selectee will need to demonstrate during the probationary period in order to qualify for an appointment, and set the applicant's expectations at a reasonable level by explaining that if selected, the individual would still have to successfully complete a probationary period before the appointment could become final.

Of the more than 40 agencies and components that provided us information on their probationary period processes, none mentioned the job interview as a means by which the agency told applicants about the probationary period. Notification during job interviews appears to be primarily a result of individual supervisors taking initiative rather than agency- or component-wide policies or established procedures. Only 20 percent of supervisory respondents reported that they discussed the probationary period at all with their probationers before the probationers entered on duty. We do not know the level of detail in these discussions, but the very absence of any communication from the majority of supervisors about the probationary period before the probationers come on board sends a message to the probationers. The message: the probationary period is so unimportant to their supervisors that it is not even worth mentioning that it exists.

Another opportunity to notify a probationer is the job offer. Several agencies and components informed us that their human resources offices were required to include a notification regarding probation in the job offer. According to our surveyed probationers, the job offer was used to notify them about the probationary period more than any other pre-hire method. Unfortunately, just being notified that the probationary period exists is not enough. While 34 percent of our surveyed probationers were told of a probationary period in the offer, only 25 percent were told of its purpose, and only 17 percent were told of the potential consequences of being a probationer.

Even with all the different communication methods combined, the message that the probationary period exists was often not sent. A third of our responding probationers reported that they did not know they would be required to complete a probationary period until after they reported for duty.

This lack of communication about the probationary period throughout the entire pre-hire process is problematic on several levels. First, the probationers are put into a position where many of them may not know that they are subject to an additional assessment before their appointment becomes final. They are giving up their current situations without being educated about precisely what they are accepting in exchange. With so much at stake, candidates deserve to understand what is being offered and the conditions that come with that offer. Furthermore, in some cases, a lack of notification can invalidate the probationary period.²⁶

Secondly, this is the start of the management-employee relationship. Trust is an important element in a productive relationship, and if a probationer feels the employer was disingenuous by failing to mention the probationary period, the relationship can be damaged.

Additionally, silence about the probationary period can send the message that the agency does not take the probationary period seriously, since it is apparently not important enough to mention as an aspect of employment along with salary, benefits, or related matters. This message is sent by the human resources staff, supervisors, and everyone else probationers encounter who do not inform them of the probationary period's existence and potential consequences.

²⁶ If individuals with rights as current Federal employees accept an appointment that by its nature subjects them to a new probationary period, they retain their current rights unless they make a knowing and voluntary decision to relinquish those rights as a condition of accepting the new job. If the decision was not an informed one, the rights are retained. *Edwards v. Department of Justice*, 86 M.S.P.R. 404 (2000); and *Ramos v. Department of Justice*, 94 M.S.P.R. 623, 629 (2003).

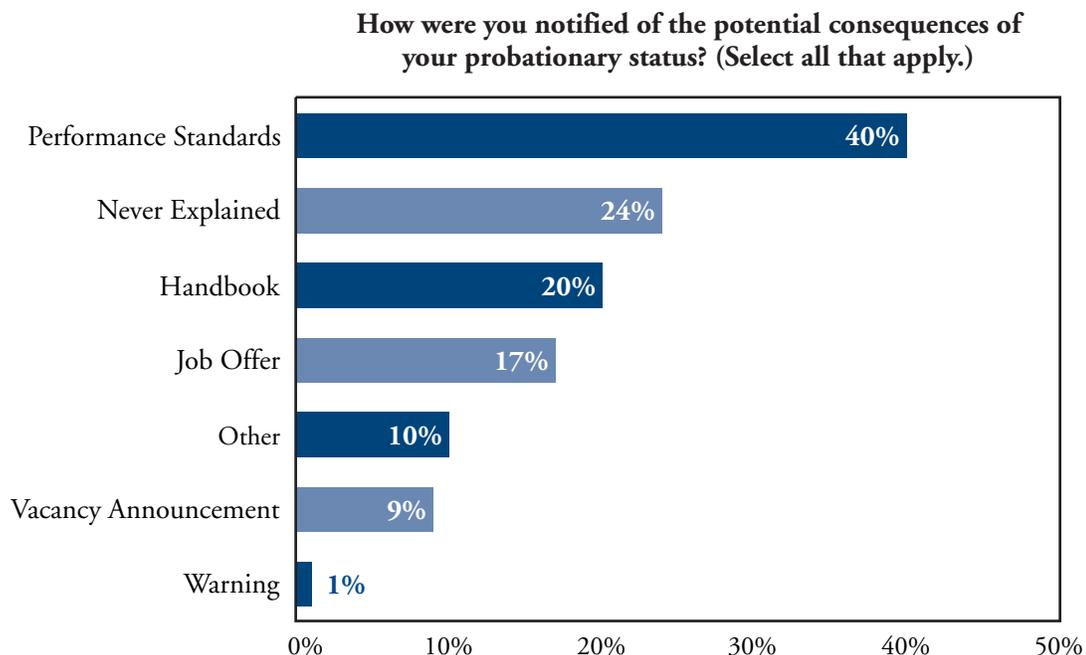
Communications After Selection

In some locations, the message that the probationary period is not important continues to be sent after the probationer reports for duty.

For agencies responding to our questionnaire, the most common time to notify probationers of the existence of the probationary period was when the probationer entered on duty. Several agencies noted that they had developed orientation programs and materials including handbooks, and that notifying probationers of the probationary period was a part of this orientation, which occurred either the first day or soon thereafter. Yet, there were a few probationers who were not aware of the probationary period until they received our survey. These individuals were on appointments subject to the probationary period and reported starting their Federal service at least 7 months prior to completing our survey. Still, 6 percent informed us that despite their communications with their supervisors, human resources offices, co-workers, and friends, they were never told that they would be required to complete a probationary period.

Even for those probationers who were notified, the message sent was sometimes incomplete. Nearly one-quarter of our surveyed probationers told us that the potential consequences of being a probationer were never explained to them. As illustrated by Figure 3, below, most of those who were notified of the potential consequences were told after they came aboard:

Figure 3: Notification of the Potential Consequences of Being a Probationer



As shown above, the most common time to be told of the consequences of the probationary period was during discussions of the performance standards, cited by 40 percent of probationary respondents. Yet, given the importance of the supervisor's expectations in both the assessment of a probationer and the outcome of that assessment (termination versus retention), 40 percent is a regrettably low number. The link between performance standards and the probationary period is too important to be left out of discussions regarding performance expectations.

Supervisors' expectations and the potential consequences should be communicated to probationers if the probationary period is to be used to separate individuals who are not assets to the Government. Silence on the matter may cause a probationer to assume that all is well, creating an expectation that the appointment either is already finalized, or that the finalization is a mere formality. Probationers deserve to be given the clear message that the probationary period will be used by the agency for assessment purposes and that action will be taken based upon the assessment results. This can and should be done in a positive manner by notifying probationers that the reward for success is a finalized appointment that carries significant job protection rights.

Supporting Supervisors of Probationers

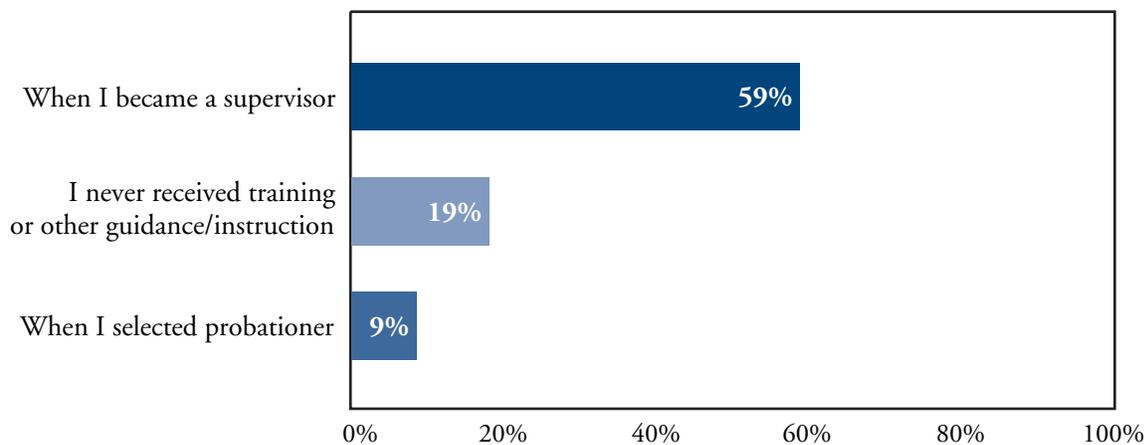
Supervisors have a critical role in the administration of a probationary period. Ultimately, it is a supervisor who must determine if the probationer's conduct and performance are acceptable. Unfortunately, some of the supervisors who responded to our survey indicated that they are not given adequate information to carry out this critical responsibility. One supervisor told us, "When [the individual] came here I had no idea he was on probation." Another stated, "At a minimum, supervisors should be given some idea at the outset of their advertisement of the employees' rights and options rather than [having to rely on] the 'voyage of discovery' that is currently the norm."

Our survey did not ask supervisors when they became aware they were supervising a probationer. However, we did ask when they received training, guidance, or instructions concerning their role as a supervisor of probationers. As noted in Figure 4, below, almost one in five supervisors never received any training, guidance, or instruction. (For those with 5 years or less as a supervisor, 28 percent reported that they had never received guidance.) A lack of basic information can make it difficult for a supervisor to administer the probationary period effectively. Furthermore, while almost

60 percent of supervisors did receive training at some point in their career, less than 10 percent were given instructions as a reminder at the time that they selected a probationer. It is difficult for supervisors to use the probationary period as an assessment tool prior to appointment unless they are aware that they have selected a probationer and know what their role is as the supervisor of a probationer.

Figure 4: Training, Instructions or Guidelines

When did your agency provide you training or other guidance/instructions concerning your role as a supervisor during a subordinate's probationary period? (Select all that apply.)



The supervisors who responded to our survey indicated that they wished they had been given more information. The gaps in knowledge varied from supervisors who said they did not know an individual was a probationer to those who did not know when a subordinate's probationary period would end. (Three percent of our survey's supervisory respondents reported they did not know the length of their subordinate's probationary period, while 4 percent reported a length that is shorter than the 1-year minimum required by OPM regulations.) One supervisor indicated that the problem was not a lack of knowledge about the probationary period, but simply, "As a supervisor I sometimes forget to discuss 'probationary' status with new hires.... It may be helpful to develop an information sheet/form explaining the probationary period and require the employee and supervisor to both sign it for new hires to the Federal system."

Supervisors need support from their agencies in order to meet their responsibilities as supervisors of probationers. Many receive only silence—which itself is a message. If supervisors received the message—through training, guidance, and their own supervisors—that the probationary period is to be taken seriously as an assessment period, and that assessing the probationer is a critical function of being a supervisor, that message could be passed on to the probationer. The current overall lack of communication throughout the pre- and post-hire process indicates that the message is not being adequately communicated to either supervisors or probationers. As long as agencies remain silent on this issue, they can expect supervisors to continue using the probationary period at a level far below its full potential.

FINDINGS AND RECOMMENDATIONS

The probationary period is an opportunity to assess the conduct and performance of a probationer to determine if the individual is a good match for the needs of the hiring agency before an appointment to the civil service becomes final. However, this assessment frequently does not occur. Our survey responses indicated that even though supervisors are aware that the probationer's appointment is not final, supervisors tend to treat their probationers as fully appointed Federal employees, with all the rights and responsibilities that implies. Agency policies and responses to our questionnaire also indicated that in many cases, probationers who are marginal or unsuccessful are not handled any differently than fully appointed Federal employees.

The message being sent by supervisors, human resources staff, and agency cultures overall is that the probationary period is a mere formality. Some supervisors expressed frustration at the lack of agency support for the full use of the probationary period, and even a number of probationers were perturbed by what they saw as agencies' failure to use the probationary period to remove marginal and poor performers.

The probationary period, if fully used, is one of the most valid tests available to determine if an individual will be a successful employee. However, full and successful usage requires a fair, in-depth assessment of the probationer and a willingness to terminate the probationer if the individual fails to prove that a finalized appointment would be in the public's best interest. Until this occurs, the effectiveness of the probationary period will remain severely limited.

Recommendations

1. **The statute and regulations should be changed to better support the use of the probationary period as a time period to assess candidates before they receive finalized appointments as Federal employees. This includes providing agencies with the flexibility to set the length of the probationary period based upon the unique characteristics of their positions and training programs. Specifically:**
 - ☑ Congress should amend 5 U.S.C. Chapter 75 to indicate that if an individual is in a probationary status, the individual is not entitled to the protections granted to Federal employees, even if the individual has been in service for more than 1 year. This would help support the message that appointment as a Federal employee must be earned through successful performance and is not an entitlement that automatically results from a job offer or physical presence in the workplace. Amending the statute would also enable OPM to provide all agencies with meaningful flexibility regarding the duration of the probationary period.
 - ☑ OPM should establish procedures so that a probationer does not automatically become an employee in the absence of agency action. An agency should be required to certify that a probationer's conduct and performance have established that the individual will be an asset to the Government. In the absence of this certification, the probationer's employment should automatically terminate upon the expiration of the probationary period. The use of a not-to-exceed date for that period can help emphasize that the individual has not been promised a finalized appointment, but rather has been given a time-limited opportunity with the burden on the probationer to demonstrate why a finalized appointment is in the interest of the Government.
 - ☑ If Congress amends 5 U.S.C. Chapter 75 as recommended above, OPM should modify 5 CFR §315.801 and §315.802 so that they will no longer set the probationary period at 1 year with a prohibition on extensions. OPM should, instead, issue regulations that permit agencies to set a probationary period of 1 to 3 years for each occupational area upon showing that the nature of the applicable positions calls for the particular length requested by the agency.

2. Agencies should create a culture in which probationers are treated with respect as candidates for an appointment, but not as Federal employees with finalized appointments. In particular:

- ☑ Performance appraisals for supervisors should include an evaluation of how thoroughly they have used the probationary period as an assessment tool. Supervisors should be held accountable for using the probationary period fairly, fully, and in the best interest of the Federal Government. This should not be considered an additional critical element, but rather should be seen as an intrinsic part of their existing responsibility to thoroughly assess their subordinates and take action when appropriate.
- ☑ Supervisors should receive training in their responsibilities to the agency, the civil service, and the probationer. They should be made aware when they have hired a probationer, and reminded that their role is to assess the individual for appointment as well as to supervise the performance of work towards organizational goals.
- ☑ Agency policies should treat unsuccessful probationers differently than Federal employees with finalized appointments. Agencies should ensure that probationers receive clear guidance and a full understanding of performance expectations, as well as the appropriate level of training for an individual with their level of experience. However, agencies should also ensure that probationers and their supervisors recognize that probationers are not similarly situated to other Federal employees and are not entitled to the same level of investment or opportunities for rehabilitation.
- ☑ Probationers should be notified, *before accepting a job offer*, that they will be probationers and what that means. Human resources staff and supervisors should ensure that probationers are aware they have been offered an opportunity to demonstrate on the job why finalizing their appointment would be in the best interests of the agency and the entire civil service—but that a finalized appointment is not guaranteed.
- ☑ In their discussions with a probationer, before and after the individual begins work, supervisors should reinforce the message that probationers are still applicants and the probationary period is an extension of the examining process, prior to finalizing probationers' appointments.

3. Agencies should use the probationary period to terminate probationers who fail to demonstrate the appropriate level of performance and conduct. For example:

- ☑ Agencies should support supervisors in their efforts to use the probationary period and avoid sending any messages that could inappropriately discourage supervisors from taking action. For example, if supervisors believe that the authorization or funding for spaces would be lost if they terminated probationers, they may be less likely to terminate marginal/unsuccessful probationers. Supervisors should be given the opportunity to recruit for the right fit, rather than being put in the position of having either the marginal/unsuccessful probationer or nobody at all.
- ☑ Supervisors should establish performance standards for probationers that address both organizational performance goals and their own expectations for their probationers. Trainees should be measured by both the performance of short-term goals as well as their demonstrated potential to advance to the full-performance level. Standards should be set based upon what could reasonably be expected of a new employee, and those standards should not be modified around the individual. Rather, the individuals should be measured against the standards.
- ☑ Supervisors should provide clear instructions to probationers as well as guidance and training in order to give probationers a fair opportunity to demonstrate why it is in the public interest to finalize an appointment to the Federal service. If, after this instruction, a probationer is not fully fit for the position, in both performance and conduct, supervisors should terminate the probationer.

APPENDIX A: METHODOLOGY

The Survey

Individuals were selected at random from the Office of Personnel Management's database to participate in our survey. The population was limited to full-time, permanent, non-seasonal employees who had a career-conditional appointment and were first hired into the competitive service within the 6 months preceding the random drawing of participants. Individuals were selected from each of the following agencies:

- Department of the Army
- Department of the Navy
- Department of the Air Force
- Other Department of Defense Components
- Department of Veterans Affairs
- Social Security Administration
- Bureau of Prisons
- Internal Revenue Service
- Department of Agriculture, Forest Service

We sent 1,070 surveys to probationers, and an equal number of a different survey to the supervisors of those probationers. Seventy-two supervisor surveys and 101 probationer surveys were returned as undeliverable. The response rate for each group was approximately 60 percent, with 600 supervisors and 581 probationers responding. Because of the manner in which the survey was conducted it was not possible to associate the responses between a particular probationer and that individual's supervisor.

This survey was not intended to represent the Federal Government as a whole. Rather, its results paint a picture of what is occurring in the agencies that recruit the most probationers, as well as in certain other agencies, to provide a cross-section of the workforce engaged in different occupations.

Agency Input

We also sent a different set of questions to a number of departments, agencies, and components. The questions addressed how they managed the probationary process, including any flexibility that was available to them. We received a total of more than 40 responses. These responses came from one or more components within, or the headquarters of, the following:

- Department of the Interior
- Department of Defense
- Department of Health and Human Services
- Small Business Administration
- National Aeronautics and Space Administration
- Department of Agriculture
- Department of Veterans Affairs
- General Services Administration
- Department of the Treasury
- Department of Labor
- Department of Education
- Social Security Administration
- Department of Justice

The Focus Group

Our focus group consisted of approximately 10 members of the Federal Midwest Human Resources Council in Chicago, IL.

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