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Veterans' Preference in Federal Reductions in Force

An analysis of the reduction-in-force rule at 91 Fed. Reg. 49,178 (2026), drawing on the statute and its history, the rulemaking record, and federal workforce data

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Executive Summary

On September 2, 2026, a final rule issued by the Office of Personnel Management (OPM) took effect (91 Fed. Reg. at 49,178). It rewrites the order in which federal employees are kept or released in a reduction in force (RIF). For decades, a preference-eligible veteran whose performance was acceptable ranked ahead of every nonveteran in the same tenure group. The new rule ranks employees by a score built from their three most recent ratings of record and adds 5 points for preference eligibles with a service-connected disability of 30 percent or more and 3 points for other preference eligibles. This report asks what that change does to the retention preference in 5 U.S.C. § 3502, whom it affects, and what options remain. The organizing distinction is between preference as a priority, which settles every comparison between a veteran and a nonveteran before performance is considered, and preference as a weight, which competes with performance on a common scale.

Section 3502 directs OPM to give "due effect" to tenure, military preference, length of service, and performance, and it entitles a qualifying preference eligible "to be retained in preference to other competing employees" (5 U.S.C. § 3502(a), (c)). OPM reads that entitlement as "a meaningful retention preference, not a categorical right," relying on the "due effect" mandate, tenure-group rules that already placed some veterans below nonveterans, and the point-based hiring preference (91 Fed. Reg. at 49,180-83). Union critics read it to require only acceptable performance (AFGE and AFSCME 2026, 2), a reading that draws support from *Hilton v. Sullivan*, which treated the 1944 predecessor as an absolute preference (334 U.S. 323, 336-39 (1948)), and from Congress's rejection in 1978 of a proposed time limit on retention preference. Disabled American Veterans (DAV) argued that preference would be "largely illusory" under the proposal, a contention OPM called "not accurate" (DAV 2026b, 3; 91 Fed. Reg. at 49,182). After *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), a court would decide the statutory question for itself, but the companion appeals rule sends RIF appeals to OPM and bars judicial review of its decisions (91 Fed. Reg. at 49,242), so the forum may matter as much as the answer.

The strength of the new preference depends on how ratings are distributed, which OPM and agencies now shape; for fiscal year 2026, OPM capped the combined share of the two highest rating levels at 40 percent (OPM 2026c, 2). Illustrative modeling in Section 4 finds that a veteran with three Fully Successful ratings outranks roughly 22 to 77 percent of nonveteran competitors with the 3-point credit, and 47 to 94 percent with the 5-point credit, compared with every nonveteran in the same tenure group under the prior rules.

The change is largest outside the Department of Defense (DoD), which has ranked employees by performance first since 2017. Among veterans who still compete, long-serving veterans lose the most because length of service is now only a tie-breaker, and veterans serving probationary periods are removed from RIF competition, with effects that depend on how agencies use their discretion. This report takes no position on whether the rule is wise or lawful.

KEY FINDINGS

The rule converts a priority into a weight. Preference eligibles no longer rank as a group ahead of nonveterans. They receive 3 or 5 points on a performance scale that runs to 21, which OPM calculates as 14.3 or 23.8 percent of the scale (5 C.F.R. § 351.504(a); 91 Fed. Reg. at 49,181).

The statutory question is contested. OPM relies on the "due effect" mandate, the point-based hiring preference, and tenure-group rules that already placed some veterans below nonveterans. Critics read § 3502(c) to require only acceptable performance, a reading that draws support from *Hilton* and the 1978 record. The final rule does not cite *Hilton*.

Preference strength now depends on performance management. Because the credit is fixed while the spread of ratings is not, OPM's distribution caps, agency appraisal patterns, and discretionary award credits set the practical value of preference.

The change is narrower and more uneven than government-wide figures suggest. About half of the 621,751 veterans in the executive branch work for DoD, which already ranks preference behind ratings (OPM 2026b, 4-5; DoD 2021, paras. 3.3.c, 3.4). The largest changes fall on veterans outside DoD, on long-serving veterans, and on veterans serving probationary periods.

Review channels have narrowed. RIF appeals now go to OPM rather than the Merit Systems Protection Board (MSPB), grievances are barred, and OPM's rule bars judicial review of OPM's decisions, while Veterans Employment Opportunities Act (VEOA) remedies remain (91 Fed. Reg. at 49,230, 49,242-43).

I. Introduction, Scope, and Method

Reductions in force were rare in the federal government until 2025. The Partnership for Public Service, a nonpartisan nonprofit that analyzes OPM personnel data, reports that RIF separations never exceeded 300 in a fiscal year during the preceding decade but that 10,436 employees were separated by RIF between January 20, 2025, and January 2026 (Partnership for Public Service 2026b). The Government Accountability Office (GAO) counted 6,331 RIF separations at 22 Chief Financial Officers Act agencies between January 2025 and January 2026, among roughly 378,000 departures, and a net workforce decline at those agencies of nearly 256,000 employees, or more than 11 percent, over 2025 (GAO 2026, 5-8). The two RIF counts differ in part because they rest on different data; GAO's, for example, omits agencies that did not provide data, including the U.S. Agency for International Development (GAO 2026, 6-8). Veterans held 27.4 percent of executive branch jobs in fiscal year 2024 (OPM 2026b, 4) and 27.9 percent as of January 2026 (Partnership for Public Service 2026b), so the retention rules bear on a large share of the remaining workforce. Public discussion has run from a description of the proposal as a "major blow" to veterans (Laws 2026) to OPM's assurance in the final rule that preference "remains a substantial component of retention standing" (91 Fed. Reg. at 49,214). Each description captures part of the change. Preference survives as a defined credit, but what it guarantees has changed, and the change interacts with companion rules on performance appraisal and appeals that have received less attention.

Agard Research Associates Inc. (ARA) is a nonpartisan institute. This analysis neither supports nor opposes the rule or its companion rules. Where the report presents evidence bearing on their likely effects, it presents the stated purposes of their supporters and the concerns raised by their critics with equal care, and it identifies the institutional perspective of data sources where relevant.

Section 2 describes the retention framework before and after the rule, together with the companion rules. Section 3 analyzes the statutory question, including the 1944 and 1978 records and the forum in which it can be litigated. Section 4 examines how the point credit works in practice and whom it affects. Section 5 reviews the comment record, congressional activity, litigation, and implementation. Section 6 sets out policy options without recommending among them, and Section 7 summarizes the findings and the indicators ARA will monitor.

METHOD AND SOURCING

The report rests on primary sources read in the original: the final rule, its proposed version, and two published corrections; the companion rules on RIF appeals, performance appraisal, probationary appeals, and administrative leave; the governing statutes; the Veterans' Preference Act of 1944 and the Civil Service Reform Act of 1978 (CSRA), together with the House committee report, the House floor record, and the Senate committee report; and the principal judicial decisions. Workforce data come from OPM's annual report on veterans' employment, GAO, and the Partnership for Public Service. The comment record was sampled rather than read in full. The report reviewed 14 comments chosen to represent two veterans service organizations, unions, a management association, policy organizations that supported and opposed the proposal, a lawyers' association, an individual commenter, and two federal agencies, together with OPM's responses in the final rule. The illustrative model in Section 4 is ARA's own, and its assumptions are stated with the results. Unless otherwise noted, the report uses "veteran" for a preference-eligible employee and "nonveteran" for an employee without veterans' preference. Workforce counts from OPM and the Partnership for Public Service also include veterans without preference; of the 621,751 veterans OPM reported for fiscal year 2024, 545,352 were preference eligible (OPM 2026b, 4). Online sources were retrieved between October 27 and November 6, 2026. Federal Register pin cites refer to printed pages, and the House committee's compiled legislative history of the CSRA (Committee Print No. 96-2, 1979) is cited as CSRA Legislative History.

A NOTE ON STATUS

The final rule took effect September 2, 2026, and governs RIFs for which agencies issue notices on or after that date; RIFs noticed earlier proceed under the prior regulations (91 Fed. Reg. at 49,178). OPM corrected the rule on August 25 and September 15, 2026 (91 Fed. Reg. 54,794; 91 Fed. Reg. 58,363). The companion RIF appeals rule took effect the same day and applies to RIF actions noticed on or after September 2 (91 Fed. Reg. at 49,230). The performance appraisal rule took effect August 6, 2026, and agencies must comply with the new summary-level patterns beginning January 1, 2027 (91 Fed. Reg. at 41,521). A rule on administrative leave, including leave during a RIF notice period, takes effect November 18, 2026 (91 Fed. Reg. at 65,924). As of November 1, 2026, the sources reviewed for this report identify no lawsuit that directly challenges the RIF rule. An August 2026 union complaint against OPM's suitability and performance appraisal rules cites the RIF rule only as context (Complaint at 2, *Am. Fed'n of Gov't Emps. v. Off. of Pers. Mgmt.*, No. 3:26-cv-08835 (N.D. Cal. Aug. 24, 2026)).

2. The Retention Framework Before and After the Rule

2.1 The Statutory Baseline

Federal law has protected veterans in layoffs since 1876, when Congress first required that veterans receive preference when executive departments reduced their staffs (91 Fed. Reg. at 10,904). The modern framework dates from section 12 of the Veterans' Preference Act of 1944, which directed the Civil Service Commission to release competing employees under regulations giving due effect to tenure, military preference, length of service, and efficiency ratings. A proviso added that preference employees rated "good" or better "shall be retained in preference to all other competing employees," and that lower-rated preference employees would be retained ahead of nonpreference employees with equal or lower ratings (ch. 287, § 12, 58 Stat. 387, 390 (1944)).

Section 3502 of title 5 carries that structure forward. Subsection (a) directs OPM to prescribe regulations for the release of competing employees that "give due effect to" tenure of employment, military preference, length of service, and efficiency or performance ratings. Subsection (b) entitles a preference eligible with a compensable service-connected disability of 30 percent or more, whose performance has not been rated unacceptable, "to be retained in preference to other preference eligibles." Subsection (c) entitles any employee who has retention preference and has not been rated unacceptable "to be retained in preference to other competing employees" (5 U.S.C. § 3502(a)-(c)). Subsections (b) and (c) took their present form in the CSRA, which replaced the ratings-based proviso with the current threshold of performance not rated unacceptable (Pub. L. No. 95-454, § 307(e), 92 Stat. 1111, 1149 (1978)).

Under OPM's prior regulations, retention registers were built in three tiers. Employees were sorted first into tenure groups: Group I for career employees not serving probation, Group II for career-conditional employees and employees serving probation, and Group III for employees serving indefinite, term, and similar nonstatus appointments. Within each group, employees were sorted into veterans' preference subgroups: AD for preference eligibles with a compensable service-connected disability of 30 percent or more, A for other preference eligibles, and B for everyone else (5 C.F.R. § 351.501(a)-(c) (2025)). Within each subgroup, employees were ranked by service computation date, advanced by additional service credit of 20, 16, or 12 years for each rating at Level 5, 4, or 3, averaged over up to three ratings (91 Fed. Reg. at 10,911-12). Performance therefore mattered only among employees in the same tenure group and

subgroup, and preference decided every comparison between a veteran and a nonveteran in the same tenure group.

2.2 What the Final Rule Changes

OPM proposed a change narrower in scope in December 2020. It would have ranked employees within each tenure group by the total of their three most recent ratings of record and used veterans' preference only to order employees with equal totals, which would have placed preference below performance more completely than the 2026 rule does. OPM never finalized that proposal and, in the final rule, rejected reissuing it as "too narrow" (85 Fed. Reg. at 81,839-40; 91 Fed. Reg. at 49,212). The 2026 rule changes the retention order in eight respects that bear on veterans.

Tenure groups are consolidated. Groups I, II, and III become a single competitive service tenure group and a single excepted service tenure group, listed on separate registers. The old distinction between career and career-conditional employees survives only as a tie-breaker, renamed tenure subgroups I and II (5 C.F.R. §§ 351.501-.502; 91 Fed. Reg. at 49,178, 49,220).

Performance comes first. Within each tenure group, employees are ranked by performance credit: 7, 5, 3, and 0 points for ratings at Level 5 (Outstanding), Level 4 (Exceeds Fully Successful), Level 3 (Fully Successful), and Level 1 or 2, summed over the three most recent ratings of record received in the four years before RIF notices issue, for a maximum of 21. Employees with no rating receive the modal rating; those with two ratings receive the average of the two as a proxy for the third; and those with one rating have it counted three times (5 C.F.R. § 351.503; 91 Fed. Reg. at 49,220-22).

Preference becomes points. Preference eligibles with a compensable service-connected disability of 30 percent or more receive 5 additional points, other preference eligibles receive 3, and nonpreference employees receive none. The labels AD, A, and B remain on the register for identification (5 C.F.R. § 351.504(a); 91 Fed. Reg. at 49,222).

Tenure and service become tie-breakers. Employees with equal combined scores are ordered by tenure subgroup and then by service computation date (5 C.F.R. § 351.501(c)).

Probationary employees no longer compete. Employees serving initial probationary or trial periods, temporary employees serving appointments of one year or less, and Schedule C and Schedule G

employees are not competing employees. Agencies may retain or release them without ranking them on a register, although employees released for RIF reasons must receive a modified RIF notice (91 Fed. Reg. at 49,178-79).

Displacement rights are narrowed. "Bump and retreat" rights give way to a single right of assignment to a position held by an employee with lower retention standing, generally within three grades, or five grades for certain preference eligibles with a disability rated at 30 percent or more. Assignment ordinarily requires passing a job-related skills assessment (91 Fed. Reg. at 49,178).

Whole-area abolitions bypass the register. When every position in a competitive area will be abolished within 180 days, agencies may release employees without a retention register or assignment rights. Rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA) apply as a mandatory exception (91 Fed. Reg. at 49,178-79).

Standing is fixed at notice. Retention standing is determined as of the date an employee receives a specific RIF notice rather than the date the RIF takes effect, and agencies may not reclassify positions for erosion of duties after announcing a RIF if doing so would lower an employee's standing (91 Fed. Reg. at 49,178-79).

Table 1 summarizes the principal differences between the prior and new regimes, including the appeals changes described in Section 2.3.

TABLE 1. RETENTION ORDER BEFORE AND AFTER SEPTEMBER 2, 2026

FEATURE	PRIOR RULES (RIFS NOTICED BEFORE SEPTEMBER 2, 2026)	FINAL RULE (RIFS NOTICED ON OR AFTER SEPTEMBER 2, 2026)
First sort	Tenure Groups I, II, and III	Competitive or excepted service tenure group, on separate registers
Veterans' preference	Subgroups AD, A, and B; every preference eligible ranks ahead of every nonpreference employee in the same tenure group	Points added to performance credit: 5 (30 percent or more disabled) or 3 (other preference eligibles)
Performance	Additional service credit of 12 to 20 years, averaged over up to three ratings, applied within subgroups	Primary ranking factor: 7, 5, 3, or 0 points per rating over three ratings, maximum 21

FEATURE	PRIOR RULES (RIFS NOTICED BEFORE SEPTEMBER 2, 2026)	FINAL RULE (RIFS NOTICED ON OR AFTER SEPTEMBER 2, 2026)
Tenure and length of service	Primary sort (tenure) and ranking within subgroups (service date)	Tie-breakers only: tenure subgroup, then service computation date
Probationary employees	Compete in Group II with preference subgroups	Excluded from competition
Displacement	Bump and retreat	Assignment within three grades (five for certain disabled veterans), subject to a skills assessment
Appeals	MSPB, then the Federal Circuit; grievance where a bargaining agreement allowed	OPM only; no grievance; no judicial review of OPM decisions; VEOA remedies preserved

Sources: 5 C.F.R. pt. 351 (2025); 91 Fed. Reg. at 49,178-79, 49,220-22, 49,230, 49,242-43.

2.3 The Companion Rules

Several related actions determine how the new order operates. The RIF appeals rule replaces the MSPB with OPM as the adjudicator of appeals from RIF separations, demotions, and furloughs of more than 30 days. It makes the OPM process exclusive, bars grievances and grievance arbitration over RIFs, and preserves only collateral claims before the Equal Employment Opportunity Commission, inspectors general, the MSPB, the Department of Labor's Veterans' Employment and Training Service (DOL VETS), and the Office of Special Counsel (91 Fed. Reg. at 49,230). OPM received 1,252 comments on that proposal and reported that 99 percent opposed it (91 Fed. Reg. at 49,230).

The performance appraisal rule authorizes OPM to establish a standardized distribution of rating levels that agencies must apply (5 C.F.R. § 430.208(c)). It limits agencies to three summary-level patterns: Pattern A (Levels 1 and 3), confined to seasonal employees, teachers, General Schedule grades 1 through 4, and Federal Wage System employees; Pattern B (Levels 1, 3, and 5); and Pattern C (Levels 1, 3, 4, and 5). None of the permitted patterns includes Level 2. The rule also removes the option to grieve a rating of record once existing bargaining agreements expire, and the revised regulations retain the bar on lowering a disabled veteran's rating because of absences for medical treatment under Executive Order 5396 (91 Fed. Reg. at 41,521, 41,531, 41,538). For fiscal year 2026, OPM capped the combined share of Level 4 and Level 5 ratings at 40 percent for career Senior Executive Service, senior professional, and General

Schedule employees, describing the cap as "a ceiling, not a target." Bargaining agreements that prohibit standardized distributions remain operative until they expire, and agencies may seek waivers in extraordinary circumstances (OPM 2026c, 2, 4, 7). Because ratings now drive retention, these performance management decisions shape RIF outcomes directly.

Three further rules complete the picture. A probationary appeals rule establishes OPM procedures for employees terminated during probationary or trial periods, the population the RIF rule removes from competition (91 Fed. Reg. at 49,072). An administrative leave rule, effective November 18, 2026, clarifies when agencies may place employees on administrative leave during a RIF notice period (91 Fed. Reg. at 65,924). The MSPB has conformed its own regulations by removing references to its former RIF jurisdiction, except for Foreign Service appeals under 22 U.S.C. § 4010a (91 Fed. Reg. at 51,997).

3. The Statutory Question

The central legal question is whether a fixed numerical credit, which a nonveteran with higher ratings can overcome, satisfies the command that a qualifying preference eligible "is entitled to be retained in preference to other competing employees" (5 U.S.C. § 3502(c)). OPM and its critics agree on the text and disagree about what it requires.

3.1 OPM's Reading

OPM's position, set out in the final rule, rests on four propositions.

"Due effect" is a balancing mandate. Section 3502(a) requires regulations that give due effect to four factors and prescribes no hierarchy among them. In upholding an earlier rule that gave performance more weight, the D.C. Circuit read the provision as delegating to OPM the weight given each factor (*Am. Fed'n of Gov't Emps. v. Off. of Pers. Mgmt.*, 821 F.2d 761, 764-65 (D.C. Cir. 1987) [hereinafter *AFGE v. OPM*]) and described that weighting as "a policy decision, not a technical question for which data can provide a mathematically 'correct' answer" (*id.* at 765; 91 Fed. Reg. at 49,180).

"In preference to" requires an advantage, not first place. OPM reads subsections (b) and (c) as "an entitlement to a meaningful retention preference, not a categorical right to be retained ahead of every non-veteran regardless of performance" (91 Fed. Reg. at 49,182). It notes that preference was never categorical across tenure groups: a Group II veteran could be released before a Group I nonveteran, and in 1977 Arch S. Ramsay, director of the Civil Service Commission's Bureau of Recruiting and Examining, testified that preference, while a significant advantage, "is not absolute" (91 Fed. Reg. at 49,182-83 (quoting CSRA Legislative History, at 789)).

Congress knows how to require absolute priority. Section 3313 directs that preference eligibles with a compensable service-connected disability of 10 percent or more be entered on hiring registers ahead of other candidates, except for certain scientific and professional positions (5 U.S.C. § 3313), and USERRA bars discharge of returning service members except for cause for defined periods (38 U.S.C. § 4316(c)). OPM reads the more general language of § 3502 against those provisions as a sign that Congress did not intend veterans always to appear first on a retention register (91 Fed. Reg. at 49,182).

Points are how Congress implements hiring preference. Section 3309 adds 5 or 10 points to the examination scores of preference eligibles. OPM calculates that the RIF credit spans 14.3 or 23.8 percent of the 21-point performance scale, compared with 5 or 10 percent of the 100-point examining scale, and concludes that the RIF preference is "materially stronger than hiring preference as a scoring weight" (91 Fed. Reg. at 49,181-83).

OPM also points out that the new order helps some veterans. Because career and career-conditional employees now compete in one group, a career-conditional veteran with strong ratings can outrank a nonveteran with longer career tenure, as in OPM's example of a 30 percent disabled veteran with three Outstanding ratings who is retained over a career nonveteran (91 Fed. Reg. at 49,183). OPM characterizes the rule as changing "the method of operationalizing preference, but not the underlying principle" (91 Fed. Reg. at 49,183).

3.2 The Critics' Reading

Three of the organizational comments reviewed developed the opposite textual argument: a joint comment from two unions and a comment from a lawyers' association at length, and the AFL-CIO more briefly (AFL-CIO 2026, 5). The American Federation of Government Employees (AFGE) and the American Federation of State, County and Municipal Employees (AFSCME) observed that retention preference "no longer hinges on the degree of a veteran's successful performance; it requires only that the veteran perform successfully" (AFGE and AFSCME 2026, 2). On that reading, the statute sets a single performance threshold, not rated unacceptable, and a scheme in which a higher-rated nonveteran overtakes a qualifying veteran conditions the entitlement on comparative performance in a way the text does not. The National Employment Lawyers Association (NELA) argued that the point system violates the statute and added that the rule fails the "due effect" mandate from the other side, because tenure of employment, reduced to a tie-breaker, becomes "a nullity" for most employees (NELA 2026, 1-2).

Veterans service organizations framed the issue in terms of statutory entitlement. Disabled American Veterans (DAV), in a comment signed by its National Service Director, opposed the proposal on three grounds: that it erodes veterans' preference, that it exceeds OPM's authority under § 3502, and that it is arbitrary and capricious under the Administrative Procedure Act (DAV 2026b, 2). DAV called preference "a substantive statutory entitlement" and objected that the proposal would let "marginal and inherently subjective differences in performance ratings" override it (DAV 2026b, 2). Its statutory argument rested

less on the threshold in § 3502(c) than on the "due effect" mandate, which it read as "a deliberate balance between objective measures of service and more subjective assessments of performance," one "ensuring that no single factor dominates." Subordinating tenure, length of service, and preference to ratings, DAV argued, would reduce preference to "a largely illusory consideration" (DAV 2026b, 2-3). DAV framed that argument under *Chevron*, which *Loper Bright* overruled in 2024, so a court would now decide the meaning of § 3502 for itself rather than ask only whether Congress spoke unambiguously (DAV 2026b, 3; see Section 3.4). DAV also argued that OPM had not shown the existing framework to be deficient or accounted for the reliance of federal employees, particularly veterans, on it, and it urged OPM to withdraw the proposal "in its entirety" (DAV 2026b, 3-4). Its National Commander, Coleman Nee, made the case publicly the next day, calling preference "a statutory safeguard" that "cannot be diminished through regulation" (DAV 2026a).

The Veterans of Foreign Wars (VFW) took a more measured position: it expressed support for modernizing the workforce but warned against converting preference into "a secondary, point-based consideration," describing preference as a protection "never intended to function as a marginal bonus," and it asked OPM to revise rather than withdraw the proposal (VFW 2026, 1-2). OPM answered both organizations. It listed DAV's comment among those arguing that the proposal conflicts with the statute and undermines preference, disagreed with both arguments, and called DAV's "largely illusory" contention "not accurate," citing examples in which a veteran with three Level 4 ratings outranks a nonveteran rated Level 5 on one or two of the three (91 Fed. Reg. at 49,179, 49,181-82). To reliance arguments of the kind DAV raised, OPM responded that the rule applies only prospectively, that employees have no "vested right to any particular retention formula," and that DoD's move to a performance-first system had undermined any reasonable expectation that RIF rules "would remain static" (91 Fed. Reg. at 49,210). It agreed with the VFW that preference "must remain meaningful and enforceable" (91 Fed. Reg. at 49,214).

3.3 The 1944 and 1978 Records

The strongest historical support for the critics' reading comes from *Hilton v. Sullivan*, 334 U.S. 323 (1948). Construing the 1944 proviso, the Court described its 1912 predecessor as "an absolute command" protecting veterans rated "good" (*id.* at 336), recounted that a member of the Civil Service Commission called the proviso the "heart of the section" (*id.* at 338), and concluded that "Congress passed the bill with

full knowledge that the long standing absolute retention preferences of veterans would be embodied in the Act" (*id.* at 339). The question presented concerned length of service, but the classification the Court sustained placed veterans rated "good" or better ahead of all nonveterans, "even over nonveterans with higher efficiency ratings and longer government service" (*id.* at 333). *Hilton* did not consider a scheme that weighs preference against ratings, so it does not decide the present question, but it shows that the operative phrase was understood in 1948 to protect qualifying veterans against higher-rated nonveterans. Among the comments reviewed, only an individual commenter cited *Hilton*, and for the meaning of "due effect" rather than for § 3502(c) (Clark 2026, 1). The final rule does not cite *Hilton*; the proposed rule cited it only for historical background (91 Fed. Reg. at 10,904).

The 1978 record shows Congress considering and rejecting limits on that preference. The House Committee on Post Office and Civil Service described existing law as one under which "all preference eligibles are retained within their competitive group during a reduction in force until all nonpreference eligibles have been displaced," and it amended the bill to limit retention preference for most veterans to the first eight years after their initial federal appointment (H.R. Rep. No. 95-1403, at 8-9, 24 (1978), reprinted in CSRA Legislative History, at 645-46, 661). Five committee members filed additional views opposing "any dilution of veterans' preference" (CSRA Legislative History, at 788-91). On the House floor, the Committee of the Whole adopted, 281 to 88, amendments offered by Representative James M. Hanley of New York that had the effect of retaining existing veterans' preference standards, and the House agreed to them two days later, 327 to 70, on a separate vote (124 Cong. Rec. H9401 (daily ed. Sept. 11, 1978); 124 Cong. Rec. H9669 (daily ed. Sept. 13, 1978)). In the Senate, the Committee on Governmental Affairs rejected, by a vote of 9 to 7, an amendment by Senators Jacob K. Javits of New York and Thomas F. Eagleton of Missouri that would have narrowed preference, chiefly in hiring, and approved a study instead (S. Rep. No. 95-969, at 117-19 (1978), reprinted in 1978 U.S.C.C.A.N. 2723, 2846-49). The enacted statute imposed no time limit. It rewrote § 3502(b), added § 3502(c), and kept the operative phrase "retained in preference to" (§ 307(e), 92 Stat. at 1149).

The textual history also bears on the comparative-performance question. The 1944 proviso made preference depend on comparative performance for veterans rated below "good," who were protected only against nonveterans with equal or lower ratings (58 Stat. at 390), and in 1978 Congress replaced that two-tier structure with a single floor. AFGE and AFSCME read that history as establishing that preference "no longer hinges on the degree of a veteran's successful performance" (AFGE and AFSCME

2026, 2). OPM can answer that the same Congress left the "due effect" weighting of performance to the agency and accepted a tenure-group structure under which preference was not absolute in practice: in fiscal year 1976, according to the testimony OPM quotes, 1,800 veterans were separated by RIF alongside 3,000 nonveterans (91 Fed. Reg. at 49,182-83). That testimony appears in the additional views of the members who opposed any dilution of preference, who cited it to show that preference was already limited in practice (CSRA Legislative History, at 789). The modern text also omits the word "all" from the 1944 phrase "all other competing employees," a change the rulemaking record reviewed for this report does not discuss. The record indicates that Congress in 1978 understood retention preference to operate categorically within tenure groups and rejected the principal proposals to weaken it. It does not settle whether a point credit that higher-rated nonveterans can overcome is still retention "in preference to" them.

3.4 Deference, Reviewability, and Forum

Loper Bright Enterprises v. Raimondo overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and held that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" (603 U.S. 369, 412 (2024)). The Court also recognized that some statutes delegate discretion, including those that use terms such as "appropriate" or "reasonable" (*id.* at 394-95). That distinction splits § 3502. The "due effect" language of subsection (a) plausibly delegates to OPM the weighting of tenure, length of service, and performance against one another, which is how the D.C. Circuit read it in 1987 (*AFGE v. OPM*, 821 F.2d at 764-65). Subsections (b) and (c), by contrast, confer individual entitlements in mandatory terms, which a court would construe for itself. On this reading, OPM's discretion over how tenure, length of service, and performance are weighted is broad, while its discretion over whether qualifying veterans are retained "in preference to" others is not.

Where the question can be heard is a separate problem. The appeals rule provides that "a party cannot obtain judicial review" of OPM's RIF appeal decisions (5 C.F.R. § 351.901(c)(4); 91 Fed. Reg. at 49,242, 49,248). OPM's rationale rests on the CSRA's comprehensive remedial scheme, which in its view provides no judicial review for non-Senior Executive Service RIFs, and on decisions channeling federal employment disputes away from district courts, including *United States v. Fausto*, 484 U.S. 439, 443, 448 (1988), which read the CSRA's omission of review for certain employees as "a considered congressional

judgment," and *Elgin v. Department of the Treasury*, 567 U.S. 1, 5-6 (2012) (see 91 Fed. Reg. at 49,242-43). OPM also defends the new forum as one that reduces "delay, fragmentation, and unnecessary litigation burden" and lets it "bring its subject-matter expertise in part 351 directly to bear" (91 Fed. Reg. at 49,230, 49,236). Critics, including 13 senators who wrote to OPM about the appeals proposal, argue that combining policymaking and adjudication in one agency undoes the separation Congress built into the CSRA (Van Hollen et al. 2026).

Challengers could invoke the inquiry, under *Thunder Basin Coal Co. v. Reich*, into whether channeling would "foreclose all meaningful judicial review" (510 U.S. 200, 212-13 (1994); *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 186 (2023)), arguing that with the MSPB removed from the RIF path no comparable review remains. That argument faces two obstacles. *Fausto* treats the absence of review as a deliberate congressional choice, and in May 2026 the Supreme Court reversed, on party-presentation grounds, a Fourth Circuit decision that had questioned whether the CSRA still channels claims to the MSPB given changed conditions there; two Justices added that "[c]onditions may have changed, but the statute has not" (*Margolin v. Nat'l Ass'n of Immigr. Judges*, 608 U.S. 339, 340, 343 (2026) (per curiam); *id.* at 345 (Thomas, J., concurring) (quoting *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 547 (1943))). The 1987 *AFGE v. OPM* litigation, a facial challenge to an earlier RIF rule decided on the merits, predates *Fausto* and does not resolve the point.

For preference eligibles, the VEOA provides a separate path. A preference eligible who alleges a violation of "any statute or regulation relating to veterans' preference" may file a complaint with DOL VETS within 60 days, pursue the claim before the MSPB, and, if the Board has not issued a judicially reviewable decision within 120 days, elect to proceed in federal district court (5 U.S.C. §§ 3330a(a), 3330b). The appeals rule expressly preserves those routes (91 Fed. Reg. at 49,243). The VEOA is therefore the likeliest vehicle for an individual veteran to argue that a RIF conducted under the new rule violated § 3502(c). Whether the MSPB or a reviewing court will entertain an argument that the regulation itself conflicts with the statute, as distinct from a claim that an agency misapplied it, is an open question that this report flags rather than resolves.

4. How the Point Credit Works in Practice

4.1 The Arithmetic of the Credit

Under Pattern C, adjacent rating levels from Fully Successful to Outstanding differ by 2 points per rating. For employees rated Fully Successful or better, three-rating scores run from 9 points (three Fully Successful ratings) to 21 (three Outstanding ratings). The 3-point credit thus equals one and a half single-rating steps, and the 5-point credit equals two and a half, which is the basis for OPM's statement that the smaller credit is "larger than one ordinary one-level rating difference" (91 Fed. Reg. at 49,182). A one-level difference sustained across all three ratings, however, is worth 6 points, more than either credit. A 30 percent disabled veteran with three Fully Successful ratings scores 14 and ranks below a nonveteran with three Exceeds Fully Successful ratings, who scores 15. A veteran with the 3-point credit and three Exceeds Fully Successful ratings scores 18 and ranks below a nonveteran with three Outstanding ratings.

OPM's responses to commenters confirm that the formula can rank a nonveteran above a veteran as well as the reverse. Responding to the National Treasury Employees Union (NTEU), OPM acknowledged that a nonveteran with three Level 5 ratings may rank above a disabled veteran with three Level 3 ratings and said the example "does not show that veterans' preference has been erased." Responding to AFGE and AFSCME, it accepted that a nonveteran with three Level 5 ratings and four years of service outranks a veteran with the 3-point credit, ratings at Levels 4, 4, and 5, and 40 years of service, calling that outcome "a feature of a system designed to give meaningful effect to both veterans' preference and performance" (91 Fed. Reg. at 49,183).

The formula also leaves room for agency discretion that operates before preference is added. In a competitive area where all employees are rated under Pattern A (pass-fail), every acceptable employee scores 9 and the veterans' credit would ordinarily decide the order, but an agency may, in its "sole and exclusive discretion," assign additional points for quality step increases, special act awards, time-off awards, and similar recognition (5 C.F.R. § 351.503(d)). Where employees were rated under different patterns, an agency may transmute ratings upward on the basis of documented awards (§ 351.503(e)). Agencies must specify these criteria in advance, but the regulation sets no maximum on the additional points (91 Fed. Reg. at 49,221-22). Under Pattern B, which has no Level 4, a single step from Fully Successful to Outstanding is worth 4 points, more than the 3-point credit. A single rating counted three

times can also produce the maximum score, so an employee with one Outstanding rating in the four-year window receives 21 points (§ 351.503(f)(3)).

4.2 Illustrative Scenarios

To show how the value of the credit depends on the distribution of ratings, ARA modeled four distributions (Table 2). Scenario A approximates the compressed distributions documented before the cap: GAO found that about 61 percent of permanent non-Senior Executive Service employees received one of the top two ratings in 2013, as the Senior Executives Association (SEA) summarized in its comment (SEA 2026, 2), and, by ARA's calculation from the ratings table in the Department of Labor's comment, 75 to 79 percent of its rated employees received Level 4 or Level 5 ratings in fiscal years 2022 through 2025 (DOL 2026, 4). Scenario B places the fiscal year 2026 cap at its ceiling. Scenario C assumes a tighter distribution, and Scenario D a three-level Pattern B system. The model assumes that each employee's three ratings are drawn independently from the stated distribution, that veterans and nonveterans share the same distribution, that all competitors are in the same tenure group and competitive level, and that 1 percent of ratings are Level 1. The "typical" comparison pairs a randomly selected veteran with a randomly selected nonveteran. ARA found no public data on rating distributions by veteran status, so the shared-distribution assumption is a simplification rather than an estimate.

TABLE 2. ILLUSTRATIVE VALUE OF THE VETERANS' CREDIT UNDER FOUR RATING DISTRIBUTIONS

Scenario (levels 5 / 4 / 3)	Veteran with three Fully Successful ratings: share of nonveterans outranked, with 3 / 5 points	Typical veteran against typical nonveteran: chance of ranking ahead, with 3 / 5 points
A. Compressed, before the cap (30 / 30 / 39 percent)	22 percent / 47 percent	76 percent / 88 percent
B. Cap at its ceiling (15 / 25 / 59 percent)	49 percent / 76 percent	79 percent / 91 percent
C. Tight distribution (7 / 13 / 79 percent)	77 percent / 94 percent	84 percent / 95 percent
D. Pattern B (20 / none / 79 percent)	52 percent / 90 percent	70 percent / 94 percent
Prior rules, any distribution	100 percent / 100 percent	100 percent / 100 percent

Source: ARA calculations under the assumptions stated in the text, using the point values in 5 C.F.R. §§ 351.503(a), 351.504(a). Outcomes under the prior rules assume both employees are in the same tenure group. Ties, which occur in about 1 percent of comparisons or fewer, are counted as not ranking ahead.

Three patterns emerge. First, under every distribution a substantial share of veterans with acceptable records rank below some nonveterans, an outcome that could not occur within a tenure group under the prior rules. Second, under Pattern C the credit counts for most when ratings cluster at Fully Successful and for least when they spread across the top levels. With no credit at all, a typical veteran would rank ahead of a typical nonveteran about half the time once ties are split; the 3-point credit raises that to 76 percent in Scenario A and 84 percent in Scenario C. For Pattern C agencies, OPM's standardized distribution and cap therefore raise the practical value of preference, other things equal, by compressing ratings toward Level 3. Pattern B is the exception: because a single step from Fully Successful to Outstanding is worth 4 points, the 3-point credit gives a typical veteran the lowest chance of ranking ahead in Scenario D (70 percent), even though most ratings there are Fully Successful. Third, the results are sensitive to how persistent ratings are. If employees receive the same rating every year, a Fully Successful veteran never outranks a nonveteran with consistent Level 4 ratings, whatever the disability

credit, and the share of nonveterans outranked becomes the share rated Level 3 or below for either credit: 40 percent in Scenario A, 60 percent in B, and 80 percent in C and D. Those figures are higher than the independent-draw results for the 3-point credit and lower for the 5-point credit.

Timing matters as well. Because the formula draws on the three most recent ratings from a four-year window, RIFs conducted in 2026 through 2028 will rely partly on ratings issued before the cap took effect. For those RIFs, Scenario A is the closest benchmark, and it is the scenario in which the credit protects Fully Successful veterans least.

4.3 Who Is Affected

OPM reported 621,751 veterans in the executive branch workforce in fiscal year 2024, 27.4 percent of 2,267,091 employees. Of these veterans, 545,352 had preference and 262,385 had a compensable service-connected disability of 30 percent or more, equal to 11.6 percent of all employees and 42.2 percent of veterans (OPM 2026b, 4). The rule does not affect these employees uniformly.

Veterans at DoD. DoD employed 314,311 veterans, 43.0 percent of its workforce and about half of all veterans in the executive branch (OPM 2026b, 5). Under authority in 10 U.S.C. § 1597, DoD has ranked employees since January 2017 by rating of record, tenure group, average score, veterans' preference, and service computation date, in that order (DoD 2021, paras. 1.2.a, 3.3.c, 3.4; 91 Fed. Reg. at 49,188). Preference at DoD already functions mainly as a tie-breaker after ratings, so the government-wide rule gives preference more weight than the DoD system that OPM cites as precedent. The change in method falls chiefly on the roughly 307,000 veterans outside DoD, although DoD will need to reconcile its instruction with the revised part 351.

Veterans at VA. The Department of Veterans Affairs (VA) employed 122,094 veterans in fiscal year 2024, more than any agency other than DoD and about two-fifths of the veterans outside DoD. Veterans made up 25.3 percent of VA's workforce, below the executive branch average of 27.4 percent but above the 20.0 percent average for agencies outside DoD, by ARA's calculation from the same data (OPM 2026b, 4-5). DAV warned that the rule would have "a disproportionate and destabilizing effect" on this workforce, which delivers benefits and health care to disabled veterans (DAV 2026b, 4).

Probationary veterans. Agencies hired 56,318 veterans in fiscal year 2024, about 22 percent of 256,684 new hires; 47,634 of them had preference, and 29,064 had a disability rating of 30 percent or more (OPM

2026b, i, 6). Under the prior rules, a veteran serving probation competed in Group II with preference. Under the new rule, the same veteran is not a competing employee and may be retained or released without regard to the retention order. OPM grounds the exclusion partly in section 14 of the 1944 Act, which conditioned adverse-action protections on completion of probation (91 Fed. Reg. at 49,192). The Partnership for Public Service supports the exclusion because probationers "are almost always the first to be removed" under the old order and agencies can now keep them outside the RIF process (Partnership for Public Service 2026a, 4). Whether the change helps or hurts a given veteran depends on how the agency uses that discretion.

Career-conditional veterans. Veterans who have completed probation but not the three years of service needed for career tenure can gain under the new rule (5 C.F.R. § 315.201 (2025)). They no longer sit below every career nonveteran and can outrank one with weaker ratings (91 Fed. Reg. at 49,183). Given the share of veterans among recent hires, this group is substantial.

Long-serving veterans. Among veterans who still compete, those with long federal careers lose the most, because length of service, which compounded their preference under the prior rules, is now only a tie-breaker. The VFW identified this group as bearing the practical cost of the change (VFW 2026, 1), and DAV objected that a veteran with "substantially greater tenure and length of service" could be displaced on "minimal rating differentials" (DAV 2026b, 2).

Disabled veterans. Preference eligibles with a disability of 30 percent or more receive the larger credit and assignment rights reaching five grades rather than three, and the appraisal regulations continue to bar lowering their ratings because of absences for medical treatment (91 Fed. Reg. at 41,538, 49,178). As the scenarios show, the larger credit narrows but does not close the gap created by a sustained difference in ratings.

4.4 The Historical Baseline

Evidence from earlier RIFs indicates how much the categorical preference mattered. GAO found that at three military installations in fiscal year 1991, employees without veterans' preference were about two to seven times as likely to lose their jobs as employees with it, and that in the U.S. Geological Survey's 1995 RIF, employees without preference were four times as likely to lose their jobs, even though preference eligibles were just as likely to be affected in some way (GAO 1998, 1). In earlier work on RIFs at three DoD installations, GAO found that women and minorities were disproportionately

separated, in part because they ranked lower on retention factors, including veterans' preference (GAO 1996, 2). The 1978 House committee voiced a parallel concern when it proposed time limits on preference (H.R. Rep. No. 95-1403, at 8-9). These findings frame the distributional trade-off. The categorical preference protected veterans substantially and shifted RIF losses toward nonveterans. A weighted preference spreads losses more evenly across veteran status while making outcomes depend more heavily on the accuracy and consistency of performance ratings, the concern SEA pressed when it argued that, given rating inflation, current ratings do not "reliably distinguish between genuinely outstanding and genuinely satisfactory performance" (SEA 2026, 2).

5. Stakeholders, Congress, Courts, and Implementation

5.1 The Comment Record

OPM received 721 unique comments on the proposed rule from employees, agencies, unions, veterans' groups, professional organizations, and think tanks (91 Fed. Reg. at 49,179). The comments reviewed for this report divide largely, though not uniformly, by constituency.

Veterans service organizations. DAV argued that the proposal violates § 3502 and the Administrative Procedure Act and urged withdrawal (DAV 2026b, 2-4). The VFW criticized it while endorsing modernization and asked for revisions that would keep preference "meaningful and enforceable" (VFW 2026, 2).

Unions and employee advocates. NTEU urged OPM to withdraw the proposal (NTEU 2026, 1). The AFL-CIO argued that it "weakens protections for veterans" and conflicts with § 3502(b) and (c) (AFL-CIO 2026, 1, 5). AFGE and AFSCME, in a joint comment, and NELA contended that it violates § 3502 (AFGE and AFSCME 2026, 2; NELA 2026, 1-2), and Civil Service Strong, with Democracy Forward, objected that it would "convert veterans' preference into a small numerical add-on" (Civil Service Strong and Democracy Forward 2026, 1).

Management and good-government organizations. Under the heading "The Right Principle, the Wrong Sequence," SEA endorsed the principle that performance should matter but disputed the assumption that current ratings are "adequate to bear this weight," citing GAO's finding that about 99 percent of employees were rated at or above Fully Successful in 2013 (SEA 2026, 1-2). The Partnership for Public Service supported placing performance first "if performance management is also done well" (Partnership for Public Service 2026a, 3).

Supporters. FGA Action argued that performance has been "systematically underweighted" in RIFs (FGA Action 2026, 2). The Niskanen Center argued that the old order creates an "adverse selection" problem by releasing newer employees with the most marketable skills first, and it conditioned its support on two recommendations to prevent manipulation of competitive areas (Niskanen Center 2026, 4-5). The Office of Special Counsel supported the proposal as more closely aligned with the merit system principles (91 Fed. Reg. at 49,184; Baldis 2026).

Agencies. The Department of Agriculture and the Department of Labor supported the proposal as a way to retain high performers (USDA 2026, 1; DOL 2026, 4). The Department of Labor's position bears on implementation because its Veterans' Employment and Training Service investigates VEOA complaints.

OPM addressed the rating-quality concern by pointing to the performance appraisal rule, which it described as tackling rating inflation "head-on," and it declined to delay the RIF rule until appraisal reforms mature (91 Fed. Reg. at 49,184, 49,190).

5.2 Congressional Activity

Congressional activity in the record reviewed has taken the form of oversight letters and appropriations amendments rather than authorizing legislation. In March 2025, 12 senators led by Brian Schatz and Mark Kelly asked OPM to account for the number of veterans separated in that year's workforce reductions (Schatz 2025). In March 2026, 13 senators urged OPM to reject the RIF appeals proposal (91 Fed. Reg. 5861; Van Hollen et al. 2026). Among the amendments submitted to the House Rules Committee for the fiscal year 2027 Military Construction and Veterans Affairs appropriations bill, H.R. 8469, was one that would bar the Department of Veterans Affairs from using funds to alter or eliminate veterans' preference policies in hiring, retention, or promotion; the record reviewed does not show that it was made in order (House Committee on Rules 2026). The congressional materials reviewed come from members of the minority caucus in each chamber, and ARA did not identify formal congressional statements supporting the rule, although supporters' views are well represented in the comment record. The sources reviewed identify no enacted legislation amending § 3502 since the rule took effect.

5.3 Litigation and Implementation

The rule arrives after more than a year and a half of litigation over federal workforce reductions. In July 2025, the Supreme Court stayed a district court injunction that had barred further implementation or approval of agency RIF and reorganization plans under Executive Order 14210 (*Trump v. Am. Fed'n of Gov't Emps.*, 606 U.S. 960 (2025) (order granting stay)). In August 2026, unions sued OPM over its suitability and performance appraisal rules, arguing among other things that through the suitability rule OPM "has granted itself plenary and, in its view, unreviewable authority to fire employees across the government" (Wagner 2026). That suit does not challenge the RIF rule, but its outcome matters for veterans because ratings issued under the challenged appraisal rule now determine retention standing. In

September 2026, the administration settled union litigation over RIFs conducted during the 2025 government shutdown. It agreed to notify agencies that guidance treating RIFs as a shutdown-exempt activity had been rescinded and to instruct them to remove RIF authority from their shutdown plans; the notices issued during the shutdown had already been rescinded (Heckman 2026).

Implementation began immediately. OPM's September 2 memorandum summarized the changes for agencies, including the requirement that a competitive area established or materially modified within 90 days before notices issue receive OPM approval (OPM 2026a, 1; FEDweek 2026). OPM estimated first-year implementation costs of $43,128 per agency, or $3.45 million across 80 agencies, and noted that a RIF can take as long as 14 months from planning to completion under the old rules (91 Fed. Reg. at 49,207, 49,209). Practitioner commentary has emphasized the practical consequence for veterans: under the new order, performance "now outranks" preference (Helixon 2026).

6. Policy Options

The options below are organized by the institution that would act. ARA does not recommend among them. Each entry states what the option would do and the principal considerations its supporters and opponents would raise (Table 3).

TABLE 3. POLICY OPTIONS AND PRINCIPAL CONSIDERATIONS

OPTION	WHAT IT WOULD DO	CONSIDERATIONS
Congress: restore the subgroup order	Amend § 3502 to require that qualifying preference eligibles rank ahead of nonpreference employees in the same tenure group before performance is considered.	Removes the legal question and restores predictability for veterans; reduces the weight of performance that agencies such as the Department of Labor and the Department of Agriculture say they need, and revives the distributional effects GAO documented.
Congress: codify a weighted preference	Ratify a point-based method in statute and fix the size of the credit, for example so that it offsets a sustained one-level rating difference.	Settles legality while keeping performance first; requires Congress to choose a number, and the credit's value would still vary with rating distributions unless the statute addresses them.
Congress: restore independent review	Return RIF appeals to the MSPB with judicial review, or provide judicial review of OPM decisions.	Responds to the forum concerns raised by senators and by most commenters on the appeals rule; OPM argues that its process reduces delay and brings its RIF expertise to bear (91 Fed. Reg. at 49,230, 49,236), and supporters could add that further review would lengthen RIF disputes.
OPM: stabilize the credit	Scale the credit to the spread of scores in a competitive area, or exclude ratings issued before the distribution caps.	Keeps the value of preference consistent across agencies and years; adds complexity and would likely require new rulemaking.
OPM: address probationary veterans	Restore competition rights for preference eligibles serving probation, or require agencies to follow the retention order when they release probationers for RIF reasons.	Protects preference-eligible new hires (47,634 in fiscal year 2024) during probation; reduces the flexibility OPM sought and that the Partnership for Public Service views as protecting new hires.

OPTION	WHAT IT WOULD DO	CONSIDERATIONS
OPM and agencies: report outcomes	Publish RIF results by preference status, disability rating, and rating level, and report use of discretionary award credits under § 351.503(d)-(e).	Allows the rule's effects to be evaluated at little cost; outcome data cannot by themselves show whether ratings were accurate.
Congress or GAO: independent evaluation	Congress could request, or GAO could initiate, a review of the first RIFs under the rule, including effects by veteran status, disability rating, sex, and race or ethnicity.	Provides independent evidence comparable to GAO's 1990s work; results would arrive after early RIFs are complete.

Source: ARA analysis of the options discussed in the rulemaking record and the sources cited in Sections 3 through 5.

7. Conclusion and Monitoring Indicators

The 2026 rule keeps veterans' preference as a defined credit but changes its character. A preference that once settled every comparison between a veteran and a nonveteran in the same tenure group now competes with performance on a 21-point scale, and its practical strength depends on rating distributions that OPM and agencies control through separate decisions. Whether that change is lawful turns on a contested reading of § 3502(c). The 1944 text, *Hilton*, and the 1978 record support the critics; the "due effect" mandate as the D.C. Circuit read it in 1987, the tenure-group precedent, and the hiring analogy support OPM. The question will be decided, if at all, in a narrowed set of forums, with the VEOA the clearest remaining path for individual veterans. The effects are concentrated outside DoD and among probationary and long-serving veterans, while career-conditional veterans may gain.

ARA will track the indicators below; movement on any of them would prompt an update to this analysis:

Litigation over the rule. A facial challenge to 91 Fed. Reg. 49,178 or the appeals rule, or a VEOA appeal raising § 3502(c), would test the central legal question and the reach of the bar on judicial review.

Rating distributions. OPM's fiscal year 2026 results, the cap it sets for fiscal year 2027, and agencies' choice of summary patterns by January 1, 2027, will set the practical value of the credit, as Section 4 shows.

RIF volume and composition. The number of RIF notices issued under the rule and any data on separations by preference status would show whether the modeled effects appear in practice.

DoD alignment. Whether DoD revises its instruction to conform to the new part 351 or keeps its own order under 10 U.S.C. § 1597 will determine how the roughly 314,000 veterans who work at DoD are ranked.

Congressional action. Appropriations riders or authorizing legislation addressing retention preference or RIF appeal rights would change the legal baseline.

OPM appeal decisions. The first OPM decisions in RIF appeals brought by preference eligibles will show how OPM applies § 3502(c) under its own rule.

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This report provides general information only and does not constitute legal advice. All statements of legal and regulatory status are current as of November 1, 2026, and are subject to the developments identified in Section 7.

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