AFGE LOCAL 252

REPRESENTING U.S. DEPARTMENT OF EDUCATION EMPLOYEES

March 12, 2026

Comments Submitted to the Office of Personnel Management via Federal Rulemaking Portal Regarding Reduction in Force Appeals, Docket No. OPM-2025-0239-0001 (Feb. 10, 2026)

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AFGE Local 252 represents bargaining unit employees at the U.S. Department of Education (Department). We submit this comment in strong opposition to the proposed rule captioned above. Under the current collective bargaining agreement (CBA) between AFGE Local 252 and the Department, bargaining unit employees may appeal a reduction-in-force (RIF) action via the negotiated grievance procedures outlined in Article 42 of the CBA.[1] Under the negotiated grievance procedures outlined in Article 42 of the CBA, If the Union is dissatisfied with the decision in the grievance procedure, the Union may refer the matter to arbitration.[2] The procedures for arbitration include the designation of a neutral arbitrator to hear and the dispute and the ability of each party to secure witnesses. The proposed rule would remove those substantive, negotiated legal rights for our bargaining unit employees and instead designate OPM as the sole and exclusive forum for appeals of RIF actions. As explained below, AFGE Local 252 has serious concerns with the proposed rule.

The Proposed Rule Would Remove Employees' Due Process Rights

The grievance procedures and arbitration procedures in the CBA provide the Department's bargaining unit employees with meaningful due process rights that would be decimated by the proposed rule. Federal employees who can be separated only for cause possess a constitutionally protected property interest in continued employment.[3] Once a property interest exists, the Constitution—not the agency—determines what process is due. The *Loudermill* Court explicitly rejected the argument that the legislature (or, by extension, the executive) that created the property interest can define the procedures for its deprivation.

OPM's preamble attempts to distinguish RIFs from adverse actions, arguing that because RIFs target positions rather than individuals, the due process calculus is different. But this is a distinction without a difference from the affected employee's perspective. A federal employee

[1] *See* CBA Section 42.04 (January 17, 2025), https://afge252ed.org/wp-content/uploads/2025/01/cba-term-agreement-20250116.pdf.
[2] *See,* CBA, Section 42.11.
[3] *See Cleveland Board of Education v. Loudermill,* 470 U.S. 532 (1985).

who loses their job through a RIF suffers the identical deprivation of livelihood and property interest as one removed for cause. The mechanism by which the government chooses to eliminate someone's employment does not diminish the magnitude of the deprivation. Under the *Mathews v. Eldridge* balancing test, three factors are considered: the private interest at stake, the risk of erroneous deprivation through current procedures versus proposed alternatives, and the government's interest in efficiency.[4] Here, the private interest—loss of employment, income, benefits, and career—is among the most significant interests a person can have. The risk of erroneous deprivation is dramatically increased by this rule: RIF disputes routinely involve contested factual questions about competitive area definitions, competitive levels, retention standings, performance rating accuracy, bump and retreat rights, and whether the agency properly applied veterans' preference. These are precisely the kinds of disputes that require testimony and presentation of arguments before a neutral arbitrator—not paper review by the same agency that wrote the rules being applied. And as the *Loudermill* Court noted, the government's interest in avoiding the procedural requirements of due process is, by itself, of "minimal" weight.

The D.C. Circuit in *AFGE v. OPM* explicitly left open the question of whether due process requires a hearing in RIF appeals.[5] It did not hold that no hearing is required; it held the question was not ripe. This proposed rule would ripen that question immediately upon finalization, and the answer—under *Loudermill*, *Mathews*, and decades of subsequent due process jurisprudence—is that some meaningful opportunity to be heard is constitutionally required before the government can deprive a person of her livelihood.

Removing the right of bargaining unit employees at the Department to appeal RIF actions via the negotiated grievance and arbitration procedures raises serious due process concerns. Employees facing a RIF action should retain access to independent adjudication and meaningful review.

<u>The Proposed Rule Would Create a Serious Conflict of Interest</u>

OPM is responsible for promulgating the regulations governing RIF procedures at 5 CFR Part 351; issuing guidance to agencies on how to conduct RIFs through its Workforce Policy and Innovation office; and providing operational RIF support to agencies on a reimbursable basis, as the preamble acknowledges.[6] In the past year OPM has also directed the mass RIFs under Executive Order 14210 and related executive orders and played a key role in executing these RIFs. For example, in recent federal agency RIFs, including RIFs at the Department of Education, OPM has approved shortened time periods for noticing changes to competitive areas. OPM also approves shorted timeframes for notices of the RIFs for some agencies. The proposed rule would create a conflict of interest by giving OPM the authority to sit in judgment of whether

[4] *See Mathews v. Eldridge,* 424 U.S. 319 (1976)
[5] *See AFGE v. OPM*, 821 F.2d 761 (D.C. Cir. 1987).
[6] *See* 91 FR 5871.

federal agencies followed OPM's own rules when executing a RIF that OPM itself played a role in executing and facilitating. OPM would now judge whether its own rules were followed in the RIFs it directed. The conflict could not be more apparent.

The proposed rule's own internal logic exposes this problem. Proposed § 351.905(b) provides that when OPM's own employees face RIFs, an administrative law judge will adjudicate the appeal, and OPM will not disturb the ALJ's decision except for harmful procedural irregularity or clear error of law. OPM apparently recognizes that it cannot fairly judge its own employees' RIF appeals. But this recognition is fatally underinclusive. OPM also plays a key role in RIFs conducted by other federal agencies and provides operational RIF support to agencies on a reimbursable basis. OPM's institutional interest in sustaining agency RIF actions extends far beyond appeals by OPM's own employees. If the conflict of interest is real enough to require an ALJ for OPM employees, it is real enough to require independent adjudication for all federal employees.

The Proposed Rule Would Interferes with Employees' Collectively Bargained Rights

Proposed § 351.901(c) declares the OPM appeal process to be the "sole and exclusive means of appealing any reduction-in-force action" and provides that these procedures "shall supersede any appeal procedures found in agency policies or collective bargaining agreements."[7] The preamble states this language is "intended to preclude appeals filed pursuant to internal agency policies or collective bargaining agreements, whether filed by individual employees or by unions on behalf of their members."

OPM invokes 5 U.S.C. § 7117(a)(1), which provides that the duty to bargain does not extend to matters inconsistent with a "Government-wide rule or regulation." But this provision limits the scope of bargaining—it does not authorize OPM to strip employees of existing negotiated grievance procedure rights and arbitration rights mid-contract. Collective bargaining agreements are binding contracts. The Federal Service Labor-Management Relations Statute protects the right of employees to negotiate grievance procedures, and those procedures become enforceable contractual terms. OPM's attempt to override these agreements by regulation raises serious questions under the FSLMRS, particularly where, as here, the regulation's primary purpose is not to establish substantive workforce policy but to eliminate an independent adjudicatory pathway.

The Proposed Rule's Cost and Benefit Analysis is Misleading

The proposed rule's regulatory impact analysis estimates annual savings of $6.1 million by transferring appeals from MSPB to OPM. This figure is derived from assumptions that are internally inconsistent and ignore significant costs.

[7] 91 FR 5868.

OPM estimates that only 292 employees per year will file RIF appeals, based on a thirty-year historical average. But OPM simultaneously acknowledges that the Trump Administration oversaw 317,000 departures in 2025 alone, calling it the largest peacetime reduction in history.[8] In addition, the MSPB reported in May 2025 that it had received over 10,600 appeals in the year prior and that it also "anticipated [a] wave of appeals resulting from Governmentwide reductions in force (RIFs)."[9] OPM declares that this number is "anomalous," but without any justification. In fact, if the number of appeals is anticipated to remain so low, it is hard to make sense of OPM's claims that the appeals process is extraordinarily burdensome. OPM excludes 2025 data as "anomalous" while publishing a rule designed to facilitate precisely the kind of large-scale RIFs that made 2025 anomalous. If the stated purpose of the rule is to make RIFs easier to conduct, using historical data from an era when RIFs were rarely used grossly understates the expected volume of appeals under the new regime.

The analysis also fails to account for the cost of erroneous deprivations. When an independent adjudicator with full hearing and discovery authority finds that a RIF was improperly conducted, the employee is made whole, and the agency learns from its mistake. When a paper-review process controlled by OPM signs off on improper RIFs, the costs are borne by the employee who lost their job, and by the public, which loses a career civil servant whose rights were violated. These costs are real, even if they do not appear in OPM's spreadsheet.

Conclusion

If OPM believes the current RIF appeals process is too slow or cumbersome, the appropriate remedy is to work with Congress to reform MSPB's procedures, adequately fund and staff MSPB, or seek legislative authority for a streamlined process that preserves independent adjudication and judicial review and respects the federal employees' collectively bargained rights. The inappropriate remedy is for OPM to appoint itself to judge its own RIF regulations and procedures.

We look forward to participating in this conversation going forward and offering feedback on OPM's proposed. Please contact Rachel Gittleman (afge252ed@gmail.com) with any questions.

[8] *See* 91 FR 5866.
[9] MSPB Annual performance Plan for FY2025-2026, https://www.mspb.gov/about/annual_reports/MSPB_APP_for_FY_2025_2026.pdf.