CIVIL SERVICE STRONG POWERED BY DEMOCRACY FORWARD

**Civil Service Strong – Rulemaking Comment Guide**

**OPM's Proposed Rule on Reduction in Force Appeals**

Comment deadline: **March 12, 2026**[1]

This document is designed to support partners in commenting on OPM's proposed rule regarding appeals of Reductions in Force. Any interested party, including any individual member of the public, may submit a comment. See the end of this memo for a step-by-step guide to doing so, and for additional resources.

## Overview of the Proposed Rule

On February 10, 2026, the Office of Personnel Management issued a proposed rule titled, "Reduction in Force Appeals." This proposal would fundamentally change how federal workers can challenge layoffs carried out through a reduction in force (RIF).

Today, employees can appeal RIFs they believe to be unlawful or performed incorrectly to the Merit Systems Protection Board (MSPB), an independent adjudicatory body with administrative judges, discovery, and hearings. Employees can then appeal MSPB decisions in federal court. This process is the cornerstone of OPM's RIF regulations.

OPM now proposes to eliminate that pathway and replace it with an internal OPM process. Appeals would be decided by OPM staff, with final authority resting with the OPM Director, a political appointee.

In practical terms, this rule would:

- eliminate independent review
- strip away discovery and hearings
- sharply limit reconsideration
- foreclose judicial review following MSPB proceedings

It would be a significant rollback of civil service protections.

[1] This guide is intended to help potential commenters understand the proposal and identify areas where comments would be useful. It is not intended to be legal advice or a substitute for legal advice for a specific organization or about a particular set of facts and should not be relied upon as such.

**Points to Consider Raising in Comment Letters**

- The proposed rule violates the CSRA's core design

Congress intentionally designed the Civil Service Reform Act (CSRA) to separate workforce policy (handled by OPM) from the adjudication of workforce rights (handled by the MSPB). Congress created that separation to prevent political influence over employment decisions and to ensure neutral review when workers challenge agency actions. This proposed rule would collapse that wall.

Under OPM's proposal, the same agency that designs RIF policy and is actively directing agencies to prepare large-scale RIFs, would also decide whether those RIFs were lawful or performed correctly. That creates a structural conflict of interest and directly undermines Congress's intent.

Instead of MSPB administrative judges, appeals would be handled by one of OPM's internal offices. Final authority would rest with the OPM Director and ultimately the President. There would be no neutral decision-maker and employees' claims might never reach an Article III court. This concentrates extraordinary power over federal employment in a single agency and removes the external check that MSPB and federal courts provide.

- The proposed rule would eliminate core civil service protections

The proposal removes guaranteed discovery, hearings as of right, meaningful reconsideration, and potential federal court review.

Employees would generally be limited to a paper-based process and whatever evidence agencies choose to provide. This is especially damaging because employment cases often rely on indirect evidence, including emails, internal communications, and planning documents that only employers possess. Without discovery or hearings, workers lose the ability to uncover political targeting, retaliatory motives, discriminatory intent, and pretextual justifications in any meaningful way. Speed is being prioritized over fairness.

- The proposed rule would shift the burden onto workers

For decades, agencies have had the burden of proving at the MSPB, by a preponderance of the evidence, that a RIF was taken for bona fide management purposes and that it properly initiated the substantive RIF procedures.

OPM's proposal flips this framework. Employees would have to prove unlawfulness up front, even though agencies control the relevant evidence. This would make successful appeals dramatically harder.

- The proposed rule treats RIFs as "formulaic," when today they are not

OPM repeatedly characterizes RIFs as mechanical exercises that supposedly do not warrant discovery or hearings.

That bears little resemblance to current reality. RIFs are intended to eliminate positions for budgetary or organizational reasons. Today, the administration is using RIFs to dismantle entire offices, eliminate statutory functions, target DEI-related roles, and remove perceived political opponents. Many of these maneuvers are the subject of active federal court and MSPB litigation.

When RIFs are used this way, neutral adjudication and discovery become essential.

- The proposed rule relies on a false "efficiency" narrative

OPM blames MSPB delays for justifying this proposal but omits key facts, including that the President fired the MSPB Chair without cause, breaking quorum; the MSPB backlog surged due to unprecedented mass terminations and RIFs by this administration; and OPM itself has driven many of the actions, resulting in a large number of RIF appeals to the MSPB.

OPM cannot undermine the MSPB and then cite MSPB dysfunction to justify commandeering RIF appeals in this way. Faster decisions achieved by stripping guardrails and processes do not constitute meaningful efficiency.

- The proposed rule massively understates impact

OPM estimates that approximately 292 RIF appeals will happen per year, based on pre-2025 averages. That figure is disconnected from reality. Recent large-scale RIFs and office closures have already generated thousands of appeals. Various news reports say that agencies and federal workers expect further RIFs. The proposal dramatically understates how many workers will be affected and how overwhelmed OPM's internal processes are likely to become.

- The proposed rule would foreclose RIF and discrimination "mixed cases" through the MSPB

RIFs often intersect with discrimination claims (based on race, sex, disability, and other grounds). Under current law, these RIF and discrimination "mixed cases" can proceed through the MSPB or EEOC and into federal court after a set number of days. OPM's proposal removes the MSPB pathway to federal court for those challenging a RIF by prohibiting adjudication of discrimination claims at OPM. This deprives workers of another traditional path to judicial review.

- The proposed rule seeks to override collective bargaining agreements

The proposed rule asserts authority to supersede collective bargaining agreements and grievance arbitration procedures for RIFs. By shifting negotiated grievances and arbitrations of RIFs of bargaining unit employees to OPM, it will only further overwhelm OPM's internal processes to adjudicate RIF appeals.

- The proposed rule does not sufficiently analyze reliance interests

OPM acknowledges that federal employees have long relied on MSPB appeal rights and federal court review and explicitly asks for public comment on reliance interests. OPM's discussion of these interests is cursory and does not seriously grapple with the disruption caused by reversing decades of settled practice. This is a critical area for public comment.

- The proposed rule's cease-and-desist provisions are broad and vague

The proposal authorizes OPM to issue cease-and-desist and protective orders during an appeal and to impose sanctions, including excluding evidence or drawing adverse inferences, if a party violates these orders. The proposal claims these orders are meant to protect employees from harassment but includes broad prohibitions on communications that include appeal-related information "for any purpose whatsoever unrelated to the adjudication." This could function like a gag order, chilling the ability to speak publicly about one's own case, coordinating with other affected employees, sharing information, and building systemic evidence of patterns. Even if the intent is to prevent harassment of employees, the text is broad and vague enough to be misused.

- Bottom line

This proposal is not about streamlining processes. It centralizes power regarding RIFs inside OPM, eliminates independent review, strips due process, and shields politically driven RIFs from scrutiny, thereby directly undermining the CSRA.

**How to Submit a Comment**

- The deadline for submitting comments is March 12, 2026.
- Submit your comments using the "Submit A Public Comment" button on the Federal Register notice here, or via regulations.gov comment docket here.
- Comments may be submitted as simple text in the online form, or by uploading a document file (.doc, .pdf, and other common formats are accepted).
- Make sure your comment references "Reduction in Force Appeals, Docket No. OPM- 2026-02576".
- OPM will not accept comments submitted by fax or by email or comments submitted after the comment period closes.

- If you require an accommodation or have questions about comment submission, contact employeeaccountability@opm.gov or by phone at 202-606-2930.

**Additional Resources**

Protect Democracy, What Makes an Effective Public Comment on a Federal Regulation

Office of Personnel Management, Reduction in Force Appeals (Proposed Rule)