Mr. Noah Peters
Office of Personnel Management
1900 E Street NW
Washington, DC 20415

Re: Comments on Proposed Rule: Reduction in Force (RIN 3206-AO86; Docket ID: OPM-2025-0107), 91 FR 10904 (March 5, 2026)

Dear Mr. Peters:

The Senior Executives Association (SEA) submits the following comments on the Office of Personnel Management's proposed rule to revise its reduction-in-force (RIF) regulations, published in the Federal Register on March 5, 2026. SEA is a professional association representing Senior Executive Service (SES) members and other career federal executives. Founded in 1980, SEA's mission is to improve the efficiency, effectiveness, and productivity of the federal government while advancing the professionalism of career federal executives and enhancing public recognition of their contributions.

SEA shares OPM's stated goal of building a high-performing federal workforce grounded in merit. We agree that the RIF process should retain the government's best performers and that performance should play a meaningful role in retention decisions. We also acknowledge that the current RIF regulations, largely unchanged since the mid-twentieth century, could benefit from modernization.

However, SEA has significant concerns about the proposed rule as drafted. In particular, we believe the rule elevates performance ratings to a determinative role in retention decisions without adequate safeguards to ensure those ratings are reliable, consistent, and meaningfully differentiated across the federal enterprise. The proposed rule also raises specific concerns for career senior executives, introduces new areas of agency discretion without sufficient guardrails, and should be evaluated in the context of companion rulemakings that, taken together, would fundamentally restructure employee protections.

Our comments are organized into five sections: (I) Performance Ratings as the Primary Retention Factor; (II) Implications for Career Senior Executives; (III) Competitive Area Redefinition and Abolishment Provisions; (IV) Due Process, Appeals, and the Companion Rulemaking on RIF Appeals; and (V) Recommendations.

I. Performance Ratings as the Primary Retention Factor: The Right Principle, the Wrong Sequence

SEA supports the principle that performance should matter in retention decisions. The federal government should retain its best-performing employees when workforce reductions are necessary. We concur with this.

What we dispute is the assumption, embedded throughout the proposed rule, that the current federal performance rating system yields results that are adequate to bear this weight. The proposed rule would make performance credit the primary basis for ranking employees on a retention register, ahead of tenure subgroup and length of service. Under the proposed scoring system, three years of Level 5 (Outstanding) ratings would yield 21 performance credit points, while three years of Level 3 (Fully Successful) ratings would yield only 9 points. This 12-point gap cannot be overcome by any amount of federal service. Such a gap is appropriate only if the ratings themselves reliably distinguish between genuinely outstanding and genuinely satisfactory performance. The evidence overwhelmingly suggests they do not.

a. The Evidence of Rating Inflation Is Undisputed

   The Government Accountability Office's 2016 analysis of performance rating distributions (GAO-16-520R) found that approximately 99 percent of all permanent, non-SES employees received a rating at or above "fully successful" in calendar year 2013. Roughly 61 percent were rated in the top two categories. Less than one percent of the federal workforce received a rating below "fully successful." A separate GAO analysis found that more than 85 percent of career senior executives received top ratings between fiscal years 2010 and 2013 (GAO-15-189).

   These findings are not outliers. GAO has documented performance management as a long-standing government-wide challenge in multiple reports, including GAO-19-35 (November 2018), which found that managing employee performance has been the subject of numerous reforms since the beginning of the modern civil service, and that employees responded least positively to survey statements related to rewarding performance. The Merit Systems Protection Board's 2019 research brief on remedying unacceptable performance found that only 26 percent of supervisors were confident they could remove a subordinate for poor performance. MSPB's 2013 report, Managing Public Employees in the Public Interest, found that among stewardship-related survey questions, agreement was lowest for items concerning whether organizations effectively address poor performance.

   The 2024 Federal Employee Viewpoint Survey confirms the persistence of this problem. Only 47 percent of federal employees agreed with the statement, "In my work unit, differences in performance are recognized in a meaningful way." This was the lowest positive response rate for any question on the survey and has consistently been the lowest over the past three years.

b. OPM's Own Concurrent Rulemaking Acknowledges the Problem

SEA notes with concern that OPM is simultaneously pursuing a separate rulemaking on performance appraisals (RIN 3206-AP06, 91 FR 8780, February 24, 2026) that explicitly acknowledges the very problem this RIF rule does not address. In that rulemaking, OPM stated that "in FY 2024 close to half of all Federal employees received the highest possible evaluation" and characterized performance ratings as systemically inflated. OPM further cited its own 2019 memorandum on applying rigor in performance management, acknowledging that prior efforts to address rating inflation "have not been successful."

OPM's two rules are contradictory: one rule tells Congress and the public that performance ratings are so inflated they require a complete regulatory overhaul, and another rule tells federal employees that those same ratings should now be the primary factor in determining whether they keep their jobs during a reduction in force. These two positions are fundamentally irreconcilable. If ratings do not reliably distinguish between outstanding and satisfactory performance, then a retention system that treats a 12-point gap between Level 5 and Level 3 employees as dispositive does not elevate merit. It elevates rating culture, supervisory generosity, and organizational factors around ratings.

c. The Proposed Scoring System Amplifies Rating Inconsistencies

The proposed performance credit values (7/5/3/0/0) create large, determinative gaps between rating levels. Under the current system, performance credit supplements length of service, so rating differences are somewhat diluted by actual tenure. Under the proposed system, performance credit stands alone as the primary ranking factor within each tenure group. This means that the difference between an employee whose supervisor consistently rates at Level 5 and one whose supervisor reserves Level 5 for truly exceptional performance will determine who keeps their job, regardless of the relative quality of their actual work.

The problem is compounded by the variation in rating patterns across agencies. Some agencies use five-level systems; others use pass/fail. Some have robust calibration processes; many do not. The proposed rule's provisions for "transmuting" ratings across different rating patterns (proposed Section 351.503(e)) and for awarding additional performance credit based on awards in pass/fail systems (proposed Section 351.503(d)) introduce further subjectivity and inconsistency. Agency discretion to assign values of "7" for agency awards, "5" for organizational awards, and "4" for time-off awards, as illustrated in the preamble, creates a system in which the same level of actual performance could yield materially different retention outcomes depending on which agency the employee works for and what award budget was available.

d. The Sequencing Is Backward

SEA believes OPM has the sequencing transposed. The logical order is: first, fix performance appraisal systems so they produce reliable, calibrated, and meaningfully differentiated ratings; then, after those systems have been operating for a sufficient period to produce credible ratings of record, use those ratings for high-stakes retention decisions. Implementing this proposed rule before the performance appraisal reforms have taken effect and demonstrated results would build a retention system on a foundation that OPM itself acknowledges is unreliable.

We note that OPM's June 2025 memorandum on performance management requires agencies to transition to a standardized governmentwide performance appraisal cycle beginning October 1, 2026. If the RIF rule were finalized and effective before that transition is complete, agencies would be making retention decisions based on ratings generated under the very systems OPM has identified as producing inflated and undifferentiated results.

II. Implications for Career Senior Executives

a. SES Furlough Definition (Part 359, Subpart H)

The proposed revision to the definition of "furlough" in Section 359.802 to exclude emergency shutdown furloughs caused by lapses in congressional appropriations codifies longstanding OPM guidance. SEA does not object to this change, which appropriately distinguishes between planned agency-initiated furloughs and emergency furloughs driven by congressional inaction.

b. Interaction with Existing SES Authorities

The proposed rule repeatedly references the SES framework as a model for non-SES provisions. For example, the transfer-of-function definition is being aligned with 5 CFR 359.608. However, the proposed rule does not adequately address the interaction between the new RIF provisions and the unique statutory protections applicable to career SES members.

Career SES members are already subject to reassignment authority under 5 U.S.C. 3395, performance-based removal under 5 U.S.C. 3592, and the SES performance appraisal system under 5 U.S.C. 4314. When a career SES member's organization is abolished under the new Section 351.605 (abolishment of a competitive area), the proposed rule does not address how this interacts with the guaranteed placement rights under 5 U.S.C. 3594-3595. Career SES members who are removed from the SES during a RIF are entitled to placement in a GS-15 or equivalent position. The streamlined abolishment provision, which eliminates the requirement to build a retention register or provide assignment rights, could undercut these statutory protections if not carefully administered.

SEA requests that OPM clarify in any final rule that the abolishment of a competitive area under Section 351.605 does not diminish or supersede the statutory placement rights of career SES members under 5 U.S.C. 3594-3595.

c. Impact on the SES Pipeline

The exclusion of probationary employees from RIF competition (proposed Section 351.202(d)) could have unintended effects on the pipeline of future senior leaders. Employees serving initial probationary periods often include recent SES Candidate Development Program graduates placed in developmental or feeder positions. If agencies are restructuring, these newer employees, who may represent significant agency investment in leadership development, would be excluded from RIF protections entirely. Agencies could retain or separate them at will, without regard to their performance or potential. SEA urges OPM to consider the impact of this provision on leadership pipeline investments and to recommend that agencies account for leadership development considerations in their workforce planning when exercising the discretion this provision affords.

II. Competitive Area Redefinition and Abolishment Provisions

a. Competitive Area Definition (Section 351.402(b))

The proposed rule gives agencies significant flexibility to define competitive areas by organizational unit rather than by the current standard of "separate administration within the local commuting area." The new standard requires units to be "clearly distinguished from other organizational units with regard to its operation, work function, staff, and supervisory oversight." While OPM characterizes this language as clearer than the current standard, SEA is concerned that the terms "operation, work function, staff, and supervisory oversight" are sufficiently elastic to allow agencies to draw competitive areas narrowly to isolate specific groups of employees.

The requirement that organizational units be designated by the head of the agency or designee, with no redelegation below the agency's headquarters level, provides some protection. However, SEA recommends that OPM require agencies to establish competitive area designations through a transparent process, with documentation available for review, and to prohibit agencies from establishing or modifying competitive areas after a decision to conduct a RIF has been made. Without such guardrails, the potential for gerrymandering competitive areas to target particular employees or groups of employees is real.

b. Abolishment of a Competitive Area (Section 351.605)

The revised Section 351.605 allows an agency to release competing employees without regard to retention standing when it will eliminate all positions in a competitive area

within 180 days. Under this provision, the agency need not build a retention register, need not provide assignment rights under Subpart G, and need only provide minimal notice to employees. The notice requirements omit the employee's performance credit, tenure subgroup, and service date, all of which would be available under a standard RIF. SEA is concerned that this provision, combined with the flexible competitive area definition in Section 351.402(b), creates the potential for abuse. An agency could define a narrow competitive area, declare that all positions in that area will be abolished, and thereby avoid the retention register and assignment rights provisions entirely. The 180-day timeframe is generous enough to accommodate most restructuring scenarios. SEA recommends that OPM require heightened scrutiny of any competitive area abolishment, including a requirement that OPM review and approve the action before it is implemented, to ensure that the abolishment provision is not used to circumvent the merit-based protections the rule is intended to advance.

IV. Due Process, Appeals, and the Companion Rulemaking on RIF Appeals

a. These Proposed Rules Must Be Evaluated Together

SEA emphasized in its February 11, 2026, statement on the companion RIF appeals proposed rule (RIN 3206-AO99, 91 FR 5861) that "independent review of employee appeals is a core safeguard of a professional, merit-based, and nonpartisan civil service" and that "any reforms aimed at improving efficiency should focus on streamlining and strengthening appeals processes, not diminishing independent oversight or weakening due-process protections." That concern is directly relevant here.

The RIF appeals proposed rule would transfer appeal rights for RIF actions from the Merit Systems Protection Board (MSPB) to OPM itself. This means that the agency that writes the RIF rules, provides technical assistance to agencies conducting RIFs, and runs RIFs on a reimbursable basis would also be the sole adjudicator of employee challenges to those RIF actions. This creates an inherent conflict of interest.

The substantive RIF rule before us must be evaluated in the context of this companion rulemaking. OPM is simultaneously: (1) making performance ratings the primary retention factor despite acknowledged rating inflation; (2) giving agencies broad discretion to define competitive areas, transmute ratings, and abolish competitive areas without building retention registers; (3) proposing to move the appeals process for all of this from an independent adjudicator (MSPB) to itself; and (4) proposing to overhaul the performance appraisal system that generates the ratings on which retention will depend. Taken together, these four rulemakings represent a fundamental restructuring of employee protections with no independent check.

b. Specific Due Process Concerns in the Substantive Rule

Several provisions in the proposed substantive rule raise due process concerns independent of the appeals rulemaking. The abolishment provision (Section 351.605) means affected employees will not know their relative retention standing, limiting their ability to challenge the action. The new qualification assessment requirements in Section 351.702(a)(4), which introduce structured interviews and work-related exercises, inject subjectivity into what has traditionally been a more mechanical qualification determination. The broad agency discretion to transmute ratings across different rating patterns (Section 351.503(e)) and to award additional performance credit for awards in pass/fail systems (Section 351.503(d)) create new areas of contestable judgment that employees will find difficult to challenge.

SEA recommends that OPM ensure MSPB retains meaningful review authority over RIF actions, regardless of the outcome of the companion rulemaking. At minimum, employees should receive sufficient information to challenge competitive area definitions, performance credit calculations, and qualification assessments. The proposed rule should also require agencies to provide affected employees with their complete retention data, including their calculated performance credit, the basis for any transmuted ratings, and the competitive area definition and its justification.

SEA also encourages OPM to carefully consider reductions affecting positions that support continuity of government, national security, public health, scientific advancement, economic stability, or other mission-critical functions. Efficiency objectives should be balanced with preserving the government's ability to carry out essential responsibilities effectively and without disruption.

V. Recommendations

SEA offers the following recommendations to strengthen the proposed rule:

a. Condition implementation on performance system readiness. OPM should not finalize the performance-first retention provisions of this rule until agencies have implemented the performance appraisal reforms proposed in RIN 3206-AP06 and demonstrated, through at least one full appraisal cycle, that their systems produce meaningfully differentiated ratings. At minimum, the performance-first provisions should include a phased implementation timeline tied to the performance appraisal reform schedule.

b. Require rating calibration before any RIF. OPM should require agencies to conduct and document a rating calibration analysis before initiating any RIF under the new rules, demonstrating that ratings within the competitive area are distributed in a way that reflects genuine performance differences rather than rating culture or supervisory norms.

c. Clarify SES protections. OPM should clarify in any final rule that the abolishment provision (Section 351.605) and other streamlined procedures do not diminish the statutory placement rights of career SES members under 5 U.S.C. 3594-3595.

d. Strengthen competitive area guardrails. OPM should prohibit agencies from establishing or modifying competitive areas after a decision to conduct a RIF has been made, and should require OPM review and approval of any competitive area abolishment under Section 351.605.

e. Preserve independent appellate review. OPM should withdraw the companion proposed rule (RIN 3206-AO99) transferring RIF appeals from MSPB to OPM. If OPM proceeds with that rulemaking, it should at minimum preserve independent judicial review of RIF appeal decisions and ensure that employees have access to the full administrative record, including retention registers, performance credit calculations, and competitive area documentation.

f. Evaluate the rulemakings together. OPM should delay finalization of this proposed rule until the companion rulemakings on performance appraisals (RIN 3206-AP06), RIF appeals (RIN 3206-AO99), and managing senior professional performance (RIN 3206-AO88) are finalized, so that the public and affected employees can evaluate the complete regulatory framework. At minimum, OPM should reopen the comment period for this rule after those companion rules are finalized.

g. Add transfer-of-function protections for intra-agency moves. The proposed limitation of transfer-of-function procedures to inter-agency transfers removes a significant protection for employees whose functions are moved within an agency. OPM should require agencies to provide advance notice and the opportunity to follow one's function when functions are transferred between competitive areas within a single agency, even if the full transfer-of-function procedures of Subpart C are not required.

SEA appreciates the opportunity to comment on this proposed rule. We reiterate our support for the principle that merit and performance should play a meaningful role in workforce decisions, including retention during reductions in force. Our concerns are not with the principle but with the execution: the federal government must get performance management right before it can responsibly make performance the primary determinant of who stays and who goes.

We welcome the opportunity to discuss these comments further with OPM and to work collaboratively toward a RIF framework that is both efficient and fair.

Respectfully submitted,

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President
Senior Executives Association