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*SEA - The Voice of Senior Executives*

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March 12, 2026

Carol Matheis  
Office of Personnel Management  
Employee Accountability  
[employeeaccountability@opm.gov](mailto:employeeaccountability@opm.gov)

Re: Comments on Proposed Rule, Reduction in Force Appeals, RIN 3206-AO99, 91 FR 5861 (Feb. 10, 2026)

Dear Ms. Matheis:

The Senior Executives Association (SEA) submits these comments on OPM's proposed rule governing reduction-in-force (RIF) appeals, 91 FR 5861 (Feb. 10, 2026). SEA represents Senior Executive Service members and other career federal executives and has advocated for a professional, merit-based, and nonpartisan civil service since 1980. We write to raise substantive concerns about the proposal and urge OPM to reconsider several of its core elements.

### **SEA Supports Modernizing RIF Appeals**

SEA recognizes that the current framework has genuine shortcomings. MSPB's recurring quorum failures, most recently a five-year gap from 2017 to 2022, have left employees and agencies in prolonged uncertainty, and the dual-track structure in which OPM sets policy while MSPB adjudicates appeals has produced fragmentation and complexity that can work against both efficiency and fairness. SEA does not oppose modernizing RIF appeals. However, the mechanism OPM has chosen, stripping MSPB jurisdiction, consolidating adjudication at OPM, and foreclosing judicial review, raises concerns that outweigh the anticipated efficiency gains.



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### **Independent Review Is a Core Safeguard of the Merit System**

The proposed rule would move RIF appeals from MSPB, an independent, bipartisan body established by Congress to provide neutral adjudication of federal personnel disputes, to OPM's Merit Systems Accountability and Compliance (MSAC) office. OPM simultaneously sets RIF policy, provides agency guidance, executes its own RIFs, and, under this proposal, would adjudicate appeals from all of those activities. Internal separation between OPM's Workforce Policy and Innovation office and MSAC does not constitute an independent review in any meaningful sense. MSPB's independence derives from its separate statutory establishment, bipartisan composition, and insulation from the executive branch equities at stake in a given dispute. Moving RIF appeals to OPM would undermine the credibility of the appeals process, regardless of how fairly individual cases might be decided.

### **Eliminating Judicial Review Raises Serious Concerns**

The proposed rule would expressly foreclose judicial review of OPM's final decisions. SEA strongly objects to this element. A RIF separation results in the loss of a federal career, a deprivation that has historically warranted meaningful procedural protections. Even accepting OPM's legal premise that the CSRA does not require judicial review of RIF actions, it does not follow that eliminating such review is sound policy. An employee who believes they were wrongly separated, including through a RIF used as pretext for politically motivated dismissal, would have no recourse outside the executive branch. That outcome is inconsistent with a nonpartisan, merit-based civil service.

### **Written-Record Review Without Hearings Weakens Due Process**

The proposed rule replaces mandatory hearings and discovery with written record review, leaving OPM sole discretion to order a hearing only where it finds one necessary and efficient. RIF determinations turn on complex retention registers, service computation dates, performance ratings, veterans' preference determinations, and competitive area definitions. Errors in these calculations can be difficult to identify and challenge solely through a written record. SEA recommends that the final rule preserve a right to a hearing where a material factual dispute cannot be resolved in writing, with objective criteria for granting that hearing rather than unfettered agency discretion.



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### **CBA Preemption Requires Stronger Justification**

The proposed rule would override RIF-related appeal procedures in collective bargaining agreements, preempting negotiated grievance arbitration for this category of actions. SEA recognizes OPM's authority to issue government-wide regulations that displace conflicting CBA provisions. However, wholesale preemption of negotiated RIF protections without specific statutory authorization could undermine labor-management relationships across the federal government. If OPM proceeds with this element, it should provide a clear and detailed legal basis for doing so.

### **Recommendations**

SEA urges OPM to:

- Reform MSPB procedures rather than eliminate MSPB jurisdiction, including by streamlining discovery, establishing strict timelines, and limiting hearings to material factual disputes.
- Preserve judicial review for employees separated through a RIF, at a minimum, for claims that a RIF violated applicable statutes or constitutional requirements.
- Establish objective criteria for when a hearing will be ordered if adjudication is consolidated at MSAC.
- Protect pending MSPB appeals from disruption during any transition to a new system.
- Articulate stronger conflict-of-interest protections within OPM's adjudicative process.



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SEA is committed to a federal government that is effective, accountable, and worthy of public trust. We share OPM's goal of a RIF appeals process that is efficient and produces consistent, well-reasoned outcomes. We do not share the view that these goals require eliminating independent review, foreclosing judicial recourse, or concentrating adjudicative authority in the agency that sets and administers the policies at issue. We urge OPM to withdraw or substantially revise this proposed rule and to engage with SEA and other stakeholders in developing reforms that modernize the process while preserving the independence and due-process protections on which a merit-based civil service depends.

Respectfully submitted,

*Marcus L. Hill*

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Senior Executives Association