

USAID Administrative Leave & RIF FAQ Guide

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Introduction:

This guide provides USAID employees with essential information regarding administrative leave and Reduction in Force (RIF) procedures. It addresses common concerns, legal rights, and available resources, with answers tailored to different hiring mechanisms.

USAID employs staff under five primary hiring mechanisms: Foreign Service Officers (FSOs), Foreign Service Limited (FSL) appointees, Civil Service (CS) employees, Personal Services Contractors (PSCs) and Civil Service Excepted (CSE) employees. Each mechanism has different rules governing employment status, appeal rights, severance pay, and benefits eligibility. Questions marked with (*) indicate that the answer depends on an employee's hiring mechanism. Employees are encouraged to consult USAID HR, union representatives (**American Foreign Service Association (AFSA)** for FSOs, **American Federation of Government Employees (AFGE)** for CS and CSE), or legal counsel for case-specific guidance.

This document is for informational purposes only and does not constitute legal advice, official USAID policy, or an authoritative interpretation of federal employment law. Policies on **RIF, administrative leave, severance, benefits, and appeals may change based on agency directives, legal rulings, or new regulations.

Employees should consult **USAID HCTM, OPM, union representatives (AFSA for FSOs, AFGE for CS and CSE), or legal counsel** for specific guidance. The authors assume no liability for inaccuracies, omissions, or actions taken based on this information.

*1. What are my legal rights and options after receiving a RIF notice?

Affected employees should review the resources provided in their RIF notice to understand legal rights and options. Affected employees have the right to seek corrective action through grievances, or join legal actions challenging the RIF process. Legal representation is recommended to explore options based on hiring status and tenure. Should you receive a RIF notice, it is recommended to immediately download the RIF letter to a safe device or forward it to a secure email account. Signing the form is only an acknowledgment of receipt.

Please note: "Appointment Type" appears on RIF documents as "Excepted-Permanent/SES-Noncareer." We understand that this means "Excepted-Permanent" or "SES-Noncareer." Tenured Foreign Service Officers fall under "Excepted-Permanent," so the classification is correct and there is no need to request a correction for this designation. If you see the letter "F" on your RIF notice, this does not mean that you are considered to be a "Schedule F" employee; in this context, "F" simply means "fulltime."

2. How should a RIF work?

In the Federal Government, layoffs are called reduction in force (RIF) actions. When an agency must abolish positions, the RIF regulations determine whether an employee keeps his or her present position. The law provides that the RIF regulations must give effect to four retention factors: Tenure of employment; Veterans' preference; Total creditable Federal civilian and uniformed service; and Performance ratings.

The RIF process for USAID FSOs is laid out in ADS 454. However, it remains to be seen if ADS 454 will be followed. In certain instances, it already has not been followed. A brief summary of the ADS 454 process is follows:

When a RIF is authorized, HCTM will issue a RIF notice to each SFS or FS employee reached for separation; for employees stationed in USAID/W at least 60 days prior to the effective date of the separation, for employees stationed outside USAID/W at least 90 days prior to the effective date of the separation. The notice should include the effective date of separation, information on how the decision was reached to separate the employee, information on the right either to file a grievance under Chapter 11 of the FSA or to appeal to the Merit Systems Protection Board (MSPB) and information on any appropriate annuity or separation payment.

For the Foreign Service, the names of competing employees in a given Competitive Level are first placed in one of two groups on a retention register on the basis of their tenure group, i.e., career and career candidate. The former is the higher ranked; the latter lower and is where separation begins.

***3. Is there an official appeal or grievance process I can follow?**

Yes. USAID employees impacted by a **RIF** or administrative leave can **file grievances**, but the specific process **depends on their hiring mechanism**. Employees should review **USAID policies and OPM regulations** and consult with **union representatives** (AFSA for FSOs, AFGE for CS and CSE—and recognizing that many CS and CSE are not members of AFGE) and/or federal employment lawyers to determine their rights.

- **FSOs** (including those who are “untenured” on career candidate appointments) may appeal RIF-related terminations through the **Foreign Service Grievance Board (FSGB)** under the **Foreign Service Act**. FSGB handles **wrongful termination, procedural violations, and improper RIF implementation grievances**. However, the scope for appealing a RIF through the FSGB is limited to reprisal and interference in official duties. If an FSO disagrees with the FSGB’s decision, they may have additional appeal options within the Department of State or, in some cases, federal court. FSOs may also elect to appeal to the MSPB in an individual or class appeal as described below, but it is important to underscore that employees must pick one approach (either to FSGB or to the MSPB).
- **FSL appointees** generally have **limited appeal rights** due to the term-limited nature of their employment. Unlike career FSOs, FSL employees may not have access to **FSGB**

grievance procedures unless explicitly outlined in their appointment terms. Some may seek reconsideration through **HR**, but legal options are generally more restricted. Employees in this category should consult their **employment agreement** and USAID HCTM to determine if any internal reconsideration process is available.

- **CS employees** appeal RIF-related actions through the **Merit Systems Protection Board (MSPB)**, which reviews cases involving **RIF procedures, procedural errors, and wrongful terminations**. CS employees can be represented by the **AFGE** during their appeal (though this is likely only the case if an employee is a member of AFGE). In cases of suspected **prohibited personnel practices**, employees may also file a complaint with the **Office of Special Counsel (OSC)**. Grievances are adjudicated first by an administrative court judge, and can be appealed to the MSPB board (need more detail here on the board). Once these avenues are exhausted MSPB decisions can be appealed to federal court if necessary.
- **CSE employees** may have **fewer appeal rights** than CS employees in the **competitive service**. Some CSE employees can access **MSPB appeals**, while others may be subject to **agency-specific internal grievance policies**. Since appeal rights vary, CSE employees should consult with **AFGE or USAID HR** to determine their options for contesting a RIF decision.

***4. Does my tenure status or hiring mechanism impact my rights?**

Yes, your tenure status and hiring mechanism significantly influence your rights and options following a RIF at USAID. Each employment category, **FSOs, FSL appointees, CS employees,** and **CSE employees** has distinct regulations governing their employment terms, appeal rights, and benefits.

- **FSOs:** As career diplomats, FSOs are afforded specific protections under the **Foreign Service Act**. In the event of a RIF, they have the right to file a grievance through the **FSGB or the MSBP**. The Foreign Service Act provides them with structured processes to contest terminations or reassignments, ensuring due process is followed.
- **FSL Appointees:** FSL employees are typically on time-limited appointments, inherently offering fewer job protections. Their temporary status means they may not have access to the exact appeal mechanisms as career FSOs. Consequently, their options to contest RIF decisions are more restricted.
- **CS Employees:** CS employees are subject to the regulations set forth by the **Office of Personnel Management (OPM)**. They possess specific rights concerning RIF procedures, including the ability to appeal adverse actions through the **Merit Systems Protection Board (MSPB)**. This framework ensures that CS employees have avenues to challenge RIF decisions and seek redress.
- **CSE Employees:** CSE employees operate under different rules than their competitive service counterparts. Their appeal rights can vary based on the nature of their appointment and the specific agency policies governing their positions. CSE employees need to consult with **USAID's Human Resources** or their respective union representatives to fully understand their rights and any available recourse in the event of a RIF.

5. What are AFSA and AFGE doing to advocate for affected staff?

AFSA and AFGE are engaging in legal and advocacy efforts for impacted USAID staff. Employees are encouraged to stay updated through union communications and attend ongoing litigation and appeals briefings.

Specifically, AFSA is pursuing a class appeal to the MSPB to challenge the RIF. MSPB allows for a class appeal when all issues would be the same for all employees--and if they win it would be to the benefit of all in that class. The relief sought would be to invalidate the RIF that has been carried out. AFSA has made this decision due to the narrowness of the issues that the FSGB can rule on in a RIF grievance. They are not pursuing remedies within the judiciary because the case law in courts has made very clear that employee disputes should be brought first to administrative bodies rather than directly to court--case law that has been cited both in the recent AFSA lawsuit related to administrative leave and the global FSO recall and in the case brought by the PSC Association.

***6. How does severance pay work, and what timeline should I expect for payouts?**

Severance pay varies by hiring mechanism. The Foreign Service Act permits that severance payments for RIF'd FSOs below FS-01 be paid in installments on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments.) Employees should review the **Foreign Affairs Manual (FAM)** or contact HR for specific details.

- FSLs are typically ineligible for severance pay due to their time-limited contracts. However, some may receive compensation depending on their appointment terms, so they should consult USAID HR for clarification.
- CS employees may be eligible for severance pay if they are involuntarily separated under a RIF and meet conditions outlined in Title 5, Section 5595 of the U.S. Code and OPM regulations. The payout amount and timeline vary based on service length and salary.
- CSE employees' eligibility for severance pay varies depending on the terms of their appointment and agency-specific policies. They should review their employment agreements and consult USAID HR to determine their status.

For those FSOs ineligible for immediate retirement, severance pay amounts to one-twelfth of your current annual salary for each year of service up to a maximum of one year's salary. "Service" includes all your creditable government service. If you have any questions about the accuracy of your records, whether something is creditable, or how to make sure your time with another agency has been properly credited, you'll need to work directly with HCTM. Severance pay cannot be received concurrently with certain Federal Employees' Compensation Act (FECA) benefits, and reemployment in the federal government within five years may require repayment of the severance amount.

***7. Am I eligible for unemployment benefits or other financial assistance?**

Depending on their state of residence/location of employment, employees may be eligible for unemployment benefits in the event they are not eligible for an immediate retirement annuity. Additionally, they should explore options for financial assistance, such as emergency savings withdrawals from TSP or short-term hardship programs. **CSE employees** may or may not qualify, depending on **appointment terms and state policies**. Filing a claim with the **state's unemployment agency** is the best way to confirm eligibility.

8. Can I apply for another job while on administrative leave?

Yes. Employees can apply for other positions but should confirm their employment status with USAID HR. However, since you are still a government employee, please remember that ethics standards still apply, particularly the provisions in 5 C.F.R. 2635 Subpart F on Job Search while employed by the USG.

9. Are there ongoing legal actions or lawsuits that I can join?

Yes. Multiple legal challenges are being pursued, including grievances and lawsuits filed through AFSA, AFGE, and independent legal groups. Employees are encouraged to stay informed about updates from legal teams.

10. What is the best way to engage with my congressional representatives about this situation?

Employees are advised to contact their representatives, highlighting concerns about due process violations, administrative leave policies, and the broader impact on USAID's mission. Congressional offices may assist in advocating for affected employees.

***11. How does this impact my federal pension, TSP, or other retirement benefits?**

Retirement benefits, including TSP and FERS/FSPS pension eligibility, remain largely protected under federal law. While OPM regulations establish these policies, concerns have emerged that the current administration may attempt to reinterpret or delay severance payments as part of broader cost-cutting measures. Recent federal workforce reductions have raised alarm that severance could be staggered over years instead of a lump sum, or that new justifications could be used to deny payouts to certain employees. Given the administration's aggressive restructuring of USAID, employees should closely monitor developments and seek legal or union support (AFSA, AFGE) if severance payments are delayed or denied. Any deviation from standard severance policies could signal attempts to bypass established worker protections. Employees should document all communications with HR and legal representatives to ensure they receive the full benefits they are entitled to under the law.

12. Does my health insurance coverage continue after termination or RIF?

Under standard federal regulations, if you are separated from service due to a RIF or other involuntary reasons, your Federal Employees Health Benefits (FEHB) coverage typically terminates at the end of the pay period you separate. You are then granted a 31-day temporary

extension of coverage at no cost, during which you can convert to a non-group contract or apply for Temporary Continuation of Coverage (TCC). TCC allows you to continue your FEHB coverage for up to 18 months, although you will be responsible for the full premium plus a 2% administrative fee.

However, recent administrative actions have raised concerns about potential deviations from these established procedures. Employees are advised to stay informed through official USAID communications and consult with human resources to understand how these changes may impact their health benefits. Additionally, engaging with employee unions or legal advisors may provide further guidance on navigating potential challenges to your health insurance coverage during this period.

13. Why do some staff have different reactivation procedures or access issues?

There have been reports of a 'do not re-enable' list preventing some employees from regaining system access. Employees should confirm their access status with HR and document any irregularities.

14. What does the 'do not re-enable' list mean, and how can I confirm my status?

Employees reported being placed on a restricted list, which prevented reactivation. If you suspect you are on this list, you may need mission or bureau leadership approval to regain access.

15. What is the timeline for legal or administrative actions related to the RIF?

Timelines vary based on the type of challenge. Internal grievances through the FSGB or Merit Systems Protection Board (MSPB) may take months to over a year and cannot be filed until the effective date of termination; these could be appealed within the Board system and to appellate courts. Union-led lawsuits and constitutional challenges can extend longer, potentially reaching appellate courts. Some cases may lead to temporary injunctions delaying terminations or securing reinstatements. Employees should stay engaged with unions (AFSA, AFGE), legal representatives, and congressional inquiries while documenting all communications and exploring interim financial support options.

***16. What happens to my accrued annual and sick leave?**

Upon separation due to a RIF, all employees, regardless of category, are entitled to a **lump-sum payment** for unused annual leave. This payment is calculated based on the employee's basic pay rate, including locality adjustments. It reflects the amount they would have received had they remained employed until the leave was exhausted. Processing times can vary.

Unused sick leave, however, is not paid out upon separation. Instead, it remains on record and is fully **recredited if an employee returns to federal service** at any time in the future. For employees covered under the **Federal Employees Retirement System (FERS)**, accrued sick leave can be converted into additional service credit, increasing their retirement annuity.

However, if an employee is separated before retirement eligibility, the sick leave balance remains inactive until they are reemployed in the federal system.

While these rules are standard across federal agencies, concerns exist that the current administration may attempt to **delay or reinterpret** leave payouts as part of broader cost-cutting measures, similar to reported severance payment concerns. Employees should closely monitor official guidance from USAID Human Resources and ensure all leave balances are properly documented before separation to safeguard their entitlements.

17. Does professional liability insurance protect me from firing or RIF?

Professional liability insurance (PLI) does not prevent termination or protection from a RIF, as these are workforce restructuring decisions rather than individual misconduct cases. PLI primarily covers legal defense costs for allegations of professional negligence, misconduct, or disciplinary actions, and typically does not cover legal costs associated with a challenge to a RIF. However, some policies may offer legal assistance if a termination involves wrongful dismissal, discrimination, or retaliation. While it won't reinstate employment, it could provide legal resources for challenging unfair treatment. Employees should review their policy details and consult their provider to determine coverage options while also considering union representation (AFSA or AFGE) for additional legal support in RIF-related disputes.

18. Can I File a Grievance if I'm RIF'd?

An employee impacted by a RIF has limited grievance and appeal rights. That said, RIF'd employees have the right to file a Chapter 11 grievance with the Foreign Service Grievance Board (FSGB) or appeal to the Merit Systems Protections Board (MSPB) under procedures prescribed by the MSPB, but not both. The MSPB is a quasi-judicial agency in the executive branch where civil service employees appeal adverse employment actions. Foreign Service employees pursue similar appeals before the FSGB. Foreign Service employees may go before the MSPB in the specific case of a RIF.

However, a grievance will not delay the separation and is limited only to cases of reprisal, interference in the conduct of the member's official duties or similarly inappropriate use of RIF authority. It must be filed before the effective date of separation. No other grievances relating to the member's separation or proposed separation due to the RIF may be filed.

An MSPB appeal must be filed before the end of the 30-day period that begins the day after the effective date stated in the separation notice.

19. Retirement Benefits in the Event of a RIF

Please review AFSA's detailed PowerPoint—"Benefits at Retirement, Resignation, and Involuntary Separation"—that answers frequently asked retirement questions. Per 3 FAM 2859.3, FSOs who are FS-1 and above are eligible for immediate involuntary retirement regardless of age and service. Because of this, they are not eligible for severance. They are

also entitled to continued health insurance and other benefits. The effective date of retirement will be the effective date of separation specified in the RIF notice

Staff who are eligible for voluntary retirement (over 50 with 20 years of service) or involuntary retirement under 3 FAM 2859.3 are recommended to submit their retirement paperwork to hr-helpdesk@usaid.gov with a 'cc to your personal email address. Filing for voluntary involuntary retirement does not forestall your ability to challenge the RIF action through a grievance.

20. How long does it take the MSPB to decide an appeal?

Usually, the Board will schedule a hearing within 60 to 90 days after the appeal is filed, and the case assigned to an Administrative Judge. After the hearing, the Administrative Judge will issue an initial decision, usually within 120 days from the date the appeal was filed.

If either party disagrees with the initial decision, they can file a petition for review by the Board within 35 days. The Board is composed of three members, and their decisions are made by majority vote (5 C.F.R. §1200.3(a)). Notably, if at any point there are only two Board members (for example, due to a vacancy, or due to recusal), and they are unable to reach a decision, the initial decision by the Administrative Judge may be deemed the final decision of the Board (5 C.F.R. §1200.3(b)). Similarly, if there is only one Board member, s/he may direct the appeal to another Administrative Judge for issuance of the final decision (5 C.F.R. §1200.3(c)).

The Board does not have a strict timeline for issuing a final decision, and it can go from several months to over a year.

21. What information should the appeal to the MSPB include?

At a minimum, appeals must include (5 C.F.R § 1201.24):

- (1) The name, address, telephone number, and email address of the appellant, and the name and address of the agency that took the action;
- (2) A description of the action the agency took and its effective date;
- (3) A request for hearing if the appellant wants one;
- (4) A statement of the reasons why the appellant believes the agency action is wrong;
- (5) A statement of the action the appellant would like the judge to order;
- (6) The name, address, telephone number, and email address of the appellant's representative, if the appellant has a representative;

(7) Where applicable, a copy of the notice of proposed action, the agency decision being appealed and, if available, the SF-50 or similar notice of personnel action. No other attachments should be included with the appeal, as the agency will be submitting the documents required by 1201.25 of this part, and there will be several opportunities to submit evidence and argument after the appeal is filed. An appellant should not miss the deadline for filing merely because he or she does not currently have all of the documents specified in this section.

(8) A statement telling whether the appellant or anyone acting on his or her behalf has filed a grievance or a formal discrimination complaint with any agency regarding this matter; and

(9) The signature of the appellant or, if the appellant has a representative, of the representative. If the appeal is electronically filed, compliance with §1201.14 and the directions at e-Appeal satisfy the signature requirement.

22. Where can I find official guidance from USAID, OPM, or legal resources?

Employees should review:

- **USAID ADS 454: RIF Foreign Service Guide**
- **OPM RIF Fact Sheets**
- **Benefits During Separation (reasons other than retirement)**
- **AFSA/AFGE legal updates**
- **USAID internal guidance and policy documents**