

*This FAQ is intended to provide information about AFSA's planned class action appeal of USAID's Reduction in Force to the Merit Systems Protection Board. The questions and answers are not intended to be exhaustive and do not constitute legal advice for your particular question, issue, or concern, nor do the questions and answers create any attorney-client relationship or duty on our part to assist you. For general information about the Foreign Service RIF and Foreign Service retirement benefits, please visit AFSA's [Resource Hub](#).*

**1. Who will be included within the class?**

We will ask the Merit Systems Protection Board (MSPB) to recognize a class that includes all members of the Foreign Service at USAID who received a specific RIF notice with effective RIF dates of April 24, 2025 or May 24, 2025.

**2. Who is funding the litigation?**

The class action appeal is being funded by [AFSA](#) and [Democracy Forward](#).

**3. Will there be any financial cost to the class members?**

No.

**4. What lawyers or firms will be representing the class?**

Daniel Crowley of [Crowley So, LLP](#) and Elaine Fitch of [Kalijarvi, Chuzi, Newman, and Fitch, P.C. \(KCNF\)](#), have entered into a co-counsel agreement with AFSA and Democracy Forward to represent the class.

**5. What are the initial steps for obtaining certification of a class at the MSPB?**

In a class action appeal, one or more employees file an appeal under their own names (our “named appellants”) and include with their appeal a request that the Administrative Judge (AJ) recognize them as representatives of an entire class of employees. The Request for class certification must establish 1) numerosity (the class is so numerous that joinder of all members is impractical); 2) commonality (there must be questions of law or fact common to the class); 3) typicality (the claims or defense of the named appellants must be typical of the claims or defenses of the class); and 4) adequacy of representation (the named appellants must fairly and adequately protect the interests of the class).

The AJ should decide within 30 days whether to hear the case as a class appeal.

**6. Do I have to sign up or opt into the class?**

No. If the MSPB certifies the class, the Board's ruling will apply to all class members, whether or not you affirmatively agreed to join the class.

**7. What if I want to file my own appeal or otherwise do not want to be included in the class action?**

If you do not wish to be part of the class, you will have the ability to opt out after the MSPB certifies the class. If the class is certified, you will receive notice of the decision and your right to opt out.

**8. What happens if the Board does not certify the class?**

If the MSPB decides not to certify the class, members of the putative class will have 35 days, from the date of that decision, to file an individual RIF appeal.

It is important that you follow developments in the case so that you know when this occurs. Failure to meet the 35-day deadline will result in your appeal being time-barred.

**9. If the MSPB does not certify the class, will KCNF and/or Crowley So represent the FSOs in their individual appeals?**

We are optimistic that the MSPB will accept the request for class certification because it will be one of the only means for the Board to expeditiously address identical claims for hundreds of people. If class certification is denied, we would not be able to file hundreds of separate appeals. However, we would be able to provide a template, which would also involve requesting that the cases be consolidated. The appeal form itself is not complicated, and it can be completed easily online.

**10. What are the common issues you expect to raise in the class appeal?**

Our case strategy will continue to evolve as we prepare the appeal, but we presently anticipate that the main focus of the appeal will be the Agency's violation of various RIF regulations, including whether the RIF was lawfully authorized, challenging the narrow definition of competitive areas, incorrect calculations of service computation date, the application (or lack thereof) of bumping/retreating/placement/reassignment, failing to provide proper notifications, and whether the requirement to create retention registers was followed; violations of ADS 454 and other Agency policies, including noncompliance with order of separation requirements and failure to provide travel benefits; and possible violations of prohibited personnel practices under [5 USC § 2302](#).

**11. What if I want to raise additional arguments?**

If you would like to raise any other claims, you should consider filing an individual appeal.

An individual appeal must be filed no later than 30 days after your RIF date. We strongly encourage anyone considering an individual appeal to consult with another attorney.

Importantly, the 35-day deadline described in FAQ number 8 above only applies to class members filing individual appeals because the MSPB declined to accept the class appeal. Our class appeal does not otherwise serve to toll or extend any filing deadline.

**12. What are some of the issues you do not expect to raise in the class appeal?**

It is impossible to list all claims that will not be included in the class appeal. However, some examples include claims of discrimination, retaliation, and whistleblower reprisal. If you wish to pursue such a claim, or any other claim that is not included in the class appeal, you should consult with another attorney immediately. The time for filing these claims will not be tolled or extended by the filing of our class action appeal.

**13. What happens if the MSPB lacks quorum?**

The lack of a quorum will not affect the AJ's ability to hear the appeal. Once our appeal is filed, the case will be assigned to an AJ. There will be discovery, motions, and possible briefing before a hearing is held. Following a hearing, the AJ will issue an initial decision. If either the appellants or the agency disagree with the initial decision, they can file a petition for review within 35 days of the initial decision. Petitions for review are considered by the Board's members. Alternately, appellants can appeal the decision to the United States Court of Appeals for the Federal Circuit.

For the Board to consider a petition for review, it must have a quorum consisting of at least two members. If the MSPB lacks a quorum, the case will not be considered until a quorum is established. This last time the Board lacked a quorum occurred between 2017 and 2022, which resulted in a backlog of approximately 4,000 cases.

As of today, the Board still maintains a quorum. If that changes, we anticipate developing arguments to bypass the Board and proceed directly to the Court of Appeals.

**14. HCTM has advised FSOs at the rank of FS-01 and above to file for involuntary retirement, should we do that?**

If you have already received a specific RIF notice, you can go ahead and follow this advice from HCTM.

If you have not received a specific RIF notice, you should wait until you receive one.

If you have not received a specific RIF notice but have already submitted a retirement application, you should rescind your application and refile after receiving a specific RIF notice.

**15. How long will the case take?**

It is impossible to say for sure, but it could take years to complete litigation at the MSPB, given the unprecedented number of appeals being filed as a result of the administration's actions. The timeline could be extended further if either party appeals the case.

**16. What remedy will we seek through the class appeal?**

If we prevail on the class action appeal, we anticipate that all class members will be reinstated with full back pay and benefits. We will also seek to recover all attorneys' fees and costs incurred in pursuit of the appeal.

**17. If I accept a new job after the RIF, how will that impact my participation in the class action?**

You will still be able to participate in the class action. If the MSPB reverses the RIF, you will be entitled to back pay, benefits, and reinstatement. Typically, any interim earnings would be deducted from your back pay award. If you prefer to stay at your new job instead of going back to work for USAID, you can do that.

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