

**NOTE: The below text is a version of language that has been submitted to the MSPB on behalf of certain USAID foreign service officers as a response to Box 16 on MSPB Form 185.**

## **EXPLANATION OF APPEAL**

Appellant's termination from USAID via a reduction in force (RIF) should be reversed. There was no bona fide basis for the RIF, the agency violated its own rules and procedures for RIFs, and the RIF was contrary to statutory and constitutional provisions. As a result, Appellant should be reinstated and made whole.

We note that this appeal is timely pursuant to the denial of class certification on July 15, 2025, in Case DC-0351-25-2947-I-1 ("Pursuant to 5 C.F.R. § 1201.27(b), any putative class member affected by this decision may file an individual appeal no later than August 19, 2025.").

### **I. Arguments in support of appeal**

Appellant raises the following arguments to challenge the RIF:

#### **1. Lack of bona fide basis for RIF**

A RIF must be based on a bona fide determination that the agency needs to lay off employees due to shortage of funds, restructuring, or other similar reasons. Here, however, the Department of Government Efficiency (DOGE) directed the RIF based on prohibited factors, including the false assertion that USAID employees were "radical-left Marxists who hate America," as stated publicly by Elon Musk, and baseless claims that the agency or its grantees were engaged in fraud. This is not a proper basis for a RIF.

#### **2. Violation of USAID Automated Directives System (ADS) 454.2 and 454.3.1 (failure to follow general RIF procedures)**

These provisions set forth general procedures for how a RIF should be planned and carried out at USAID. At a minimum, the agency must be held to the procedures the agency itself has adopted. Yet, the Agency violated these basic provisions.

First, under ADS 454.2, the USAID Assistant Administrator for Management must authorize a RIF "based on the determination that a RIF is necessary" and then engage in certain pre-RIF planning. Similarly, under ADS 454.3.1, management must decide that a RIF is necessary based on "a shortage of funds, organizational changes, realignment of mission, and/or changes in skills and work force needs." The Agency violated this provision because the RIF was directed by DOGE without regard to any determination by the Assistant Administrator for Management and without a bona fide determination that a RIF was necessary.

Second, under ADS 454.2, the USAID Office of Human Capital and Talent Management (HCTM) must implement a RIF "in consultation with the bureaus, field missions, and the

exclusive representatives of the Foreign Service employees” and “make[] recommendations... on the Competitive Levels, classes, and numbers to be reduced.” The Agency did not engage in the required consultation, nor did the Agency consider recommendations from HCTM.

3. Violation of USAID ADS 454.3.3, 454.3.4, 454.3.8, and related provisions (failure to create retention registers and rank employees)

The Agency’s rules make clear that a RIF must be based on “[r]etention registers... prepared by the Office of Human Capital and Talent Management,” which “will list, in order of retention, the names of each competing employee assigned to the competitive level.” *See, e.g.*, ADS 454.3.3; 343.3.4.

Here, the Agency completely failed to follow this process. The Agency did not create retention registers or rank employees. Likewise, the Agency failed to make retention registers available to employees, as required by the Agency’s rules. *See* ADS 343.3.8.

4. Violation of 5 U.S.C. §§ 2301, 2302 (merit systems principles, prohibited personnel practices)

Federal agencies must make employment decisions based on the efficiency and effectiveness of the government, and without consideration of impermissible factors such as political affiliation. *See, e.g.*, 5 U.S.C. §§ 2301(b)(5), 2302(b)(1)(E).

Here, as set forth above, the RIF was based on impermissible factors such as political animus and false allegations of fraud.

5. Violation of the First Amendment

The First Amendment prohibits the government from discriminating based on perceived political affiliation. Here, as set forth above, the RIF was wrongly based on perceived political affiliation of employees, such as the perception that USAID employees are “radical-left Marxists who hate America.”

6. Violation of the Separation of Powers and Take Care clause

The executive branch’s unilateral dismantling a federal agency violates the Constitution because the executive does not have authority to create, reorganize, or eliminate federal agencies. Rather, that power lies with Congress, and the President must take care to implement the laws passed by Congress. Here, the RIF was the result of a wrongful decision by the executive branch to eliminate a federal agency without Congressional authorization.

7. Violation of the APA

USAID and the State Department also violated the Administrative Procedure Act by taking action that was “arbitrary, capricious” or “not in accordance with law.” 5 U.S.C. § 706(2)(A). In particular, USAID and the State Department acted arbitrarily and capriciously when they decided to dismantle USAID based on impermissible factors, transfer certain functions to the State Department without adequate justification, and then institute a haphazard

and arbitrary process to fill new positions at the State Department to carry out those functions. Further, these actions exceeded the Agencies' statutory authority.

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Appellant reserves the right to raise additional arguments in support of this appeal.