



LOCAL 777

INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, AFL-CIO
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September 2, 2025

Rulemaking Comments

Re: FLRA Notice of Proposed Rulemaking (90 FR 30019)
Implementation of the Administrative False Claims Act

Solicitor Thomas Tso
Federal Labor Relations Authority
1400 K Street NW
Washington, DC 20424-0001

I am writing on behalf of Local 777 of the International Federation of Professional and Technical Engineers (IFPTE), AFL-CIO. We are a labor union recognized under the Federal Service Labor-Management Relations Statute as the exclusive representative of a bargaining unit of employees. We are also currently organizing in two additional potential units. We are also an unincorporated association recognized under Section 501(c)(5) of the Internal Revenue Code. We make these comments under 5 U.S.C. §§ 553 & 7102.

1. In proposed § 2419.2(a), we recommend that the FLRA clarify that “person” as used in these regulations includes both Agency and Union officials, as well as organizations. In our experience, Agency officials are as likely to make false statements in proceedings before the FLRA as anyone else; and the current draft of the regulations could leave the reader unclear as to whether Agency officials practicing before the FLRA could be liable under the AFCA.
2. In proposed § 2419.3(a), we recommend that the FLRA clarify how someone (whether a union or management official, or other individuals such as union members or grievants) would submit a matter to the Investigating Official for investigation. Further, we recommend that the FLRA clarify how the “may elect” discretion in proposed § 2419.3(a) will be utilized by the Investigating Official. We urge these clarifications to be made in the Rule text; but failing that, we encourage a treatment of these subjects in the preamble to the Final Rule.
3. In proposed §2419(c)(3), we recommend FLRA clarify in the text the types of actions that are likely to occur in the context of the FLRA’s business. For example, we are not aware of grants, loans, or contracts commonly issued by the FLRA; but we are aware of ULP charges, petitions (negotiability, representation, etc.) and it would help the reader to have these interactions substituted for the more boilerplate examples.

4. In proposed §2419.4(a)(3), we recommend that FLRA clarify that the representative available to the Defendant is statutorily required by 5 U.S.C. §§ 555 & 3803 and is not limited to an attorney. Further, we recommend that the FLRA explicitly state that an AFCA complaint is a “proceeding” under the meaning of 5 CFR 2429.13; and therefore, a representative is entitled to official time.

5. Related to the representative mentioned in §2419.4(a), we recommend that the FLRA explicitly state that representatives under AFCA are not subject to the criminal conflict of interest statute at 5 U.S.C. § 205, to the extent that a Defendant may elect a federal employee representative who may not be subject to the FSLMRS¹. We believe that AFCA proceedings are “personnel administration proceedings” within the meaning of 5 U.S.C. § 205(d)(1)(A), and stating this explicitly will ensure that there is no confusion as to who may serve as a representative.

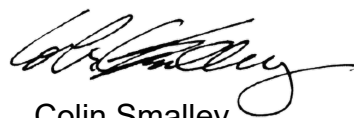
6. We suggest that the FLRA expand on how the representative may be chosen. Since 5 U.S.C. § 205(d)(1) requires that representation by a government employee not be “inconsistent with the faithful performance of that officer's or employee's duties”, it seems to us that it would be appropriate for FLRA to add rule text explaining that a potential representative must be allowed to serve as such in the absence of the representative's Agency's determination that the representative's duties preclude such service.

7. In proposed § 2419.4(a)(5) and § 2419.4(e), we believe the FLRA should not require imposition of the maximum penalties in the event of a failure to file an answer. This is not required by the statute and is unnecessarily punitive. Instead, we suggest the FLRA delete these provisions in favor of the proposed text at § 2419.5(b).

8. In proposed § 2419.4(f)(2)(v), we recommend that the FLRA explicitly state that an AFCA complaint is a “proceeding” under the meaning of 5 CFR 2429.13; and therefore, witnesses are entitled to official time. We further suggest that FLRA explicitly state that the presiding officer may upon motion from a party, order the reasonable release and provision of official time for witnesses, representatives, and defendants.

We appreciate the opportunity to provide these comments. If you have any questions, please feel free to contact me by email at president@ifpte777.org or by phone at 312-450-0838.

Sincerely,



Colin Smalley
President

¹ We note that Agencies (allegedly) subject to E.O. 14251 are already using threats of prosecution under § 205 against union members who seek to use their free association rights to name other union members who are federal employees as their representatives. See <https://www.wgbh.org/news/local/2025-08-26/trump-administration-moves-to-curtail-union-representation-at-epa>