# Trump Administration Looks to Upend Collective Bargaining in Budget Proposal

         By [Erich Wagner](https://www.govexec.com/voices/erich-wagner/12880/)

         March 19, 2019

The Trump administration asked Congress as part of its fiscal 2020 budget to approve legislation that makes it easier to fire or discipline federal workers and to make a series of pro-management changes to the law governing collective bargaining rights at federal agencies.

The General Services Administration’s [budget justification](https://cdn.govexec.com/media/gbc/docs/pdfs_edit/031919ew1.pdf) for 2020 includes an array of legislative proposals pertaining to the Office of Personnel Management, premised on the idea that Congress will approve the White House’s plan to redistribute OPM’s various functions among GSA, the Defense Department and the Executive Office of the President.

Included in its strategy to modernize the civil service, along with plans to [issue new pay systems](https://www.govexec.com/pay-benefits/2019/03/new-pay-systems-more-temporary-employees-headline-civil-service-reforms-trumps-budget/155634/?oref=federal-news-all) and temporary hiring authorities, is a request for Congress to codify the provisions of a 2018 executive order, since struck down by a federal court, to shorten the firing process. If enacted, the standard length of performance improvement periods for federal employees would be 30 days, although agencies could choose to extend such periods on a case-by-case basis.

Additionally, the proposal would shorten the length of advanced notice required before taking a variety of disciplinary and adverse personnel actions, and the planned Highly Qualified Experts term hiring authority would require employees to serve “at the pleasure of the agency,” without access to grievance and arbitration procedures.

It also calls for provisions of another invalidated executive order narrowing the scope of grievance procedures available to bargaining unit employees. The Trump administration has appealed that legal decision to the U.S. Court of Appeals. The White House has also proposed a sizeable overhaul of the operations of the Federal Labor Relations Authority, which presides over labor-management disputes at federal agencies.

Under the new proposal, there would be a “single, integrated process” to resolve all bargaining disputes, rather than the current system, where unfair labor practice complaints and disputes over the negotiability of bargaining proposals each have different review processes. And it would prevent the FLRA from siding with a union “where such remedies would adversely affect the mission or budget of the agency involved in the dispute.”

Steve Lenkart, executive director of the National Federation of Federal Employees, said he reads the proposal as an effort to make it harder for the FLRA to make decisions objectively.

“I’d read ‘streamline’ in this case as taking away the FLRA’s ability to properly review cases and to take advantage of case law and other options available to them,” he said.

The proposal would also grant the director of OPM the ability to “intervene or otherwise participate” in an FLRA case if the director believes “an erroneous decision will have a substantial impact on civil service law.” Although it is not clear how the director may intervene in a case, Lenkart said such a change would endanger the independence of the FLRA.

“It seems like they want the OPM director to serve as an overseer, impeding FLRA’s responsibility, which is absolutely counterintuitive against the current law,” he said. “When the Civil Service Commission was broken up in 1979, the same year that they created OPM, the FLRA, [the Merit Systems Protection Board] and all of these agencies, the idea was to separate these functions because they had to be independent and they all serve different purposes. They wanted the tribunals to be independent as much as possible from executive branch leadership to keep the government apolitical and efficient and effective across the board.”

The administration also wants to roll back a practice for years favored by both labor and management for resolving some disputes, where parties would go through negotiated grievance or arbitration procedures to avoid the time and cost of litigating complaints.

“This proposal would remove the option for bargaining unit employees to file a negotiated grievance and seek binding arbitration on matters where established statutory appeals processes exist, such as agency actions taken for performance or misconduct and which otherwise are appealable to the Merit Systems Protection Board,” the plan states.

Lenkart described that provision as an effort to restrict employees’ due process rights, forcing them and their union representatives to engage in a costly and adversarial process, despite the strong track record of grievances and arbitration.

“The MSPB over the past 15, maybe even 20, years has had a lot of success with its arbitration program,” Lenkart said. “Getting labor and management to step aside and discuss what the issues are and solve them without going into costly litigation has been good for both sides. The agency and the employee often end up with something much more agreeable than if it went through the courts.”