



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, December 13, 2017

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KATHLEEN M. McGETTIGAN, ACTING DIRECTOR

Subject: Guidance for Implementation of Executive Order 13812

Note: The guidance within the memorandum below has been rescinded by Section 6 of Executive Order 14119 found here: [Federal Register: Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums](#).

Through Executive Order 13812 (Order) signed on September 29, 2017, President Trump revoked Executive Order (E.O.) 13522 of December 9, 2009, Creating Labor-Management Forums to Improve Delivery of Government Services as extended by E.O. 13708 of September 30, 2015, Continuance or Reestablishment of Certain Federal Advisory Committees, which established the National Council on Federal Labor-Management Relations (Council) and implemented labor-management forums throughout the executive branch. E.O. 13812, sec. 2(a). In addition to revoking E.O. 13522, the Order directs heads of executive departments and agencies to “promptly move to rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13522” to the extent they can do so “consistent with law.” Id. at sec. 2(b). The President noted, however, that “[n]othing in this order shall abrogate any collective bargaining agreements in effect on the date of this order.” Id. at sec. 3(a).

In reaching this decision, the President found that the Council and the forums “have consumed considerable managerial time and taxpayer resources” while having failed to “fulfil[] their goal of promoting collaboration in the Federal workforce,” and that related public expenditures “have produced few benefits to the public.” E.O. 13812, sec. 1. The President concluded, “[T]hey should, therefore, be discontinued.” Id. The U.S. Office of Personnel Management (OPM) is issuing this guidance memorandum to help agencies meet the requirements of the Order.

E.O. 13812 abolishes the requirements previously imposed on agencies to form labor-management forums and engage in pre-decisional involvement in all workplace matters with employees and their union representatives. It also directs agencies to rescind orders, rules, regulations, guidelines, or policies to implement E.O. 13522. Accordingly, agencies should take steps to abolish existing forums, consistent with law and should move to rescind any agency-wide and local labor-management partnership councils, committees, and labor-management forums formed pursuant to E.O. 13522. Where the agencies have issued “orders, rules, regulations, guidelines, or policies” in connection with the creation of the forums, they should rescind those instruments and documents that are associated with these forums and which may create legal impediments to abolishment of the forums. If a forum, or guideline, rule, or policy

associated with that forum, has been imbedded into a collective bargaining agreement or other memorandum of understanding with a collective bargaining agent for employees at the agency, the agency should seek to renegotiate those terms at the earliest practicable juncture. Agencies have discretion under the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71) to adopt a labor relations strategy best suited to their own needs.

Nevertheless, in revamping your strategy, following elimination of these forums, agencies should be mindful of the President's finding that "labor-management forums have consumed considerable managerial time and taxpayer resources," but have produced few benefits to the public.

Consistent with the rescission of E.O. 13522, agencies should utilize pre-decisional involvement (PDI) only to the extent that the cost of doing so brings tangible benefits to the agency. To the extent to which agencies utilization of PDI, pursuant to Section 3(a)(ii) of E.O. 13522, is imbedded into collective bargaining agreements or other memorandum of understanding and such agreements compel agencies to utilize PDI without the sole consideration being the tangible benefit to the agency accrued from its utilization, the agency should seek to renegotiate those agreements at the earliest practicable juncture.

If a term or article of a collective bargaining agreement or memorandum of understanding was explicitly agreed upon for the purpose of creating and supporting a forum pursuant to E.O. 13522, the rescission of E.O. 13522 may also grant agencies the authority to declare such agreements non-enforceable and thus null and void absent the need to renegotiate these agreements. Similarly, if a term or article of a collective bargaining agreement or memorandum of understanding was explicitly agreed upon to require or promote "(b)(1)" bargaining and pre-decisional involvement pursuant to E.O. 13522, agencies may also have the authority to declare such agreements non-enforceable and thus null and void. We recommend that each agency consult with agency counsel to determine what steps may be necessary and appropriate.

To be consistent and in accord with the purposes of E.O. 13812, by January 12, 2018, agencies are asked to inform OPM of steps taken to ensure compliance with Section 2 of the President's Order. This notification should include a detailed itemization of the costs of participating in such forum(s) and/or PDI during Fiscal Year (FY) 2017, including employee staff time and any other expenses, and a listing of any tangible benefits the agency has realized through use of such forums and/or PDI in previous years. Agencies should note if their records on FY 2017 costs are incomplete. This information can be emailed to awr@opm.gov. Any agencies that intend to continue forums (or equivalent) notwithstanding E.O. 13812 and/or PDI should keep records of the costs associated with such activities, as described above, for future reporting requirements.

If you have any questions about this guidance or E.O. 13812, please contact OPM's Accountability and Workforce Relations office at (202) 606-2930 or awr@opm.gov.

cc: Chief Human Capital Officers, and Human Resources Directors