



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

Thursday, July 5, 2018

**MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

FROM: DR. JEFF T.H. PON, DIRECTOR

Subject: Guidance for Implementation of Executive Order 13837 – Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use

*Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: <https://www.chcoc.gov/content/guidance-implementation-executive-order-14003-protecting-federal-workforce>*

**Introduction**

President Trump has recognized the importance of strategic workforce management, placing it at the top of his agenda for modernizing the Federal Government in key areas that will improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars. In support of this important effort, setting sensible standards for granting and using taxpayer-funded union time\* by federal employees for labor-management relations activities is necessary to meet the needs and expectations of agencies, employees, and the ultimate customers -- the American people.

Executive Order (EO) 13837, signed by the President on May 25, 2018, requires agencies subject to the Federal Service Labor-Management Relations Statute\*\* (the Statute) to administer the Statute in a manner consistent with the requirements of an effective and efficient government, and consistent with this objective, to authorize taxpayer funded union time only in amounts that are reasonable, necessary, and in the public interest and to monitor its use to see that it is used efficiently. The EO states that agencies should not cover union expenses to a greater extent than the law requires and asserts that agencies should eliminate unrestricted grants of taxpayer funded union time. Such unrestricted grants would include grants of taxpayer-funded union time that allocate a specific portion of an employee's tour of duty for taxpayer-funded union time (e.g. 100%, 50%). Agencies should instead carefully monitor and report taxpayer-funded union time to ensure that it is only used for authorized purposes and to make the information on these expenditures available to the public. Notably, the EO emphasizes that Executive Branch employees should spend the clear majority of their duty hours performing Federal business and serving the public.

This guidance summarizes key requirements of EO 13837 (attached).

## **Implementation and Renegotiation of Collective Bargaining Agreements**

Section 8(a) of the EO states that the EO is to be implemented within 45 days of its issuance, except for subsection 4(b), which will be effective for employees at an agency when such agency implements the procedure required by section 5(b), to the extent permitted by law and consistent with agency obligations under CBAs in force on the date of the issuance of the EO. Agencies are to designate an official responsible for the implementation of the EO and notify OPM within 30 days of the issuance of the EO regarding the point of contact for the agency. Agencies should send the name, title, telephone number and email address for their designated official to OPM by e-mail to [LRG@opm.gov](mailto:LRG@opm.gov) as soon as possible but no later than July 13, 2018.

Section 8(b) of the EO directs agencies to consult with employee labor representatives about the implementation of the EO, on the earliest date permitted by law. It also reinforces the requirements of Section 8(a) by directing any agency with a CBA inconsistent with the EO, at the earliest moment the law permits, to give any contractually required notice of its intent to alter the terms of such agreement and either reopen negotiations and negotiate to obtain provisions consistent with the EO, or subsequently terminate such provision and implement the requirements of the EO, as applicable under law. EOs possess the force of government-wide rules. Therefore, provisions of the EO are effective on the date the CBA expires or rolls over, whether or not the CBA is reopened for negotiations. Nonetheless, agencies are encouraged to consult with legal counsel and offices of labor relations on questions relating to appropriate implementation of the EO. This consultation would include questions about how to implement the provisions of the EO that conflict with an existing and currently effective CBA.

## **Standards for Reasonable and Efficient Taxpayer-Funded Union Time Usage**

Section 3(a) of EO 13837 sets forth standards agencies must follow in negotiating with unions for taxpayer-funded union time. Section 3 states that no agency shall agree to authorize taxpayer-funded union time unless such time is reasonable, necessary, in the public interest, and consistent with effective and efficient Government. It further clarifies, taking into account the size of the bargaining unit and the amount of time anticipated to be granted under sections 7131(a) and 7131(c) of the Statute, that agencies should take the view in collective bargaining negotiations that taxpayer-funded union time is not ordinarily considered to be reasonable, necessary, in the public interest, or consistent with effective and efficient Government where the taxpayer-funded union time rate in any bargaining unit exceeds 1 hour per bargaining unit employee. Agencies must also commit the time and resources needed to achieve that goal and to fulfill their duty to bargain in good faith. "Union time rate" is defined in Section 2(j) of the EO as the ratio of (i) the total number of duty hours in a fiscal year that employees in a bargaining unit used for taxpayer-funded union time, to (ii) the number of employees in the bargaining unit. In meeting the requirements of Section 3 of the EO, the Office of Personnel Management (OPM) recommends that each agency assess its union time rate for previous years to assist in making appropriate adjustments on authorization and use of taxpayer-funded union time going forward, which should occur at the earliest practicable date permitted by law and subject to appropriate collective bargaining obligations.

Subject to section 5(b) and section 8 of EO 13837, agencies shall take steps to modify CBAs and other agreements at the soonest permissible opportunity to ensure that unrestricted grants of

taxpayer-funded union time are eliminated and that agencies have mechanisms in place to ensure that employees request and receive specific authorization prior to utilizing taxpayer-funded union time and to carefully monitor taxpayer-funded union time to ensure that it is used only for authorized purposes.

Section 3(b) of EO 13837 requires an agency head to report to the President through the Director of OPM when an agency agrees, under section 7131(d) of title 5, United States Code, to authorize amounts of taxpayer-funded union time that would cause the union time rate to exceed one hour per bargaining unit employee (or proposes to do so in negotiation impasse proceedings). Such report shall explain why such expenditures are reasonable, necessary, and in the public interest, describe the benefit (if any) the public will receive from the activities conducted by employees on such taxpayer-funded union time, and identify the total cost of such time to the agency. This reporting duty cannot be delegated. Agency reports on this matter may be submitted to the OPM Director via electronic mail at [LRG@opm.gov](mailto:LRG@opm.gov).

Subsection 3(b)(ii) further directs each agency head to require relevant subordinate agency officials to inform the agency head 5 business days in advance of presenting or accepting a proposal that would result in a union time rate of greater than 1 hour for any bargaining unit, if the subordinate agency officials anticipate they will present or agree to such a provision. This reporting requirement does not apply to any union time rate resulting from an order received in impasse proceedings or interest arbitration, provided that the agency had proposed to establish a union time rate of 1 hour or less.

### **Employee Conduct with Regard to Agency Time and Resources**

Section 4 of EO 13837 sets forth new requirements and restrictions for employees regarding the use of paid time and government property to ensure taxpayer monies are being spent effectively. Notably, Section 4:

1. prohibits employees from engaging in lobbying activities during paid time, except in their official capacities as an employee;
2. subject to section 4(a)(ii)(2) and (3) of the EO, requires employees to spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary agency training, in order to develop and maintain the skills necessary to perform their agency duties efficiently and effectively. For purposes of Fiscal Year 2018, agencies shall apply these requirements for paid time from July 9, 2018, through September 30, 2018;
3. prohibits employees acting on behalf of a Federal labor organization from receiving free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems. If such free or discounted use is not generally available, then agencies should take immediate steps on or after July 9, 2018, to discontinue providing free or discounted use or receive appropriate reimbursement from the labor organization for such free or discounted use, to the extent authorized by law or regulation;

4. prohibits reimbursement to employees for expenses incurred performing non-agency business, unless required by law or regulation;
5. except as otherwise authorized by law or regulation and subject to exceptions in section 4(a)(v)(2), prohibits use of taxpayer-funded union time to prepare or pursue grievances under procedures negotiated pursuant to section 7121 of title 5, United States Code, except where such use is otherwise authorized by law or regulation. Employees may use taxpayer-funded union time to prepare for, confer with their union representative regarding, or present a grievance brought on the employee's own behalf or to appear as a witness in any grievance proceeding. Employees may not, however, use official time to prepare or pursue grievances on another employee's behalf. Individual employees may also use taxpayer-funded union time to challenge an adverse personnel action taken against the employee in retaliation for engaging in federal protected whistleblower activity.

Unless specified by a different deadline, the requirements in section 4 take effect on July 9, 2018. In agencies with CBAs that conflict with these requirements, the provisions of the EO become effective on the date the CBA expires or rolls over, whether or not the CBA is reopened for negotiations or if a CBA contains a reopener provision permitting the EO to be immediately effective during the term of an agreement.

Section 4(c) provides that OPM will examine existing regulations to identify inconsistencies with the requirements and restrictions outlined in Section 4 of the EO within 45 days of the date of the issuance of the EO. As applicable, OPM will propose new or revised regulations for notice and public comment as soon as practicable to assist agencies in ensuring compliance with these requirements and restrictions as related to the use of taxpayer-funded union time. Review of current regulations is well underway.

While any forthcoming proposed regulations from OPM may offer some more details on these new requirements and restrictions, agencies are reminded of these new EO requirements and restrictions and should make appropriate adjustments on authorization and use of taxpayer-funded union time, at the earliest practicable date permitted by law and subject to appropriate collective bargaining obligations and to the extent consistent with applicable law. Please refer to the attached EO for complete details on these new requirements and restrictions.

### **Preventing Unlawful or Unauthorized Expenditures**

Section 5(a) of the EO addresses authorization requirements and the misuse of taxpayer-funded union time. Specifically, it notes that the use of taxpayer-funded union time by any employee without advanced written agency authorization (as required by Section 4(b) of the EO), or for purposes not specifically authorized by the agency is to be considered an absence without leave and subjects the employee to appropriate disciplinary action. The EO further highlights that repeated misuse of taxpayer-funded union time may constitute serious misconduct impairing the efficiency of the Federal service. In such instances, the EO directs agencies to take appropriate disciplinary action to address such misconduct.

Subject to section 5(b) and section 8 of EO 13837, agencies should take steps to modify CBAs and other agreements at the soonest permissible opportunity to eliminate unrestricted grants of

taxpayer-funded union time and put mechanisms in place that require employees to request and receive specific authorization prior to utilizing taxpayer-funded union time, and agencies should carefully monitor taxpayer-funded union time to ensure that it is used only for authorized purposes.

Section 5(b) of the EO provides that agencies are to develop and issue procedures governing authorization of taxpayer-funded union time within 180 days of the issuance of the EO, to the extent permitted by law. The procedures should require specific information as to the number of hours to be used and the specific and detailed purposes of such use. Agencies are to require authorization renewals no less than once per pay period for individuals with continuing and ongoing requests. In addition, separate advance authorizations are required for taxpayer-funded union time in excess of previously authorized hours, and for purposes for which such time was not previously authorized. To the extent such matters are already covered by existing collective bargaining agreements, OPM recommends that agencies, in consultation with appropriate legal counsel and labor relations staff, determine the earliest practicable date permitted by law to begin negotiations to bring the collective bargaining agreements into compliance with the EO.

Section 5(b) and 5(c) also require that, within 180 days of the issuance of the EO, agencies develop a monitoring system for the use of taxpayer-funded union time that requires employees to request and receive advanced, specific authorization prior to utilizing taxpayer-funded union time with specific purpose of how it will be used and further require agencies to carefully monitor and report taxpayer-funded union time to ensure that it is only used for authorized purposes.

Special attention is required by agencies to monitor any unlawful uses such as internal union business, certain lobbying activities, and political activities as defined in the EO. To the extent such matters are already covered by existing collective bargaining agreements, OPM recommends that agencies, in consultation with appropriate legal counsel and labor relations staff, determine the earliest practicable date permitted by law to seek negotiations on bringing the collective bargaining agreement into compliance with the EO.

### **Agency Reporting Requirements**

Section 6(a) of the EO requires agencies to submit an annual report to OPM on specific detailed purposes for agency authorizations to use taxpayer-funded union time and the amount of time for each purpose; the job title and total compensation for each employee using this time in the fiscal year, as well as the total number of hours each employee spent on these activities and the proportion of each employee's total paid hours that number represents; the total value of government property the agency allows unions or individuals on this time to use, on a free or discounted basis; and the amount of reimbursement paid by labor organizations for the use of government property.

Section 6(b) of the EO requires agencies to calculate the union time rate each fiscal year and report bargaining unit union time rates in excess of 1 hour to the Interagency Labor Relations Working Group (LRG) established pursuant to EO 13836. Section 6(c) of the EO requires agencies to explain any increases in union time rates to the LRG.

OPM will issue separate guidance on the format for all reporting requirements and establish the date for agency submissions. Please refer to the attached EO for complete details on agency reporting requirements.

### **Public Disclosure and Transparency**

Section 7 of the EO requires OPM to develop the processes and procedures to be utilized in reporting the data on taxpayer-funded union time usage as outlined in the EO. In addition to information on taxpayer-funded union time, agencies will be required to report data related to the value of any government property the agency allows labor organizations to use on a free or discounted basis; any expenses such as travel or per diems the agency paid for activities conducted on or related to taxpayer-funded union time; the purposes for which the taxpayer-funded union time was granted; and aggregated figures reflecting the job title and total compensation of employees who used taxpayer-funded union time as well as the total number of hours spent on this time and the proportions of the employees' paid hours that represents.

Standardized formats for agency annual reports are to be developed by OPM and shall be published by the OPM Director within 180 days of the issuance of the EO. OPM will analyze agency submissions and prepare a detailed report as outlined in the EO, to be published by June 30 of each year. The first report shall cover fiscal year 2019 and shall be published by June 30, 2020. The OPM Director, in consultation with the Chief Human Capital Officers, is authorized to promulgate any other guidance necessary to assist with compliance of the EO.

Until additional OPM guidance is issued regarding these matters, please refer to the EO for complete details on these reporting requirements for agencies.

### **Questions**

Agency headquarters-level human resources offices may contact OPM's Accountability and Workforce Relations office at [awr@opm.gov](mailto:awr@opm.gov) or 202-606-2930. Other agency employees should contact their agency human resources offices for assistance.

2 Attachments:

- [Executive Order 13837](#)
- Agency Deadlines (see 508-conformant PDF below)

cc: Chief Human Capital Officers and Human Resources Directors

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\* Section 2(i) of the EO defines "taxpayer-funded union time" as official time granted to an employee pursuant to section 7131 of title 5, United States Code.

\*\* Chapter 71 of title 5, United States Code.