



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, October 4, 2019

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: DALE CABANISS, DIRECTOR

Subject: Updated Guidance on Implementation of Executive Orders 13836, 13837, and 13839

Note: The guidance within the memorandum below has been rescinded by Executive Order; please refer to OPM's March 5, 2021 memorandum: 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>

Full Reinstatement of Executive Orders 13836, 13837, and 13839

On July 16, 2019, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating the order of the district court that had enjoined parts of three Executive Orders: 13836 *Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*; 13837 *Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use*; and EO 13839 *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles*. [See [https://www.cadc.uscourts.gov/internet/opinions.nsf/81BFA36379FFE7A185258439004F8C8A/\\$file/18-5289-1797318.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/81BFA36379FFE7A185258439004F8C8A/$file/18-5289-1797318.pdf)]

On October 3, 2019, the Court of Appeals issued the mandate implementing its decision to vacate the district court's order. Accordingly, all provisions of these three Executive Orders, including previously enjoined provisions, are in full force and effect and should be implemented consistent with the requirements and guidance contained in the EOs.

OPM Guidance

The following U.S. Office of Personnel Management's (OPM) Guidance is hereby rescinded:

- Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839 issued on August 29, 2018.
- Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839, issued November 8, 2018.

Note: It should be noted that although OPM's November 8, 2018 guidance is rescinded to the extent that it was issued pursuant to the previously enjoined portions of the EOs, this guidance emphasized that even for previously enjoined subjects, agencies retained the

authority to draft proposals and take positions during bargaining that are consistent with law and arrived at using independent judgment, taking into account agency-specific circumstances. This principle remains in effect as this is a right afforded agencies pursuant to the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71). Reinstatement of the previously enjoined portions of the EOs may provide an additional basis for agencies to continue ongoing pursuit of agency-specific goals through the collective bargaining process.

The following OPM guidance, originally issued on July 5, 2018 pursuant to the signing of the EOs is now effective:

- *Guidance for Implementation of Executive Order 13836 – Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining*
(<https://www.chcoc.gov/content/guidance-implementation-executive-order-13836-developing-efficient-effective-and-cost>)
- *Guidance for Implementation of Executive Order 13837 – Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use*
(<https://www.chcoc.gov/content/guidance-implementation-executive-order-13837---ensuring-transparency-accountability-and>)
- *Guidance for Implementation of Executive Order 13839 – Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles*
(<https://www.chcoc.gov/content/guidance-implementation-executive-order-13839-promoting-accountability-and-streamlining>)

Compliance with Executive Orders

OPM plans to provide additional guidance further discussing the full reinstatement of the EOs and addressing questions that may arise pursuant to this reinstatement. In the meantime, agencies should immediately review the EOs to ensure that they are fully compliant with all requirements or are taking steps to become compliant with requirements at the soonest feasible opportunity. The three EOs can be found at:

- Executive Order 13836 – Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining: <https://chcoc.gov/content/guidance-implementation-executive-order-13836-developing-efficient-effective-and-cost>
- Executive Order 13837 – Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use: <https://chcoc.gov/content/guidance-implementation-executive-order-13837---ensuring-transparency-accountability-and>
- Executive Order 13839 – Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles: <https://chcoc.gov/content/guidance-implementation-executive-order-13839-promoting-accountability-and-streamlining>

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors