



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Employee Services

April 13, 2023

Via Electronic Mail

Austin R. Evers  
Executive Director  
American Oversight  
[foia@americanoversight.org](mailto:foia@americanoversight.org)

Re: Final Response to Freedom of Information Act (FOIA) Request No. 23-ES-0006-R

Dear Austin R. Evers:

This is the final response to your FOIA request dated March 23, 2020, sent on April 11, 2023 as a referral of records from the U.S. Department of Justice United States Marshals Service (USMS) to the U.S. Office of Personnel Management (OPM), assigned tracking number 23-ES-0006-R. You requested the following:

Any memoranda, guidance, or directives regarding the restriction or elimination of collective bargaining rights for federal employees, including but not limited to the use or delegation of authority under the Federal Service Labor-Management Relations Statute [from November 1, 2019 to the date of the search].

Your request was processed under the FOIA, 5 U.S.C. § 552.

Records consisting of twelve (12) pages were referred by USMS to OPM. The records are being released to you in full.

If you are not satisfied with OPM's determination in response to this request, you may administratively appeal in writing by email to [OGCAtty@opm.gov](mailto:OGCAtty@opm.gov) or by mail to:

U.S. Office of Personnel Management  
Office of the General Counsel  
1900 E Street, N.W.  
Washington, D.C. 20415

An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why you believe the denying official erred. Appeals must be electronically transmitted or postmarked within 90 days of the date of the response to your

request. Due to OPM's current maximum telework operations, it is recommended that FOIA administrative appeals be submitted via email to avoid processing delays.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. You may contact OGIS by e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; facsimile at 202-741-5769; or mail at:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001

You may also contact OPM's FOIA Public Liaison at [FOIA@opm.gov](mailto:FOIA@opm.gov) or 202-606-1153. If by email, please address it to the FOIA Public Liaison either in the subject line or salutation.

If you have any questions regarding your request, please feel free to contact Steven Gitelman at [steven.gitelman@opm.gov](mailto:steven.gitelman@opm.gov) or 202-936-2470.

Sincerely,

**TIMOTHY  
CURRY**

Digitally signed by  
TIMOTHY CURRY  
Date: 2023.04.13  
10:25:08 -04'00'

Tim Curry  
Deputy Associate Director  
Accountability and Workforce Relations  
Employee Services  
Office of Personnel Management

Enclosure (12 pages)

**From:** OPM-AWR  
**Sent:** Thu, 26 Sep 2019 20:50:11 +0000  
**To:** Undisclosed recipients:  
**Subject:** Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839  
**Attachments:** AFGE V TRUMP EN BANC DENIED.PDF

On July 16, 2019, the United States Court of Appeals for the District of Columbia issued a decision vacating the District Court order in the matter of American Federation of Government Employees, AFL-CIO, et. al., v. Donald J. Trump in his official capacity as President of the United States, et al.

[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)

The District Court's order 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 13839 Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles.

Yesterday, September 25, 2019, the U.S. Court of Appeals for the D.C. Circuit denied the Plaintiff/Appellee's petition which has requested that the Court rehear this matter. See attachment. **Agencies should be aware, however, that the injunction issued by the District Court remains in effect until the D.C. Circuit issues a mandate implementing its order.**

While the implementation of the Court of Appeals Order is pending, agencies should continue to follow OPM's Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839 issued on August 29, 2018 (<https://www.chcoc.gov/content/updated-guidance-relating-enjoinment-certain-provisions-executive-orders-13836-13837-and>). Agencies should also continue to follow OPM's Updated Guidance Relating to Enjoinment of Certain Provisions of Executive Orders 13836, 13837, and 13839, issued November 8, 2018 (<https://www.chcoc.gov/content/additional-guidance-relating-implementation-executive-orders-13836-13837-and-13839>).

At such time that the mandate is issued and the injunction is lifted, we will advise you. If you have any questions regarding the court's decision, please consult with your agency legal counsel.

**Accountability  
and Workforce Relations  
Employee Services  
U.S. Office of Personnel Management**

*OPM Employee Services wants to hear your feedback! Please, let us know about the service you received today at the following link:*

<https://feedback.opm.gov/Community/se/076F441041B8A245>

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 18-5289****September Term, 2019****1:18-cv-01261-KBJ****Filed On:** September 25, 2019

American Federation of Government  
Employees, AFL-CIO, et al.,

Appellees

v.

Donald J. Trump, in his official capacity as  
President of the United States, et al.,

Appellants

**BEFORE:** Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith,  
Srinivasan, Millett, Pillard, Wilkins\*, Katsas, and Rao, Circuit  
Judges

**ORDER**

Upon consideration of appellees' petition for rehearing en banc, and the  
absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk

\* Circuit Judge Wilkins did not participate in this matter.

**From:** OPM-AWR  
**Sent:** Tue, 27 Nov 2018 18:16:43 +0000  
**Cc:** OPM-AWR;OPM-LRG  
**Subject:** UPDATE: OPM Memo: Updated Guidance for Submission of Collective Bargaining Agreements and Arbitration Awards in Accordance with EO 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining

OPM has made changes to the recently-released memorandum with updated guidance for the submission of collective bargaining agreements (CBAs) and arbitration awards in accordance with Executive Order 13836. The changes attempt to clarify that agencies will need to provide CBAs in a format conformant with the standards of Section 508 of the Rehabilitation Act of 1973, as amended, and scanned versions of CBAs will not be accepted in any format.

This memorandum is available online at: <https://chcoc.gov/content/updated-guidance-submission-collective-bargaining-agreements-and-arbitration-awards>

If you have any questions about the requirements, please contact OPM's Accountability and Workforce Relations office at [LRG@opm.gov](mailto:LRG@opm.gov), [AWR@opm.gov](mailto:AWR@opm.gov), or (202) 606-2930.

Accountability and Workforce Relations  
U.S. Office of Personnel Management  
[AWR@opm.gov](mailto:AWR@opm.gov)

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**From:** OPM-AWR  
**Sent:** Tuesday, November 20, 2018 1:01 PM  
**Cc:** OPM-AWR <[AWR@opm.gov](mailto:AWR@opm.gov)>; OPM-LRG <[LRG@opm.gov](mailto:LRG@opm.gov)>  
**Subject:** OPM Memo: Updated Guidance for Submission of Collective Bargaining Agreements and Arbitration Awards in Accordance with EO 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining

Today OPM released a memorandum with updated guidance for the submission of collective bargaining agreements and arbitration awards in accordance with Executive Order 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining.

This memorandum is available online at: <https://chcoc.gov/content/updated-guidance-submission-collective-bargaining-agreements-and-arbitration-awards>

Accountability and Workforce Relations  
U.S. Office of Personnel Management  
[AWR@opm.gov](mailto:AWR@opm.gov)

**From:** OPM-AWR  
**Sent:** Tue, 15 Oct 2019 13:51:09 +0000  
**To:** Undisclosed recipients:  
**Subject:** Presidential Memorandum on Executive Orders 13836, 13837, and 13839

On Friday, October 11, 2019, the President issued a Presidential Memorandum on Executive Orders 13836, 13837, and 13839 (<https://www.whitehouse.gov/presidential-actions/presidential-memorandum-executive-orders-13836-13837-13839/>).

The text of the Presidential memorandum is located below.

***Accountability  
and Workforce Relations  
Employee Services  
U.S. Office of Personnel Management***

Issued on: October 11, 2019

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

**SUBJECT: Executive Orders 13836, 13837, and 13839**

On May 25, 2018, I signed three Executive Orders requiring executive departments and agencies (agencies) to negotiate collective bargaining agreements that will reduce costs and promote government performance and accountability. These Executive Orders, Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining), Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use), and Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles), were partially enjoined by the United States District Court for the District of Columbia on August 25, 2018. The District Court's injunction barred enforcement of sections 5(a), 5(e), and 6 of Executive Order 13836, sections 3(a), 4(a), and 4(b) of Executive Order 13837, and sections 3, 4(a), and 4(c) of Executive Order 13839.

On July 16, 2019, the United States Court of Appeals for the District of Columbia Circuit held that the District Court lacked jurisdiction and vacated its judgment, and the Court of Appeals has now issued the mandate making its judgment effective.

Provisions of the Executive Orders that had been subject to the District Court's injunction set presumptively reasonable goals that agencies must pursue during bargaining; directed agencies to refuse to bargain over permissive subjects of negotiation; and established Government-wide rules that displace agencies' duty to bargain with unions over contrary matters, regardless of whether the Federal Service Labor-Management Relations Statute would otherwise require bargaining absent those rules. Sections 4(c)(ii) and 8(a) of Executive Order 13837 and section 8(b) of Executive Order 13839, however, recognized agencies' ability to comply with collective bargaining agreements containing prohibited terms so long as such agreements were effective on the date of the Executive Orders.

While the District Court's injunction remained in effect, agencies retained the ability to bargain over subjects covered by the enjoined provisions. The Executive Orders, however, did not address collective bargaining agreements entered into during this period. As a result, it is necessary to clarify agencies' obligations with respect to such collective bargaining agreements.

Agencies shall adhere to the terms of collective bargaining agreements executed while the injunction was in effect. Agencies that remain engaged in collective-bargaining negotiations, to the extent consistent with law, shall comply with the terms of the Executive Orders. However, where, between the date of the Executive Orders and the date of the Court of Appeals's mandate, the parties to collective bargaining negotiations have executed an agreement to incorporate into a new collective bargaining agreement specific terms prohibited by the Executive Orders, an agency may execute the new collective bargaining agreement containing such terms, and terms ancillary to those specific terms, notwithstanding the Executive Orders.

To the extent it is necessary, this memorandum should be construed to amend Executive Orders 13836, 13837, and 13839.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the *Federal Register*.

DONALD J. TRUMP

**From:** OPM-PLR  
**Sent:** Mon, 2 Oct 2017 13:43:25 -0400  
**To:** Undisclosed recipients:  
**Subject:** Presidential Executive Order on the Revocation of Executive Order Creating Labor-Management Forums

**The White House**

Office of the Press Secretary

For Immediate Release

September 29, 2017

# Presidential Executive Order on the Revocation of Executive Order Creating Labor-Management Forums

## EXECUTIVE ORDER

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### REVOCATION OF EXECUTIVE ORDER CREATING LABOR-MANAGEMENT FORUMS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. The United States Government should spend tax dollars responsibly, efficiently, and in the public interest. The National Council on Federal Labor-Management Relations (Council) and related agency-level labor-management forums have consumed considerable managerial time and taxpayer resources, but they have not fulfilled their goal of promoting collaboration in the Federal workforce. Public expenditures on the Council and related forums have produced few benefits to the public, and they should, therefore, be discontinued.

Sec. 2. Revocations. (a) Executive Order 13522 of December 9, 2009 (**Creating Labor-Management Forums to Improve Delivery of Government Services**), as extended by Executive Order 13708 of September 30, 2015 (Continuance or Reestablishment of Certain

Federal Advisory Committees), which established the Council and implemented labor-management forums throughout the executive branch, is hereby revoked.

(b) The Director of the Office of Personnel Management and heads of executive departments and agencies shall, consistent with law, promptly move to rescind any orders, rules, regulations, guidelines, programs, or policies implementing or enforcing Executive Order 13522.

Sec. 3. General Provisions. (a) Nothing in this order shall abrogate any collective bargaining agreements in effect on the date of this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

September 29, 2017.

**From:** OPM-AWR  
**Sent:** Wed, 17 Apr 2019 18:44:00 +0000  
**Cc:** OPM-AWR;OPM-LRG  
**Subject:** OPM Reminder to Agencies on submitting CBAs and arbitration awards

This a reminder to submit all collective bargaining agreements and arbitration awards to OPM in accordance with Executive Order (EO) 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining. Section 8 of the EO requires agencies to submit any new term collective bargaining agreement to OPM within 30 days of its effective date and any new arbitration award to OPM within 10 business days of receipt.

We have not received as many arbitration awards as expected. The submission of arbitration awards will allow us to assess issues regarding federal sector arbitration and, if necessary, pursue reforms. It will also provide OPM visibility on arbitration decisions involving appealable adverse actions. Only OPM may challenge adverse action decisions where agencies have not prevailed, so receiving them in a timely manner provides OPM an opportunity to make a timely determination on whether it is appropriate to challenge these decisions. Please email all CBAs and arbitration awards to [LRG@opm.gov](mailto:LRG@opm.gov).

The memorandum/guidance relating to this requirement is available online at: <https://chcoc.gov/content/updated-guidance-submission-collective-bargaining-agreements-and-arbitration-awards>

If you have any questions, please email [LRG@opm.gov](mailto:LRG@opm.gov) or [AWR@opm.gov](mailto:AWR@opm.gov).

Sincerely,

**Tim Curry**  
Deputy Associate Director  
Accountability and Workforce Relations  
U.S. Office of Personnel Management

**From:** OPM-AWR  
**Sent:** Mon, 25 Nov 2019 23:03:34 +0000  
**To:** Undisclosed recipients:  
**Subject:** OPM Memo: Updated Guidance on Implementation of Executive Orders 13836, 13837, and 13839  
**Importance:** High

Good evening

Today OPM issued a memorandum titled, "Updated Guidance on Implementation of Executive Orders 13836, 13837, and 13839." A 508-conformant version of this memorandum is available online for the benefit of readers with disabilities at: <https://www.chcoc.gov/content/updated-guidance-implementation-executive-orders-13836-13837-and-13839-0>

***Accountability  
and Workforce Relations  
Employee Services  
U.S. Office of Personnel Management***

**From:** OPM-AWR  
**Sent:** Tue, 20 Nov 2018 18:00:45 +0000  
**Cc:** OPM-AWR;OPM-LRG  
**Subject:** OPM Memo: Updated Guidance for Submission of Collective Bargaining Agreements and Arbitration Awards in Accordance with EO 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining

Today OPM released a memorandum with updated guidance for the submission of collective bargaining agreements and arbitration awards in accordance with Executive Order 13836 - Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining.

This memorandum is available online at: <https://chcoc.gov/content/updated-guidance-submission-collective-bargaining-agreements-and-arbitration-awards>

Accountability and Workforce Relations  
U.S. Office of Personnel Management  
[AWR@opm.gov](mailto:AWR@opm.gov)