



Federal Register

**Monday,
December 14, 2009**

Part II

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Management Forums to Improve Delivery
of Government Services**

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Executive Order 13522 of December 9, 2009

The President

Creating Labor-Management Forums to Improve Delivery of Government Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish a cooperative and productive form of labor-management relations throughout the executive branch, it is hereby ordered as follows:

Section 1. Policy. Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people. A nonadversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations and improve the productivity and effectiveness of the Federal Government. Labor-management forums, as complements to the existing collective bargaining process, will allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people. Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.

The purpose of this order is to establish a cooperative and productive form of labor-management relations throughout the executive branch.

Sec. 2. The National Council on Federal Labor-Management Relations. There is established the National Council on Federal Labor-Management Relations (Council).

(a) **Membership.** The Council shall be composed of the following members appointed or designated by the President:

- (i) the Director of the Office of Personnel Management (OPM) and Deputy Director for Management of the Office of Management and Budget (OMB), who shall serve as Co-Chairs of the Council;
- (ii) the Chair of the Federal Labor Relations Authority;
- (iii) a Deputy Secretary or other officer with department- or agency-wide authority from each of five executive departments or agencies not otherwise represented on the Council, who shall serve for terms of 2 years;
- (iv) the President of the American Federation of Government Employees, AFL-CIO;
- (v) the President of the National Federation of Federal Employees;
- (vi) the President of the National Treasury Employees Union;
- (vii) the President of the International Federation of Professional and Technical Engineers, AFL-CIO;
- (viii) the heads of three other labor unions that represent Federal employees and are not otherwise represented on the Council, who shall serve for terms of 2 years;
- (ix) the President of the Senior Executives Association; and
- (x) the President of the Federal Managers Association.

(b) **Responsibilities and Functions.** The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include, to the extent permitted by law:

- (i) supporting the creation of department- or agency-level labor-management forums and promoting partnership efforts between labor and management in the executive branch;

- (ii) developing suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies;
- (iii) collecting and disseminating information about, and providing guidance on, labor-management relations improvement efforts in the executive branch, including results achieved;
- (iv) utilizing the expertise of individuals both within and outside the Federal Government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations;
- (v) developing recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests;
- (vi) serving as a venue for addressing systemic failures of department- or agency-level forums established pursuant to section 3 of this order; and
- (vii) providing recommendations to the President for the implementation of several pilot programs within the executive branch, described in section 4 of this order, for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

(c) Administration.

- (i) The Co-Chairs shall convene and preside at meetings of the Council, determine its agenda, and direct its work.
- (ii) The Council shall seek input from nonmember executive departments and agencies, particularly smaller agencies. It also may, from time to time, invite persons from the private and public sectors to submit information. The Council shall also seek input from Federal manager and professional associations, companies, nonprofit organizations, State and local governments, Federal employees, and customers of Federal services, as needed.
- (iii) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.
- (iv) Members of the Council shall serve without compensation for their work on the Council, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.
- (v) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may require for purposes of carrying out its functions.
- (vi) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Director of OPM in accordance with the guidelines that have been issued by the Administrator of General Services.

(d) Termination. The Council shall terminate 2 years after the date of this order unless extended by the President.

Sec. 3. Implementation of Labor-Management Forums Throughout the Executive Branch.

(a) The head of each executive department or agency that is subject to the provisions of the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*), or any other authority permitting employees of such department or agency to select an exclusive representative shall, to the extent permitted by law:

(i) establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions;

(ii) allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums; and

(iii) evaluate and document, in consultation with union representatives and consistent with the purposes of this order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

(b) Each head of an executive department or agency in which there exists one or more exclusive representatives shall, in consultation with union representatives, prepare and submit for approval, within 90 days of the date of this order, a written implementation plan to the Council. The plan shall:

(i) describe how the department or agency will conduct a baseline assessment of the current state of labor relations within the department or agency;

(ii) report the extent to which the department or agency has established labor-management forums, as set forth in subsection (a)(i) of this section, or may participate in the pilot projects described in section 4 of this order;

(iii) address how the department or agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants; and

(iv) explain the department's or agency's plan for devoting sufficient resources to the implementation of the plan.

(c) The Council shall review each executive department or agency implementation plan within 30 days of receipt and provide a recommendation to the Co-Chairs as to whether to certify that the plan satisfies all requirements of this order. Plans that are determined by the Co-Chairs to be insufficient will be returned to the department or agency with guidance for improvement and resubmission within 30 days. Each department or agency covered by subsection (b) of this section must have a certified implementation plan in place no later than 150 days after the date of this order, unless the Co-Chairs of the Council authorize an extension of the deadline.

Sec. 4. *Negotiation over Permissive Subjects of Bargaining.*

(a) In order to evaluate the impact of bargaining over permissive subjects, several pilot projects of specified duration shall be established in which some executive departments or agencies elect to bargain over some or all of the subjects set forth in 5 U.S.C. 7106(b)(1) and waive any objection to participating in impasse procedures set forth in 5 U.S.C. 7119 that is based on the subjects being permissive. The Council shall develop recommendations for establishing the pilot projects, including (i) recommendations for evaluating such pilot projects on the basis, among other things, of their impacts on organizational performance, employee satisfaction, and labor relations of the affected departments or agencies; (ii) recommended methods for evaluating the effectiveness of dispute resolution procedures

adopted and followed in the course of the pilot projects; and (iii) a recommended timeline for expeditious implementation of the pilot programs.

(b) The Council shall present its recommendations to the President within 150 days after the date of this order.

(c) No later than 18 months after implementation of the pilot projects, the Council shall submit a report to the President evaluating the results of the pilots and recommending appropriate next steps with respect to agency bargaining over the subjects set forth in 5 U.S.C. 7106(b)(1).

Sec. 5. 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 limit, preclude, or prohibit any head of an executive department or agency from electing to negotiate over any or all of the subjects set forth in 5 U.S.C. 7106(b)(1) in any negotiation.

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

- (i) authority granted by law to an executive department, agency, or the head thereof; or
- (ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

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

(e) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other 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.



THE WHITE HOUSE,
December 9, 2009.