

United States Senate
WASHINGTON, DC 20510

April 27, 2020

Russell T. Vought
Acting Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Michael J. Rigas
Acting Director
United States Office of Personnel Management
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Washington, DC 20415-1000

Dear Mr. Vought and Mr. Rigas:

We write to request information about current policies and procedures at the Office of Management and Budget (OMB) and the U.S. Office of Personnel Management (OPM) regarding the safety of federal workers during the coronavirus (COVID-19) pandemic. The federal civilian workforce includes nearly two million employees located in the United States.¹ OMB and OPM have the authority and responsibility to make sure that federal agencies have effective and clear policies to protect these employees and prevent them from contracting and unwittingly spreading the virus during the COVID-19 pandemic.

We are seeking information about your office's efforts to (1) ensure that agencies are maximizing telework across their workforce, (2) collect and provide data on current teleworking practices at federal agencies, and (3) standardize the procedures by which positive cases of COVID-19 are handled and disclosed.

In addition, we are seeking information about how OMB and OPM are evaluating when it is safe for federal employees to reduce telework and return to work at their job sites. Last week, your agencies issued a memo that directs federal agencies to "incorporate" the President's Opening Up America Again guidelines "into agency workplace protocols," and encourages federal agencies to "to allow Federal employees and contractors to return to the office in low-risk areas."² Public health experts have expressed serious concerns about these guidelines and warned

¹ U.S. Office of Personnel Management, "Federal Workforce Data," June 2019, <https://www.fedscope.opm.gov/employment.asp>.

² Office of Management and Budget and Office of Personnel Management, "Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again," April 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-23.pdf>.

that there is still not sufficient testing, tracing, or personal protective equipment to know what, where, and when it is safe to relax certain social distancing and quarantine guidelines.³ As the number of coronavirus cases and the number of deaths—including deaths of federal employees—continue to rise,⁴ it is imperative that all federal employees are appropriately protected, and have assurance that their safety will take precedence and be the highest priority in decisions about when and how they return to their job sites.

Teleworking Has Been Implemented Inconsistently Across the Federal Government

On March 3, 2020, days after the announcement of what was then the first known COVID-19-related death in the United States,⁵ OPM issued a government-wide memo directing agencies to “incorporate telework into the continuity of operations plan[s].”⁶ It was two more weeks before OMB issued a memorandum directing federal agency heads to “maximize telework across the nation for the Federal workforce (including mandatory telework, if necessary),” and to “extend telework flexibilities to contract workers wherever feasible.”⁷ By that date, more than 100 Americans had died as a result of COVID-19.⁸ OMB and OPM risked the safety of federal employees by waiting so long to issue strong telework guidance. Moreover, almost one month after it was put in place, this guidance has still not led to a uniform or rapid shift to telework across all agencies.

For example, the head of the U.S. Department of Veterans Affairs (VA) Veterans Health Administration, which has over 355,000 employees,⁹ did not reverse a ban on telework for applicable employees until March 21, after *ProPublica* reported that employee requests to work from home were being ignored.¹⁰ The Social Security Administration (SSA) did not implement

³ The Guardian, “Operation reopen America: are we about to witness a second historic failure of leadership from Trump?,” Ed Pilkington and Dominic Rushe, April 18, 2020, <https://www.theguardian.com/us-news/2020/apr/18/operation-reopen-america-are-we-about-to-witness-a-second-historic-failure-of-leadership-from-trump>.

⁴ Government Executive, “Coronavirus Roundup: Federal Employee Cases and Deaths Continue to Increase,” Courtney Bublé, April 14, 2020, <https://www.govexec.com/workforce/2020/04/coronavirus-roundup-federal-employee-cases-and-deaths-continue-increase/164603/>.

⁵ NPR, “President Trump Confirms 1st U.S. Coronavirus Death; U.S. Heightens Travel Warnings,” Meg Anderson, February 29, 2020, <https://www.npr.org/2020/02/29/810722517/seattle-area-patient-with-coronavirus-dies>; NPR, “1st Known U.S. COVID-19 Death Was Weeks Earlier Than Previously Thought,” Bill Chappell, April 22, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/22/840836618/1st-known-u-s-covid-19-death-was-on-feb-6-a-post-mortem-test-reveals>.

⁶ U.S. Office of Personnel Management, “Memorandum for: Heads of executive departments and agencies,” March 3, 2020, <https://chcoc.gov/content/preliminary-guidance-agencies-during-coronavirus-disease-2019-covid-19>.

⁷ Office of Management and Budget, “Memorandum for the heads of departments and agencies,” March 17, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>.

⁸ Washington Post, “U.S. coronavirus death toll surpasses 100,” Reis Thebault, Abigail Hauslohner and Jacqueline Dupree, March 17, 2020, https://www.washingtonpost.com/national/us-coronavirus-death-toll-reaches-100/2020/03/17/f8d770c2-67a8-11ea-b313-df458622c2cc_story.html.

⁹ U.S. Office of Personnel Management, “Federal Workforce Data,” June 2019, <https://www.fedscope.opm.gov/employment.asp>.

¹⁰ ProPublica, “The VA Will Now Let Some Administrative Staff Work From Home,” Bryant Furlow, March 25, 2020, <https://www.propublica.org/article/va-veterans-health-administration-telework-policy-work-from-home-coronavirus>; ProPublica, “The Veterans Health Administration Has Banned Even Administrative Employees From

full telework for most employees until March 20,¹¹ and the Internal Revenue Service (IRS) did not do so until March 30.¹² The Environmental Protection Agency (EPA) issued a new order restricting telework on March 15—although the agency subsequently said the new restrictions did not apply during the pandemic¹³—and leadership did not urge EPA employees to work from home until March 20, the day a second EPA employee received a confirmed COVID-19 diagnosis.¹⁴

Astonishingly, some federal employees who have jobs that can be done remotely are still not able to access telework. On April 13, *Government Executive* reported that some employees of the U.S. Department of Justice Executive Office of Immigration Review (EOIR) are still not being allowed to telework, even after one had COVID-19 symptoms. The report states that “while the attorneys and paralegals may work remotely, the agency still is not allowing most support staff and clerks to telework, citing a lack of laptops.”¹⁵ One agency employee reports being told, “that if they were uncomfortable continuing to work in the office, they would have to take personal leave.”¹⁶ We are disturbed by reports that more senior staff at EOIR are being allowed to telework, while administrative staff are being required to come in.

In addition, due to security concerns, many/most employees at intelligence agencies may be unable to conduct substantial amounts of their work at home, putting them at risk of contracting COVID-19; needless to say, a COVID-19 outbreak among the federal intelligence workforce would pose implications for national security.¹⁷

The *Telework Enhancement Act of 2010* gives OMB and OPM certain responsibilities to ensure the widespread availability of telework across the federal government.¹⁸ Especially during this pandemic, OMB and OPM must take additional steps to monitor telework practices at the agencies and ensure that as many employees as possible are able to telework.

Positive COVID-19 Cases Are Being Reported and Handled Inconsistently

Working From Home,” Bryant Furlow, March 20, 2020, <https://www.propublica.org/article/the-veterans-health-administration-has-banned-even-administrative-employees-from-working-from-home>.

¹¹ Government Executive, “Social Security Institutes Fulltime Telework for Most Employees,” Erich Wagner, March 20, 2020, <https://www.govexec.com/management/2020/03/social-security-institutes-fulltime-telework-most-employees/163979/>.

¹² Federal News Network, “IRS issues evacuation notice putting nearly all employees on mandatory telework,” Jory Heckman, March 27, 2020, <https://federalnewsnetwork.com/workforce/2020/03/nteu-says-irs-preparing-evacuation-notice-to-send-all-employees-home/>.

¹³ The Hill, “New EPA order limits telework post-pandemic,” Rachel Frazin, March 24, 2020, <https://thehill.com/policy/energy-environment/489293-new-epa-order-limits-telework-post-coronavirus>.

¹⁴ E&E News, “Wheeler urges telework as 2nd staffer tests positive,” Corbin Hiar, March 20, 2020, <https://www.eenews.net/stories/1062655813>.

¹⁵ Government Executive, “Immigration Review Office Remains Open Despite Potential COVID-19 Exposure,” Erich Wagner, April 13, 2020, <https://www.govexec.com/management/2020/04/immigration-review-office-remains-open-despite-potential-covid-19-exposure/164584/>.

¹⁶ *Id.*

¹⁷ Wall Street Journal, “Spies, Unable to Telework, Adapt Their Access to U.S. Secrets,” Warren P. Strobel and Dustin Volz, April 6, 2020, <https://www.wsj.com/articles/spies-unable-to-telework-adapt-their-access-to-u-s-secrets-11586177533>.

¹⁸ Telework Enhancement Act of 2010, Public Law 111-292.

There also appear to be disparities across agencies in terms of how federal agencies disclose positive COVID-19 cases in their workforces. Thousands of federal employees have reportedly been infected with COVID-19.¹⁹ When an employee tests positive, it is critical that management act on this information immediately, so that those who have come into contact with that employee can be informed, self-quarantine, and get tested in order to prevent further spread. But there is apparently no consistency across agencies in terms of how and when cases are reported.

For example, hours after the Department of Transportation learned of a positive case, it disclosed the employee's office location and sent other employees home.²⁰ In contrast, communications about COVID-19 across the Department of State are haphazard, and possibly inaccurate—Secretary of State Pompeo told reporters that you could count the number of employees who tested positive “on one hand,” although at the time there were reportedly dozens of suspected cases among State Department employees.²¹ There are now at least 150 confirmed cases, and at least one death.²² While the U.S. Postal Service told employees that they would be informed “if an employee in your workplace is confirmed to have COVID-19,”²³ postal workers are reporting that they are instead first hearing about cases through their colleagues.²⁴ One mail handler said, “people are scared because management has stopped communicating. We have a right to know from management exactly how many cases are confirmed in the building.”²⁵

At the VA, reports indicate that staff who have been exposed to the virus are pressured to return to work soon after exposure because “those who take time off to self-isolate after a potential exposure without experiencing symptoms risk being labeled ‘absent without leave,’” negatively impacting their pay and promotion opportunities.²⁶ Reports indicate that this “is creating a stressful environment in which VA workers worry their colleagues may be hiding symptoms

¹⁹ Government Executive, “Thousands of Federal Employees Have Contracted COVID-19,” Eric Katz, April 2, 2020, <https://www.govexec.com/workforce/2020/04/thousands-federal-employees-have-contracted-covid-19/164337/>.

²⁰ Federal News Network, “Transportation sends all headquarters employees home due to coronavirus case,” March 19, 2020, <https://federalnewsnetwork.com/workforce/2020/03/transportation-sends-all-headquarters-employees-home-due-to-coronavirus-case/>.

²¹ Politico, “Trump administration confronts a growing coronavirus threat within,” Nolan D. McCaskill, March 20, 2020, <https://www.politico.com/news/2020/03/20/coronavirus-government-agencies-transparency-138711>.

²² Government Executive, “Thousands of Federal Employees Have Contracted COVID-19,” Eric Katz, April 2, 2020, <https://www.govexec.com/workforce/2020/04/thousands-federal-employees-have-contracted-covid-19/164337/>; CNBC, “State Department confirms first official to die from coronavirus,” Amanda Macias, March 31, 2020, <https://www.cnbc.com/2020/03/31/state-department-confirms-first-official-to-die-from-coronavirus.html>.

²³ U.S. Postal Service, “Mandatory Stand-Up Talk,” March 30, 2020, <https://documentcloud.adobe.com/link/review/?pageNum=1&uri=urn%3Aaaid%3Aascds%3AUS%3A5ffbc583-00d7-4cdb-86ea-d3188979bc79>.

²⁴ ProPublica, “Postal Workers Say USPS Isn’t Telling Them When Colleagues Test Positive for COVID-19, Despite Promising To,” Maryam Jameel, April 14, 2020, <https://www.propublica.org/article/postal-workers-say-usps-isnt-telling-them-when-colleagues-test-positive-for-covid-19-despite-promising-to>.

²⁵ *Id.*

²⁶ Government Executive, “VA Instructs Coronavirus-Exposed Staff to Continue Working, Places Those Who Don’t in AWOL Status,” Eric Katz, April 17, 2020, <https://www.govexec.com/workforce/2020/04/va-instructs-coronavirus-exposed-staff-continue-working-places-those-who-dont-awol-status/164693/>.

while they have insufficient equipment to protect themselves and others from spreading the virus.”²⁷

Your agencies are uniquely positioned to coordinate communication about positive cases of COVID-19 in the federal workforce and provide agencies with uniform guidance on how such cases should be handled. The federal government should be providing a model of safe and clear reporting systems; right now, it is failing to do so.

Teleworking Guidance Must Not Be Ended Prematurely

Efforts to return to work must be done safely, according to guidance of medical experts and public health officials, and ensure that workers have the protective equipment needed to do their jobs safely and effectively. Your April 20 joint guidance outlines “a process for agency heads and leaders to make decisions for their workforce operations while utilizing the different telework postures implemented during the outset of the COVID-19 response.”²⁸ For agencies with glaring telework deficiencies, the recently-issued OMB and OPM memo may be a signal that, because further direction to re-open the government may be forthcoming, there is no need to make telework more widely available. Given the serious and ongoing concerns regarding telework implementation across the federal government, we would like to know how you plan to evaluate agencies’ plans to determine when it is appropriate to resume regular operations. In addition, because your recent guidance depends on “the Phase of a state, county, region, or metropolitan-area determined by the state assessment,” we would like to know how you plan to evaluate individual departments and offices’ plans across the country.²⁹

In the face of this pandemic, your agencies should take aggressive and ongoing measures, as recommended by public health experts, to protect federal workers and prevent the deadly spread of COVID-19. Additionally, this crisis has demonstrated the clear ability of a great many federal workers to work remotely via telework and has therefore renewed questions regarding why this Administration has restricted effective, efficient, and—as this moment demonstrates—beneficial telework for federal workers.

To address our concerns, we request that OMB and OPM provide answers to the following questions by May 11, 2020. We also encourage you to convene a virtual or socially-distanced meeting or task force of the Chief Human Capital Officers Council (the Council), which coordinates the human capital policies of federal agencies, in order to gather and report this information in as comprehensive a way as possible.³⁰

²⁷ Government Executive, “VA Instructs Coronavirus-Exposed Staff to Continue Working, Places Those Who Don’t in AWOL Status,” Eric Katz, April 17, 2020, <https://www.govexec.com/workforce/2020/04/va-instructs-coronavirus-exposed-staff-continue-working-places-those-who-dont-awol-status/164693/>.

²⁸ Office of Management and Budget and Office of Personnel Management, “Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again,” April 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-23.pdf>.

²⁹ *Id.*

³⁰ Chief Human Capital Officers Council, “Council Charter,” <https://www.chcoc.gov/content/council-charter>.

1. What is your agency's process for providing guidance for the federal workforce regarding the COVID-19 crisis? Who are the officials tasked with leading that effort? To what extent are public health officials involved?
2. What actions does your agency take to monitor and enforce federal agencies' compliance with the directive to "maximize telework"³¹ for workers and contractors?
3. At each agency, please provide the following information:
 - a. What percentage of employees are eligible for telework?
 - b. Of those, what percentage of employees are currently teleworking full-time?
 - c. Of employees who are not teleworking, please describe the frequency of the reasons why they are not teleworking. For example, what percentage of non-teleworking employees are not teleworking because their duties are location-specific, or because they have not been given access to proper equipment, or because they do not have sufficient internet connections?
4. Why have government-wide memos regarding COVID-19 telework guidance been issued by OMB, when such guidance has traditionally been issued by OPM?
5. How many positive cases of COVID-19 in the federal workforce is your agency aware of? How many fatalities? Please provide information on an agency-by-agency basis.
6. What actions does your agency take to ensure that it is aware of all cases of COVID-19 in the federal workforce?
7. What procedures has your agency implemented regarding employer and worksite requirements when there is a potential or confirmed case of COVID-19 among federal employees or contractors? How does your agency ensure those procedures are followed?
8. Does your agency have, or is it working to draft, guidance for agencies on how to handle situations where critical and/or senior personnel are sick?
 - a. As an example, please provide any contingency plans that have been put in place for OMB and OPM, such as a depiction of possible alternative organizational structures if circumstances were to disrupt the existing chain of command.
9. Does your agency have, or is it working to draft, guidance for agencies to ensure that employees are protected if they report unsafe working conditions related to exposure to COVID-19?
10. How will your agency determine when it is safe and appropriate to roll back the telework guidance that has been issued?
 - a. Will you rely solely on the Opening Up America Again guidance?

³¹ Office of Management and Budget, "Memorandum for the heads of departments and agencies," March 17, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>; Office of Management and Budget and Office of Personnel Management, "Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again," April 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-23.pdf>.

- b. Which officials will be involved in providing information necessary to making the determination before any such determination is announced?
 - c. When and how will your agency communicate how this decision will be made to federal employees?
 - d. Will you consult with unions representing federal employees to determine the appropriate method of making this decision?
 - e. Will you consult with the state and local public health departments in areas with substantial numbers of federal workers? What if these public health officials provide different advice than the official “state assessment” referenced in your guidance?³²
11. Has your agency taken steps to reconsider its previous restrictions on telework moving forward more generally, in light of the obvious workability and benefits of broad telework flexibility as demonstrated by this crisis?
12. Please describe the roles and responsibilities, if any, that your agencies have in relation to the White House Coronavirus Task Force, including which officials participate in task force activities and what those activities include.

Sincerely,

Elizabeth Warren
United States Senator

Patty Murray
United States Senator

Gary C. Peters
United States Senator

Edward J. Markey
United States Senator

Mark R. Warner
United States Senator

Richard Blumenthal
United States Senator

Chris Van Hollen
United States Senator

Robert Menendez
United States Senator

Benjamin L. Cardin
United States Senator

Sherrod Brown
United States Senator

³² Office of Management and Budget and Office of Personnel Management, “Aligning Federal Agency Operations with the National Guidelines for Opening Up America Again,” April 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/04/M-20-23.pdf>.

Bernard Sanders
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