

# United States Senate

WASHINGTON, DC 20510

May 20, 2021

Kathleen McGettigan  
Acting Director  
Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415

Dear Acting Director McGettigan,

We are writing to ask for clarification regarding the requirement in Section 4 of President Biden's Executive Order (EO) 14003, *Protecting the Federal Workforce*, regarding the requirement for agencies to negotiate with a labor organization representing such agency's employees over subjects described in 5 U.S.C. 7106(b)(1), which covers, in part, the "technology, methods, and means of performing work." Our staff has been advised by officials at the Bureau of Engraving and Printing (BEP) that this requirement does not apply to actions that the agency deems necessary during emergencies. We ask that you confirm whether or not this is the case, and that you advise BEP of your finding as well.

BEP employs over 1,000 people in the District of Columbia, and hundreds of these workers live in Maryland. In a communication to our office, BEP personnel stated that EO 14003 did not require the agency to bargain – as several unions representing BEP workers have requested – over a new policy requiring workers to wear tracking devices, "because the emergency exception under 5 USC s 7106(a)(2)(D) applied." However, neither EO 14003 nor the related OPM guidance describe any such exception.

While Sec. 7106(a)(2)(D) provides that as a general matter, an agency retains its authority to take necessary actions to carry out its mission during emergencies, this provision is subject to subsection (b), which states that "nothing in this section shall preclude any agency and any labor organization from negotiating," among other things, the subjects described in Sec. 7106(b)(1). In other words, Sec. 7106(a)(2)(D) does not appear to prohibit an agency from bargaining over a subject described in Sec. 7106(b)(1), if the agency elects to do so. And EO 14003 requires agencies to elect to do so.

We appreciate your analysis of this question, and look forward to your reply.

Sincerely,



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Chris Van Hollen  
United States Senator



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Benjamin L. Cardin  
United States Senator

CC: Leonard R. Olijar, Director of the Bureau of Engraving and Printing