

Congress of the United States
Washington, DC 20515

September 2, 2020

The Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

The Honorable Sonny Perdue
Secretary
Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

The Honorable Michael J. Rigas
Acting Director
Office of Personnel Management
190 E St., NW
Washington, DC 20415

Dear Secretary Mnuchin, Secretary Perdue, and Acting Director Rigas:

Nearly a month after the President's memorandum on deferring payroll tax obligations, the administration's conflicting and changing statements have left employers and employees confused.ⁱ On behalf of federal employees in our districts, we are writing today to seek clarity regarding IRS Notice 2020-65, the guidance implementing the President's memorandum.ⁱⁱ

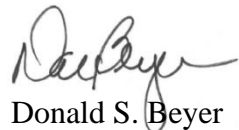
A week prior to the Notice, the National Finance Center (NFC) issued a notification about upcoming changes, causing confusion as to how the changes could be made without the necessary Treasury guidance.ⁱⁱⁱ Although a revised notification has since been issued, we are concerned about the lack of cross-agency coordination regarding this significant change for the federal workforce. We are especially alarmed that after many businesses and groups, including the U.S. Chamber of Commerce, have expressed concern about the ramifications of deferral for employers and employees, federal public servants are being used as guinea pigs.^{iv}

Even today, the Notice leaves a number of questions unanswered. Despite Secretary Mnuchin's previous statement that "we can't force people to participate," the Notice language is not explicit as to whether the postponement is optional for employers, much less for employees.^v Additionally, the only direction provided about employees who separate from their employers prior or during 2021 is that the employer "may make arrangements" to collect the taxes.

As these changes go into effect for employees' paychecks starting tomorrow, we request a prompt answer to the following questions:

- What steps are you taking or advising other agencies to take to inform federal workers of their lower take-home pay in 2021?
- Will there be any procedure for federal workers to opt-out of this deferral?
- What are your plans for recovery of reduced payroll withholding from workers who leave the federal workforce prior to or during 2021?
- Are other payroll providers for federal employees (including the Defense Finance and Accounting Service, the Department of Interior National Business Center, and the General Services Administration National Payroll Branch) implementing similar procedures? Will such changes be made for active duty military personnel?
- What number and percentage of employees under NFC's purview, and the overall federal workforce, will be affected by these changes?
- Under the Notice, are employers required to defer withholding of employee Old-Age, Survivor and Disability Insurance (OASDI) taxes? If not, what is your estimate of the take-up rate by employers? Are you aware of any state laws that would make deferral mandatory?
- The Presidential Memorandum directed the Secretary of the Treasury to "explore avenues, including legislation," to permanently forgive the deferred amounts. What is your estimate of the lost revenue to the Social Security trust funds if such legislation were enacted?
- The stated goal of the Presidential Memorandum is to "put money directly in the pockets of American workers." Do you support a pay increase for federal workers?

Sincerely,



Donald S. Beyer
Member of Congress

/S/
Mike Thompson
Member of Congress

/S/
Danny K. Davis
Member of Congress

/S/
John B. Larson
Member of Congress

/S/
Lloyd Doggett
Member of Congress

/S/
Earl Blumenauer
Member of Congress

/S/
Brian Higgins
Member of Congress

/S/
Judy Chu
Member of Congress

/S/
Terri A. Sewell
Member of Congress

/S/
Suzan K. DelBene
Member of Congress

/S/
Jimmy Panetta
Member of Congress

/S/
Bill Pascrell, Jr.
Member of Congress

/S/
Gwen Moore
Member of Congress

/S/
Linda T. Sanchez
Member of Congress

/S/
Daniel T. Kildee
Member of Congress

/S/
Dwight Evans
Member of Congress

/S/
Thomas R. Suozzi
Member of Congress.

cc: Calvin W. Turner Jr., Director, National Finance Center

ⁱ <https://www.whitehouse.gov/presidential-actions/memorandum-deferring-payroll-tax-obligations-light-ongoing-covid-19-disaster/>

ⁱⁱ <https://www.irs.gov/pub/irs-drop/n-20-65.pdf>

ⁱⁱⁱ Although both the earlier and updated NFC notices mischaracterize the memorandum as an "Executive Order," the memorandum lacks legal effect without implementing guidance from the Treasury Department.
https://www.nfc.usda.gov/ClientServices/HR_Payroll/Custom_Notifications/2020/General/082120-OASDI.pdf;
https://www.nfc.usda.gov/ClientServices/HR_Payroll/Custom_Notifications/2020/General/082820-COVID_Update.pdf

^{iv} <https://www.uschamber.com/comment/us-chamber-letter-secretary-mnuchin-implementation-of-the-executive-order-deferring-payroll>

^v <https://www.forbes.com/sites/kellyphillipserb/2020/08/12/mnuchin-suggests-payroll-tax-deferral-will-be-up-to-employers-we-cant-force-people-to-participate/#17c1a9224c41>