



April 19, 2022

Secretary Deb Haaland
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Haaland:

I am writing to ask you to bring the Department of the Interior into compliance with the President's Executive Order (EO) 14003, *Protecting the Federal Workforce*. The Department of the Interior's failure to comply with this EO has opened the door to favoritism, retaliation and discrimination against Interior employees.

Our main concern is that Interior is still using the 30-day Notice of Opportunity to Demonstrate Acceptable Performance process, known as a "NODAP." This harsh personnel policy was implemented under the Trump administration and remains in the Department's Personnel Management Manual despite being revoked in President Biden's EO 14003.

Interior implemented the 30-day NODAP process in 2018 after former President Trump issued his oppressive EO 13839, *Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles* on May 25, 2018.

Employee representatives expressed outrage when the Trump EO was implemented by Office of Personnel Management. For example, National Treasury Employees Union President Tony Reardon told the Washington Post:

With these rules, OPM directs agencies to take the shortest route possible to firing federal workers while at the same time opening the door to favoritism, retaliation and discrimination.... The proposed regulations minimize the substantive right that employees be given time to improve their performance, and they sacrifice fairness for the sake of expediency.¹

On January 22, 2021, on his third day in office, President Biden revoked the Trump-era EO 13839 when he issued EO 14003 and ordered agencies to bring their actions in line with his new EO.

Yet, Interior has neglected to do this. Interior still maintains the Trump NODAP process in its Department Manual, [370-dm-430-ts.pdf \(doi.gov\)](#), which states it:

Incorporat[ed] requirements of Executive Order 13839 and Personnel Bulletin 18-06, specifically making clear that 1) procedures under 5 CFR 752 should be

*used in appropriate cases to address instances of unacceptable performance; and
2) opportunity periods to demonstrate acceptable performance [NODAPs] will
generally last no more than 30 days.*

See Provision 1.7 – F.(2) of [Chapter 430: Performance Management System \(doi.gov\)](#)

By leaving the harsh 30-day NODAP on the books, Interior has not come into compliance with the President EO. This is having negative effects on Interior employees and minimizes their substantive rights to improve their performance.

Indeed, this occurred in a recent PEER case when our client, BLM employee Walter Loewen, was issued a NODAP after raising concerns about the effects of a controversial oil and gas drilling project. Mr. Loewen had six years of well-rated performance, plus five performance awards. Yet, Mr. Loewen’s new supervisor required him to produce 18 “make work” documents totaling 174 pages in basically 21 workdays during the height of the COVID pandemic. Our client allegedly failed that massive assignment and was terminated from his position based on the Trump-era NODAP rule. We also have a U.S. Geological Survey client who was removed based on a 30-day NODAP after her 27-year career as a Federal scientist.

I urge you to promptly amend Interior’s Manual to revoke the Trump-driven 30-day NODAP process. You also should rescind the employee removals during your time as Secretary that were based on harsh NODAPs. For further information please feel free to contact me.

Sincerely,



Timothy Whitehouse
Executive Director