

October 8, 2025

Hon. Russell Vought  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Vought:

On January 16, 2019, President Trump signed the Government Employee Fair Treatment Act of 2019 (Act).<sup>1</sup> Section 2 of that Act amended the Anti-Deficiency Act to provide that:

Each employee of the United States Government or of a District of Columbia public employer furloughed as a result of a covered lapse in appropriations shall be paid for the period of the lapse in appropriations, and each excepted employee who is required to perform work during a covered lapse in appropriations shall be paid for such work, at the employee's standard rate of pay, at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse.<sup>2</sup>

Consistent with the plain text of the Act, the Office of Personnel Management issued guidance ahead of the current lapse of appropriations that explained that employees placed in furlough status must receive back pay.<sup>3</sup> Yesterday, it was reported that the Administration, including the Office of Management and Budget, is now potentially disclaiming that responsibility.<sup>4</sup>

Apparently, your office now believes that the responsibility to pay furloughed employees is not “self-executing” and that the law merely acts as a “permanent authorization,” but not an “obligation,” to pay employees.<sup>5</sup> In effect, your view is that there is no requirement to pay back pay unless Congress explicitly states so in separate legislation.<sup>6</sup> But this all amounts to legal legerdemain, seeking to “create ambiguity where the statute’s text and structure suggest none.”<sup>7</sup> The law is clear: each employee “shall” be “paid for the period of the lapse in appropriations.”<sup>8</sup>

It is axiomatic that the plain language of a law must control. The Supreme Court explained earlier this year that “[i]t is undisputed that the word ‘shall’ imposes a mandatory command.”<sup>9</sup>

<sup>1</sup> Pub. L. 116-1, 133 Stat. 3 (Jan. 16, 2019), as amended by Pub. L. 116-5, § 103, 133 Stat. 10 (Jan. 25, 2019).

<sup>2</sup> *Id.* § 2 (codified at 31 U.S.C. § 1341(c)(2)) (emphasis added).

<sup>3</sup> Office of Personnel Management, Special Instructions for Agencies Affected by a Possible Lapse in Appropriations Starting on October 1, 2025 (Sept. 28, 2025), [special-instructions-for-a-possible-lapse-in-appropriations-starting-on-oct-1-9-28-2025.pdf](#).

<sup>4</sup> Stephen Fowler & Claudia Grisales, *White House Floats No Back Pay for Some Furloughed Workers Despite 2019 Law*, NPR (Oct. 7, 2025), <https://www.npr.org/2025/10/07/g-s1-92363/omb-memo-shutdown-federal-worker-backpay>.

<sup>5</sup> Draft Memorandum from Mark R. Paoletta, General Counsel, *RE: Effect of the 2019 Antideficiency Act Amendments on Furloughed Employees' Back Pay* (Oct. 3, 2025), [dfe00e6b-396e-453f-91a8-8809f074281a.pdf](#).

<sup>6</sup> *Id.*

<sup>7</sup> *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008).

<sup>8</sup> 31 U.S.C. § 1341(c)(2).

<sup>9</sup> *Bufkin v. Collins*, 604 U.S. \_\_\_\_\_, 145 S.Ct. 728 (2025) (citing *Shapiro v. McManus*, 577 U.S. 39, 43 (2015)).

That is to say “[s]hall means must.”<sup>10</sup> Against this framework, Congress’s use of the word “shall” in the Act inexorably leads to one, and only one, conclusion: each employee *must* be paid “for the period of the lapse in appropriations.”<sup>11</sup> As Justice Scalia noted in his seminal treatise on legal interpretation, *Reading Law: The Interpretation of Legal Texts*, the “traditional, commonly repeated rule is that ‘shall’ is mandatory” and “when the word shall can reasonably be read as mandatory, it ought to be so read.”<sup>12</sup>

Were the text of the Act not clear enough, however, the legislative history is replete with references indicating that backpay is mandatory. For example, before calling for the Senate to consider the Act under unanimous consent, Senator Mitch McConnell explained that he “had an opportunity to talk to President Trump a few moments ago and wanted to indicate to our colleagues that he will sign the bill that we have been discussing here to *guarantee* that government workers who have been displaced as a result of the shutdown will ultimately be compensated.”<sup>13</sup> Senator Dan Sullivan reiterated this point a moment later, stating that the bill would “*ensure* the backpay for Federal workers who will be without pay.”<sup>14</sup>

Later that week, when the House took up the bill, several members reiterated the mandatory nature of backpay. For example, Representative William Hurd from Texas said “this is an important piece of legislation that *ensures* all Federal employees receive backpay once this government shutdown is over.”<sup>15</sup> Montana Representative Gregory Gianforte likewise called the legislation “a *promise* to our dedicated civil servants, both those forced to the sidelines and those still hard at work without pay.”<sup>16</sup>

Given the clarity of the law, there is no place for the Administration to backpedal on its obligation to pay furloughed workers. The Administration’s statements appear to be a naked attempt at inflicting pain on innocent parties to gain advantage in the shutdown. But government employees did not start this shutdown, nor can they stop it. Regardless of politics or party, government employees are our fellow citizens who have chosen to dedicate their lives to serving our nation. They are not negotiating chips.

America’s public servants deserve better. We call on you to do the right thing and adhere to the law. In the event that you do not, however, we stand ready to ensure that our public servants receive the pay they deserve under the law.

Sincerely,

/s/  
Amb. Norman Eisen (ret.)  
Executive Chair and Founder  
Democracy Defenders Fund

/s/  
Rushab Sanghvi  
General Counsel  
American Federation of  
Government Employees,  
AFL-CIO

/s/  
Teague Paterson  
General Counsel  
American Federation of State,  
County and Municipal  
Employees, AFL-CIO

<sup>10</sup> *Id.* (citing *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171–172 (2016)).

<sup>11</sup> 31 U.S.C. § 1341(c)(2).

<sup>12</sup> Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 112, 114 (2012).

<sup>13</sup> 116 Cong. Rec. S133 (Jan. 10, 2019) (emphasis added).

<sup>14</sup> *Id.* at S134 (emphasis added).

<sup>15</sup> 116 Cong. Rec. H500 (Jan. 11, 2019) (emphasis added).

<sup>16</sup> *Id.* at H499 (emphasis added).

cc:

The Honorable Susan Collins  
Chair  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Rand Paul  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

The Honorable Tom Cole  
Chairman  
Committee on Appropriations  
United States House of Representatives  
Washington, DC 20515

The Honorable James Comer  
Chairman  
Committee on Oversight and Government  
Reform  
United States House of Representatives  
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The Honorable Patty Murray  
Vice Chair  
Committee on Appropriations  
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The Honorable Gary Peters  
Ranking Member  
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The Honorable Rosa DeLauro  
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The Honorable Robert Garcia  
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