

[January 28, 2025](#) Dennis Crouch

USPTO's Remote Work Program Faces Potential Rapid Dismantling Under New Federal Guidelines

by Dennis Crouch

Last week, I wrote about the twin challenges facing the USPTO: [a return-to-office mandate and a hiring freeze that could significantly impact patent operations](#). Today's joint memorandum from OMB and OPM provides a rapid timeline for implementing these changes, with agencies required to submit detailed implementation plans by February 7th, 2025. [[OMB OPM Come Home Memo](#)].



The USPTO must develop a comprehensive plan addressing not just space and staffing, but also the “risks, barriers, and resource constraints” that could prevent expeditious return to in-person work. While patent examiners await official word from agency leadership about their specific situations, the clock is ticking on what could be the most significant operational change at the USPTO in decades.

As someone who practiced 20 years ago — at a time when USPTO examiner morale was low and the agency had difficulty recruiting quality candidates — I recognize that things are so much better today. (Do you agree?). For those of us outside the USPTO, now is the time to voice support both for the examiner community and uninterrupted USPTO operations — especially if you can provide Dir. Stewart with evidence that will aid efforts to water-down the negative effect of these orders.



U.S. Office of
Management and Budget

U.S. Office of
Personnel Management



MEMORANDUM

TO: Heads of Executive Departments and Agencies

FROM: Matthew J. Vaeth, Acting Director, Office of Management and Budget;
Charles Ezell, Acting Director, Office of Personnel Management

DATE: January 27, 2025

RE: Agency Return to Office Implementation Plans

I. Purpose

The Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) are issuing this memorandum to provide further guidance to agencies on implementation of the January 20, 2025, Presidential Memorandum (PM) *Return to In-Person Work*.

II. Requirement to Prepare Implementation Plans

As of January 24th, agencies should have already notified employees of their intent to comply with the PM directing agencies to return all eligible employees¹ to full-time in-person work. To facilitate the consistent implementation of this guidance across agencies, OMB and OPM direct all agencies to prepare implementation plans that describe their approach to fully complying with this PM and overcoming any constraints in achieving full compliance.

Agencies should prepare plans to expeditiously implement this PM and submit their plans to OMB and OPM for review and approval by no later than Friday, February 7th at 5:00pm EST. Agency plans should:

- a. describe the steps the agency will take to revise telework agreements for all eligible employees including major milestones for implementation;
- b. provide timelines for the return of all eligible employees to in-person work as expeditiously as possible, including the date that the agency will be in full compliance with the PM;

¹ For the purposes of this memorandum, the term “eligible employee” means any agency employee, unless excused due to a disability, qualifying medical condition, or other compelling reason certified by the agency head and the employee’s supervisor. Agencies should also exclude military spouses working remotely based on the Military Spouse Employment Act, Pub. L. 118–31, div. A, title XI, § 1112, codified at 5 USC § 3330d.

The compressed timeline is particularly challenging for the USPTO, which has operated what was long considered the federal government’s model telework program. Despite several studies demonstrating the program’s effectiveness in improving examiner retention and morale, the agency now faces the daunting task of unwinding remote work arrangements that have been in place since 1997. As with other agencies, the program greatly expanded the last several years such that today over 95% of the USPTO workforce is outside the office.

Back up a Moment: The USPTO last week sent a memo to its workforce that included an allusion to “bargaining unit exceptions” — this is associated with the collective bargaining agreements between USPTO and its unions that allow for remote work. If

these exceptions hold, then the majority of examiners will be able to continue to work from home through 2029. In my opinion, the USPTO's union agreements, while significant, do not provide insurmountable barriers to implementation of a return to office mandate. The Commerce Department also sent out a memo on Jan 24 with guidance, but indicated that the memo "does not apply to the U.S. Patent and Trademark Office." The meaning of that memo remains unclear. So far, examiners have not been given any orders or specific guidance on whether they are covered.

Of particular note here, supervisory patent examiners (SPEs) and PTAB judges are not covered by the union agreements and appear likely to face more immediate return-to-office requirements. Some SPEs may want to drop back down to an examiner role (with a lower salary) rather than relocating, which could create new challenges for patent quality review and examiner training programs. Of course, it is not clear that option would be made available. It may also be a good time for law firms to cherry pick top PTAB judges. This situation aligns with key motivations behind the return-to-office mandate. Part of this is about organizational cohesion, but a bigger part is about workforce reduction and replacement of those who left with folks who are more closely aligned with President Trump's administration. If you recall, PTAB judges require appointment by the Secretary of Commerce.

The timing of this transition is particularly precarious given the USPTO's leadership situation. Both the USPTO and Department of Commerce are currently led by acting directors – i.e., folks whose title alone show others in the White House that they do not have high levels of political capital. This will limit their ability to secure broad exemptions under the memo's "other compelling reasons" provision. I think that the rubber will meet the road here if Dir. Stewart submits a Feb 7 plan that does not call-back a substantial number of examiners.

Where do they Go: The new OMB/OPM guidance requires agencies to determine "permanent worksites for all eligible employees currently teleworking on a full-time basis." For the USPTO, this presents a unique challenge since many patent examiners were hired directly into remote positions and have never worked from a physical USPTO office. While commercial space is theoretically available nationwide, the memo emphasizes maximizing existing federal space and consolidating the federal real property footprint before acquiring new locations. The Atlanta office's planned opening will provide very limited relief. Still, there is likely space to squeeze together PTAB judges and SPEs, many of whom already work in office a few days per month.