

GIBSON DUNN



Public Policy Update

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The DOGE Has Arrived

Ever since President Trump announced that he would create a Department of Government Efficiency (DOGE), clients have raised questions regarding how it would be established, what powers it would have, and how its work could affect their operations.

Gibson Dunn previously addressed some of those questions in a [December 6, 2024 client alert](#) based on information available at the time. Now that President Trump has taken office, more details are coming to light. In one of his first acts as president, on January 20, 2025, Trump signed an executive order titled “Establishing and Implementing the President’s ‘Department of Government Efficiency’” (the Order),^[1] which brings additional clarity regarding some of the key questions about DOGE and raises others, as discussed below. In addition, recent administration actions, such as freezing (and subsequently unfreezing) federal spending and deferred resignation offers to federal employees suggest that the DOGE is having an impact.^[2]

I. Formal Establishment of DOGE as USDS

Initially, then President-elect Trump said DOGE would operate from outside the government. Much ink was spilled on whether DOGE would be a federal advisory committee (FAC) governed by the Federal Advisory Committee Act (FACA), a non-profit entity, or some other kind of non-governmental organization. With the Order, however, he has established DOGE as a federal government entity operating out of the Executive Office of the President (EOP). The Order renames the U.S. Digital Service, an existing government entity also established by presidential directive, as the U.S. DOGE Service. For the sake of clarity, this Alert

will refer to the new U.S. DOGE Service as “USDS” and the former U.S. Digital Service by its full name.

The U.S. Digital Service appears to have been an attractive office to replace with DOGE for several reasons. As a matter of optics, using the USDS as a vehicle for DOGE minimizes perception that this is an entirely new office. The office comes with an established funding stream.^[3] And the U.S. Digital Service was part of the Office of Management and Budget, with which DOGE is working closely both to gather information across the government and to implement recommendations.

The U.S. Digital Service’s mission to improve federal government technology also aligns with at least some of DOGE’s goals. President Obama created the U.S. Digital Service after private sector technology experts saved HealthCare.gov in the wake of its failed initial launch.^[4] Its purpose was to import “private sector best practices to the Federal Government.”^[5] Its projects have included improvements to SSA.gov, building COVID-19 vaccine finder tools, simplifying VA.gov, and improving government technology procurement.^[6] According to the Order, the purpose of the new USDS is to “implement the President’s DOGE Agenda, by modernizing Federal technology and software to maximize governmental efficiency and productivity.”

II. USDS Personnel

Although the Order offers some insight into USDS personnel, it also raises new questions.

A. USDS Leadership

Originally, Elon Musk and Vivek Ramaswamy were announced as the co-leads of DOGE, and Bill McGinley was announced as General Counsel. Ramaswamy and McGinley have both recently departed the team. Musk continues to lead DOGE, but his exact role is unclear. The Order establishes a USDS Administrator who will report to the White House Chief of Staff. It is possible Musk could fill that role, but no such public announcement has been made.

The White House recently did announce that Musk is serving as a special government employee (SGE). SGEs are often required to file financial disclosures and comply with federal employee criminal conflict of interest rules. In addition, the Federal Acquisition Regulation imposes conflict-of-interest restrictions that prohibit the award of contracts that arise out of an SGE’s activity where the SGE is in a position to influence the award, or another conflict of interest is determined to exist.^[7] The head of the contracting agency may grant an exception to this policy only if there is “a most compelling reason to do so, such as when the Government’s needs cannot reasonably be otherwise met.”^[8] Musk’s continued leadership of his companies, including government contractors SpaceX and Tesla, could raise significant conflict of interest concerns.

B. DOGE Employees and DOGE Teams

The Order instructs each federal agency to establish a DOGE Team of at least four employees selected by agency leaders in consultation with the USDS Administrator. This directive facially applies to both executive agencies and independent agencies like the Federal Trade

Commission, Federal Communications Commission, Securities and Exchange Commission, and others. The Order specifies that these DOGE Team members may include SGEs.

The Order also establishes within USDS the U.S. DOGE Service Temporary Organization. This organization will terminate on July 4, 2026 and is tasked with advancing the President's 18-month DOGE agenda. At this point it is unclear what unique purpose the temporary organization may fulfill as compared to the USDS, but the temporary status may make it easier to hire temporary employees or volunteers. The head of a temporary organization may appoint employees into the excepted service of the civil service, exempting them from some federal employee hiring requirements.^[9] The head of a temporary organization also may accept volunteer services as well as detailees from government departments or agencies.^[10]

The role of the current 230 U.S. Digital Service employees is unclear, and they are reportedly being reinterviewed.^[11]

III. USDS Activities

The Order tasks the USDS administrator with a "Software Modernization Initiative to improve the quality and efficiency of government-wide software, network infrastructure, and information technology (IT) systems." Priorities of this initiative include inter-operability between agencies, data integrity, and responsible data collection. The Order instructs agency heads to "ensure USDS has full and prompt access to all unclassified agency records, software systems, and IT systems."

Another executive order titled "Hiring Freeze" tasks USDS with working with the OMB Director to produce a plan to reduce the size of the federal workforce, and effectuates a freeze on hiring federal civilian employees.^[12] In support of that goal, on January 28, 2025, the administration offered federal employees a deferred resignation option.^[13] The subject of the email, "Fork in the Road" was the same as that used by Elon Musk in a similar email to Twitter employees, suggesting Musk's involvement with the resignation offer.^[14]

Other recent administration actions appear to be advancing the DOGE agenda, as well. The General Services Administration, the Department of Energy, and likely other executive branch agencies have halted all new contracting awards with certain exceptions.^[15] OMB issued a memorandum (before rescinding it) that some interpreted as freezing funding for all "financial assistance programs and supporting activities," but OMB then clarified that the freeze applied only to discretionary payments for specific programs involving immigration, foreign aid, DEI programs, and gender issues that were already ordered paused via executive orders.^[16]

IV. Transparency Requirements

Housing DOGE in the EOP may mean it is subject to fewer transparency requirements than it would have been as a federal advisory committee. As a government office, FACA disclosure requirements likely do not apply. Whether the Freedom of Information Act (FOIA) applies to the new USDS's records remains an open question. The Order states that the USDS "shall be established in the Executive Office of the President." As OMB is part of the EOP, it's not clear whether the Order means to pull the USDS out of OMB. OMB is subject to FOIA and so is the

EOP, except for any part of the EOP “whose sole function is to advise and assist the President.”^[17] The Order states that the USDS Administrator “shall report to the White House Chief of Staff” suggesting the administration could argue that the USDS exists to advise and assist the president and is therefore exempt from FOIA. Hence, it is possible that the USDS will not be subject either to FACA’s or FOIA’s transparency requirements.

The U.S. Digital Service was subject to the Federal Records Act and Presidential Records Act according to its own privacy policy.^[18] It remains to be seen if the Trump administration will amend that policy.

V. Challenges to DOGE

Minutes after Trump was inaugurated, public interest groups sued the administration seeking to enjoin DOGE from conducting its business.^[19] The lawsuits were premised on the argument that DOGE is in fact a FAC and it is violating FACA requirements regarding its establishment, records preservation, and public access. Committees composed wholly of federal government employees, such as the original U.S. Digital Service, are not subject to FACA.^[20] If DOGE is comprised solely of government employees and not private sector advisors as initially contemplated, FACA likely will not apply to it. If advisors remain outside the government, it is possible that a court could determine that some of the USDS activities fall under FACA.^[21]

DOGE—or, now, USDS—is already having an impact, although it will take months or years to understand the full implications of its actions. Gibson Dunn will continue to monitor USDS’s activities and help clients understand their effect on the U.S. government, businesses, and individuals.

^[1] Exec. Order, Establishing and Implementing the President’s “Department of Government Efficiency,” (Jan. 20, 2025), available [here](#).

^[2] Christ Megerian, Zeke Miller, and Lisa Mascaro, *Trump White House Rescinds Memo Freezing Federal Money After Widespread Confusion*, Associated Press (Jan. 29, 2025) <https://apnews.com/article/donald-trump-pause-federal-grants-aid-6d41961940585544fa43a3f66550e7be>; Scott Neuman, *Trump Wants to Cut the Federal Workforce*, NPR (Jan. 31, 2025), [here](#).

^[3] The U.S. Digital Service receives funding from the Information Technology Oversight and Reform account along with the Office of the Federal Chief Information Office. In recent years, the funds in this account have come from the American Rescue Plan Act.

^[4] The White House Office of the Press Secretary, *Fact Sheet: Improving and Simplifying Digital Services* (Aug. 11, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/08/11/fact-sheet-improving-and-simplifying-digital-services>.

^[5] U.S. Digital Service, *How We Work*, <https://www.usds.gov/how-we-work> (last visited Jan. 21, 2025).

[6] U.S. Digital Service, *Our Projects*, <https://www.usds.gov/projects> (last visited Jan. 21, 2025).

[7] 48 CFR § 3.601.

[8] 48 CFR § 3.602.

[9] 5 U.S.C. § 3161.

[10] 5 U.S.C. § 3161(i).

[11] Natalie Alms, U.S. *Digital Service Employees are Being Re-interviewed Under DOGE Transition*, NextGov/FCW (Jan. 22, 2025), [here](#).

[12] Exec. Order, *Hiring Freeze*, (Jan. 20, 2025), available [here](#).

[13] Off. of Pers. Mgmt., *Fork in the Road*, <https://www.opm.gov/fork>.

[14] Garrett Haake and Amanada Terkel, *Trump Administration Offers Roughly 2 Million Federal Worker a Buyout to Resign*, NBC News (Jan. 28, 2025), [here](#).

[15] Memorandum from Stephen Ehikian, Acting Adm'r. and Deputy Adm'r., Gen. Serv. Admin. to GSA Acquisition Workforce et al. (Jan. 24, 2025), [here](#).

[16] Memorandum from Matthew J. Vaeth, Acting Dir. Off. Mgmt. and Budget to Heads of Exec. Dep't and Agencies (Jan. 27, 2025), [here](#); OMB Q&A Regarding Memorandum M-25-13 (Jan. 28, 2025), [here](#).

[17] *Meyer v. Bush*, 981 F.2d 1288, 1291 n.1 (D.C. Cir. 1993) (quoting H.R. Rep. No. 1380, 93d Cong., 2d Sess. 14 (1974)).

[18] U.S. Digital Service, *U.S. Digital Service Privacy Policy*, <https://www.usds.gov/privacy> (last visited Jan. 22, 2025).

[19] Complaint, *Am. Pub. Health Ass'n v. Off. Mgmt. Budget*, No. 1:25-cv-00167 (D.D.C. Jan. 20, 2025); Complaint, *Jerald Lentini v. Dep't Gov. Efficiency*, No. 1:25-cv-00166 (D.D.C. Jan. 20, 2025); Complaint, *Public Citizen Inc. v. Donald Trump*, No. 1:25-cv-164 (D.D.C. Jan 20, 2025); *Ctr. for Biological Diversity v. Off. Mgmt Budget*, No. 25-165 (D.D.C. Jan 20, 2025).

[20] 5 U.S.C. § 1001(2)(B)(i).

[21] FACA provides that the term "advisory committee" excludes "a committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government." 5 U.S.C. § 1001(2)(B)(i).

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's [Public Policy](#), [Administrative Law & Regulatory](#), [Energy Regulation & Litigation](#), [Labor & Employment](#), or [Government Contracts](#) practice groups, or the following in Washington, D.C.:

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