

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
WASHINGTON REGIONAL OFFICE**

COMMERCE PROBATIONARY)	
EMPLOYEES CLASS,)	Docket No: DC-0752-25-1770-I-1
Appellants,)	
)	
v.)	Chief Administrative Judge:
)	Jeremiah Cassidy
U.S. DEPARTMENT OF COMMERCE,)	
Agency.)	March 10, 2026
)	

AGENCY’S RESPONSE TO MARCH 3, 2026 ORDER REQUIRING STATUS UPDATE¹

In furtherance of the March 3, 2026 Order Requiring Status Update, the United States Department of Commerce (Agency), through its undersigned representative, hereby submits this response detailing its efforts to date to return the individuals identified as completing their probationary and/or trial period during the time period in question to their former positions in the Agency. As detailed in the attached declarations, the Agency identified 47 individuals that completed their probationary and/or trial period between February 27, 2025, and April 10, 2025. This includes three individuals from the U.S. Patent and Trademark Office (USPTO), three individuals from the National Institute of Standards and Technology (NIST), one individual from the International Trade Administration (ITA),² and 40 individuals from the National Oceanic and Atmospheric Administration (NOAA). The efforts for each Bureau are detailed below.

¹ The Agency’s Response is supported by the following exhibits attached hereto:

- A. Declaration of Carolyn Schad;
- B. Declaration of Amy Eckstine;
- C. Declaration of Valerie Smith; and
- D. Declaration of Andrew Green.

² While the ITA individual was not specifically referenced in the Agency’s January 26, 2026 submission. This individual was identified in response to the Appellant’s discovery requests and included as an exhibit to the Appellant’s Supplemental Brief in Support of Proposed Post-Probationary Subclass found at Initial Appeal Tab 39.

U.S. Patent and Trademark Office

As detailed in the Agency's January 26, 2026 submission, the Agency identified three individuals from USPTO that completed their probationary period between February 27, 2025 and April 10, 2025. Initial Appeal Tab (IA Tab) 41 at 15-16. All three individuals accepted USPTO's offer to return to their prior position of record and were reinstated to their prior position of record as of January 12, 2026, and are in a regular duty status. *Id.*, Ex. A. USPTO has also removed the termination SF-50s from the Official Personnel File for all three individuals. Ex. A. In addition, USPTO has calculated and submitted backpay requests for each of these individuals to the National Finance Center and is waiting for the payment to be disbursed. *Id.* USPTO is also conducting a leave audit so as to restore the appropriate amount of leave to each of these individuals. *Id.*

National Institute of Standards and Technology

Similar to UPSTO, NIST also identified three individuals who completed their probationary period between February 27, 2025 and April 10, 2025. IA Tab 41 at 13-14. Out of those three, only one individual opted to return to NIST and that individual returned to duty in their prior position of record on December 29, 2025. *Id.* After receiving information on outside earnings, NIST submitted a request for backpay to the National Finance Center on February 20, 2026, and that request is currently pending. Ex. B. With respect to the remaining two individuals that resigned effective in December 2025, one of those individuals will not receive backpay as their outside earnings exceed the gross backpay amount. *Id.* The remaining individual has not provided the necessary information regarding outside earnings for NIST to make the necessary calculations. *Id.* NIST has and will continue to follow up with this individual. *Id.* Finally, NIST

has requested that the April 10, 2025 termination SF-50s be removed from all three Official Personnel Files. *Id.*

International Trade Administration

ITA only identified one individual that completed their probationary period between February 27, 2025 and April 10, 2025. Ex. C. This individual accepted the offer to return to work and returned on January 12, 2026. *Id.* The Agency has updated this individual's Official Personnel File to remove the April 10, 2025 termination action. *Id.* The Agency received the relevant information from this individual regarding both outside earnings and whether this individual would like retroactive coverage through the Federal Employee Health Benefits (FEHB) Program, the Federal Employees Group Life Insurance (FEGLI), and the Thrift Savings Plan (TSP). *Id.* The Agency received the necessary information on March 9, 2026, and will promptly submit the backpay request to the National Finance Center for this individual. *Id.*

National Oceanic and Atmospheric Administration

NOAA identified 40 individuals who completed their probationary period between February 27, 2025, and April 10, 2025. IA Tab 41 at 17-18. However, the February 26, 2026 submission incorrectly provided that eight individuals declined to return to NOAA. *Id.*; Ex. D. That number should be 10. Ex D. As such, 30 individuals opted to return to NOAA and all 30 of those individuals have returned to their prior position of record and are in a duty status. Ex. D. NOAA has reached out to the 30 individuals that returned to work and requested information regarding outside earnings. *Id.* To date, only 20 individuals have responded. *Id.* As a result, the Agency will be following up with all 30 individuals to confirm any outside earnings and to determine whether any individual would like retroactive coverage through FEHB, FEGLI, and

TSP.³ *Id.*; Ex. C. In addition, the Agency will be following up with the 10 individuals that opted not to return to obtain this additional information, as well. The Agency plans on submitting the backpay requests to the National Finance Center on a rolling basis as they receive the requisite information. Ex. C, D.

Respectfully submitted,

/s Christiann Burek

³ Part of this timeline can be attributed to the back and forth between the Agency and NFC as to whether the Agency was required to deduct health insurance benefits from the amount of backpay or whether the employees could elect not to have coverage as they may have obtained coverage from another source during the time period in question.

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<hr style="border-top: 1px solid black;"/> <p>COMMERCE PROBATIONARY) EMPLOYEES CLASS,) Appellants,))) v.)) U.S. DEPARTMENT OF COMMERCE,) Agency.)</p> <hr style="border-top: 1px solid black;"/>)	Docket No: DC-0752-25-1770-I-1 Chief Administrative Judge: Jeremiah Cassidy March 9, 2026
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DECLARATION OF CAROLYN SCHAD

I, Carolyn Schad, pursuant to 28 U.S.C. § 1746, do hereby state and aver:

1. I serve as the Acting Director for the Office of Human Resources at the U.S. Patent and Trademark Office (USPTO), U.S. Department of Commerce (DOC). I have held this position since February 2025.

2. As detailed in my January 26, 2026 declaration, USPTO identified 3 individuals who completed their probationary period between February 27, 2025, and April 10, 2025. As of the date of this declaration, all three of these individuals have returned to a duty status in their previous position with USPTO. In addition, USPTO has removed the April 10, 2025 termination SF-50 from each of these individual’s Official Personnel File.

3. In addition, USPTO has calculated the backpay owed, including any deductions due to outside earnings, to each of these 3 individuals and on February 23, 2026, submitted a request to the National Finance Center (NFC) for payment.¹ While this request is pending with NFC, USPTO is also in the process of conducting a leave audit to ensure that the proper amount

¹ Only 1 of the 3 individuals was enrolled in FEHB prior to the April 10, 2025 termination and USPTO confirmed with that individual whether they would like retroactive coverage through the time period in question prior to submitting the backpay request.

of leave is restored to each of the three individuals.

I have read the above statement consisting of 2 pages. I declare under the penalties of perjury that the foregoing is true, correct, and complete to the best of my knowledge and belief.

**CAROLYN
SCHAD**

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Carolyn Schad

Date

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DECLARATION OF AMY O. ECKSTINE

I, Amy O. Eckstine, pursuant to 28 U.S.C. § 1746, do hereby state and aver:

1. I serve as a Supervisory HR Specialist in the Talent Acquisition Division at the National Institute of Standards and Technology (NIST), U.S. Department of Commerce (DOC). I have held this position since October 2017.

2. As detailed in my January 26, 2026 declaration. NIST identified 3 individuals who completed their probationary period between February 27, 2025 and April 10, 2025. In early December 2025, NIST contacted the three impacted individuals and informed them that NIST was rescinding their termination. The impacted individuals were offered the choice between returning to NIST or resigning. Two individuals declined the offer to return to their position and negotiated resignation dates effective in December 2025, and one individual returned to duty on December 29, 2025.

3. With respect to the individual that returned to duty, NIST, after receiving the necessary information from this individual regarding outside earnings, submitted a request for backpay to the National Finance Center (NFC) on February 20, 2026. This request is pending with NFC.

4. With respect to the two individuals that declined to return to NIST, one will not receive backpay as their outside earnings exceeded the gross backpay amount. The remaining individual has not provided the necessary information to compute the backpay amount. NIST has reached out to this individual on four occasions and requested to meet the week of February 23, 2026. NIST has not received any communication from this individual after she missed a scheduled call on February 11, 2026.

5. Finally, NIST has also requested that the April 10, 2025 termination SF-50 be removed from all three individual's Official Personnel File (OPF).

I have read the above statement consisting of 2 pages. I declare under the penalties of perjury that the foregoing is true, correct, and complete to the best of my knowledge and belief.

AMY ECKSTINE Digitally signed by AMY
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Amy Eckstine

March 9, 2026

Date

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DECLARATION OF VALERIE SMITH

I, Valerie Smith, pursuant to 28 U.S.C. § 1746, do hereby state and aver:

1. I serve as the Director of Talent Support in the Office of Human Resources Management (OHRM), Office of the Secretary, Department of Commerce (DOC). Talent Support provides HR transactional services such as personnel action requests (PAR), payroll, benefits, and time and attendance to a number of bureaus at the DOC including, but not limited to, the International Trade Administration (ITA) and the National Oceanic and Atmospheric Administration (NOAA). In my role as Director, I am responsible for overseeing these transactional services and providing advice and guidance to the bureaus and offices that Talent Support services. I have served in this role since September 21, 2025, when OHRM realigned and created Talent Support services from the Talent Management Office. Prior to this role and beginning in January 2022, I served as the Deputy Director of the Enterprise Services/Human Resources Tower. In that role, I oversaw transaction services, similar to my current role as Director of Talent Support. I have been with DOC for 19 years.

2. ITA identified one individual that completed their trial period between February 27, 2025, and April 10, 2025. ITA offered that individual the opportunity to return to their position with ITA and that individual returned to ITA on January 12, 2026. Talent Support requested that this individual provide information regarding any outside earnings and whether they would like retroactive FEHB, FEGLI, and TSP coverage for the time period in question. Talent Support received this information on March 9, 2026, and will move forward with requesting that National Finance Center (NFC) to compute and disperse the individual's back pay. Talent Support has also confirmed that the termination SF-50 has been removed from this individual's Official Personnel File (OPF).

3. As detailed above, Talent Support provides transactional services to NOAA. My understanding is that NOAA identified 40 individuals who completed their probationary and/or trial period between February 27, 2025 and April 10, 2025, and offered the individuals the opportunity to return to their position within NOAA on or about January 12, 2026, of which 30 accepted this offer. NOAA requested the 30 individuals that accepted reinstatement provide documentation regarding any outside earnings during the time period in question and to date have received 20 responses, which were provided to the Talent Support office on March 10, 2026. Talent Support will follow up with the individuals who did not respond to NOAA's request this week, as well as find out what each individual wants with respect to retroactive FEHB, FEGLI, and TSP for the time period in question. As Talent Support receives this information, it will submit rolling requests to NFC for processing. NFC has estimated a timeline of 60 to 90 days for processing.

4. Talent Support will also reach out to the 10 individuals who declined reinstatement to obtain information relevant to the backpay calculations including but not

limited to any outside earnings, as well as whether the individuals want retroactive coverage for FEHB and FEGLI.

5. I have read the above statement consisting of three pages. I declare under penalties of perjury that the foregoing is true, correct, and complete to the best of my knowledge.

**VALERIE
SMITH**

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Valerie Smith

Date

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DECLARATION OF ANDREW GREEN

I, Andrew Green, pursuant to 28 U.S.C. § 1746, do hereby state and aver:

1. I serve as the Acting Director, Office of Human Capital Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC). I have held this position since October 6, 2025,

2. As I detailed in my January 26, 2026 declaration, NOAA identified 38 individuals who completed their probationary period between February 27, 2025 and April 10, 2025, and two individuals who completed their trial period during that same time. Out of those 40 individuals, 30 individuals have returned to their position with NOAA and are in a duty status. In my earlier declaration, I incorrectly stated that 32 individuals were returning to NOAA. The correct number is 30, with 10 individuals opting not to return to NOAA. These 10 individuals have negotiated specific resignation dates. NOAA has requested that the termination SF-50s from the Official Personnel Files be removed from the 30 individuals that opted to return to NOAA. For the 10 individuals that have resigned, NOAA will replace the termination SF-50 with a resignation SF-50 reflecting an updated resignation date in January 2026.

3. On February 13, 2026, NOAA reached out to the 30 individuals that had returned

to NOAA and requested that they provide documentation regarding any outside earnings they received during the time period from April 10, 2025, through January 12, 2026, along with a signed certification statement. NOAA further requested that, to the extent, that the individuals did not have any outside earnings, they submit a certification statement affirming that they did not have any backpay. To date, NOAA has only received responses from 20 individuals.

4. As a result, the Agency will be reaching back out the 30 individuals that opted to return to NOAA to renew the request that they provide the necessary documentation and forms to calculate backpay. At this time, the Agency will also clarify as to whether these individuals would like retroactive FEHB and FEGLI coverage as this would be offset from the total backpay amount. As the Agency receives this information and, on a rolling basis, the Agency will submit the backpay requests to the National Finance Center for calculation and payment.

I have read the above statement consisting of 2 pages. I declare under the penalties of perjury that the foregoing is true, correct, and complete to the best of my knowledge and belief.



Andrew Green

3/10/2026

Date