

Civil Federal Capacity Framework

Consolidated Analysis: PUB-PRI Matrix, Consent Flowchart, and Withdrawal Procedures

Litigation-Ready Reference for Structural Constitutional Analysis

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Part I: Introduction and Theoretical Foundations

Section 1: Purpose and Scope

This document provides a consolidated analytical framework for classifying all civil federal capacities along a **PUB (Public/Sovereign)** versus **PRI (Private/Proprietary)** axis. The framework is designed to serve as a litigation-ready reference for structural constitutional analysis, mapping each federal capacity across four critical dimensions:

1. **Classification.** Whether the federal capacity is exercised as a sovereign function (PUB), a proprietary function (PRI), or a hybrid of both (HYBRID).
2. **Role of Consent.** Whether individualized consent is constitutionally required, irrelevant, or structurally ambiguous.
3. **Consent Mechanisms.** The specific documentary, procedural, and legal mechanisms through which consent is obtained, imputed, or rendered immaterial.
4. **Withdrawal Procedures.** Where applicable, the procedures, forms, consequences, and structural barriers governing an individual's exit from a federal program or obligation.

The analytical utility of this framework lies in its capacity to expose structural asymmetries — instances in which the federal government invokes proprietary justifications (voluntary participation, contractual consent) while exercising powers functionally indistinguishable from sovereign compulsion. These asymmetries present cognizable constitutional vulnerabilities under the unconstitutional conditions doctrine, the Spending Clause anti-coercion principle, and substantive due process.

Section 1.1: The PUB/PRI Distinction — Theoretical Foundation

PUB (Public/Sovereign) Capacities

PUB capacities are functions exercised under the federal government's inherent sovereign authority. These include the police power (as exercised through the Commerce Clause and other enumerated powers), taxation, national defense, and the administration of justice. In international law terminology, these are *jure imperii* acts — acts performed in the exercise of sovereign authority.

The defining characteristic of PUB capacities is that the consent of the governed individual is legally irrelevant to the government's authority to impose the obligation. Constitutional authority derives from enumerated powers (Art. I, §8; Art. II; Amdt. XVI) or from structural sovereignty inherent in the constitutional design. An individual's objection to taxation, jury service, or selective service registration does not create a constitutional defense to the obligation.

PRI (Private/Proprietary) Capacities

PRI capacities are functions where the federal government operates in a capacity analogous to a private actor — offering benefits, services, employment, insurance, lending, or contractual arrangements. These are *jure gestionis* acts — acts performed in a commercial or proprietary capacity. The individual's voluntary participation is a constitutional prerequisite to the government's authority to impose conditions.

The unconstitutional conditions doctrine constrains the government's ability to condition participation on the waiver of constitutional rights. As the Supreme Court held in *Perry v. Sindermann*, 408 U.S. 593 (1972), the government may not deny a benefit to a person on a basis that infringes constitutionally protected interests. This principle was reinforced in *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), which extended the doctrine to conditions imposed on land-use permits.

HYBRID Capacities

Some federal programs exhibit characteristics of both sovereign and proprietary action. The paradigmatic example is **Social Security**: funded through mandatory

payroll taxation (a PUB function — the individual has no choice but to pay FICA taxes while employed) but distributing benefits through an entitlement structure with enrollment mechanisms that bear PRI characteristics. **Medicare Part A** is similarly hybrid — enrollment is automatic for Social Security recipients, but the benefit itself resembles an insurance product.

The HYBRID classification is analytically significant because it reveals the structural mechanism through which the government can combine sovereign compulsion with proprietary discretion — collecting funds under the coercive authority of taxation while distributing benefits under terms that deny the participant vested property rights (*Flemming v. Nestor*, 363 U.S. 603 (1960)).

Doctrinal Antecedents

The sovereign/proprietary distinction has deep roots in government liability law. In the U.S. constitutional context, the distinction manifests in the market participant exception to the dormant Commerce Clause (*Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976)), the government-as-employer versus government-as-sovereign distinction in First Amendment cases (*Garcetti v. Ceballos*, 547 U.S. 410 (2006)), and the Spending Clause framework that treats conditional federal spending as a contractual offer rather than a regulatory mandate (*South Dakota v. Dole*, 483 U.S. 203 (1987)).

Section 1.2: Consent in Constitutional Context

Three types of consent are relevant to the analysis of civil federal capacities:

1. Civic Consent (Implied/Structural). The social contract theory under which sovereign obligations — taxation, jury duty, selective service registration — require no individualized consent. Authority flows from constitutional ratification and the individual's status as a citizen or resident within the sovereign jurisdiction. This is the consent of the governed in the Lockean and Madisonian sense — general, structural, and non-revocable by individual act.

2. Express Consent (Contractual/Enrollment). The affirmative act of enrolling, applying, or signing an agreement to participate in a federal program. Express consent is documented through specific instruments: signing an SF-2809 for FEHB

enrollment, completing a TSP-1 election form, executing a Master Promissory Note for federal student loans. The voluntariness and knowing character of express consent is constitutionally significant under the Spending Clause framework.

3. Constructive Consent (Deemed/Default). Consent imputed by law through inaction or status. Examples include automatic enrollment in Medicare Part A at age 65 for Social Security recipients and automatic TSP enrollment for FERS employees hired after 2010. Constructive consent raises heightened constitutional scrutiny because the individual may not have performed any affirmative act signaling voluntary participation.

Constitutional Significance

Where PRI capacities are involved, the validity of the government's authority to impose conditions depends on consent being **knowing and voluntary**. The Supreme Court's clear-notice requirement in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981), demands that conditions attached to federal spending be stated unambiguously so that the recipient can make an informed choice. The anti-coercion principle articulated in *NFIB v. Sebelius*, 567 U.S. 519 (2012), further constrains the government's power by prohibiting conditions so onerous that they leave the participant with no real choice but to comply.

Part II: PUB/PRI Matrix for All Civil Federal Capacities

Section 2: The PUB/PRI Classification Matrix

The following matrix classifies twenty-eight civil federal capacities along the PUB/PRI axis, identifying the constitutional authority, consent type, consent relevance, withdrawal availability, and governing statutory authority for each.

Section 2.1: Category A – Sovereign/Mandatory Obligations (PUB)

| Federal Capacity | Class. | Constitutional Authority | Consent Type | Consent Irrelevant? | Withdrawal Possible? | Governing Statute |
|---|------------|-----------------------------|--|---------------------|--|--|
| 1. Federal Income Taxation | PUB | Art. I §8 cl. 1; Amdt. XVI | Civic (structural) | Yes | No (while earning income) | 26 U.S.C. §1 et seq. |
| 2. FICA/Payroll Tax (SS & Medicare) | PUB | Art. I §8 cl. 1; Amdt. XVI | Civic (structural) | Yes | No (while employed) | 26 U.S.C. §§3101-3128 |
| 3. Selective Service Registration | PUB | Art. I §8 cls. 12-14 | Civic (mandatory) | Yes | No (statutory duty) | 50 U.S.C. §3802 |
| 4. Federal Jury Service | PUB | Art. III §2; Amdts. VI, VII | Civic (mandatory) | Yes | No (subject to exemptions) | 28 U.S.C. §1861 et seq. |
| 5. Census Participation | PUB | Art. I §2 cl. 3 | Civic (mandatory) | Yes | No | 13 U.S.C. §221 |
| 6. Federal Subpoena Compliance | PUB | Art. III | Civic (mandatory) | Yes | No | Fed. R. Civ. P. 45; Fed. R. Crim. P. 17 |
| 7. Immigration/Naturalization Obligations | PUB | Art. I §8 cl. 4 | Civic (structural) | Yes | Limited (denaturalization) | 8 U.S.C. §1101 et seq. |
| 8. Federal Criminal Law Compliance | PUB | Art. I §8; Art. III | Civic (structural) | Yes | No | 18 U.S.C. passim |
| 9. AML/KYC/BSA Compliance | PUB | Art. I §8; Commerce Clause | Civic (mandatory for covered entities) | Yes | No (while conducting covered activity) | 31 U.S.C. §5311 et seq. |
| 10. Environmental Regulatory Compliance | PUB | Commerce Clause; Art. I §8 | Civic (mandatory) | Yes | No (while conducting regulated activity) | 42 U.S.C. §7401 et seq.; 33 U.S.C. §1251 et seq. |

Section 2.2: Category B – Proprietary/Voluntary Programs (PRI)

| Federal Capacity | Class. | Constitutional Authority | Consent Type | Consent Irrelevant? | Withdrawal Possible? | Governing Statute |
|---|------------|--------------------------------|---|---------------------|--------------------------------------|------------------------------|
| 11. Federal Employees Health Benefits (FEHB) | PRI | Art. I §8 cl. 18 (Spending) | Express (enrollment election) | No | Yes (Open Season / QLE) | 5 U.S.C. §8901 et seq. |
| 12. Thrift Savings Plan (TSP) | PRI | Art. I §8 cl. 18 (Spending) | Express/Constructive (auto-enroll post-2010; opt-out) | No | Yes (change/stop anytime) | 5 U.S.C. §8431 et seq. |
| 13. Federal Employees Group Life Insurance (FEGLI) | PRI | Art. I §8 cl. 18 (Spending) | Constructive (auto-enroll; opt-out) | No | Yes (cancel during Open Season / QE) | 5 U.S.C. §8701 et seq. |
| 14. Medicare Part B | PRI | Art. I §8 cl. 1 (Spending) | Express/Constructive (auto-enroll for SS; opt-out) | No | Yes (can decline or disenroll) | 42 U.S.C. §1395j et seq. |
| 15. Medicare Part D (Rx Drug) | PRI | Art. I §8 cl. 1 (Spending) | Express (voluntary enrollment) | No | Yes (can disenroll) | 42 U.S.C. §1395w-101 et seq. |
| 16. Federal Student Loans (Direct) | PRI | Art. I §8 cl. 1 (Spending) | Express (Master Promissory Note) | No | Yes (repayment/discharge) | 20 U.S.C. §1087a et seq. |
| 17. SNAP | PRI | Art. I §8 cl. 1 (Spending) | Express (application) | No | Yes (stop recertification) | 7 U.S.C. §2011 et seq. |
| 18. Section 8 Housing Choice Vouchers | PRI | Art. I §8 cl. 1 (Spending) | Express (application) | No | Yes (surrender voucher) | 42 U.S.C. §1437f |
| 19. Federal Pell Grants | PRI | Art. I §8 cl. 1 (Spending) | Express (FAFSA application) | No | Yes (stop applying) | 20 U.S.C. §1070a |
| 20. VA Benefits (Disability, Education, Healthcare) | PRI | Art. I §8 cls. 12-14; Spending | Express (application/enrollment) | No | Yes (can decline services) | 38 U.S.C. passim |
| 21. ACA Marketplace | PRI | Commerce Clause; | Express (exchange) | No | Yes (can disenroll) | 42 U.S.C. §18001 et |

| Federal Capacity | Class. | Constitutional Authority | Consent Type | Consent Irrelevant? | Withdrawal Possible? | Governing Statute |
|-----------------------|------------|--------------------------------------|-------------------------------------|---------------------|----------------------------|--|
| Insurance | | Spending | enrollment) | | | seq. |
| 22. TANF | PRI | Art. I §8 cl. 1 (Spending to states) | Express (application through state) | No | Yes (stop recertification) | 42 U.S.C. §601 et seq. |
| 23. SBA Loans | PRI | Art. I §8 cl. 1, cl. 3 | Express (loan application) | No | Yes (repayment) | 15 U.S.C. §631 et seq. |
| 24. FHA/VA Home Loans | PRI | Art. I §8 cl. 1 (Spending) | Express (mortgage application) | No | Yes (payoff/refinance) | 12 U.S.C. §1707 et seq.; 38 U.S.C. §3701 et seq. |

Section 2.3: Category C – Hybrid Capacities (PUB + PRI)

| Federal Capacity | Class. | Constitutional Authority | Consent Type | Consent Irrelevant? | Withdrawal Possible? | Governing Statute |
|--|---------------|----------------------------|---|-------------------------------|---|---|
| 25. Social Security (OASDI Benefits) | HYBRID | Art. I §8 cl. 1; Amdt. XVI | Civic (tax side); Express/Constructive (benefit side) | Tax: Yes; Benefits: No | Tax: No; Benefits: Partial (suspend at FRA) | 42 U.S.C. §401 et seq. |
| 26. Medicare Part A (Hospital Insurance) | HYBRID | Art. I §8 cl. 1 | Civic (tax side); Constructive (benefit auto-enroll) | Tax: Yes; Benefits: Partially | Benefits: Limited (must repay all SS benefits to disenroll) | 42 U.S.C. §1395c et seq. |
| 27. Unemployment Insurance (Federal/State) | HYBRID | Art. I §8 cl. 1 (FUTA) | Civic (employer tax); Express (worker claim filing) | Tax: Yes; Benefits: No | Benefits: Yes (stop claiming) | 26 U.S.C. §3301 et seq.; 42 U.S.C. §501 et seq. |
| 28. Federal Workers' Comp. (FECA) | HYBRID | Art. I §8 cl. 18 | Civic (employer coverage mandatory); Express (worker files claim) | Coverage: Yes; Claim: No | Yes (can decline benefits) | 5 U.S.C. §8101 et seq. |

Section 2.4: Analytical Commentary

The Asymmetry Problem. The HYBRID classification reveals a structural asymmetry at the core of several major federal programs. Many hybrid programs impose the PUB taxation obligation — mandatory, non-consensual, enforced through penalties — without providing corresponding PRI-side withdrawal rights for the benefit component. This creates a **structural one-way ratchet**: the individual is compelled to contribute through sovereign taxation but receives benefits under terms that the government characterizes as proprietary and therefore non-vested.

The paradigmatic example is the Medicare Part A / Social Security entanglement. An employed individual must pay FICA taxes (PUB — no choice). Upon reaching age 65, the individual is automatically enrolled in Medicare Part A (constructive consent). To disenroll from Part A, the individual must simultaneously forfeit all Social Security benefits and repay every dollar of Social Security benefits ever received. This structure makes disenrollment practically impossible for any individual who has received substantial Social Security payments, converting nominal PRI participation into functional PUB compulsion.

The Doctrinal Tension. The Supreme Court's holding in *Flemming v. Nestor*, 363 U.S. 603 (1960), that there is no accrued property right in Social Security benefits, sits in unresolved tension with the modern due process framework. If benefits are not property, then the government may modify or eliminate them without implicating the Due Process Clause. Yet the government simultaneously treats the taxation component as mandatory sovereign action from which the individual cannot withdraw. The result is a constitutional hybrid that combines the government's maximum authority (sovereign taxation power) with its minimum obligation (no vested property right in the corresponding benefit) — a combination that this framework identifies as structurally vulnerable to constitutional challenge.

Part III: Consent Requirement Flowchart

Section 3: When Is Consent Required? — Decision Flowchart

The following decision flowchart provides a systematic analytical protocol for determining whether individualized consent is constitutionally required for any given civil federal capacity. The flowchart should be applied sequentially, beginning at Step 1.

STEP 1: Identify the federal capacity at issue.

→ **STEP 2:** Is the capacity exercised under inherent sovereign authority (police power, taxation, national defense, administration of justice)?

→ **YES → BRANCH A: SOVEREIGN CAPACITY (PUB)**

→ **STEP 3A:** Consent is constitutionally **IRRELEVANT**.

→ The government's authority derives from structural constitutional grants (Art. I §8; Art. II) and the social contract.

→ Individual participation is compulsory.

→ No unconstitutional conditions analysis applies.

→ **Compliance is mandatory; refusal triggers enforcement (penalties, prosecution, contempt).**

→ ***END – CONSENT NOT REQUIRED.***

→ **NO → STEP 3:** Is the capacity exercised under the Spending Clause (Art. I §8 cl. 1) or in a proprietary/market-participant role?

→ **YES → BRANCH B: PROPRIETARY CAPACITY (PRI)**

→ **STEP 4:** Does the program involve individualized enrollment, application, or agreement?

→ **YES → STEP 5:** Is consent express (affirmative enrollment act) or

constructive (auto-enrollment with opt-out)?

→ **EXPRESS CONSENT:**

→ Individual signed, applied, or affirmatively enrolled.

→ Consent is **KNOWING AND VOLUNTARY** (*Pennhurst* clear-notice requirement).

→ Unconstitutional conditions doctrine applies — government cannot condition participation on waiver of constitutional rights.

→ Withdrawal/exit rights should exist. → See Part V.

→ **END — EXPRESS CONSENT REQUIRED AND OBTAINED.**

→ **CONSTRUCTIVE CONSENT:**

→ Individual was auto-enrolled by status (e.g., Medicare Part A at 65; TSP for FERS).

→ **STEP 6:** Was meaningful opt-out available and clearly communicated?

→ **YES:** Constructive consent is valid. Participation may be declined.

→ **NO:** → **CONSTITUTIONAL ISSUE** — potential coercion under *NFIB v. Sebelius* anti-coercion principle.

→ Structural challenge may lie. Capacity may be functionally PUB despite PRI labeling.

→ **END — CONSTRUCTIVE CONSENT ANALYZED.**

→ **NO → STEP 4B:** Is participation triggered automatically by status without enrollment or application?

→ This suggests the program may be HYBRID or misclassified as PRI.

→ **STEP 7:** Apply the coercion test (*NFIB v. Sebelius*):

→ Is the financial inducement so large that it leaves states/individuals with no real choice?

→ Does refusal result in loss of existing benefits (not merely new ones)?

→ Is the condition related to the purpose of the program (germaneness — *South Dakota v. Dole*)?

→ If coercion is found → capacity is functionally PUB regardless of PRI labeling.

- ***END – COERCION ANALYSIS REQUIRED.***
- **PARTIALLY → BRANCH C: HYBRID CAPACITY**
- **STEP 8:** Separate the PUB component (mandatory taxation/obligation) from the PRI component (benefit receipt).
- Apply Branch A analysis to the PUB component.
- Apply Branch B analysis to the PRI component.
- **Key question:** Can the individual accept the PUB obligation without the PRI benefit, or vice versa?
- If inseverable → structural asymmetry issue. The government collects under sovereign authority but distributes under proprietary terms, creating a one-way ratchet.
- ***END – HYBRID ANALYSIS REQUIRED; SEVERABLE COMPONENTS ANALYZED INDEPENDENTLY.***

Part IV: Program-to-Consent Mechanism Mapping

Section 4: Major Civil Federal Programs — Consent Mechanism Mapping

The following table maps each major civil federal program to its administering agency, the specific consent mechanism employed, the documentary instrument through which consent is obtained or imputed, the conditions imposed on participation, the assessed risk of unconstitutional conditions, and the leading case law.

| Program | Agency | Consent Mechanism | Consent Document/ Act | Conditions Imposed | Unconstit. Conditions Risk | Key Case Law |
|-----------------------|----------------|--------------------|-----------------------|--------------------|----------------------------|-----------------|
| 1. Federal Income Tax | IRS / Treasury | Civic (structural) | W-4 (withholding) | N/A — sovereign | N/A — PUB | <i>Brushabe</i> |

| Program | Agency | Consent Mechanism | Consent Document/ Act | Conditions Imposed | Unconstit. Conditions Risk | Key Case Law |
|-----------------------------|--------------------------|---|---|---|--|---|
| | | — no individualized consent | election, not consent to tax) | obligation | | <i>r v. Union Pac. R.R.</i> , 240 U.S. 1 (1916) |
| 2. FICA/Payroll Tax | IRS / Treasury | Civic (structural) | None | N/A — sovereign obligation | N/A — PUB | <i>Helvering v. Davis</i> , 301 U.S. 619 (1937) |
| 3. Selective Service | SSS | Civic (mandatory by law) | Registration form (compliance, not consent) | N/A — sovereign obligation | N/A — PUB | <i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981) |
| 4. Federal Jury Duty | Federal Courts | Civic (mandatory by summons) | Juror Qualification Questionnaire | N/A — sovereign obligation | N/A — PUB | <i>Powers v. Ohio</i> , 499 U.S. 400 (1991) |
| 5. Census | Census Bureau / Commerce | Civic (constitutional mandate) | Census form | N/A — sovereign obligation | N/A — PUB | Art. I §2 cl. 3 |
| 6. Social Security Benefits | SSA | Constructive (auto-entitlement) + Express (application to receive) | SSA-1 (Application for Benefits) | 40 quarters worked; benefit tied to earnings history | Low (benefits); high structural tension re: <i>Flemming</i> | <i>Flemming v. Nestor</i> , 363 U.S. 603 (1960); <i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976) |
| 7. Medicare Part A | CMS / HHS | Constructive (auto-enroll with SS at 65) | No separate enrollment form | Must disenroll from SS to disenroll Part A; must repay all SS benefits received | HIGH — structural coercion (loss of all SS benefits to exit Part A) | <i>NFIB v. Sebelius</i> , 567 U.S. 519 (2012) (by analogy) |
| 8. Medicare Part B | CMS / HHS | Constructive (auto-enroll, opt-out available) / Express (if not auto) | CMS-40B (Request for Enrollment) | Monthly premium; late enrollment penalty | Moderate — opt-out available but penalty for late enrollment | 42 U.S.C. §1395j et seq. |
| 9. Medicare Part D | CMS / HHS | Express (voluntary enrollment through plan) | Plan enrollment form | Monthly premium; creditable coverage requirement | Moderate — late enrollment penalty | MMA of 2003 |

| Program | Agency | Consent Mechanism | Consent Document/ Act | Conditions Imposed | Unconstit. Conditions Risk | Key Case Law |
|--------------------------------|------------------|---|---|--|---|--|
| 10. FEHB | OPM | Express (affirmative enrollment election) | SF-2809 (Health Benefits Election Form) | Employment status; premium sharing | Low — purely voluntary | 5 U.S.C. §8901 et seq. |
| 11. TSP | FRTIB | Constructive (auto-enroll for FERS post-2010) / Express (CSRS opt-in) | TSP-1 (Election Form) | Employment status; contribution limits | Low — opt-out available | 5 U.S.C. §8431 et seq. |
| 12. FEGLI | OPM | Constructive (auto-enroll; waiver available) | SF-2817 (Life Insurance Election) | Employment status; premium by age | Low — waiver available | 5 U.S.C. §8701 et seq. |
| 13. Federal Student Loans | ED / FSA | Express (application + signed MPN) | FAFSA; Master Promissory Note (MPN) | Eligible institution enrollment; repayment obligation; borrower rights | Moderate — conditions on institutional eligibility; IDR conditions | 20 U.S.C. §1087a et seq. |
| 14. Pell Grants | ED / FSA | Express (FAFSA application) | FAFSA | Enrollment; satisfactory academic progress | Low — grant, no repayment | 20 U.S.C. §1070a |
| 15. SNAP | USDA / FNS | Express (application to state agency) | State application form | Income/ asset limits; work requirements; recertification | Moderate — work requirements may raise constitutional conditions issues | <i>Lyng v. Int'l Union</i> , 485 U.S. 360 (1988) |
| 16. TANF | HHS (via states) | Express (application to state) | State application form | Time limits; work requirements; child support cooperation | HIGH — work/behavior conditions on basic assistance | <i>Wyman v. James</i> , 400 U.S. 309 (1971) |
| 17. Section 8 Housing | HUD | Express (application; waitlist) | HUD application; HAP contract | Income limits; inspection requirements; lease compliance | Moderate — search requirements; portability limits | 42 U.S.C. §1437f |
| 18. VA Disability Compensation | VA | Express (application; C&P exam) | VA Form 21-526EZ | Service-connected disability; medical evidence | Low — earned benefit | 38 U.S.C. §1110 et seq. |

| Program | Agency | Consent Mechanism | Consent Document/ Act | Conditions Imposed | Unconstit. Conditions Risk | Key Case Law |
|-------------------------------------|-----------|---|---|---|--|---|
| 19. VA Education Benefits (GI Bill) | VA | Express (application) | VA Form 22-1990 | Service requirements; approved program enrollment | Low — earned benefit | 38 U.S.C. §3001 et seq. |
| 20. ACA Marketplace Insurance | CMS / HHS | Express (enrollment via Healthcare.gov or state exchange) | Marketplace application | Income verification; premium payment; coverage period | Moderate — individual mandate structural framework remains (\$0 penalty) | <i>King v. Burwell</i> , 576 U.S. 473 (2015); <i>NFIB v. Sebelius</i> |
| 21. SBA Loans | SBA | Express (loan application) | SBA loan application; promissory note | Business eligibility; personal guarantee; repayment | Low — standard lending | 15 U.S.C. §631 et seq. |
| 22. FHA Home Loans | HUD / FHA | Express (mortgage application through lender) | Mortgage note; FHA case number assignment | Property standards; MIP; occupancy requirements | Low — standard insured lending | 12 U.S.C. §1707 et seq. |

Part V: Withdrawal Procedures for Voluntary Civil Federal Capacities

Section 5: Withdrawal Procedures for PRI and HYBRID (Benefit-Side) Capacities

The following table details the specific withdrawal procedures, required forms, consequences, reversal periods, and structural barriers for each PRI and HYBRID (benefit-side) federal capacity that nominally permits withdrawal.

| Program | Withdrawal Type | Procedure | Form/ Filing Required | Consequences of Withdrawal | Cooling-Off / Reversal Period | Structural Barriers to Withdrawal |
|---------|------------------------|---------------------------------|---------------------------------|----------------------------|-------------------------------|-----------------------------------|
| 1. FEHB | Voluntary cancellation | Submit cancellation during Open | SF-2809 (cancellation election) | Loss of health coverage; | Can re-enroll next Open | None — clean voluntary |

| Program | Withdrawal Type | Procedure | Form/ Filing Required | Consequences of Withdrawal | Cooling-Off / Reversal Period | Structural Barriers to Withdrawal |
|--------------------|--------------------------------------|--|--|--|---|---|
| | | Season or with qualifying life event | | 31-day temporary extension of coverage | Season | exit |
| 2. TSP | Stop contributions / full withdrawal | Change contribution election; request withdrawal at separation | TSP-1 (contribution change); TSP-99 (withdrawal) | Loss of employer matching; tax consequences on withdrawal | Contribution changes effective next pay period | Tax penalties for early withdrawal (<59½) |
| 3. FEGLI | Waiver / cancellation | Submit waiver to employing agency | SF-2817 (waiver election) | Loss of life insurance coverage | Can re-enroll only with qualifying event + medical exam | Re-enrollment requires medical underwriting — creates soft lock-in |
| 4. Medicare Part B | Voluntary disenrollment | Request disenrollment from SSA | CMS-1763 (Request for Disenrollment) | Loss of medical coverage; late enrollment penalty if re-enrolling later | Can re-enroll during General Enrollment Period (Jan-Mar annually) | Late enrollment penalty (10% per year of delay) — punitive re-entry cost |
| 5. Medicare Part D | Voluntary disenrollment | Contact plan or CMS | Plan disenrollment form | Loss of Rx drug coverage; late enrollment penalty | Can re-enroll during Annual Enrollment Period (Oct-Dec) | Late enrollment penalty — punitive re-entry cost |
| 6. Medicare Part A | Disenrollment (extremely restricted) | Must file with SSA; must repay ALL Social Security benefits ever received | Written request to SSA | Loss of hospital insurance + loss of ALL Social Security benefits + must repay | Essentially irreversible at scale | EXTREME — must repay all SS benefits = structural impossibility for most = functional involuntariness despite PRI labeling. THIS IS THE |

| Program | Withdrawal Type | Procedure | Form/ Filing Required | Consequences of Withdrawal | Cooling-Off / Reversal Period | Structural Barriers to Withdrawal |
|-----------------------------|--------------------------------------|---|----------------------------------|--|---|---|
| | | | | | | PARADIGMATIC STRUCTURAL ASYMMETRY. |
| 7. Social Security Benefits | Suspension / Withdrawal | Suspension: available at FRA. Withdrawal: within 12 months of first payment | SSA-521 (Request for Withdrawal) | Suspension: benefits stop, delayed retirement credits accrue. Withdrawal: must repay all benefits received | Withdrawal only within 12-month window; one lifetime withdrawal | 12-month window + full repayment = practical irreversibility |
| 8. Federal Student Loans | Repayment / Discharge | Repay in full; qualify for forgiveness (PSLF, IDR); seek discharge (disability, school closure) | Varies by exit path | Loan obligation extinguished; credit impact varies | No cooling-off on disbursement (120-day return window for some) | Exit requires full repayment or qualifying for narrow forgiveness/discharge categories |
| 9. SNAP | Non-recertification | Simply do not recertify at interval end | None — inaction suffices | Benefits stop at end of certification period | Can reapply at any time | None — clean voluntary exit |
| 10. Section 8 | Voucher surrender | Notify PHA in writing | Written notice to PHA | Loss of housing assistance; return to waitlist if reapplying | None | Waitlist re-entry (often years-long) = soft barrier |
| 11. TANF | Non-recertification / voluntary exit | Stop participating; do not recertify | None — inaction suffices | Loss of cash assistance | Can reapply (subject to lifetime limits) | Federal 60-month lifetime limit is absolute — withdrawal consumes already-limited |

| Program | Withdrawal Type | Procedure | Form/Filing Required | Consequences of Withdrawal | Cooling-Off / Reversal Period | Structural Barriers to Withdrawal |
|---------------------|-----------------------|--|--|--|---|--|
| | | | | | | eligibility |
| 12. VA Benefits | Declination / non-use | Decline services; do not use benefits | No formal withdrawal required for most | Benefits remain available for future use | Can re-engage at any time | None — earned benefit, no penalty for non-use |
| 13. ACA Marketplace | Disenrollment | Cancel plan through Marketplace | Marketplace cancellation | Loss of coverage; potential coverage gap | Can re-enroll during Open Enrollment or with qualifying event | Coverage gap = potential future underinsurance |
| 14. SBA Loans | Repayment | Repay loan balance in full | Payoff request to lender | Loan obligation extinguished | No prepayment penalties (most SBA loans) | None — standard loan exit |
| 15. FHA Home Loans | Payoff / Refinance | Pay mortgage in full or refinance out of FHA | Payoff statement; refinance closing | MIP may persist for loan life on certain loans | FHA MIP removal rules vary by down payment and term | MIP persistence = hidden structural barrier on post-2013 originations |

Section 5.1: Structural Asymmetry Analysis

Withdrawal Difficulty Ranking

The following ranks federal programs by withdrawal difficulty, from easiest to most structurally difficult:

Tier 1 — Easiest (Inaction Suffices; No Penalties):

5. SNAP — Non-recertification; no consequences; reapplication available at any time.
6. TANF — Non-recertification; however, the 60-month lifetime limit creates a shadow cost.

7. VA Benefits — Declination without penalty; earned benefit remains available indefinitely.

Tier 2 — Clean Withdrawal During Enrollment Windows:

8. FEHB — Cancellation during Open Season; 31-day extension; re-enrollment available.
9. TSP — Contribution changes at any time; tax consequences on early withdrawal.
10. ACA Marketplace — Cancel through exchange; re-enroll during Open Enrollment or with QLE.
11. SBA Loans — Repayment without prepayment penalty.

Tier 3 — Soft Lock-In (Re-Entry Barriers):

12. FEGLI — Waiver available, but re-enrollment requires medical underwriting, creating a health-status-dependent lock-in.
13. Section 8 — Surrender available, but waitlist re-entry may require years.

Tier 4 — Punitive Re-Entry Costs:

14. Medicare Part B — Disenrollment available, but late enrollment penalty (10% per year of non-enrollment after initial eligibility) creates a permanent premium surcharge upon re-entry.
15. Medicare Part D — Same late enrollment penalty structure as Part B.

Tier 5 — Practical Irreversibility:

16. Social Security Withdrawal — Available only within 12 months of first benefit payment; requires full repayment of all benefits received; limited to one withdrawal per lifetime.
17. Federal Student Loans — Exit requires full repayment or qualification for narrow discharge/forgiveness categories (PSLF, IDR forgiveness, disability discharge, school closure).

Tier 6 — Structural Impossibility:

18. FHA Home Loans (post-2013) — MIP persists for loan life regardless of equity; exit requires full payoff or refinance into non-FHA product.

19. **Medicare Part A — Disenrollment requires repayment of ALL Social Security benefits ever received. For any individual who has received substantial Social Security payments, this condition renders withdrawal a structural impossibility. This is the paradigmatic case of a nominally PRI capacity that functions as a de facto PUB obligation.**

The One-Way Ratchet Problem

Programs that are easy to enter but structurally difficult to exit create what this framework terms a **capacity trap** — a structural condition in which the individual's initial consent becomes functionally irrevocable. The capacity trap operates through several mechanisms:

- **Financial irreversibility.** Requiring repayment of previously received benefits (Social Security withdrawal; Medicare Part A disenrollment) makes exit economically irrational for most participants.
- **Punitive re-entry costs.** Late enrollment penalties (Medicare Parts B and D) impose permanent premium surcharges that punish any period of non-enrollment, creating a financial incentive structure that discourages even temporary exit.
- **Status-triggered auto-enrollment.** Constructive consent mechanisms that enroll individuals by operation of law (Medicare Part A at 65) bypass the affirmative consent act entirely, converting what should be a PRI enrollment decision into a PUB-style automatic obligation.
- **Cross-program entanglement.** Linking withdrawal from one program to forfeiture of benefits under a separate program (Medicare Part A ↔ Social Security) creates compound exit costs that exceed the value of any single program, making withdrawal from either program structurally impossible.

The one-way ratchet converts nominally PRI participation into a de facto PUB obligation. The individual's initial consent — whether express or constructive —

becomes a one-time event with permanent, irrevocable consequences. This is fundamentally inconsistent with the contractual model that underlies the PRI classification.

Doctrinal Implication

Where withdrawal is structurally impossible, the original consent cannot be characterized as meaningfully voluntary under the standards established in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981), and *NFIB v. Sebelius*, 567 U.S. 519 (2012). The clear-notice requirement demands that conditions be stated unambiguously so that the participant can exercise informed choice. The anti-coercion principle prohibits conditions so onerous that they amount to a "gun to the head." When disenrollment from a nominally voluntary insurance program requires forfeiture of all retirement benefits accumulated over a working lifetime, the condition is coercive by any reasonable standard.

This analysis exposes a constitutional vulnerability in programs like Medicare Part A: they are nominally classified as PRI (proprietary, consent-based), but they function as PUB (sovereign, compulsory) because the structural conditions of participation render exit impossible. The PRI classification is constitutionally unsustainable where withdrawal is structurally precluded.

Part VI: Conclusion and Analytical Observations

Section 6: Framework Summary and Doctrinal Implications

This framework establishes a three-category classification system — **PUB (Public/Sovereign)**, **PRI (Private/Proprietary)**, and **HYBRID** — for the comprehensive analysis of all civil federal capacities. The classification is grounded in the foundational distinction between *jure imperii* acts (sovereign functions requiring no individualized consent) and *jure gestionis* acts (proprietary functions predicated on voluntary, knowing consent). The HYBRID category captures

programs that combine mandatory sovereign taxation with optional proprietary benefit distribution.

Key Structural Finding

The most constitutionally vulnerable federal programs are those classified as PRI or HYBRID that lack meaningful withdrawal mechanisms. These programs impose sovereign-style obligations under proprietary-style justifications — collecting the coercive power of PUB while claiming the legitimacy of consent associated with PRI. The structural mechanism is the one-way ratchet: easy entry through express or constructive consent, followed by structurally impossible exit through repayment requirements, cross-program entanglement, or punitive re-entry costs.

The Constitutional Floor

Three doctrinal pillars together establish a constitutional floor below which the PRI classification cannot be sustained:

20. The Unconstitutional Conditions Doctrine (*Perry v. Sindermann*; *Koontz v. St. Johns River*): The government may not condition a benefit on the waiver of constitutional rights. Where participation in a PRI program is structurally irrevocable, the conditions attached to that participation acquire coercive force indistinguishable from sovereign compulsion.

21. The Spending Clause Anti-Coercion Principle (*NFIB v. Sebelius*): Congress may not use financial inducements so powerful that they leave participants with no real choice. The Medicare Part A / Social Security entanglement — where disenrollment from hospital insurance requires forfeiture of all retirement benefits — satisfies this threshold.

22. The Clear-Notice Requirement (*Pennhurst State School & Hospital v. Halderman*): Conditions attached to federal spending must be stated unambiguously so that the participant can make an informed choice. Where constructive consent mechanisms bypass affirmative enrollment and cross-program entanglements create compound exit costs not apparent at the time of initial participation, the clear-notice requirement is not satisfied.

The principle is this: If withdrawal is structurally impossible, consent is structurally coerced, and the PRI classification is constitutionally unsustainable.

Litigation Applications

This framework can be deployed in litigation to challenge:

23. **Conditions imposed on benefits participation.** Where conditions attached to PRI programs exceed the scope of the program's purpose or require waiver of constitutional rights, the unconstitutional conditions doctrine provides a basis for challenge.
24. **Restrictions on withdrawal from voluntary programs.** Where exit is structurally precluded — through repayment requirements, cross-program forfeiture, or punitive re-entry costs — the program's classification as "voluntary" is legally fictive, and the conditions imposed on continued participation must be evaluated under the more demanding standards applicable to sovereign compulsion.
25. **Structural coercion in hybrid programs.** The one-way ratchet structure of HYBRID programs — mandatory taxation combined with non-vested benefits and structurally impossible withdrawal — presents a cognizable Spending Clause anti-coercion claim.
26. **The government's invocation of proprietary immunity.** Where the government relies on *Flemming v. Nestor* to deny vested property rights in benefits while simultaneously exercising sovereign taxation power to fund those benefits, this framework exposes the doctrinal inconsistency: the government cannot simultaneously claim sovereign power to collect and proprietary discretion to withhold.

Framework Application Note

This consolidated analysis is designed as a litigation-ready reference. The PUB/PRI classification matrix (Part II), consent flowchart (Part III), consent mechanism mapping (Part IV), and withdrawal procedures chart (Part V) are

intended for direct incorporation into briefs, memoranda, and expert reports addressing structural constitutional challenges to federal benefit programs. Each component is self-contained and independently citable, while the framework as a whole provides a systematic methodology for analyzing any civil federal capacity along the consent-and-withdrawal axis.

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