

**MEMORANDUM OF UNDERSTANDING**  
**REGARDING WORKPLACE FLEXIBILITIES BETWEEN**  
**THE NATIONAL TREASURY EMPLOYEES UNION**  
**AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

The National Treasury Employees Union (“NTEU” or “Union”) and the Department of Health and Human Services (“HHS” or “Agency”) (the Parties) hereby enter into this Memorandum of Understanding (“MOU”).

The Parties are entering into this MOU in response to the Agency’s Article 3 notice of its intention to establish workplace flexibilities through policy HHS Instruction 990-1, Workplace Flexibilities (“HHS Workplace Flexibilities policy”) (attached as Appendix A), which includes all HHS workplace flexibilities to include remote work arrangement options for bargaining unit employees. The Parties agree that this Agreement only applies to a remote work arrangement that is a voluntary workforce flexibility arrangement under which an employee is scheduled to perform work within or outside the local commuting area of their mission area, Agency, or staff office’s worksite. The parties further agree that an employee approved to work remotely is not required to report to the mission area, Agency, or staff office worksite on a regular and/or recurring basis.

The Parties recognize that the use of remote work has the potential to improve and increase productivity and morale, improve employee engagement, maintain talent, and to provide the public with greater service. HHS and NTEU jointly recognize the mutual benefits of a flexible workplace program to the Agency and its employees. Balancing work and family responsibilities and meeting environmental, financial, and commuting concerns are among its advantages. An employee’s request for a remote work arrangement may be approved when the employee meets the criteria for eligibility established in HHS Instruction 990-1, Workplace Flexibilities and under this Agreement.

The Parties recognize that remote employees must be treated equitably for appraisals of job performance, training, awards, reassignments, promotions, changes in grade, work requirements, approval for overtime work, and flexible and compressed work schedules.

This MOU will work in conjunction with the parties’ current CBA.

Where there is a conflict between this Agreement and HHS Instruction 990-1 Workplace Flexibilities (as incorporated as Appendix A), this Agreement is controlling.

**A. General Agreements**

1. A Workplace Flexibilities Agreement (WFA) for remote work is a voluntary arrangement in which an employee, under a written WFA for remote work, is scheduled to perform their work at an alternative worksite on a full-time basis and is not expected to perform work at an agency worksite on a regular and recurring basis. This MOU covers only employees who request a remote work arrangement.
2. A remote worker’s official worksite can be within or outside the local commuting area of the Agency’s worksite. The local commuting area is defined here and in the parties’ CBA, as a 45-mile radius around the employee’s alternative worksite.

3. An approved WFA for remote work will result in a change in the employee's official duty station. The Agency will provide the employee with proper notice of the change in duty station as required under this Agreement.

**B. Initial Eligibility for a Remote Work Arrangement**

1. Employees are eligible for remote work when:
  - a. The employee's duties require less than 16 hours per bi-weekly pay period at the agency worksite;
  - b. The employee has a performance plan in place and is performing at least at the fully successful level or its equivalent and participation is not expected to cause an adverse impact on organizational productivity; and
  - c. The employee has not been officially disciplined for being absent without permission for more than 5 days in any calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
2. Examples where remote work would be appropriate include (but are not limited to) the following:
  - a. The employee's position does not require regular face-to-face interaction with other employees or stakeholders at a specific HHS office location; or
  - b. The employee is impacted by an office closure and there is still an identified business need to perform work in that geographic pay area.
3. An employee is considered ineligible if:
  - a. The employee has been officially disciplined for being absent without leave for more than 5 days in any calendar year; or
  - b. An employee has been officially disciplined for violations of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635, Subpart G) for viewing, downloading, or exchanging pornography, including child pornography on a Federal Government computer or while performing Federal Government duties; or
  - c. The employee's performance during the performance year falls below the fully successful level.

**C. Commuting Area and Locality**

1. Employees under a WFA for remote work may be eligible for a public transportation

subsidy or travel reimbursement subject to supervisory approval on days they are required to report to work.

2. Although remote workers are not required to routinely report to the traditional worksite, the Agency may require the presence of a remote employee at the worksite for a circumstance requiring the employee's physical presence. All travel costs for required travel to the official worksite may be covered by the Agency consistent with HHS Instruction 990-1-70(B)(3).
3. Employees under a WFA for remote work will be reimbursed for authorized travel expenses and may be entitled to per diem in accordance with the FTR for expenses resulting from the employee's travel to the agency worksite *outside* the local commuting area (i.e., more than 45 miles outside the employee's official worksite).
4. Employees who are required to report to the employer's worksite *within* the local commuting area (i.e., within 45 miles of the employee's official worksite), will be reimbursed for Employer authorized reasonable travel expenses (e.g., mileage in accordance with the GSA mileage reimbursement rate).

**D. Workplace Flexibility Agreement for Remote Work**

1. Eligible employees may submit a completed WFA for remote work through their Office or OpDiv system to their immediate supervisor or management official designated by their Office or OpDiv. The WFA for remote work serves as the employee's application/request form that may be accessed through the HHS Office or OpDiv Intranet.
2. Within ten (10) calendar days of submission, the employee's supervisor will approve or disapprove the employee's request.
3. If an employee's request for a remote work arrangement is approved, the Agency will complete an SF-52 and notify the employee if a change in duty station may impact the employee's locality pay. The employee will be given five (5) workdays from the date of notification to advance or withdraw the WFA for remote work. If the Agency provides notice to an employee under this section while the employee is on leave, the employee will be given five (5) workdays from their return from leave to advance or withdraw their WFA for remote work.
4. If the employee decides to advance their approved WFA for remote work, the employee's WFA for remote work becomes effective and implemented on the date as provided on the completed Agreement. An employee's official duty station will be updated on the SF-50 as soon as administratively feasible but no later than two full pay periods from the WFA effective date. The SF-50 effective date will be the date the WFA is signed and dated by the employee and the employer.
5. If an employee's request (i.e., initial request, modification request, or termination request) is disapproved, within five (5) workdays of disapproval, the employee will be advised in writing with the reason(s) for disapproval. Managers shall not unreasonably or arbitrarily

deny an employee's request. The Union may file a grievance in accordance with this MOU and Article 45 of the parties' CBA.

6. Employees may submit a written request to their immediate supervisor to modify or terminate their WFA for remote work. Requests to modify a WFA for remote work must be made at least 60 workdays prior to the intended relocation and shall include the proposed alternative worksite. The Agency will provide a written response to the requesting employee within ten (10) workdays of the request submission. In instances where employees request to terminate their remote work agreement, the employee may assume moving cost expenses.
7. The Agency may terminate or modify an employee's remote work arrangement for cause, for the reasons described Section B.3 of this Agreement, Appendix A, Section 990-1-140, (as applicable and not in conflict with this Agreement), and if the employee fails to comply with the criteria as prescribed in Article 26, Section 8 of the parties' CBA. The Agency will follow the applicable procedures outlined in the parties' CBA for any notice of the scheduled termination or modification of an employees' workplace flexibility arrangement. When deciding to terminate an agreement, the Employer will be able to document and demonstrate the reasons for the termination. The Union may file a grievance in accordance with this MOU and Article 45 of the parties' CBA. If changes are made to the OPM Change in Duty Station Guidance, the Agency will follow Article 3 and bargain with NTEU to the extent required by law prior to implementing those changes.
8. For cause termination or modification will be based on one of the following:
  - a. the employee is no longer eligible for the reasons cited in subsections B1 and B3, above;
  - b. the employee does not comply with the terms of the written agreement (5 U.S.C. 6502(b)(3)); or
  - c. circumstances in which work is no longer portable.
9. An employee whose WFA for remote work is terminated will be assigned to an Agency worksite. An "Agency worksite" shall be defined as a work location within the budgetary control of the division within which the employee is assigned. Subject to workload considerations, the Agency will make every reasonable effort to reassign the employee to a duty station within the employee's Office's workspace located within the employee's local commuting area. Where the Agency offers the employee a choice of several official worksites, the employee may select a post of duty closest to the employee's remote work duty station. Upon completion of a change in duty location, the employee's SF-50 will be updated accordingly.

**E. Work Assignments/Performance**

1. The employee's performance will be evaluated against standards contained in the employee's performance plan. Management and the employee understand there will be no distinction in the performance standards for remote workers, teleworkers, non-teleworkers, and non-remote workers.
2. The use and availability of technology, equipment, and data will be governed by Agency policy where not in conflict with this Agreement and Article 26 of the parties' current and successor CBA. Agency equipment issued to remote workers is for official use, and the Employer is responsible for its repair and maintenance. Employees are responsible for maintaining and repairing personally owned equipment. The Employer will make available necessary office supplies.

**F. Significant or Unanticipated Problems**

If either Party becomes aware of significant and unanticipated problems arising from the implementation of this MOU, the Union or the Agency will inform the other Party, and where there is mutual agreement, the Parties will meet to resolve the issue(s) within ten (10) workdays.

**G. Duration**

This MOU will remain in effect for the duration of the parties' current 2010/2014 CBA and until a successor CBA is effective.

For Agency:

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For NTEU:

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