

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NATIONAL TREASURY EMPLOYEES UNION  
AND  
THE FOOD, NUTRITION, AND CONSUMER SERVICES**

This Memorandum of Understanding ("MOU") between the National Treasury Employees Union ("NTEU" or "Union") and the Food, Nutrition, and Consumer Services ("FNCS" or "Employer") (collectively, "the Parties" or individually, "party") addresses the implementation of the two year Pilot for Phased Retirement.

On July 6, 2012, P.L. 112-141, the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), was signed into law. Section 100121 of P.L. 112-141 provides authority for a new Phased Retirement option for certain federal employees. On August 8, 2014, the Office of Personnel Management published the final rule to implement Phased Retirement.

The Parties acknowledge that Phased Retirement is a human resources tool for Federal agencies to retain employees who would have fully retired, but who are willing to continue in federal service for a period of time on a part-time schedule while engaging in mentoring and training of less experienced employees. Moreover, Phased Retirement is designed to assist agencies with knowledge management and continuity of operations in the short term, but also to enhance the mentoring and training of the employees who will be filling the positions or taking on the duties of more experienced retiring employees.

Under the Phased Retirement Pilot, participating employees will be paid for the part-time service they continue to provide the government and will receive additional credit for that service toward their full retirement. These employees will also begin receiving partial annuity payments, prorated based on the portion of the workweek that they are not scheduled to work.

In order to implement Phased Retirement, the Parties agree to the following provisions:

1. **Meetings.** Within thirty (30) calendar days of USDA approval of FNCS' implementation plan, the Employer will initiate formal meetings with all bargaining unit employees. Notice of such meetings shall be given to the Chapters in accordance with Section 5.03 of the Parties' 2014 FNS-NTEU National Agreement ("CBA"). Wherever reasonably practicable, these meetings will be held face-to-face and will be held during regularly scheduled group meetings. Where face-to-face meetings are not possible, they will be held telephonically. During the meetings, the Employer will explain the Phased Retirement Pilot and its implementation. The Union shall have the right to be present and ask any questions.

A copy of this MOU and any related guidance will be distributed to all bargaining unit employees in advance of the meeting. Subject to the Employer's right to assign work, employees will be given up to thirty (30) minutes to review such materials prior to the formal meeting.

2. **Timeline.** Absent just cause, the Phased Retirement Pilot will be fully implemented no later than ninety (90) days following the effective date of this Agreement. If the Agency is unable to implement Phased Retirement within this timeline, it shall brief NTEU with respect to the reasons no later than seven (7) calendar days prior to the expiration of the 90-day implementation window. Thereafter, the Agency will provide NTEU with subsequent briefings every forty-five (45) days with respect to the status of implementation. After two such briefings, NTEU shall have the right to reopen this MOU in accordance with Section 18 below. Employees may submit election forms to the Agency after implementation is announced.
3. **Eligibility.** Participation in Phased Retirement is voluntary and an employee must elect to participate. To participate in Phased Retirement, an employee must:
  - a. Have been employed on a full-time basis for not less than the 3-year period preceding the effective date of his or her entry into phased retirement status; and,
  - b. Be eligible for immediate retirement under either of the following provisions:
    - i. Under CSRS, the employee must be at least age 55 and must have performed at least 30 years of service, or must be at least age 60 and must have performed at least 20 years of service; or,
    - ii. Under FERS, the employee must be at least the minimum retirement age (MRA, Age 55-57, depending on your year of birth) and must have performed at least 30 years of service, or must be at least age 60 and must have performed at least 20 years of service.

All bargaining unit employees meeting the above criteria are eligible for Phased Retirement.

4. **Approval Process.** Employees must submit a completed OPM election form to their Human Resources ("HR") department. Within thirty (30) calendar days of receipt of the form, HR will notify the employee of any and all changes to the employee's working conditions, including, but not limited to, the requirement to work 50% of their full-time work schedule, the change to part-time phased retiree status, calculations of pay, leave accrual changes, disability retirement, health benefits, and life insurance. HR will also inform the employee of any issues with eligibility. After this notice is received, the employee will be allowed seven (7) calendar days to withdraw their election prior to approval.

Decisions to approve or deny requests for Phased Retirement will be made on a case-by-case basis depending on the needs of the organization. Supervisors will provide written reasons for all denials. Management will make such determinations reasonably and not in an arbitrary or capricious manner.

5. **Service Period.** The Phased Retirement period may not be greater than two (2) years.



6. **50% Working Percentage.** In accordance with 5 CFR § 831.1712, a Phased Retiree's working percentage, or the number of officially established hours per pay period to be worked by an employee in Phased Retirement status must equal one-half the number of hours the Phased Retiree would have been scheduled to work had the Phased Retiree remained in a full-time work schedule and not elected to enter Phased Retirement status. Phased Retirees may elect how they apportion their work hours from week to week as long as they satisfy the 50% working percentage each pay period.

7. **Mentoring Activities.** A phased retiree must spend at least 20% of his/her working hours in mentoring activities. Mentoring activities are teaching, training, reviewing, or providing advice, feedback, or guidance to less senior employees, for the purpose of sharing knowledge and experience that will enhance the mentee's career development. Mentoring activities do not include the ability to conduct performance appraisals or employee evaluations. The mentoring relationship is a peer relationship where work-related issues can be discussed informally and confidentially.

Employees will be instructed on how to report their time spent performing mentoring activities upon approval of their phased retiree status.

8. **Volunteers for Mentees.** The Employer will solicit volunteers for mentee positions, who are defined as employees with less than ten (10) years of experience in their current position. Participation as a mentee is voluntary. However, the Employer will encourage eligible employees to participate.

a. **Initial Announcement.** The Employer will announce its solicitation for volunteers during the formal meeting described in Section 1 above. The solicitation will thereafter remain open.

b. **Selection of Mentees.** If there are more volunteers than can be accommodated by a Phased Retiree, the Employer will select the volunteers according to reverse seniority. The remaining volunteers will be placed on a waiting list in order of reverse seniority. After six (6) months, the volunteers on the waiting list will rotate as mentees.

c. **Employee Preferences.** In matching mentors and mentees, the Employer will make reasonable efforts to accommodate employee preferences.

d. **Unavailability of Mentees.** If a mentee becomes unavailable to serve in this capacity during a mentor's Phased Retirement period, the Employer will be responsible for replacing such mentee.

9. **Monitoring Hours Worked.** The Employer will be responsible for monitoring and enforcing strictly the half-time schedule and mentoring management requirements.

10. **Training.** Pursuant to Article 18 of the Parties' CBA, all impacted employees will receive the appropriate materials and training necessary for performance of their roles under Phased

Retirement. This includes sufficient duty or administrative time to attend training or review program materials.

**11. Evaluations.** The Employer will evaluate employees approved for Phased Retirement in accordance with Article 9 of the Parties' CBA.

**12. Adverse Impact.** Except as provided herein, there shall be no adverse impact on the conditions of employment of bargaining unit employees as a result of this initiative. In particular, there will be no changes to bargaining unit employees' Posts of Duty.

- a. Employees approved for Phased Retirement will be allowed to continue to perform the same duties performed prior to electing to participate in Phased Retirement, with the sole addition of mentoring activities, subject to the Employer's right to assign work.
- b. The Employer will not increase workload levels for employees due to an employee's approval for Phased Retirement. In the event that workload problems are identified as a result of Phased Retirement, the Agency will consider adjusting/rebalancing work assignments, approving credit hours, approving overtime, or taking other actions as appropriate consistent with Section 18.07 of the Parties' CBA.
- c. A Phased Retiree may not be assigned hours of work in excess of the officially established part-time schedule (reflecting the working percentage), except under the rare and exceptional circumstances specified in paragraph (h)(2) of 5 CFR § 831.1715. These circumstances must meet the following conditions:
  - i. The work is necessary to respond to an emergency posing a significant, immediate, and direct threat to life or property;
  - ii. An authorized agency official determines that no other qualified employee is available to perform the required work;
  - iii. The Phased Retiree is relieved from performing the excess work as soon as reasonably possible (e.g., by management assignment of work to other employees); and
  - iv. When an emergency situation can be anticipated in advance, agency management made advance plans to minimize any necessary excess work by the Phased Retiree.

Employing agencies must inform each Phased Retiree and his or her supervisor of— (i) The limitations on hours worked in excess of the officially established part-time schedule; (ii) The requirement to maintain records documenting that exceptions met all required conditions. The Agency will provide its supervisors

with guidance and training on best practices to ensure that overtime assignments are equally distributed among qualified Phased Retirees.

- d. Employees will not be subject to discipline or otherwise receive negative recordations for following the advice, guidance, or training of a Phased Retiree. If there is a conflict between a Phased Retiree's guidance and an employee's Supervisor, the issue will be resolved by that employee's Supervisor.

It is the intention of the Parties to cover all reasonably foreseeable adverse impact in this MOU. However, if either party identifies adverse impact at some point in the future, which this MOU does not cover, that party will follow the procedures of Section 53.02 of the Parties' CBA concerning the provision of notice and the opportunity to bargain.

**13. Telework and AWS.** Apart from a change from full-time to part-time status, employees previously on telework arrangements and/or Alternative Work Schedules ("AWS") will not be removed from their telework or AWS due to approval for Phased Retirement. Phased Retirees will meet with their Supervisors to discuss modifications to their telework or AWS schedule due to the 50% working percentage time and mentoring activities. A Phased Retiree who is approved for telework will not be required to comply with Section 20.06(2) of the Parties' CBA, which states that employees must be in the office a minimum of two (2) workdays each week and a minimum of eight (8) hours each work day. Phased Retirees shall be eligible to apply for AWS schedules and Telework arrangements under Articles 19 and 20, respectively, of the Parties' CBA.

**14. Phased Retirement Agreements.** Under the following limited circumstances, the Agency may terminate a Phased Retirement Agreement ("PRA") early by notifying the Phased Retiree in writing, which includes the Retiree's rights, at least 30 days in advance of the effective date of the termination (except in the event of a Reduction In Force (RIF) in 14.b below, which will be 60 days pursuant to Article 15.02(3)):

- a. The basis for entering into the service agreement no longer exists (**Note:** attach a copy of the original justification to the service agreement);
- b. Funding is no longer available for that position;
- c. The phased retiree's position is subject to a reassignment, but not a transfer of function or reclassification when the competencies of the position are retained;
- d. The phased retiree is subject to an adverse action such as a removal; or,
- e. It is determined by OPM, USDA, or FNCS that the phased retiree has been working a significant amount of overtime, in which case s/he will be returned to full-time status as if s/he elected to return to full-time status. The termination of the service agreement under these circumstances is not grievable or appealable. However, an employee has the right to grieve any assignment of overtime made in violation of 5 CFR § 831.1715.



**15. Opting-out.** Employees approved for Phased Retirement may elect to opt-out of Phased Retirement status at any time during the service agreement so long as the employee provides notice at least three (3) calendar days before expiration of the agreement by completing the appropriate portions of the SF3116 to elect either:

- a. Enter full retirement status; or,
- b. Return to the status of a regular employee. The Employer will not unreasonably deny an employee's election to opt-out of Phased Retirement and return to the status of a regular employee.

Employees who elect to opt-out of approved Phased Retirement status may not elect Phased Retirement thereafter.

**16. Information to the Union.** If an employee is not approved for participation in Phased Retirement, the Employer will provide written notice to the employee, including the specific reason for the denial. Upon request, the Employer will provide NTEU with a list of bargaining unit employees who have elected Phased Retirement and the status of their election (i.e. active, opted-out, or retired).

**17. Significant Problems.** If either party becomes aware of significant unanticipated problems that arise following implementation of this initiative, the Employer or the Union will inform the other party, and the Parties will meet to discuss and attempt to resolve the problem as soon as possible.

**18. Reopener.** Either party may reopen this agreement any time six (6) months after this MOU becomes effective. In the event that the Employer seeks not to extend the two-year pilot, it will provide NTEU with at least sixty (60) days' notice and an opportunity to bargain.

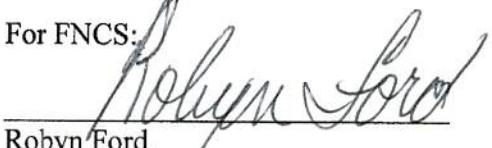
**19. Effective Date and Termination.** This MOU will take effect upon Agency Head approval or on the thirty-first (31<sup>st</sup>) day following execution, whichever is earlier, and will be coterminous with the Parties' CBA.

For NTEU:

  
Matthew Allinson  
National Negotiator  
NTEU

12/23/15  
Date

For FNCS:

  
Robyn Ford  
Acting Branch Chief Employee and Labor Relations  
USDA-FNS

12/23/2015  
Date