

**MEMORANDUM OF UNDERSTANDING**  
**REGARDING A SAFE RETURN TO THE WORKPLACE**  
**BETWEEN 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”).

In response to the COVID-19 pandemic, HHS implemented a maximum telework posture for Agency operations in March 2020. On August 16, 2021, HHS briefed NTEU on the “HHS Return to Workplace Proposal”, which identified a multi-phase approach to returning to the workplace. The Parties agree that it is in the best interest of all employees, their families, and their communities to implement policies, procedures, and safeguards to guard against the spread of COVID-19 and all related variants in the workplace.

Bargaining unit employees have rights to health and safety under Article 50 of the Parties’ October 1, 2010 (Revised March 6, 2014) collective bargaining agreement (“CBA”) and other applicable law and regulations, including requirements as prescribed by President Biden’s January 20, 2021 Executive Order on Protecting the Federal Workforce and Requiring Mask Wearing, and the Office of Management and Budget Memorandum M-21-15 COVID-19 Safe Federal Workplace.

In order to ensure a safe return to the workplace for employees currently in maximum telework posture, the Parties agree to the following terms:

**General Agreements**

To facilitate flexibility due to the unknown trajectory of COVID-19 and to ensure continued communications between HHS and NTEU, the Parties agree to the following general concepts:

- The substance of many of these articles are based on guidance from Task Force at the time of signature including, COVID-19 Community Level designations.
- As soon as practicable, after this MOU is executed but prior to reentry, the Agency and NTEU will jointly hold at least one virtual (i.e., zoom or teams) meeting with bargaining unit employees to provide information about the reentry process and answer any questions from employees. Up to two (2) NTEU representatives and two (2) Agency representatives will be present to address employee questions. Parties will exchange the names of their representatives as soon as practicable, but no later than five (5) business days in advance. Questions and answers from the meeting will be documented and posted on the Agency intranet as soon as practicable prior to reentry. Union representatives will be entitled to attend on official time.

- In order to ensure the Parties are timely communicating regarding matters related to return to workplace phased implementation, NTEU will submit a written meeting request to the Agency's Chief Negotiator identifying the issues to be discussed and the impacted OpDivs/StaffDivs. The Agency will schedule the meeting for the parties including, OpDiv/StaffDiv representatives and appropriate NTEU chapter presidents, generally within seven (7) calendar days of the request.
- The Parties will meet on a weekly basis for thirty (30) calendar days following the issuance of notices to NTEU bargaining unit employees. The initial meeting will include as an agenda item the issue of transportation, if any.

#### **A. Definitions**

1. At the time of signature, the CDC guidance provides information to be considered for specific groups of people who are at increased risk for severe illness:  
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.
2. For the purposes of this Agreement, "Workplace" refers to the inside of all office buildings and/or facilities in which HHS bargaining unit employees are assigned to perform work.

#### **B. Administrative Principles for Returning to the Workplace**

1. The Agency will implement a phased, approach to returning to the workplace. As to the specific dates for each phase, HHS will monitor the situation and determine the dates based upon guidance from the SFWTF.
2. HHS will continue to comply with SFWTF guidance and model safety principles for federal facilities. At this time, these safety protocols are determined by the CDC's COVID-19 Community Level tracker. Should the SFWTF, CDC, or any other applicable U.S. government agency, update or change its guidance or safety protocols, the Department will timely engage NTEU in negotiations, in accordance with Article 3, to identify the change, etc.
3. If the Department returns to a maximum telework posture, when considering returning to the workplace, the Agency will consider the guidance of the state or local government(s) where the HHS posts of duty are located with respect to the phases of re-opening. If the Agency intends to move into a higher phase of reopening than is authorized by state or local government guidance, the Agency will notify NTEU as soon as practicable, and will timely engage NTEU during the next weekly meeting, or in a briefing, whichever comes first.
4. For each of the phases of returning to the workplace, management will make available on Your Workplace website the following information:

- a. HHS COVID-19 reporting and response protocols;
  - b. Safety protocols applicable at the time or links to applicable safety protocols;
  - c. Copies, hyperlinks, or locations of policies, procedures, directives, or related guidance related to the Department's return to workplace initiative;
  - d. A copy of this MOU will be shared with bargaining unit employees.
5. Where a local government imposes more protective pandemic-related safety requirements, those requirements will be followed in the Workplace within that locality.
6. **Notice to Employees.** Employees will receive advance notice of no less than forty-five (45) calendar days, to make any necessary arrangements for children, parents, school, etc., before they are scheduled to report to the agency workplace under their schedule.
  - a. After issuance of the notice, supervisors will speak to their employees to finalize a work schedule and completed telework/remote form as appropriate. Such forms will define which days the employee is to report to the agency worksite, if any, and which days the employee will be teleworking. During this conversation, an employee should raise any medical or family concerns or other circumstances which may impact the employee's ability to return to the agency worksite. In accordance with OPM guidance, the Agency will strive for as much telework as possible, provided the mission needs are not negatively impacted. Disagreements between supervisors and employees regarding telework will be resolved in accordance with Section C.4 below.
7. **Data Request.** The Agency will provide NTEU with a list of bargaining unit employees who have received a notice to return to the workplace. Any such list will include the bargaining unit employees' name, grade, series, Operating Division (OpDiv)/Staff Division (StaffDiv), and the date each employee is directed to report to a worksite. This information will be provided to the Union at least ten (10) days before the employees are to return to the workplace.
8. Before initiating any administrative action based on an employee's decision not to comply with their return to workplace notice, the Agency will consider the employee's specific reasons including caregiving responsibilities, reliance on public transportation to commute, whether the employee is or lives with a person identified by the CDC as at increased risk of illness including, immunocompromised, and any

other circumstances demonstrating that returning to the workplace presents a risk to the health and safety of the employee or their family) when making such determinations. Nothing in this MOU impacts the discretion of the Department to take administrative action as deemed appropriate (i.e., in accordance with the parties' Collective Bargaining Agreement (CBA)).

### **C. Workplace Flexibilities and Reasonable Accommodations**

- 1. Reasonable Accommodations.** The Parties agree that full-time telework is an appropriate reasonable accommodation for an employee. All requests for a reasonable accommodation will be reviewed and determined based on the specific circumstances surrounding the request and in accordance with the reasonable accommodation procedures. Employees are eligible to request an interim accommodation including, 100% telework, while their formal reasonable accommodation request is being processed. These requests will be reviewed and determined based on the specific circumstances surrounding the request.
- 2. Unscheduled Circumstances.** The Agency recognizes that employees may be unable to provide advance notice of the need for telework and/or maxiflex in certain cases, such as when their child's school/care facility is suddenly closed due to a COVID-19 outbreak. In these cases, the Employee shall follow normal leave requesting procedures to request telework or leave and will notify their manager as soon as practicable of the need for additional telework/leave and the agency shall appropriately consider the request and make a decision based on the circumstances, per the CBA.
- 3. Employees "at increased risk" of illness.** The Parties recognize that CDC's recommendation for employees with obligations to dependents who are "at increased risk for illness" is to ensure the employee is up to date on their vaccinations and take steps to prevent getting sick such as, wearing a mask, physical distancing, washing hands, etc. (See CDC Families and COVID-19, and How To Protect Yourself and Others, updated February 25, 2022, webpages). The Department supports an employee's practicing of the CDC's guidance including, wearing a mask in the workplace. The Department will provide leave, in accordance with SFWTF or OPM guidance and the CBA, for an employee to obtain a vaccination or vaccinations and support an employee's request to physical distancing, when possible to minimize risk to the employee of contracting COVID-19. NTEU agrees to waive negotiations related to space adjustments to accommodate an employee's request to physical distance under these circumstances. An employee has the right to request other workplace flexibilities to include 100% telework, based on the specific circumstances and the needs of the mission.

4. **Reconsideration Process.** Decisions to temporarily suspend, modify, or terminate a telework arrangement must be made by the supervisor on a case-by-case basis and in accordance with the Article 26, Section 8 of the CBA. Any disputes over the return to workplace phased implementation notice referred to above in section B will be expedited as follows:
  - a. The Agency will place in writing its decision to deny a telework request and provide a written explanation to the employee. Within ten (10) calendar days of the employee's receipt of the written explanation, the Union and/or employee may file a request for reconsideration of the denial to the second line official above the supervisor who denied the employee's request. The written request for reconsideration must include the reasons that the employee and/or Union believe the denial was improper including, any reference to the CBA or other regulation, etc. The Agency will provide a written response to the employee and Union within fifteen (15) calendar days of receipt of the request for reconsideration. Timeframes can be extended where the Parties mutually agree.
  - b. If requested by either party, a virtual meeting will be held as soon as practicable to discuss the denial of the telework arrangement. During the meeting, the Union and/or employee may present documents to support approval of the telework arrangement. Such meeting shall include a Union Representative, if designated by the employee, the employee, a supervisor with decision making authority as to the telework agreement, and a Labor Relations specialist.
  - c. If, after the virtual meeting, telework is still denied, the Agency will provide a written statement of its reasoning within fifteen (15) calendar days of the meeting. This timeframe can be extended where mutually agreed upon by the Parties.
  - d. During this resolution process, and until a final decision is made, the employee will continue to telework under the conditions prescribed in their preexisting telework arrangement.
5. Consistent with the current practice, while employees are working remotely, the Agency will provide necessary equipment for employees to perform telework (e.g., Agency issued laptops, printers, computer monitors).
6. **Commuting Issues.** The Agency will support supervisors flexibility with employee tardiness when it relates to public transportation delays or periods where employees had to wait in extended lines resulting from COVID-19 related changes (e.g., delayed trains, waiting for elevators, security lines). Such flexibilities will be considered on a case-by-case basis.

#### **D. COVID-19 Safety Protocols**

1. HHS will comply with SFWTF safety protocols for entrance to a federal facility. Currently, safety protocols are based on CDC's COVID-19 Community Level tracker. Should the SFWTF guidance change, the Department will notify NTEU and satisfy collective bargaining agreement obligations. Should differences exist between the SFWTF and CDC guidance, the more protective standard of employee safety will be applied.
2. Any employee, contractor, and/or visitor who feels sick (regardless of the nature of their symptoms) should not enter any HHS office. This does not relieve the employee of the obligation to timely and appropriately request leave.
3. **Developing COVID-19 Symptoms.** Any employee who develops symptoms consistent with COVID-19 during the workday must immediately isolate, wear a mask, if not already doing so, notify their supervisor, and promptly leave the workplace. The Department will provide a mask to an employee who develops COVID-19 symptoms while at the workplace, if they do not have one. The employee may inform their supervisor by phone, text, or email to prevent in-person interaction between the employee and the supervisor. If appropriate, an employee may request telework, leave, or other flexibility(ies) based on the circumstances, and requests will be considered in light of the CBA and current office practices. If an employee develops COVID-19 symptoms during the workday or learns they have been in close contact with a COVID-19 positive individual and requests a mask, the Agency will provide a well-fitting mask for them. Additional circumstances may warrant the Department providing a well-fitting mask based on SWFTF guidance or Agency discretion.
4. **Mask Wearing.** Masks are to be worn in accordance with SFWTF guidance and as required: in common areas, elevators, stairs, lobbies, shared workspaces including, open floorplan office space, cubicles, conference rooms, and Agency vehicles. Employees may remove their masks in accordance with SFWTF guidance. Employees may also remove their masks when eating or drinking. Acceptable masks include non-medical disposable well-fitting masks that fit properly (snugly around the nose and chin with no gaps around the sides of the face).
  - a. Employees who state they are unable to wear face coverings in public areas in HHS facilities may formally request a reasonable accommodation (RA) through their manager or other reasonable accommodation procedure available through the Agency. While the RA is processed and if no alternative is available, the manager may approve the employee to

telework. If telework is not an option, the employee may request an appropriate leave, including, weather and safety leave.

- b. Should a mask requirement be imposed by SFWTF, the Department will post the requirement conspicuously at each public entrance of every Agency facility. If any visitor refuses to wear an acceptable face covering, they will not be permitted to enter the facility. Additionally, any visitor who refuses to wear a mask while inside the facility will be required to leave the premises. To the extent possible, Employees - will inform a supervisor, manager, or security officer if a visitor does not comply with the mask requirement so that the Agency can enforce the mask requirement without the employee being required to confront the unmasked visitor.
5. **Protective Barriers.** All protective barriers (e.g., plexi-glass barriers), which are currently in place, for workspaces that are accessible to the public, visitors, or any non-Agency personnel (e.g., information desk, mail room), will remain in place for the duration of this MOU. If additional protective barriers are required by SFWTF guidance, HHS will notify NTEU of their placement.
6. **Physical Distancing.** Should physical distancing in the workplace be required by the SFWTF, the Department will comply with the requirements including, if two or more cubicles are situated six or fewer feet from each other both of them will not be occupied at the same time. If, in order to comply with this requirement, a bargaining unit employee's space needs to be changed, NTEU agrees to waive negotiations over the move to ensure the Department is able to timely provide this safety measure.
  - a. Should SFTWF guidance require, or CDC guidance recommend, physical distancing, the Department agrees that-- indicators will appropriately be placed no fewer than six feet apart to denote where employees should stand in security checkpoint lines and other common areas in order to promote safe physical distancing.
  - b. Should the SFWTF guidance require, or CDC guidance recommend, physical distancing, the Department will enforce physical distancing in conference rooms, and NTEU will be notified in accordance with Article 3 of the parties' CBA of the specific process to be implemented at the time.
7. **Sanitizing/Cleaning.** Enhanced cleaning and disinfection in common areas, such as lobbies, restrooms, elevators, and stairwells, will be conducted regularly. Office space that is in regular use will be cleaned and disinfected regularly, and in accordance with SFWTF and CDC guidelines.

- a. CDC and/or FDA approved hand sanitizer, disposable gloves, disinfectant wipes, and sanitizing stations will be available to all employees at each worksite for the duration of this MOU. Hand sanitizer stations will be provided at the entrance to the building and throughout workspaces.
8. **Ventilation.** Consistent with Article 50 of the Parties' CBA, the Agency recognizes that ventilation assessment is a critical part of health and safety inspections for employee workplaces. HVAC assessments will continue to be performed in accordance with OSHA and applicable federal guidance/requirements. When an HVAC assessment is performed, the Agency agrees to provide the assessment report to NTEU within seven (7) days of receiving the report. The Parties will meet to discuss all issues related to worksite HVAC systems in accordance with Article 50, Section 10.

#### **E. Addressing Positive COVID-19 Cases**

1. The Agency will make available on Your Workplace intranet site CDC's guidance on proper contact tracing in instances of positive cases. Contact tracing will be conducted in accordance with CDC guidelines.
2. Employees who reasonably believe they may have been exposed to COVID-19 at their workplace will be granted appropriate leave, including administrative leave, in accordance with SFWTF to be tested for COVID-19.
3. Employees who believe that they may have been exposed to COVID-19 while on duty will be referred to the Federal Employees' Compensation Act Claims Administration in order to assess whether they may establish a COVID-19 claim under the Federal Employees' Compensation Act (FECA).
4. The Department will comply with the parties' CBA and any applicable SFWTF guidance on official travel, per diem, leave, etc., related to COVID-19 including quarantining. Currently:
  - a. Employees on official travel will be granted appropriate leave or duty time for the duration of quarantine period required by federal and local authorities.
  - b. All such reasonable expenses incurred as a result of the required quarantine period during official travel will be treated as official travel expenses.
5. Budget permitting, the Agency will provide testing for employees who suspect that they have been exposed to COVID-19 at all Agency office buildings. The Agency may limit the availability of such testing to only those employees who are



symptomatic and who are identified (through contact tracing) as having been exposed to COVID-19.

6. Should an employee be unable to report to the workplace in accordance with their return to workplace notice or at any other time during the duration of this MOU due to a COVID-19 related situation as described by SFWTF, the agency will comply with SFWTF guidance as to available options to offer the employee during quarantine (e.g., full-time telework, leave, workplace flexibilities).
7. All medical information collected from employees, including test results and any other information obtained as a result of testing and symptom monitoring, will be treated confidentially in accordance with applicable law, and accessible only by those with a need-to-know basis in order to protect the health and safety of personnel.

#### **F. Significant or Unanticipated Problems**

1. If either Party becomes aware of significant and unanticipated problems arising from the implementation of this COVID-19 returning to the workplace MOU, the Union or the Agency will inform the other Party, and the Parties will meet to resolve the issue(s) within ten (10) workdays or during the weekly meeting. Parties

#### **G. Effective Date and Duration**

1. Phase 2D is NTEU BUE and notices will be issued within fourteen calendar days of the date of the last signature on this agreement.
2. This MOU will remain in effect for five (5) months from full reentry unless the parties agree to reopen this MOU. The parties may mutually agree to extend this MOU for up to an additional six (6) months for any reason. The parties may mutually agree to continue the protocols referred to in paragraph D.8.

It is understood this MOU may be signed in counterparts.

#### **For NTEU:**

/s/ Folasade Omogun 4.19.22 (1:00pm)

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Folasade Omogun  
NTEU National Negotiator

#### **For HHS:**

Julie A.  
Murphy -S

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Julie Murphy  
HHS Chief Negotiator

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