



January 25, 2024

The Honorable Joni K. Ernst
Senator
United States Senate
260 Russell Senate Office Building
Washington, DC 20510

Dear Senator Ernst:

Thank you for your August 28, 2023, letter requesting that the U.S. Department of Commerce (the Department) Office of Inspector General initiate an agencywide review related to your questions on the Department's use of telework and remote work.

Related to your request, we previously identified locality pay as an area of focus. On April 25, 2023, we initiated an audit to determine whether the Department ensures employees are paid the correct locality pay in accordance with applicable regulations and policy. We anticipate issuing the audit report in the second quarter of fiscal year 2024.

We contacted the Department for responses to your questions. To obtain information that may be of use to our ongoing audit of Departmental employee locality pay, we expanded the wording of some of your questions. Enclosed please find the Department's responses to those questions. The Department is solely responsible for the enclosed responses and the conclusions expressed in them.

If you have further questions, please contact me at (202) 794-7788 or Richard Bachman, Assistant Inspector General for Audit and Evaluation, at (202) 793-3344.

Sincerely,

Roderick Anderson
Acting Inspector General

Enclosure

cc: Jeremy Pelter, Deputy Assistant Secretary for Administration, performing the non-exclusive functions and duties of the Chief Financial Officer and Assistant Secretary for Administration
Jessica Palatka, Director, Office of Human Resources Management and Chief Human Capital Officer, Office of the Secretary
Mark B. Daley, Deputy for Acquisition Program Management

Christiann Burek, Director, Oversight Office, Office of the Secretary
MaryAnn Mausser, Audit Liaison, Office of the Secretary

**September 27, 2023 Request for Information
Audit of Departmental Employee Locality Pay**

**** Please respond to the following questions no later than *October 23, 2023*. ****

- 1. How many Departmental employees spend the majority of their working hours in a region with a lower locality pay rate than where their designated primary workstation is located, but continue to receive the higher locality pay associated with the primary workstation?**
 - a. Please provide a list of these employees, including bureau, job series, grade and step, the location where they perform the majority of their work, and their primary workstation (duty station).**
 - b. Did the Department use measurable and observable records (such as information technology login information or office swipe-in data) to determine its response? If not, please provide the rationale, including how the Department identified these employees.**

Under the Department’s Remote Work and Telework policy, there are two types of telework: routine telework and situational telework. Routine telework occurs as part of an ongoing, regular schedule. Situational telework occurs on a case-by-case basis. Department employees¹ are generally eligible to engage in routine and situational telework, depending on their circumstances and job duties, unless they are excluded for defined performance or conduct-related reasons.

The Department’s Return to Office Guidance set a “baseline telework best practice of up to two days of routine (regularly scheduled) telework per week.” The Department’s operating units may request, and have received, waivers from that baseline policy. However, in any case, consistent with OPM Regulations, *see* 5 C.F.R. § 531.605, teleworking employees must be scheduled to routinely report to their official agency worksite at least twice per pay period.²

Under Department policy, no employee may engage in routine or situational telework without having in place a signed telework agreement that has been approved by their supervisor. The policy provides that, before a telework agreement can be approved, an employee must engage in a discussion with their supervisor regarding their work plan and performance expectations, and complete telework and IT security training. The Department’s performance standards and expectations do not change based on the employee’s teleworking status.

The Department’s policy separately defines remote work. Under the policy, remote work is an employment arrangement under which an employee, after receiving approval from their bureau

¹ This does not include employees of the US Patent and Trademark Office (USPTO) and the NOAA Commissioned Officer Corps, which are covered under different policies.

² OPM provides that for purposes of calculating locality pay, “the official worksite for an employee covered by a telework agreement is the location of the regular worksite for the employee's position (*i.e.*, the place where the employee would normally work absent a telework agreement), as long as the employee is scheduled to report physically at least twice each biweekly pay period on a regular and recurring basis to that regular worksite.” *See* OPM Fact Sheet: Official Worksite for Location-Based Pay Purposes, available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/official-worksite-for-location-based-pay-purposes/> (last accessed October 20, 2023).

or operating unit, may perform the duties of their position at an alternative worksite without any requirement to report to the traditional worksite at least twice each biweekly pay period. The policy requires that “alternative worksite location becomes [the remote working employee’s] official duty station for locality pay purposes, travel expenses, relocation expenses, etc., and must be documented on the employee’s SF-50, Notification of Personnel Action, even if the alternative worksite is within the locality pay area of the traditional worksite.” Remote work is “not an entitlement,” and will not be authorized if their performance or conduct does not comply with the terms of their remote work agreement.

The Department does not centrally manage employee telework or remote work agreements, which are expected to be managed at the bureau and supervisor level, nor does it currently track Department-wide statistics on these supervisory matters. Federal agency personnel pay systems also do not currently track employee telework sites. Therefore, the Department would not be able to reliably determine how many employees spend the majority of their working hours in a region that is different from where their primary duty station is located. Moreover, under OPM Regulations, even if an employee spent the majority of their working hours in a region that is different from where their primary duty location is located, their locality pay rate would still be based upon the location of their regular worksite as long as the employee is scheduled to report physically to that regular worksite at least twice each biweekly pay period on a regular and recurring basis.

- 2. Has the Department analyzed how much money could be saved by adjusting locality pay for teleworking employees who reside outside of the region where their primary workstation is located to the location from where they perform the majority of their work? If so, provide details on this analysis and the estimated amount of money that could be saved.***

As noted above, OPM regulations tie locality pay to the employee’s official duty station, which is defined for teleworking employees as the “regular worksite for the employee’s position of record” provided the employee is “scheduled to work [there] at least twice each biweekly pay period on a regular and recurring basis.” The Department has not formally analyzed the implications of OPM regulations tying locality pay to “the location from where [an employee] perform[s] the majority of their work.”

- 3. Has the Department taken any action to readjust current locality pay or calculate the locality pay of new or existing hires accounting for the geographical location from where each employee who teleworks spends the majority of their working hours, rather than the physical location of their position of record? If so, please provide the details of these action(s).***

For remote working employees, as defined above, Department policy requires that “alternative worksite location becomes [the remote working employee’s] official duty station for locality pay purposes, travel expenses, relocation expenses, etc., and must be documented on the employee’s SF-50, Notification of Personnel Action, even if the alternative worksite is within the locality pay area of the traditional worksite.” However, with respect to teleworking employees, the Department does not have the discretion to set their pay based on the geographical location where the employee spends the majority of their working hours. As described above, under the

applicable OPM Regulation, for teleworking employees, the locality pay rate is set based on the employee's official duty station, which is defined as the "regular worksite for the employee's position of record" provided the employee is "scheduled to work [there] at least twice each biweekly pay period on a regular and recurring basis."

4. *What actions is the Department taking to ensure better oversight and quality control of remote work and what other actions could be taken?*

The Department's Telework and Remote Work Plan, its March 22, 2022 Memorandum regarding "Return to Office," and related guidance are publicly available at <https://www.commerce.gov/hr/employees/work-life-balance/telework-0>, and provide significant guidance about the steps the Department takes to ensure oversight and quality control over remote work agreements. In summary, under Department policy, no employee may engage in telework or remote work without having in place a signed telework or remote work agreement that has been approved by their appropriate supervisor. For employees seeking to work remotely, the policy further requires review by the employee's servicing HR office. Remote work agreements are also subject to annual review.

The Department's performance standards and expectations do not change based on the employee's teleworking or remote work status. Before a remote work agreement can be approved, an employee must engage in a discussion with their supervisor regarding their work plan and performance expectations. Remote working employees' individual performance is monitored and managed by their supervisors, and evaluated as part of the Department's regular employee review process.

5. *Has the Department issued any guidance, established incentives, or otherwise enticed its workforce to return to working from the office buildings? If so, please provide*
a. *copies of such guidance, incentives, or other enticements and*
b. *a description of whether these efforts have proven successful and the measures used to determine success.*

The Department's Telework and Remote Work Plan, as well as its March 22, 2022 Memorandum regarding "Return to Office" are publicly available at <https://www.commerce.gov/hr/employees/work-life-balance/telework-0>. The Department's hybrid posture is designed to help us retain and motivate our employees by providing flexibility to a workforce changed by the pandemic, but which also embraces the many benefits of in-person engagement and teambuilding. The Department has not otherwise formally established incentives or offered enticements to employees to increase in-office work, although employees have had access to certain onsite benefits since the Department's Return to Office took effect, including three days of onsite food service for employees working in the Herbert C. Hoover Building (HCHB) and free fitness center memberships for a limited period for employees in HCHB.

6. *In how many instances has the Department exercised its authority under 5 C.F.R. §531.605(d)(2) to waive the twice-in-a-pay-period in-person standard?*

- a. *How many of those exceptions have been revoked each month since July 2021? Please provide a list of these employees by bureau including job series, grade, and step.*
- b. *As of the date of this memorandum, how many employees remain excepted from the twice-in-a-pay-period in-person standard? Please provide a list of these employees by bureau including job series, grade, and step.*

Situational exceptions to the requirement that teleworking employees be scheduled to work at their regular worksite twice per biweekly pay period on a regular and recurring basis are made on a case-by-case basis, and are managed and approved at the individual supervisor level. As outlined in OPM Regulations, exceptions to the policy can be approved for a myriad of reasons, from a recovery from an injury or medical condition, to an emergency situation that temporarily prevents the employee from commuting to their regular worksite, to approved absences (*i.e.*, paid leave). *See* 5 C.F.R. § 531.605. The Department does not centrally manage or track such exceptions, and so would not reasonably be able to provide data describing how frequently such situational exceptions have been provided.

7. *How is telework impacting the delivery of services and response times by the Department? Please provide details supporting your response, including bureau, program, and other information regarding the impact on delivery and response times. Have waiting lists or backlogs increased or decreased? Please list the bureau, program, and details supporting your response.*

Consistent with the Department's expectation that remote and teleworking employees maintain a high level of performance, the Department and its Bureaus have likewise maintained a high level of performance while operating in maximum telework and hybrid postures. Indeed, in Fiscal Year 2022, the Department met or exceeded 87 percent of its key performance indicators (KPI), which measure the Department's progress towards achieving the 5 goals and 23 objectives of its Strategic Plan. By comparison, in Fiscal Years 2018, 2019, 2020, and 2021, the Department met 83 percent, 88 percent, 82 percent, and 83 percent of its KPIs, respectively. The Department makes these, and many of its other performance measurements, publicly available.³

8. *What is the typical daily onsite attendance in the Department's office buildings as a proportion of its total workforce? Please provide details supporting your response.*

The Department is unable to reliably estimate daily onsite attendance for each of its over 1,859 building sites. However, with respect to the Department's headquarters building, the Herbert C. Hoover Building (HCHB) in Washington, D.C., the Department has seen a marked increase in occupancy since return to office on April 25, 2022. Based on a comparison of a building occupancy of 2,889 within the HCHB,⁴ to the estimated daily occupancy of HCHB based on card reader data, DOC recorded an average occupancy of 29% in FY22 Q4 and 28% in FY23 Q1. Following the implementation of the Department's return to office policy, those numbers have risen to: 37% in FY23 Q2, 40% in FY23 Q3 and 42% in FY23 Q4.

³ U.S. Dep't of Commerce, *Commerce Performance Data* (last visited Sept. 14, 2023), <https://performance.commerce.gov/>.

⁴ HCHB occupancy of 2,889 is based on the number of positions that report to HQ in FY22.

9. Comparing the capacity of usable area to the actual in-office attendance, what is the utilization of the Department's building spaces? Please provide details supporting your response.

The Department of Commerce's real property portfolio includes over 1,859 buildings, which include office, warehouse, and laboratory space, among other diverse utilizations. Given the breadth of its real estate holdings, as well as the difficulty of compiling the necessary data to do so, the Department cannot provide the utilization for all of its building spaces.

With respect to HCHB, defining usable square feet to include "the total of occupant area and building amenity area on any floor level, and for the building,"⁵ the usable area of HCHB is approximately 954,034 square feet. However, that figure significantly overstates the amount of office space within HCHB that could actually be used for productive work for several reasons. First, the figure provided above includes several hundred thousand square feet of specialized, joint use and support spaces such as auditoriums, a childcare center, credit union, and a cafeteria. Moreover, HCHB is a historic building with wide hallways and inefficiently configured office space due to its structural design. Therefore, any measurement of utilization based on usable square feet would significantly misrepresent the actual utilization of HCHB. Nevertheless, based on that measurement, and given an average daily occupancy of 42% in Q4 of Fiscal Year 2023, the occupancy of HCHB is approximately 470 square feet per person.

Of note, the building's utilization rate is expected to improve in the coming years, as the multi-year renovation of HCHB continues, and as part of the building is returned to GSA for lease to another federal entity.

10. What is the monetary and environmental cost of maintaining underutilized space in terms of energy usage and emissions? Please provide details supporting your response.

The Department's energy costs have remained relatively stable as building occupancy within HCHB has fluctuated. As a general matter, energy costs do not substantially change based on the level of occupancy of a building because energy usage is primarily based on conditioning air, building envelope efficiency, equipment operations, and lighting; heat load of occupants and occupant energy use is less significant.

Several of the Department's bureaus are reducing their overall footprint, which will decrease its overall energy consumption. The Department also anticipates that future significant renovations at the Department's headquarters and larger facilities will improve the building envelope, and upgrade technology and equipment, resulting in energy savings and lower emissions. Moreover, the Department conducts regular energy and water assessments in its larger facilities and prioritizes projects that improve energy efficiency and lower emissions. Finally, the Department is evaluating facility investments to utilize Carbon Pollution-Free Electricity (CFE) although that will likely not lower costs.

⁵ See OMB M-2015-01, *Implementation of OMB M-12-12 Section 3: Reduction of Footprint*, March 25, 2015, available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/m-15.01Reduce-the-Footprint-Policy.pdf>.

11. What, if any, actions are being taken or planned to reduce underutilization of the Department's buildings and office spaces?

Despite its sizable real property profile, the Department has a long track record of effective real property management and reducing its federal footprint while meeting mission requirements. In fact, between 2020 and 2022, Commerce reduced its overall real property portfolio over 17 percent. The reductions included major reductions of more than 1 million square feet of office, warehouse, and laboratory space over the last several years. For example:

- The National Institute of Standards and Technology sold a site comprising 13.71 acres of land and 11 buildings containing 32,321 square feet. The sale yielded \$12.0 million back to the federal government.
- The National Oceanic and Atmospheric Administration sold a site comprising 4.28 acres, including 11,200 square feet of space. The sale yielded \$4.8 million back to the federal government.
- The Bureau of Economic Analysis consolidated its office space to yield back approximately 138,000 square feet of space; the USPTO and NTIS reduced warehouse space totaling around 400,000 square feet; the Census Bureau closed field offices resulting in a reduction of about 100,000 square feet; USPTO returned around 190,000 square feet of space.

Further reductions to the Department's real property portfolio are planned for the coming years. Such planned reductions include a 760,000 square foot campus reduction for the USPTO, and a 300,000 square foot reduction of office space by the Census Bureau.

These completed and planned reductions in the Department's real property profile reflect the Department's commitment to effectively meeting its mission requirements, while relinquishing space the Department no longer needs. Future reductions, co-locations, and consolidations of office space will also be evaluated in light of the Department's telework policy.