

**POLICY ISSUE**  
**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Tomas E. Herrera, Acting Secretary  
**FROM:** Commissioner Crowell  
**SUBJECT:** SECY-23-0072: Final Agency Decision to Implement  
the Flexible Work Model

Approved \_\_\_\_ Disapproved  X  Abstain \_\_\_\_ Not Participating \_\_\_\_

**COMMENTS:** Below \_\_\_\_ Attached  X  None \_\_\_\_

**Entered in STAR**

Yes  X

No \_\_\_\_



**Signature**

10/26/23

**Date**

**Comments of Commissioner Crowell on SECY-23-0072,  
“Final Agency Decision to Implement the Flexible Work Model”**

The road to consideration of this paper has been long, winding, and all too often frustrating for all NRC staff – from top to bottom, at HQ, across the Regions, and everywhere in between. Many points along the way were impossible to fully predict or adequately prepare for. But other critical junctures were foreseeable and made unnecessarily challenging due to limited communication and other related shortcomings. The Commission has a responsibility to recognize these shortcomings by providing the clear direction necessary to correct course and position the NRC for long-term success.

From the advent of the COVID-19 pandemic in early 2020 to official cessation of the public health emergency in May 2023, we have collectively and individually endured unprecedented and unique challenges – both personally and professionally. Throughout it all, I appreciate the steadfast commitment of the staff in successfully implementing the NRC mission despite the many uncertainties and challenges of performing our vital functions under such conditions. The staff's dedication to public service is to be applauded. Furthermore, I appreciate the patience of all NRC staff as our agency looks ahead to establish a responsible, effective, and forward-looking work environment that meets the needs of our many stakeholders and the agency. To fully succeed in this transition, we must remain true to the NRC commitment to continuous improvement by adopting best practices as part of the broader Federal family adjusting to a modern, flexible work environment.

As the NRC moves forward within a government-wide adaptation to new work environment options, there is much we can do to control our own destiny and help ensure the long-term health and success of our agency. However, to do so, the road ahead must follow a thoughtful, measured approach to incorporating new, novel methods for individual staff to perform their respective duties, while also ensuring the NRC as a whole is able to meet its near, medium, and long-term goals. We must do so with respect for each other as individuals and with respect for the broad diversity in roles and responsibilities we each perform in support of the NRC's vital mission. In doing so, we must recognize that a convenient, “one size fits all” solution is simply not practical. We must always bear in mind that public service is a privilege and honor. As a public agency, the NRC is entrusted with the paramount responsibility to protect the health and safety of the public we serve – our friends and neighbors. Therefore, the NRC must design and implement a work model that responsibly balances workplace flexibilities with the performance of its critical mission and stakeholder expectations.

I am a strong proponent of establishing a modern, flexible work environment for the NRC. Unfortunately, I do not believe the Flexible Work Model (FWM) as proposed in SECY-23-0072 encompasses the holistic, balanced, and measured framework necessary to justify its conclusions. In exercising its delegated authority, the Office of the Executive Director for Operations (OEDO), with assistance from multiple other offices, drafted the FWM based in part on past experience and the conclusions of two agencywide workplace assessments (HEART and TPIWG).<sup>1</sup> The FWM was then further revised and informed through extensive outreach to staff and feedback from the National Treasury Employees Union. This was a significant undertaking, yielding valuable insights and recommendations from the staff. However, in developing the FWM proposal, staff leadership focused almost exclusively on inward looking elements and omitted necessary additional steps to assess broader equities or address external guidance.

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<sup>1</sup> Hybrid Environment Assessment and Review Team (HEART) Final Report (ML22271A894), September 29, 2022; U.S. NRC Telework Policy and Implementation Working Group (TPIWG) Final Report (ML22300A218), October 28, 2022.

As the official COVID-19 public health emergency was coming to an end in the spring of 2023, the current Administration – via the White House, Office of Management and Budget (OMB), and Office of Personnel Management (OPM) – began issuing updated guidance to Executive Branch agencies to help inform development of agency reentry plans and to provide review of individual agency plans. In April 2023, OMB issued Memorandum M-23-15.<sup>2</sup> This memo effectively paused the agency’s advancement of the FWM while the staff responded to OMB’s post-reentry data call for all agencies to submit a Work Environment Plan (WEP) for OMB review. Notably, in an effort to avoid a prescriptive, one size fits all approach, the OMB guidance emphasized that agencies should “generally continue to substantially increase meaningful in-person work in Federal offices.”

While formal OMB approval of agency plans was not required, it is important to highlight that the majority of Federal agencies either built or adjusted their workforce reentry plans to reflect this updated, overarching guidance from the Administration. The NRC, meanwhile, chose a different path in its response to the data call. Rather than pause to consider if and how to update the FWM to more closely reflect OMB’s guidance or to proactively engage with the Commission before proceeding, the OEDO pressed forward with the FWM as proposed. Thus, instead of *increasing* meaningful in-person work, the NRC provided OMB a proposed WEP (i.e., FWM) that further *decreased* in-person work – moving from the agency’s current requirement of a minimum of 4 days in the office per pay period to a minimum of 8 hours over 2 days per pay period. As a result, while OMB did not raise objections to the NRC’s WEP, the NRC knowingly put itself in a posture contrary to the overall intent of OMB guidance and glaringly at odds with the reentry plans in development at most other Federal agencies.

This brings us to the current crossroad on the road to reentry.

Given the major operational and policy implications of this decision, I have significant concerns regarding the OEDO’s performance of its delegated authorities and failure to proactively communicate with the Commission. At a minimum, the OEDO should have paused the FWM effort to either develop a more robust justification for *reducing* in-person work, or to enhance the FWM to incorporate guardrails to ensure the FWM would be fully successful based on meaningful, high-quality data that could adequately measure effectiveness, while preserving the flexibility to adjust the FWM, as necessary and appropriate.<sup>3</sup>

Unfortunately, arriving at this critical juncture could have been both anticipated and avoided.

In May 2023, Commissioner Caputo issued action memorandum COMAXC-23-0001.<sup>4</sup> At that time, I opted to support the OEDO’s exercise of its delegated authorities by joining a majority of my colleagues to require the staff to provide an information paper rather than the notation vote paper proposed by Commissioner Caputo. In doing so, I noted in my vote on COMAXC-23-0001 examples of key activities best performed in-person, including key leadership functions, team building, security functions, training, on-boarding, and brainstorming. I also expressed concerns that the proposed FWM at that time did not reflect the Administration’s goals to substantially increase in-person work. I further noted that any deviations from the Administration’s guidance should be based on a clear rationale, reflective of the agency’s mission, and supported by objective data and analysis. Unfortunately, SECY-23-0072 did not address the concerns my colleagues and I highlighted in our respective votes. Had I known to expect this outcome, I would likely have voted to approve Commissioner Caputo’s recommendation for a notation vote paper.

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<sup>2</sup> OMB Memorandum M-23-15, “Measuring, Monitoring, and Improving Organizational Health and Organizational Performance in the Context of Evolving Agency Work Environments,” dated April 13, 2023.

<sup>3</sup> See SECY-23-0072 at 6 for discussion of decision to implement FWM without a one-year pilot.

<sup>4</sup> COMAXC-23-0001, “Enabling the Mission – A Measured Approach to the Future of Work,” dated April 6, 2023.

Therefore, it should not be surprising that SECY-23-0072 was converted to a voting matter, requiring the Commission to exercise its responsibility to appropriately consider the broad policy implications of the FWM and provide specific direction to the staff on next steps.

Despite the twists and turns along the way, I continue to believe the FWM takes the agency in the wrong direction – in both the near and long term. As proposed, the FWM is contrary to the President's expectations that we implement increases in the amount of in-person work and to aggressively execute this shift in September and October 2023. In his August 4, 2023, email, White House Chief of Staff Jeff Zients explained that agencies should return to in-person work because, "it is critical to the well-being of our teams and will enable us to deliver better results for the American people."<sup>5</sup> I couldn't agree more.

For these reasons, I disapprove the FWM, effective immediately. In its place, the agency should retain its current telework practice (i.e., first-line supervisors should retain the authority to approve up to six days of remote work per pay period), except as applied to individuals serving in Senior Executive Service positions. This exception for SES employees is similar to recent policies adopted by other Federal Executive Branch agencies, such as the Departments of Agriculture, Education, Interior, and Labor, as well as the Environmental Protection Agency. As the most senior career employees of the agency, SES employees are entrusted with critical roles, the performance of key authorities, and agencywide leadership responsibilities that inherently necessitate a higher level of in-person presence. For this reason, in-person work for individuals serving in SES positions should increase to at least six days per pay period, effective at the start of the first pay period that occurs 60 days after the issuance of the SRM.<sup>6</sup> An in-person day for SES positions is a minimum of six hours.

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<sup>5</sup> Email from J. Zients, August 4, 2023.

<sup>6</sup> For SES employees, this does not affect existing reasonable accommodation or other special circumstances arrangements.