

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Brooke P. Clark, Secretary

FROM: Chair Hanson

SUBJECT: SECY-23-0072: Final Agency Decision to Implement
the Flexible Work Model

Approved X Disapproved Abstain Not Participating

COMMENTS: Below Attached X None

Entered in STAR

Yes X

No



Signature
Christopher T. Hanson

Date 10/30/2023

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Introduction

As public servants, our foremost priority is meeting the mission of the agency. The mission of the Nuclear Regulatory Commission (NRC) can only be effectively realized when our employees are engaged and committed to their roles. A workforce, characterized by high trust in leaders and each other as well as high confidence in the quality of the work, is necessary to make significant contributions toward achieving the agency's objectives. This is more important than ever. To meet the novel and demanding challenges ahead, the agency needs the institutional knowledge and dedication of its current workforce along with the ability to attract the best and brightest minds from across the country.

From the start of the COVID-19 pandemic, during the public health emergency, and after, the agency's staff have steadfastly accomplished our mission. A miniscule, but high-profile sampling of achievements includes reviewing and approving the Vogtle Unit 3 Inspections, Tests, Analyses, and Acceptance Criteria, ongoing reactor operator licensing, and issuance of the Safety Evaluation Report and Final Environmental Impact Statement for the Kairos Hermes test reactor construction permit application ahead of schedule and within the projected resources. Our performance metrics, which we can benchmark with pre-pandemic numbers, consistently show that the agency continues to meet its mission effectively. The data is clear—our staff prioritizes the mission, and productivity is not necessarily linked to being in an office. Telework is still work.

My vote is not a treatise on what I believe to be the perfect balance of in-person work and remote flexibilities. My vote supports two key principles. First, that the appropriate decision-making authority for development and implementation of a telework plan of any sort resides with the Executive Director for Operations (EDO), as the chief administrative officer of the agency. Second, that the EDO, in collaboration with senior leaders in the agency and in consultation with the Office of Management and Budget (OMB), executed a fair and reasoned process that culminated in the development of the Flexible Work Model (FWM) based on the "Presence with a Purpose" approach. Therefore, I approve SECY-23-0072.

Delegation of Authority

The Reorganization Plan No. 1 of 1980, 5 U.S.C. App. 1, required the Chair to delegate the administrative functions of the NRC to the EDO, subject to the Chair's direction and supervision. I have not identified a deficiency in either the actions of the EDO or in the FWM itself that would validate the use of my authority as Chair to strip the EDO of his delegated functions on telework or any other administrative matter. This issue is indeed highly visible and merits an appropriate level of ongoing awareness and attention by the Commission. However, it does not follow that simply because this issue is highly visible that the Commission should make itself the decision-making authority. Indeed, the agency has had telework policies in place for over two decades, and there is no indication that the Commission has ever inserted itself directly in these decisions—either at the inception of the policy or during the various modifications over the years.¹

¹ Telework flexibility for government agencies has been enshrined in legislation since 2000. See Public Law 106-346 §359, *Department of Transportation and Related Agencies Appropriations*, dated October 23, 2000 (stipulating that agencies must establish telework policies that allow eligible employees to participate in telework to the maximum extent possible without diminished employee performance). See also Public Law 111-292, *The Telework Enhancement Act of 2010*, dated December 9, 2010

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The management of day-to-day operations, including teleworking, falls squarely within the responsibility of the EDO for good reason. The EDO is best situated to handle the scope and multi-office impacts associated with development of an agency-wide telework plan. The EDO also has extensive experience navigating telework management at the agency including the development of monitoring data and the ability to capture best practices. Telework is not a new concept and while things look different now post-pandemic, the FWM largely leverages flexibilities that already existed (See Figure 1).

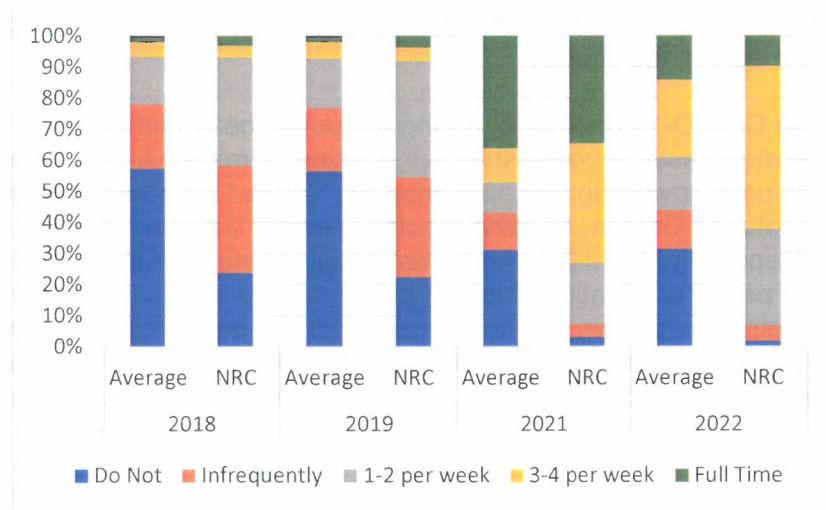


Figure 1. Comparison of Telework Usage from FEVS Responses²

I reiterated in my vote on COMAXC-23-0001 that telework decisions belong with the EDO. It was not then, nor is it my desire now, to undercut the agency's longstanding delegation of authority to the EDO on administrative issues and make the FWM subject to Commission approval.

The FWM changes the existing authority to approve telework schedules with a minimum of two in-person days per pay period from Office Directors to first-line supervisors. The majority of the Commission has disapproved the FWM and reinstated the status quo, which simply means the authority to approve that schedule resides with Office Directors. But the majority remains silent

(requiring Executive agencies to establish a policy under which eligible employees of the agency may be authorized to telework, determine the eligibility for all employees of the agency to participate in telework, and notify all employees of the agency of their eligibility to telework).

Over time, the NRC has made significant adjustments to its policies, moving from project-based only telework capabilities to allowance of fixed schedules and compressed work schedules. Full-time telework has been available to some degree for much of the history of telework at the agency. I have not been able to identify any past instance in which the Commission asserted authority over these organizational shifts in telework. Nor did the Commission insert itself during various high-profile evaluations of the agency's telework program. See United States Government Accountability Office, *Continuity of Operations: Selected Agencies Could Improve Planning for Use of Alternate Facilities and Telework During Disruptions*, May 2006, available at www.gao.gov/new.items/d06713.pdf. See also Office of the Inspector General, Report Number OIG-10-A-14, *Audit of NRC's Telework Program*, issued June 9, 2010 available at <https://www.oversight.gov/report/NRC/Audit-NRCs-Telework-Program>.

² Figure 1 was developed using Federal Employee Viewpoint Survey (FEVS) data from Question 91: "Please select the response that best describes your current remote work or teleworking schedule." See <https://www.opm.gov/fevs/reports/governmentwide-reports/>.

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on several other matters impacted by their disapproval that if left unaddressed, will cause a ripple effect through delegated functions—leading to significant uncertainty and further erosion of trust between employees and senior leadership. Indeed, there are several operational factors tied to the FWM and changes to the EDO's delegation of authority in this matter. The most complicated of these is probably labor relations and coordination with the National Treasury Employees Union Chapter 28 (NTEU), which is, and always has been, an EDO function under the Reorganization Plan. Disapproving the FWM withdraws the longstanding delegation of authority to the EDO in these matters. This will have significant ramifications for labor relations going forward, many of which will have an immediate impact on the agency's ability to negotiate effectively and efficiently.

Background

In November of 2021, I fully supported the EDO's decision to bring our workforce back into the office for a minimum of four in-person days per pay period. We were one of the earliest agencies to set a date for re-entry and have a concrete plan for our employees—expecting that the rest of the federal government would follow suit. At the time, I believed that in-person work would provide certainty and help us all return to some level of pre-pandemic normalcy. But I did not appreciate how much the pandemic reshaped the conversation. Employees immediately recognized that a telework plan based solely on in-person office days was ineffective at facilitating organic and fruitful interactions. The staff felt that they were being asked to return to the office without a clear purpose. They also identified an inconsistent application of workplace flexibilities within offices, adding to growing frustration.

Meanwhile, the bulk of the federal government did not follow through with re-entry, and we were left as an outlier with a significant erosion of trust between NRC staff and senior leaders. I appreciate the EDO and NRC upper management team for recognizing that reality and taking a step back to reevaluate our approach. Over the course of nearly two years, the EDO has used listening sessions and staff-led working groups to leverage data, performance metrics, and pre-pandemic benchmarks to set a new trajectory. The EDO utilized information gained from reports generated by the staff-led Hybrid Environment Assessment and Review Team (HEART) and the Telework Policy and Implementation Working Group (TPIWG) to formulate options and develop a path forward.³ These reports emphasized the need for an approach that avoids deterministic requirements for in-person days, instead focusing on meaningful and deliberate interactions.

In April of 2023, the Office of Management and Budget (OMB) issued Memo M-23-15 with steps for agencies to take in deciding on future work environments. The EDO actively participated in OMB's working groups and meetings and submitted the first deliverable identified in M-23-15, the NRC's Work Environment Plan, on May 15, 2023. This Work Environment Plan advocated for an approach based on "Presence with a Purpose" and reflected the input received from the HEART and TPIWG reports.

³ The HEART final report was issued September 30, 2022 ([ML22271A894](#)) and calls on the agency to adopt a "Presence with a Purpose" approach to flexible work (Recommendation 1). The TPIWG final report was issued October 27, 2022 ([ML22300A206](#)), and similarly recommends that the agency adopt the "Presence with a Purpose" model (Recommendation 1). It also recommends that the agency give authority to first-line supervisors to "reduce the number of required fixed schedule in-person days from four to two days per pay period if the nature of the work supports it" (Recommendation 2). These ideas shaped the core principles of the FWM.

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The Commission, regularly informed of the EDO's progress, issued SRM-COMAXC-23-0001 on June 9, 2023.⁴ Rather than reversing the delegation of authority and voting to revise the staff's telework plans and procedures, the Commission directed the EDO to

“provide to the Commission no later than 10 business days before the NRC is expected to reach a final agency decision on its Work Environment Plan, an information paper discussing: (1) the staff's proposed decision; (2) anticipated guidance for implementing “Presence with Purpose” norms and behaviors; (3) key performance indicators for monitoring accomplishment of the NRC's mission, organizational health, and public confidence; (4) expected changes to policies, management directives, the Collective Bargaining Agreement, and other governing documents; (5) data relied upon to reach its proposed decision, and (6) an internal strategic communication plan.”

The Commission also stated that “[a]s the staff continues to meet with OMB and the President's Management Council, the EDO should regularly update the Commission.”

The staff accomplished this latter task by providing information informally throughout the OMB process, including during daily internal meetings attended by staff from the Commission offices. In these same forums, the staff also routinely shared updates regarding engagement and negotiation with NTEU.

On August 23, 2023, the EDO issued SECY-23-0072, “Final Agency Decision to Implement the Flexible Work Model,” consistent with the Commission's principal direction in SRM-COMAXC-23-0001. The EDO's approach carries forward the “Presence with a Purpose” philosophy described in the Work Environment Plan that was submitted to, reviewed, and greenlighted by OMB. The “Presence with a Purpose” model is intended to make in-person interactions more meaningful to the participants and in turn more valuable for the organization. Instead of using an arbitrary measure—days per week—for in-person work, this framework promotes flexibility and trust while demonstrating through data and performance metrics that the mission continues to be the priority of the agency.⁵

The Flexible Work Model

The FWM delegates authority to first-line supervisors to approve telework arrangements with a minimum of two in-person days per pay period with the expectation for “employees to be in-person, when necessary, to support the agency mission, organizational health, and stakeholder confidence strategic goals.”⁶ As SECY-23-0072 states, “first-line supervisors must determine the appropriate level of telework for their employees based on the provisions in Sections 7.2 and 7.4 of the [Collective Bargaining Agreement] and should not automatically

⁴ SRM-COMAXC-23-0001, “Enabling the Mission—A Measured Approach to the Future of Work” ([ML23160A274](#)). The Commission's Internal Procedures define an Information Paper as “a paper that provides information on policy, rulemaking, or adjudicatory issues.” The description goes on to clarify that “Information Papers are purely informational and should not assume or request any action by the Commission” (available at <https://www.nrc.gov/about-nrc/policy-making/internal.html>).

⁵ This is a shift from the current status quo, which relies on a deterministic number of days in the office without specific guidance or protocol regarding the choice of in-person days.

⁶ SECY-23-0072 at 3.

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default to the minimum of two in-person days per pay period.”⁷ The delegation to first-line supervisors is an integral part of the FWM because they are “in the best position to understand the nature of work in their unit”⁸ and therefore most capable of facilitating meaningful interaction.

The FWM guidance, submitted as an attachment to SECY-23-0072, is clear on the types of interactions that will, with few exceptions, require an in-person presence. These include but are not limited to: onboarding of new or transferring employees to establish relationships and engage in development activities, such as training and team introductions; engaging with external stakeholders such as licensees, Congressional staff, international visitors, and inter-agency colleagues; and attending and conducting public meetings, such as public scoping meetings at the location of interest.⁹ The FWM, while based on trust and employee feedback, is unambiguous in this regard: “telework is not an employee entitlement.”¹⁰

The workplace of the future is evolving not only across the federal government but across the world, and the EDO is fully capable of continuing to track our performance and adjust as drivers and best practices are realized. The EDO, after negotiations with NTEU, can and will change course as needed on telework flexibilities based on data from performance measures or other indicators. First-line supervisors always have the responsibility to address individual staff performance issues, including those related to telework, as they arise.

Focusing on the absolute minimum in-person time misses the point of the FWM approach. The intent is not to increase employee telework; it is to increase meaningful in-person interactions. The management and leadership considerations in driving performance and fostering a strong organizational culture are the same whether staff are required to be in the office two, four, six, or eight days per pay period.

Based on an increasing body of literature from leading journals and business schools, leadership and management in a hybrid work environment require traits of flexibility, empathy, high communication, inclusivity, and clear expectation setting—exactly the traits that the FWM and the “Presence with Purpose” approach promotes.¹¹ Rather than the Commission wresting control of the decision from the EDO and focusing on the specific number days in the office, I would rather us work together to support the EDO and senior staff in developing managers and leaders at every level of the agency with the skills necessary for navigating the hybrid workplace in order to ensure the ongoing success of the agency.

⁷ *Id.* at 4. Section 7.2 of the Collective Bargaining Agreement (CBA) states in part, “[a]pproval or denial of an employee’s request to telework will be based on telework not diminishing the employee’s performance or agency operations, applicable law, regulation, and the provisions of this Article [Article 7].” Section 7.4 of the CBA includes telework eligibility requirements, subject to Section 7.2, which in summary include: portability of work; routine or regular use of classified, confidential, or sensitive documents/data/information; the employee’s absence from the work site not unduly interfering with the efficient operation of the organization; the employee not requiring frequent face-to-face interaction with supervisors, coworkers, or others; use of specialized equipment; and employee performance.

⁸ SECY-23-0072 at 3.

⁹ See Enclosure 2 of SECY-23-0072.

¹⁰ SECY-23-0072 at 4. As clearly established in SECY-23-0072, “first-line supervisors have the authority and responsibility to enforce work expectations related to conduct and performance as discussed in the CBA and [Management Directive] 10.99 “Discipline and Adverse Action,” if meaningful in-person work is not being fulfilled when required.”

¹¹ See, e.g., “Effective Leadership in a Hybrid World of Work,” The Conference Board et al., 2022, <https://www.conference-board.org/publications/Effective-Leadership-in-a-Hybrid-World-of-Work-Final>.

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Workforce Considerations

One of the major concerns I have with not moving forward with the FWM as proposed by the EDO is with building and maintaining an agile, highly talented, and diverse workforce ready to tackle a range of possible future scenarios. Although the data consistently support the staff's dedication to the mission, we are seeing worrying trends regarding recruitment and retention. In short, the agency is facing a morale problem. Federal Employee Viewpoint Survey (FEVS) results have been steadily declining, showing a lack of confidence in upper management, including in the Commission. Data from the FEVS over the past decade shows a gradual erosion of respect that staff has for its senior leaders as shown below in Figure 2.¹² In comparison, direct line supervisors appear to be in tune and are well respected by the staff.

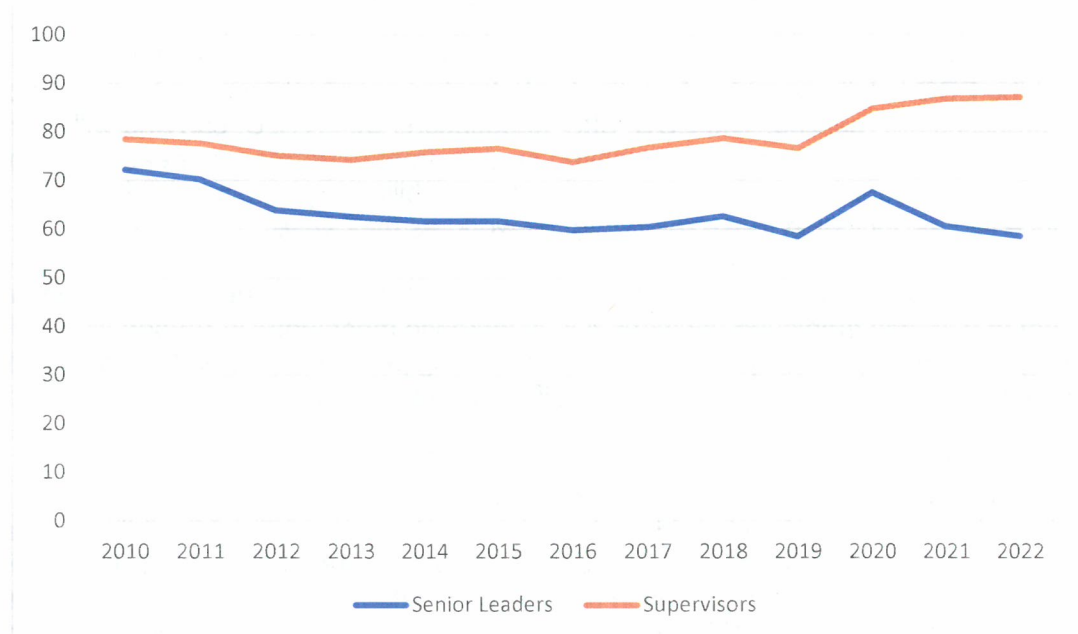


Figure 2. Comparison of Effective Leadership from FEVS Results for Senior Leaders and Supervisors at the NRC

Leadership means creating an environment of high trust and high confidence. Staff needs to have high trust in leadership to navigate us through this period of change. Leaders need to have high trust that the staff will prioritize the mission and get the job done. We also need to have high confidence in our technical capabilities at all levels so we can leverage our intellectual capital to make better, smarter, more durable regulatory decisions.

As I mentioned before, the decline in the agency's position in the rankings for mid-size agencies from 2020 to 2022 correlates with the trust gap created by original re-entry plans implemented nearly two years ago. Figure 3 demonstrates this continued downward trend.¹³ This mistrust is a significant problem for the future of the agency and its ability to have a sufficient workforce ready and capable of carrying out its mission.

¹² Figure 2 includes an index score developed by the Partnership for Public Service and Boston Consulting Group using FEVS data, that measures the level of respect employees have for senior leaders and their immediate supervisors, since 2010. Details of the survey can be found at: <https://bestplacestowork.org/>.

¹³ Figure 3 includes an index score developed by the Partnership for Public Service and Boston Consulting Group using [FEVS data](#), comparing overall employee satisfaction rankings at individual agencies since 2010. Details of the survey can be found at: <http://www.bestplacestowork.org>.

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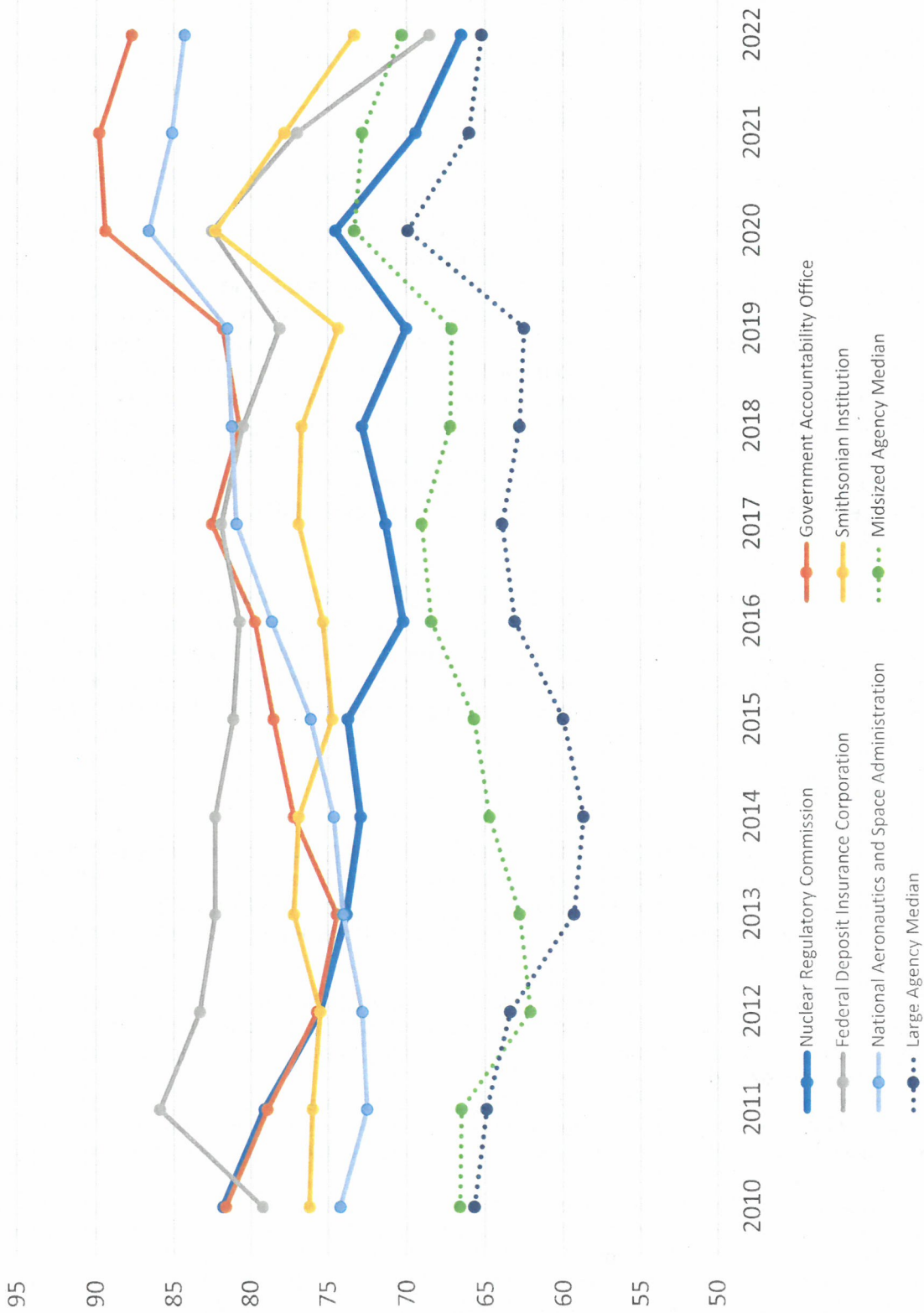


Figure 3. Trends in FEVS Best Place to Work Scores

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Exit interviews indicate telework flexibility is a major factor in employee decisions to leave the agency. Approximately 28 percent of NRC employees are considering leaving the agency based on current telework or remote work options according to a direct question asked in the 2022 FEVS survey.¹⁴ This may leave the agency with an increase in open positions, potentially in key areas, and the consistent turnover and loss of expertise could result in a significant knowledge management issue as we try to compensate for attrition. The pre-submitted questions for the September 2023 All Employees Meeting with the Commission showed that telework, above all other issues, is of greatest interest to the staff. These are indicators that there is significant concern about the future of telework flexibilities at the agency.

As we face an unprecedented retention challenge, we are also running into difficulty recruiting the people we will need to carry the agency into the future. We need to hire a significant amount of talent to simply stave off attrition—on average 150 to 200 new employees per year. OCHCO has reported in Commission meetings that telework flexibilities are being prioritized by the pool of candidates we are seeking to hire. This trend is supported by data being collected across the federal government. The Office of Personnel Management Director Kiran Ahuja testified this past March before the House Committee on Oversight and Reform that workplace flexibilities “enhance the federal government’s ability to attract and consider a more diverse talent pool across the country, including military spouses, residents of rural areas, and individuals with disabilities.”¹⁵ She went on to testify that between June and October 2022 remote job opportunity announcements on USAJOBS received, on average, 17 times more applications than non-remote jobs. In addition, the applicants to these positions included significantly more military spouse eligible applicants, more female and minority candidates, and candidates from a significantly wider geographic range.

As a government agency, we are limited in our ability to offer salaries that can compare to those available from industry. And several other federal government agencies are using more flexible work policies to lure NRC staff and prospective hires. The NRC needs to be able to offer predictable flexible work policies to recruit and retain the best and the brightest and secure the future workforce of the agency. The majority’s vote telegraphs a lack of flexibility when others in the market for talent are fully flexible.

Government-wide Policy

As described above, the EDO provided OMB the agency’s proposed Work Environment Plan in July 2023 focusing on the “Presence with a Purpose” approach. Enclosure 3 of SECY-23-0072 provides NRC’s well-supported responses to OMB questions about the FWM. The OMB did not raise any concerns with the agency’s intention to proceed with the FWM.¹⁶ As the agency that

¹⁴ Result reported in the [2022 FEVS](#) for question number 93. In the 2022 FEVS results, there was an almost 10% increase from 2021 results in the number of employees considering leaving the agency—a 15% increase as compared to 2020 numbers. This leaves us with a total of 41% of employees reporting that they are considering leaving the agency overall.

See <https://www.nrc.gov/docs/ML2309/ML23094A067.pdf>. See also materials for the June 13, 2023, Human Capital and Equal Employment Opportunity Commission Meeting ([ML23158A250](#)).

¹⁵ Testimony available at https://oversight.house.gov/wp-content/uploads/2023/03/OPM-COA-Oversight-Written-Testimony_030923.pdf.

¹⁶ In fact, communication through the OMB process regarding the FWM was overwhelmingly positive. The Work Environment Plan Review Team, consisting of representatives from OMB, the Office of Personnel Management, and the General Services Administration provided direct feedback that “[t]he plan demonstrates that NRC has considered both organizational health and performance measures to inform planned changes to the agency work environment.” See Enclosure 3 of SECY-23-0072.

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issued M-23-15 and was tasked specifically by the White House to oversee the federal government's return to the office, OMB is in the best position to interpret and carry out the Administration's priorities.

As part of SECY-23-0072, the EDO indicated that the next near-term OMB tasking is to review and analyze existing organizational health and performance indicators, data, and processes. This step is currently in process, and the NRC staff's preliminary review of its internal procedures for monitoring organizational performance and health has provided an opportunity for the staff to identify enhancements for the agency's performance management program. These enhancements may include modifying performance goals and indicators to better align with mission priorities and eliminate ambiguity. As part of this exercise the staff has also identified opportunities to better monitor and evaluate agency processes used to establish and revise performance measures.

While this work is underway, the agency's current performance indicators have pre-pandemic benchmarks, and the staff continues to monitor data associated with telework. As I noted above, our metrics indicate we are completing our mission work, just as we did with a more traditional in-office presence and during the public health emergency when we were fully remote. I see no advantage to the Commission's intervening in the NRC staff's active evaluation of its performance metrics and am not convinced that any such intervention will add value to the ongoing process.

Conclusion

The current nuclear landscape is dynamic, and change is on the horizon—if not already here. As things shift, the NRC must adapt while remaining committed to its mission and maintaining its reputation as the global gold standard in nuclear regulation. We cannot do this without an engaged workforce. It is the Commission's role to set the policy of the agency so that novel questions are dispositioned, calls for action are answered, and efforts of the NRC staff are acknowledged.

The FWM considers morale, a challenging recruitment and retention environment, future space considerations, inter-agency feedback from the OMB process, all while prioritizing our staff's continued dedication to the agency's mission. The EDO is best situated to make agency decisions regarding administrative functions such as telework. I have significant concerns about the ramifications of the proposal to substitute the Commission's judgment for the EDO's. While I hold the view that the Commission should not intervene in this matter, I am approving the SECY-23-0072, which would have enabled the EDO to proceed with the implementing the FWM.

I think it is important to speak plainly and directly about the consequences of disapproving the FWM without providing a clear path forward. The FWM represents a culmination of data gathering and outreach efforts by the agency to address employee dissatisfaction with the re-entry approach of November 2021. The majority's disapproval maintains a status quo that leaves the problems raised by the staff in the TPIWG and HEART reports unaddressed. "Presence with a Purpose" is an approach that has been embraced throughout the agency to maximize the utility of in-person time, but disapproval of the FWM ultimately leaves both managers and staff without uniform expectations or guidance. It also sets back progress made in space planning and labor relations, including a fully formed Memorandum of Understanding concerning the future of hoteling for the agency. Finally, the majority does not address the EDO's authority to make decisions about the agency's telework plan going forward. The

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Commission, unless it explicitly defines the limits of the withdrawal of the delegation or delegates this authority back to the EDO, is now responsible for making these decisions, for negotiating with NTEU, and for addressing how the agency will move forward from here.

As I stated above, the staff has consistently prioritized the mission during the pandemic and after. We have been able to take major steps forward, tackle first-of-a-kind reviews, and pursue innovation across the agency. The Commission does a disservice to staff, the structure of the NRC as an institution, and the future of nuclear regulation by choosing to manage at the operational scale rather than give attention to the many high-level policy issues with a direct link to nuclear safety waiting for our action.