

August 28, 2023

The Honorable Sean W. O'Donnell
Inspector General
United States Environmental Protection Agency
William Jefferson Clinton Federal Building
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Inspector General O'Donnell,

Remote work provides federal agencies with an opportunity to reduce costs for taxpayers and increase the ability to recruit and retain talent for public service. However, such arrangements only work for taxpayers when telework does not (1) harm the agencies' ability to achieve their mission, (2) adversely impact the timely delivery of quality services, or (3) impede or impair the management of the federal workforce and taxpayer money.

The U.S. Patent and Trademark Office (USPTO), where telework was already dramatically increasing prior to the COVID-19 pandemic, highlights both the benefits and challenges of remote work.¹

The agency claims the practice is saving tens of millions of dollars in reduced operating costs.² Downsizing the amount of space leased for USPTO headquarters alone may save at least \$30 million every year.³

However, a series of investigations by the Department of Commerce Office of Inspector General (OIG) found USPTO's lax oversight and inadequate internal controls of telework has costs millions of dollars for unpaid work and contributed to a patent application backlog. After a tipster called out a patent examiner who "never shows up to work" and whose work is "garbage," it was determined the employee was paid \$25,000 for 730 hours not worked.⁴ He was instead playing golf, shooting pool, and going to happy hour. A subsequent larger review of telework over a nine-month period found USPTO "failed to receive nearly \$8.8 million in work product

¹ U.S. Patent and Trademark Office, Telework Enhancement Act Pilot Program (TEAPP) (2020). Available at <https://www.uspto.gov/sites/default/files/documents/TEAPP%202020%20Fact%20Sheet.pdf>.

² *Id.*

³ Dan Brendel, *USPTO to Shed One-Third of its Leased Space in Alexandria, Dealing City a Major Blow*, Washington Business Journal (Nov. 4, 2022), <https://www.bizjournals.com/washington/news/2022/11/04/uspto-lease-alexandria-lcor-federal-real-estate.html>.

⁴ U.S. Department of Commerce, Office of Inspector General, Report No. 15-0076, Time and Attendance Abuse by Patent Examiner A (2015).

that would advance its mission and lessen the patent application backlog by an estimated 7,530 cases.”⁵ The OIG noted these are conservative estimates and the true costs “could be twice as high.”⁶ Additionally, more than 4,000 examiners paid for unsupported hours received above-average ratings on their annual performance reviews.⁷

USPTO’s experience demonstrates telework practices can and should be reviewed for cost savings, impact on services, and quality control of management.

Yet, despite telework being more commonplace throughout the government, other agencies have not adopted obvious operational cost saving measures and the administration has not set clear standards or expectations to improve management and prevent abuse.

First, we should not be paying for office space that is not being used.

Just five percent of the pre-pandemic federal workforce swiped-in to a government-leased office in the Washington, D.C. area on an average workday during a two-month period in the fall of 2022, according to data from the General Services Administration (GSA) and analyzed by the real estate firm Cushman & Wakefield.⁸

Seventy-five percent *or more* of the available office space at the headquarter buildings of 17 different federal agencies is not being used, according to a review conducted by the Government Accountability Office (GAO).⁹ “Underutilized office space has financial and environmental costs,” GAO notes.¹⁰ “Federal agencies spend about \$2 billion a year to operate and maintain federal office buildings regardless of the buildings’ utilization. In addition, agencies spend about \$5 billion annually to lease office buildings. Any reduction in office space could reduce these costs. Office buildings also have environmental costs that could be lowered with better utilization. For example, GSA renovated and reduced its current agency real estate footprint, which helped reduce energy consumption and costs.”¹¹

The empty offices beg the question: Where are federal employees?

The work locations of 281,656 employees were redacted from data provided in response to a Freedom of Information request filed by the nonprofit group Open the Books.¹²

⁵ U.S. Department of Commerce, Office of Inspector General, Report No. 14-0990, Analysis of Patent Examiners’ Time and Attendance (2016).

⁶ U.S. Department of Commerce, Office of Inspector General, Report No. 14-0990, Analysis of Patent Examiners’ Time and Attendance (2016).

⁷ *Id.*

⁸ Mike Dorning, *Washington Suffers as Federal Employees Work From Home*, Bloomberg News (Mar. 9, 2023), <https://www.bloomberg.com/news/features/2023-03-09/wfh-federal-employees-have-republicans-some-dems-demanding-return-to-office>.

⁹ U.S. Gov’t Accountability Office, GAO-23-106200, Preliminary Results Show Federal Buildings Remain Underutilized Due to Longstanding Challenges and Increased Telework: Statement of David Marroni, Acting Director, Physical Infrastructure Team (2023).

¹⁰ *Id.*

¹¹ *Id.*

¹² Sen. Joni Ernst & Adam Andrzejewski, *Where’s Waldo at Club Fed?*, Newsweek (Mar. 30, 2023) <https://www.newsweek.com/wheres-waldo-club-fed-opinion-1791205>.

Only one in three federal employees is fully back in the office, according to a recent Office of Personnel Management (OPM) survey, while less than one in five “never” report to a physical office.¹³

This is important information to know, especially when calculating salaries.

Remote work may be inflating salaries for those federal employees who relocated from an official worksite in a locality with higher pay rates to telework from a less expensive area. Compensation is determined, in part, by where an employee’s official worksite is located. There are 53 different locality areas and base pay is adjusted to take into account the cost-of-living in each.¹⁴ The U.S. Office of Personnel Management (OPM) maintains the official worksite for teleworkers “remains the location of the agency worksite (i.e., the agency worksite where they would normally work, not the telework location).”¹⁵ These pay determinations should be re-evaluated, and possibly redefined, to save taxpayers money. Digital records can identify the locations from which an employee is logging onto a computer or swiping an access card to enter a building, which should make it relatively easy to determine the primary location of any employee.

In March, I asked OPM how, or if, federal agencies are reviewing compensation packages to certify federal employees who predominantly work remotely from areas outside the national capital region are not receiving Washington, D.C. locality pay, which is on the higher end of the pay scale. Only this month did I receive a response. OPM told me it can provide guidance to agencies but ultimately the agencies themselves are chiefly responsible for making sure their pay packages are accurate.

The impact of telework on meeting an agency’s mission must also be evaluated. Many civil servants, like meat inspectors or airport security screeners, do not have the luxury of working from home, much less a bubble bath. But that is exactly what a manager responsible for overseeing a team who helps veterans schedule appointments at the Atlanta VA Medical Center—which has one of the longest wait times to see a doctor in the country—was doing.¹⁶ He bragged on Instagram about relaxing in a bathtub for an hour while on the job.¹⁷ In the post, his government-issue laptop is opened to a staff meeting while his legs are soaking in a tub with a

¹³ Molly Weisner, *Only 1 in 3 Federal Employees Fully Back in Office, Survey Finds*, Federal Times (Oct. 20, 2022) <https://www.federaltimes.com/fedlife/career/2022/10/20/one-in-3-federal-employees-fully-back-in-office-survey-finds/>.

¹⁴ FederalPay, General Schedule (GS) Locality Pay Map (2023). Available at <https://www.federalpay.org/gs/locality>.

¹⁵ U.S. Office of Personnel Mgmt., 2021 Guide to Telework and Remote Work in the Federal Government: Leveraging Telework and Remote Work in the Federal Government to Better Meet Our Human Capital Needs and Improve Mission Delivery (2021). Accessible at <https://www.opm.gov/telework/documents-for-telework/2021-guide-to-telework-and-remote-work.pdf>.

¹⁶ Savannah Levins, *‘If I’d Gone to the VA, I would have died.’ | VA Hospital Wait Times in the Metro Among Worst in the Nation*, 11Alive News (Sept. 30, 2022) <https://www.11alive.com/article/news/investigations/va-wait-times-metro-atlanta-among-worst-in-nation/85-d91ec9e3-313f-4699-a39c-0013a712f887>.

¹⁷ Justin Gray, *Atlanta VA Employee Posts Photo of Him ‘Working’ in a Bubble Bath, Sparking Outrage*, WSB-TV (Mar. 22, 2022) <https://www.wsbtv.com/news/local/atlanta/atlanta-va-employee-posts-photo-him-working-bubble-bath-sparking-outrage/ESKIQBN6MVCODHGANVBBZVPONY/>.

caption stating, “MY OFFICE FOR THE NEXT HR.”¹⁸ Other VA employees reported the manager for making a mockery of the veterans they serve.¹⁹ One such veteran temporarily lost his eyesight while waiting six months for an appointment with an eye doctor at the Atlanta VA.²⁰

Agencies have been unmotivated to send their workforces back to the office despite repeated calls from the Biden administration do so. In his 2022 State of the Union address, President Biden stated most federal employees would be returning to work in person.²¹ In April, the White House Office of Management and Budget directed agencies to develop plans to “increase meaningful in-person work at Federal offices” while continuing to use “flexible operational policies” and establishing routines to monitor organizational performance.²² Earlier this month, White House Chief of Staff Jeff Zients re-upped those appeals, saying how important it is to achieving “better results for the American people.”²³

It appears hybrid and remote working is now standard practice for the federal workforce. So, it is imperative for taxpayers and those being served by federal programs that costs and outcomes are not negatively impacted by the arrangement. The examples of telework abuses cited in this letter, after all, were caught thanks to dedicated civil servants who spoke up rather than effective management by the agency or OPM.

To better inform policymakers, I would request your office initiate an agencywide review to determine:

- Based upon IT login information, office swipe-ins, and other measurable and observable factors, how many 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?
- How much money could be saved by adjusting locality pay for teleworking employees who reside outside of the region in where their primary workstation is located to the true location from where they perform the majority of their work?
- Has the agency taken any action to readjust current locality pay or calculate the locality pay of new or existing hires accounting for the true 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?

¹⁸ Justin Gray, *Atlanta VA Employee Posts Photo of Him ‘Working’ in a Bubble Bath, Sparking Outrage*, WSB-TV (Mar. 22, 2022) <https://www.wsbtv.com/news/local/atlanta/atlanta-va-employee-posts-photo-him-working-bubble-bath-sparking-outrage/ESKIQBN6MVCODHGANVBBZVPONY/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ 2022 State of the Union Address, President Joseph R. Biden (Mar. 1, 2022), <https://www.whitehouse.gov/state-of-the-union-2022/>.

²² Office of Mgmt. & Budget, Exec. Office of the President, OMB Memo No. M-23-15, Memorandum for the Heads of Executive Departments and Agencies (2023).

²³ Alex Thompson, *Scoop: Biden Pushes to End Remote Work Era for Feds*, Axios (Aug. 4, 2023) <https://www.axios.com/2023/08/04/biden-end-remote-work-federal-employees>.

- What actions are the agency taking to ensure better oversight and quality control of remote work and what other actions could be taken?
- What is the typical daily onsite attendance in the agency's office buildings as a proportion of its total workforce?
- Has the agency issued any guidance, established incentives, or otherwise enticed its workforce to return to working from the office buildings? If so, have these efforts proven successful?

In how many instances has the agency exercised its authority under 5 C.F.R. § 531.605(d)(2) to waive the twice-in-a-pay-period in-person standard? How many of those exceptions have been revoked each month, since July 2021? As of today, how many employees remain excepted from the twice-in-a-pay-period standard?

- Comparing the capacity of usable area to the actual in-office attendance, what is the utilization of building space?
- What is the monetary and environmental cost of maintaining underutilized space in terms of energy usage and emissions?
- What, if any, actions are being taken or planned to reduce underutilization of building and office space?
- How is telework impacting the delivery of services and response times by the agency? Have waiting lists or backlogs increased or decreased?
- Does the OIG have any additional recommendations to improve services, reduce costs, and enhance internal controls and reduce the potential for waste and abuse with hybrid work?

Thank you for your attention to this request and please do not hesitate to contact me or my staff if you have any questions or would like to discuss further.

Sincerely,


Joni K. Ernst
United States Senator