

Memorandum of Understanding Performance Indices for Decision Writing

This is a Memorandum of Understanding (MOU) by and between the Social Security Administration (SSA), Office of Hearings Operations (OHO), hereinafter referred to as the "Agency" or "Management," and the National Treasury Employees Union, Chapter 224 (Professional Unit and Multi-Regional Unit), hereinafter referred to as "NTEU" or the "Union," and collectively referred to as the "Parties".

The purpose of this MOU is to clarify aspects of the use of, consistent with Article 21 of the 2019 National Agreement between the Agency and NTEU ("Contract"), the performance indices for decisions writing, hereinafter referred to as "Indices," when determining an employee's appraisal rating for the Achieves Business Results critical element of the Performance Assistance and Communication System ("PACS") and/or when monitoring performance during the appraisal period. As used in this MOU, Indices refers to the Decision Writer Productivity Index, ("DWPI,") as well as the Senior Attorney Advisor Productivity Index ("SAAPI") and the National Hearing Center Productivity Index ("NHCPI").

This MOU is intended to supplement the May 9, 2019 MOU between the Agency and NTEU on the impact and implementation of the Auxiliary Workload Tool ("AWT"). Subject to the changes herein, all provisions of the May 9, 2019 AWT MOU remain in effect unless superseded by this agreement.

SECTION 1 - Indices Committee

1. The parties agree to form a joint committee comprising of three Management representatives and three NTEU representatives ("Committee") to discuss national issues related to the Indices and attempt to resolve informally any such Indices-related issues.
2. Before Management adds additional categories or modifies existing categories to the AWT beyond those identified in this MOU, Management will provide NTEU an opportunity to give input relating to those changes.
3. The Committee will meet quarterly for a period not to exceed one year. After one year, the committee will continue to meet once a year for the life of this MOU. However, the Committee may meet more frequently by mutual agreement of the Parties.
4. All Committee meetings will be held virtually.
5. Committee meetings will be scheduled for one hour, but any particular meeting may be scheduled to run longer than an hour by mutual agreement of the Parties.

6. While the Committee is in effect, consistent with the Privacy Act, the Agency will provide NTEU Committee members with the national and regional averages, broken down by DWPI, SAAPI, and NHCPI, twice a year.
7. As needed and by mutual agreement of the parties, subject matter experts will provide briefings to the Committee.

SECTION 2 – Performance

1. Consistent with Article 21, Section 5.G.1, of the Contract, an employee's appraising official will consider factors affecting performance that are beyond the control of the employee and will not use an index value as the sole determinative factor in assessing an employee's performance under the Achieves Business Results element in PACS and/or taking action pursuant to Article 21, Section 6, for performance below the successful contribution level.
2. When assessing performance or taking action pursuant to Article 21 of the Contract, supervisors should consider an employee's cumulative fiscal year to date ("FYTD") index value and not rely solely on an employee's index value in a particular month. This provision does not affect Management's ability to assess performance during an OPS and/or take a performance-based action pursuant to 5 U.S.C. Chapter 43.
3. The following is a non-exhaustive list of examples of factors outside an employee's control:
 - a. The complexity of the employee's workload and/or individual cases;
 - b. Voluminous records;
 - c. Decision writing instructions;
 - d. Time spent to edit or rewrite a draft due to circumstances outside of the writer's control;
 - e. Time spent drafting a decision that is not returned to the original writer for edit or rewrite;
 - f. Incomplete or inaudible hearing recordings;
 - g. Additional analysis/drafting due to evidence entered after creation of ALJ instructions;
 - h. Double cases (e.g., DIB, SSI, and DWB, which traditionally have been entered into the system twice, but under HACPS will only be in the system once and credited as one decision);
 - i. Decisional outcome changes (e.g. ALJ changes outcome from unfavorable to fully favorable decision);
 - j. Emergency circumstances outside the employee's control at the official duty station, that prevent an employee from working; and

- k. Other situations outside the control of employee.

SECTION 3 – Auxiliary Workload Tool (“AWT”)

1. The AWT will be expanded by management to include the following additional scenarios to be incorporated into existing AWT categories or to fall under newly created ones:
 - a. Decisional outcome changes. A writer may input time in the AWT to account for a subsequent change in the decisional outcome of the case after they submitted a final draft for ALJ edit. This scenario only applies when there is a decrease in the case category time value.
 - i. Example: A decision writer submits a decision draft to an ALJ for an unfavorable, Step 5, decision. After submitting the decision draft, the ALJ changes their decision in the case to a fully-favorable, Step 5, outcome. The decision writer may input time, rounded to the closest quarter of an hour, in the AWT to make up for the difference of the two case category values;
 - ii. However, it would normally not be appropriate for a decision writer to input time in the AWT for the reverse scenario, where the ALJ changes a drafted fully-favorable decision to an unfavorable decision.
 - b. Missing case credits due to circumstances outside the decision writer’s control:
 - i. Example: A decision writer submits a final decision draft to an ALJ for edit. The case is closed. However, the case is not credited to the writer’s index after the case closes. The writer may input the amount of time, rounded to the closest quarter hour, for the case category value of the submitted draft.
 - c. Time lost working on a decision draft that is subsequently reassigned out of writing status under one of the following two circumstances:
 - i. Due to an issue identified at the outset of decision drafting. Such circumstances should normally require no more than a half-hour entry into the AWT. Examples of such issues may include but not be limited to: failure to proffer evidence; missing instructions; missing hearing recording.

- ii. Due to an issue identified later in the decision writing process.
However, these issues should be rare and limited. Examples of such issues may include but not be limited to: PII the ALJ relied upon for the decision that could not have been reasonably discovered at the outset of drafting the decision; a case with multiple Title II claims that is assigned to two different writers; and an emergency situation that requires reassignment of a case.
 - d. Time preapproved by management spent to edit or rewrite a draft due to circumstances outside of the writer's control. Time entered under this provision should only be for circumstances outside the normal requirements of a decision writer.
 - e. Reasonable time for additional analysis/drafting due to evidence entered after creation of ALJ instructions. This time will be added to the ALJ Advisement AWT Category.
 - f. Emergency circumstances outside the employee's control at the official duty station, that prevent an employee from working. For example, this may include:
 - i. A hearing office has a fire alarm, emergency drill, or power outage; employees may input the amount of time for the evacuation and return to work.
- 2. The Agency may consider future NTEU requests to add additional categories to the AWT.
- 3. AWT Procedures
 - a. AWT entries will normally not be included in a decision writer or senior attorney advisor's productivity index score, unless locked by management.
 - b. Managers may deny unsupported entries. If management denies the time submitted for any category, they must provide a remark in the AWT which explains why. Reasons for denial include the following: entry is incorrect or in clear error or the entry is not an approved assignment by management. The AWT user will be given an opportunity to explain and/or voluntarily correct the entry. However, entries that remain denied will not be deducted from the employee's index calculation.
 - c. Management should not normally request that an AWT user delete an entry, except where entered in clear error. For example, if a decision writer or senior

attorney advisor inputs time in the AWT for checking routine emails; that entry may be deleted by management.

- d. Although employees are expected to make AWT entries timely, managers will consider untimely AWT requests on a case-by-case basis.

SECTION 4 – Official Time

An employee's approved official time hours will continue to be subtracted from that employee's work hours as shown in WebTA for the purpose of calculating that employee's index value. An employee will not be denied official time based on their index value.

SECTION 5 – Indices and FAQs

1. The Agency agrees to provide NTEU with briefings prior to implementing any changes to the indices (including case categories). To the extent required by 5 USC Ch. 71, the Agency will give NTEU notice and an opportunity to bargain.
2. Consistent with Article 21 of the Contract, rating officials will communicate any changes to the numeric expectations found in their performance plan when they are issued their PACS initial expectation discussion.
3. The Agency will post the Presentation that was used to brief NTEU on the development and revision of the Indices on the SSA Intranet and available to decision writers for review.
4. The Agency will solicit Decision Writers for questions regarding the Indices and the AWT and create an updated FAQ to be distributed within six months of completion of the survey. Additionally, the FAQs will contain guidance from Article 21 regarding written documentation from employees about factors beyond their control being placed in their SSA-e7B file.
5. Consistent with Article 5, Section 1 of the 2019 SSA-NTEU National Agreement, all employees shall be treated fairly and equitably in all aspects of personnel management.
6. An employee who finishes the prior appraisal period with a DWPI exceeding 100%, and who does not receive a ROC award for that appraisal period, will be considered for an ECSA consistent with the eligibility criteria in Article 22 of the 2019 SSA-NTEU National Agreement, including funding availability.

This MOU will be effective upon completion of the Agency Head review process as set forth in 5 USC 7114(c). If, upon Agency Head review, any portion of this MOU is disapproved, the parties will negotiate those disapproved items in accordance with 5 USC Ch. 71 and the National Agreement.

The Agency will provide a copy of this Memorandum of Understanding to the Chapter President of NTEU within 10 days of approval by the Agency Head and will post the MOU on the OLMER Website within 30 days of the MOU's effective date.

FOR THE AGENCY:

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