

# SETTLEMENT AGREEMENT

WHEREAS, on May 5, 2016, the National Treasury Employees Union (NTEU) filed a national grievance against the Department of Health and Human Services (HHS or Agency) over the refusal by HHS to pay retroactive transportation subsidy increases to eligible bargaining unit employees for calendar year (CY) 2015 after the enactment of the Consolidated Appropriations Act of 2016 consistent with the requirements of the parties' term collective bargaining agreement (CBA), (hereafter, the "2016 transportation subsidy grievance") and

To fully resolve all issues arising from the 2016 transportation subsidy grievance against HHS referenced above, the parties agree as follows:

1. HHS will make payments to impacted bargaining unit employees (including former and retired employees) who participated in the HHS Public Transportation Subsidy Program (hereafter, "Transshare") at any time during calendar year (CY) 2015 to whom HHS provided the maximum subsidy in effect at that time in any given month, and who spent more than the maximum subsidy for that month as follows:

CY 2015: The maximum non-taxable amount of the public transportation subsidy benefit provided by HHS in each month in CY 2015 to Transshare participants was \$130 per month. For each month in CY 2015, if a Transshare participant spent more than \$130 on eligible public transportation commuting costs, HHS will pay the employee the difference between \$130 and their self-certified actual public transportation commuting costs in that calendar month under the terms set forth in this Settlement Agreement, not to exceed a total subsidy of \$250 for each such month. (For example, if an employee received a public transportation subsidy of \$130 for January 2015, and certifies that his/her actual public transportation commuting cost in that month was \$250, the employee will be entitled to a payment of \$120 for January 2015.).

2. Payment of Claims: Payments under paragraph 1 will be made with interest, in accordance with the Back Pay Act, under the following process:
  - a. Utilizing the Transshare database, HHS has identified NTEU bargaining unit employees (including former and retired employees) to whom HHS provided the maximum subsidy in effect at the time during one or more months during the time periods identified in paragraph 1 above, and whose actual public transportation commuting costs were greater than the maximum subsidy in effect at the time.
  - b. Bargaining unit employees identified under paragraph 2(a) must provide a timely response in accordance with the claims process set forth under paragraph 3 below in order to receive payment under this Settlement Agreement. An employee who fails to timely respond in accordance with the claims process shall be deemed to have waived his or her right to receive this payment.
  - c. HHS will work with DFAS to make the retroactive transit subsidy payments, including the withholding of any taxes, as appropriate.
  - d. HHS will also work with DFAS to quantify and make the interest payments for eligible employees receiving retroactive transit subsidy payments under this Settlement Agreement. Interest will be calculated on a daily basis from the date of the original transit subsidy disbursement, until retroactive payments are issued. 1099s will be issued to impacted bargaining unit employees identifying interest payments.
  - e. No payments under \$1.00 will be made.
  - f. Payments will be made as soon as practicable.
3. Notification of Eligibility, Claims Process, and Disputes
  - a. Within thirty (30) days of the execution of this Settlement Agreement, HHS will send an e-mail to all current HHS bargaining unit employees identified under paragraph 2(a) above notifying them that they have been determined by HHS to be eligible to receive retroactive transit subsidy payments, and advising that they will be receiving a letter with additional details concerning those payments.
  - b. Within forty-five (45) days of the execution of this Settlement Agreement, HHS will send all bargaining unit employees identified under paragraph 2(a) above (including former and retired employees, and current HHS employees in a non-work status) a letter indicating they are eligible to receive retroactive transit subsidy payments, stating the amount HHS has identified they are owed for retroactive transit subsidies for each month in paragraph 1 above (and the total

amount due for all months) exclusive of interest based on information in the HHS systems, and information about the claims process including where to send claims and disputes.

- i. If the employee agrees with the amount identified, he/she will sign and return the letter, and HHS will issue the payment as soon as practicable. The employee must return the letter to HHS at the indicated address within thirty (30) days after the letter is received in order to receive payment.
- ii. If the employee disagrees with the amount identified, he/she may file a dispute with HHS by completing and returning the enclosed Transit Benefits Dispute Form, identifying the amount(s) of his/her actual commuting costs for each month in which he/she asserts a retroactive transit subsidy payment is due, and signing the letter to self-certify the amounts identified. Employees will not be required to submit actual receipts or other documentation but may do so if they wish. The employee must return the letter to HHS at the indicated address identified in the letter within thirty (30) days after the letter is received. Any dispute of the amount due will not delay payment of the original amount HHS identified is owed to the employee.
- iii. The notifications to retirees, former HHS employees, and current HHS employees in non-work status will be sent to the participants' last known address of record, with a self-addressed return envelope which may be used to respond. If HHS receives return mail on any letter sent to an eligible employee, with a forwarding address, it will re-send the letter to the new address. If it receives return mail without a forwarding address, it will notify NTEU within five (5) days and provide NTEU with a copy of the letter that was sent to the employee. NTEU will have thirty (30) days from the date HHS notifies it of return mail and provides it with a copy of the letter to attempt to locate the employee and submit the letter with corrected mailing address to HHS. HHS will have five (5) business days to then re-send the letter. The employee will have thirty (30) days to return the re-sent letter accepting the amounts identified by HHS or disputing the amounts due.
- iv. Five (5) days will be added to the postmark of any mailed letter to determine the date of receipt of the letter by the eligible employee.

- c. Any employee who does not receive a letter notifying them they are eligible to receive retroactive transit subsidy payments may challenge that decision by notifying HHS in writing that they assert they are eligible. Any such notice must be sent to HHS at:

Tim Brown  
Deputy Director, Administrative Operations Portfolio  
Program Support Center  
U.S. Department of Health and Human Services  
7700 Wisconsin Ave., Suite 7208  
Bethesda, MD 20857

within one-hundred and five (105) days of the execution of this Settlement Agreement.

- d. HHS will provide NTEU with a copy of any dispute received under paragraphs 3(b) or 3(c) above within five (5) days of receiving the dispute. The parties will attempt to resolve the issue informally. If the issue is not resolved within thirty (30) days of the date the dispute is received by NTEU, NTEU may request a final written decision. HHS will provide NTEU and the employee with a final written notice of its decision on the claim within five (5) days of any such request from NTEU. NTEU will have thirty (30) days from the date it receives the final decision from HHS to invoke arbitration over the dispute. NTEU will be deemed to have acted in a timely fashion if it sends HHS a notice of intent to arbitrate a particular claim within 30 days after receiving the final written decision from HHS. If no final decision is issued, NTEU may invoke arbitration no more than forty-five (45) days from the date the decision should have been issued. The timeframes in this section may be modified by mutual agreement. The parties may also mutually agree to combine claims for purposes of resolution by an arbitrator.
4. HHS will provide NTEU with data concerning claims paid or denied under this Settlement Agreement as follows:
- a. Current Bargaining Unit Employees
- i. Name of employee;
  - ii. Post of duty (city/state);
  - iii. Amount of reimbursement requested;
  - iv. Amount paid; and e. Date of payment.

b. Former and Retired Bargaining Unit Employees

- i. Name of employee;
- ii. Amount of reimbursement requested;
- iii. Amount paid;
- iv. Date of payment.

c. 120 days after the effective date of this Agreement, HHS will provide NTEU with the above data regarding any claims that have been paid or denied by that date, and HHS will provide data regarding any subsequent claims paid thereafter every 60 days, until all timely received claims are paid.

5. In accordance with the Back Pay Act, HHS agrees to pay NTEU's reasonable attorney's fees in the amount of \$2,205 incurred for prosecuting the 2016 transportation subsidy grievance. All attorney's fees will be paid to NTEU within sixty (60) days of the execution of this Settlement Agreement.
6. With the exception of any unresolved claims referenced in paragraph 3 above, and paragraphs 7 and 8 below, NTEU and HHS waive any right to pursue or litigate any and all claims that relate to or arise from the subject matter of the retroactive transportation subsidy increase grievance filed May 5, 2016. This does not include actions to enforce the provisions of this Settlement Agreement.
7. The parties agree that any issue concerning the Agency's withholding of taxes from any payments made to bargaining unit employees under this Settlement Agreement shall be resolved consistent with the outcome of any grievance or ULP NTEU may elect to file pursuant to the provisions of paragraph 7 of the parties' Settlement Agreement (executed January 24, 2017) resolving the 2013 and 2015 transportation subsidy grievances.
8. Nothing herein prevents an employee from individually challenging the withholding of taxes from payments made under this Settlement Agreement directly with the Internal Revenue Service, or the appropriate court.
9. The parties agree that this agreement has no precedential effect. Specifically, neither the agreement, nor any term(s) will be used as a basis by any person, or persons to justify similar terms in any subsequent matter. It shall not be used, cited or relied upon by any party in connection with any other judicial or administrative proceeding, other than proceedings to enforce the terms of this agreement.

10. The Agreement may be transmitted between the parties by facsimile transmittal, email, or U.S. mail. Signatures transmitted by facsimile or email will be considered original signatures.

11. This Agreement shall become effective on the date of the last signature below and represents the complete understanding of the parties. No other promises or modifications hereto will be effective unless agreed to in writing and signed by the parties.

**For the Union:**

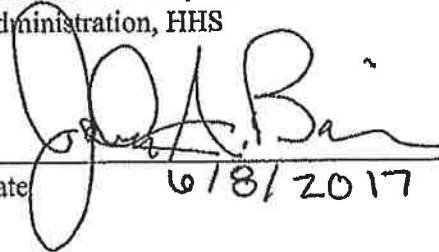
Brandon Braithwaite  
National Negotiator, NTEU



Date 6/15/17

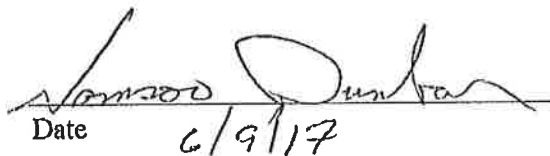
**For HHS:**

John Bardis  
Assistant Secretary for  
Administration, HHS



Date 6/8/2017

Namsoo Dunbar  
Agency Representative



Date 6/9/17