



# NAAUSA

National Association of  
Assistant U.S. Attorneys

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July 31, 2023

### **The Honorable Merrick Garland**

Attorney General  
Department of Justice

### **The Honorable Lisa Monaco**

Deputy Attorney General  
Department of Justice

### **Mr. Norman Wong**

Acting Director  
Executive Office for U.S. Attorneys  
Department of Justice

#### **Re: DOJ Telework Policy**

Dear Attorney General Garland, Deputy Attorney General Monaco, and Acting Director Wong:

As the Department of Justice crafts its new policy for substantially increasing in-person work pursuant to the Office of Management and Budget (OMB)'s April 13, 2023, memorandum M-23-15, Measuring, Monitoring, and Improving Organizational Health and Organizational Performance in the Context of Evolving Agency Work Environments, the National Association of Assistant United States Attorneys (NAAUSA) is concerned that a reduction in telework flexibility will negatively impact the productivity, recruitment, and retention of Assistant U.S. Attorneys (AUSAs). We urge the Department to conduct robust stakeholder engagement prior to finalizing any policy on telework flexibility and open the policy up to public comment to ensure it truly serves the mission of the Department and needs of the workforce.

The OMB memo correctly instructs agencies to make evidence-based decisions about the future of remote work that balance the need for in-person attendance with the proven benefits of remote work for organizational health and productivity. As the nation's premier federal civil and criminal attorneys, AUSAs know there are many obligations that require in person attendance. However, as research continually identifies the benefits of telework, U.S. Attorney Offices must recognize the recruitment and retention benefits of balanced remote work.

NAAUSA represents the interests of over 6,400 AUSAs working across the 94 U.S. Attorney Offices. Members have consistently emphasized the importance of telework flexibility for their concentration, productivity, and work-life experience. So much so, that in both 2021 and 2022 NAAUSA conducted member surveys on member attitudes toward telework with consistently overwhelming results.

In 2021, 95 percent of AUSAs [surveyed](#) reported that they were able to successfully do their job while teleworking during the COVID-19 pandemic. Further, 93 percent

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supported a baseline department-wide policy permitting at least 2 days of telework a week. This research aligned with workforce research indicating [47 percent](#) of employees experience increased productivity while teleworking and employee attrition decreased by [50 percent](#) among teleworkers during a two-year study.

In 2022, NAAUSA once again [surveyed](#) AUSAs about their telework preferences and U.S. Attorney Offices (USAOs) policies. With responses from all but two USAOs, 52 percent of offices offered flexible telework policies that allow AUSAs to telework at least two days a week or four days a pay period. The remaining 48 percent offered a less flexible policy, leaving AUSAs frustrated and considering other work options. AUSAs reported four key concerns:

1. **Lack of consideration of job duties.** In offices with strict anti-telework policies, the policy does not align with the job duties of many AUSAs. As one AUSA from the Southern District of Illinois explained, “The mandated schedule telework is not conducive to attorneys who have an ever-changing schedule. Having flexibility, even two days per week, would be helpful.” Another AUSA from the Central District of California said, “All categories of civil cases continue to move forward in litigation, with hearings and depositions taking place in-person and remotely. Written discovery continues unabated, as does motion practice. AUSAs and supervisors have been readily available through email, phone call, text and/or IM. Our Office's Civil Division has achieved phenomenal results while Civil AUSAs have worked from home for the last year and a half.” Others noted that numerous compassionate release and First Step Act motions and much appellate work can be done remotely.
2. **Location.** AUSAs report little to no exceptions for those who live beyond the average commute time of 45 minutes. Others note the impact of gas and parking prices. An AUSA in the Southern District of Georgia said, “Telework continues to work well and it’s a flexibility AUSAs have earned. With soaring gas prices and small raises, this goes a long way for AUSAs that have an arduous commute.”
3. **Pre-Pandemic normal.** COVID-19 fundamentally changed the nature of work. Yet some AUSAs feel their office is trying to reinvent the past. An AUSA in the Western District of Oklahoma noted, “We have little to no flexibility. As well as a formal dress code, even when we are not in court or in formal meetings. It feels like we are moving backwards in time.” An AUSA from the Eastern District of Washington furthered, “We have been told for years to do more with less; we keep doing it even as resources are stripped from us. At least teleworking gave us back some work-life balance to offset the unreasonable expectations the job requires.”
4. **Trust in the workforce and diminishing retention.** Many AUSAs noted the lack of trust that stringent telework policies signal to the workforce. AUSAs all readily agree there needs to be some in person presence and AUSAs will appear in person when job duties require it, but a blanket policy that restricts telework sends the wrong message to the workforce. An AUSA from the Middle District of Florida explained, “Justice should maximize telework to retain mid and senior level AUSAs. Failure to support telework suggests to AUSAs that management does not trust them.”

These concerns align with industry research indicating that flexible telework policies are key to the future of the legal profession. The American Bar Association (ABA) has urged law firms to create a culture that supports hybrid work following their [2022 best practices survey](#). The ABA research found 44 percent of lawyers practicing for ten years or less would leave their workplace for a greater ability to work remotely. If USAOs hope to recruit and retain the next generation of legal talent, embracing telework must be the

policy of the entire Department of Justice.

Further, telework accessibility is key to diversity efforts. The ABA has [observed](#) that allowing remote work has been particularly impactful for people with disabilities as a hybrid schedule allows these individuals to be more productive, focused, and comfortable in their workplace. Along the same vein, the American Constitution Society, among others, has [argued](#) that keeping telework options open post-pandemic is necessary for increasing accessibility and making the legal profession less exclusionary. When telework is only available as an accommodation, employees can feel ostracized and disconnected; however, when telework is part of an organizational culture, *all* employees can be more comfortable and efficient.

An AUSA from the Eastern District of Arkansas explained the increased productivity: “The eliminated commute and eliminated time ‘getting ready’ for work—especially for women whose expectation for physical appearance require much more time and effort—contribute to more time to get my work done.”

As NAAUSA has studied this issue and listened to the concerns of our members over the last several years, we recommend the Department adopt a **universal baseline policy permitting a minimum of two days of telework a week**, allowing USAOs and DOJ components to offer additional flexibility as their office requires. However, should a USAO or DOJ component seek to offer *less* than two days of telework a week, we feel the office should offer a compelling reason to deviate from the baseline that counters the compelling reasons for allowing telework flexibility.

A universal baseline policy will prevent internal competition, improve retention and recruitment, and still provide USAOs flexibility based on the needs of their workforce. As is, USAOs struggle to compete with DOJ components offering significantly more pay. Establishing a reasonable and flexible baseline telework policy will help slow the brain drain USAOs are currently experiencing to Main Justice and the private sector.

As the Department crafts its new telework policy, we feel it is critical that the Department engage stakeholders like NAAUSA who have spent years collecting feedback from our members about this critical topic. There is significant data on the benefits, costs, and policy options for teleworking. This is not a decision that should be made in haste or based on pretense. The effective federal administration of justice relies too heavily on a qualified and productive workforce.

We look forward to engaging with your office on this issue. Thank you for considering NAAUSA’s perspective. Please reach out to our Washington Representative Natalia Castro ([ncastro@shawbransford.com](mailto:ncastro@shawbransford.com)) with any additional questions.

Sincerely,



**Steven Wasserman**  
President