

June 30, 2020

Dear Eric,

Following the Agency's decision to enter "Phase 1" for Region 2 and the All-Employee meetings on April 7, May 13, and June 25, some of us want to share our concerns about the regional "Reconstitution Plan." We are feeling frustrated, confused, overwhelmed, anxious, helpless, and, above all, frightened by the unnecessary, serious risks of COVID-19 infection presented by the proposed return to our physical office space at 290 Broadway, and we do not think we have heard any compelling, countervailing benefits that justify those risks. Nor do we feel confident that any of the proposed "safety" measures will be sufficient to protect us, our families, and our communities from the risk of infection and viral spread on our commutes and in our office spaces. The Agency has yet to provide a comprehensive plan for reopening offices that adequately addresses the health and safety concerns of employees and that adheres to local and state guidelines. And it appears that the Agency is not adhering to its own "gating criteria" for reopening the office, since the seven-day lockdown clock did not restart after discovering that GSA contractors had been at work on the 16th and 17th floors during "Phase 0."

The best option to protect our physical and mental health, and the physical and mental health of our families and communities, is to allow unscheduled telework for all employees until there is a viable treatment or vaccine available. Indeed, the New York City Department of Health has stated that remote work policies should be continued for as long as possible to protect people who must work in-person and to keep our communities safe, especially communities of color that have been disproportionately impacted by the virus.¹ This is what the CDC² and the states of New York,³ New Jersey,⁴ and Connecticut⁵ also recommend.

The serious, unjustifiable risks posed by reopening our offices on the current timeline include, but are not limited to, the following:

- Exposure to the virus on our commutes. Most Region 2 employees travel to work via mass transit systems, including NJ Transit, Metro-North Railroad, the LIRR, MTA bus and subway service, and PATH train service. Even if the transit systems commit to routine disinfection (the effective

¹ Reopening New York City: Frequently Asked Questions (FAQs), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-reopening-nyc-faq.pdf> (last updated June 28, 2020).

² Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last updated May 6, 2020).

³ Interim Guidance for Office-Based Work During the COVID-19 Public Health Emergency, <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/offices-interim-guidance.pdf> (last updated June 26, 2020).

⁴ Which Businesses May Be Open and What Guidelines Must Be Followed?, <https://faq.business.nj.gov/en/articles/3820777-which-businesses-may-be-open-and-what-guidelines-must-be-followed> (last updated June 29, 2020).

⁵ Reopen Connecticut: Sector Rules for May 20th Reopen, https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery/CTReopens_Offices_C4_V1.pdf (May 8, 2020).

implementation of which will likely prove to be extremely challenging), that will not mitigate the risk of infection through the virus's primary transmission pathway: person-to-person via respiratory droplets released into the air when people talk, sneeze, or cough. And even if riders are required to wear masks, it is likely that many will not follow the necessary precautions faithfully. It is also doubtful that the transit agencies can or will effectively enforce these precautions on every car, every day. Requiring hundreds of Region 2 employees to use mass transit systems and asking us to share space with countless potential COVID-19 carriers will create additional risk of infection and viral spread for us, our families, and our communities, including those who are unable to work remotely, such as essential workers.

The "Reconstitution Plan" provides that in Phase 3, the "status of mass transit will be evaluated to determine its impact on employees returning to the office. If mass transit is deemed to impact the return, workplace flexibilities such as expanded use of telework will be considered to mitigate the impact." However, at the June 25th meeting, Walter Mugdan stated that currently, Administrator Wheeler has only committed to evaluating the availability of mass transit, not whether it is possible to safely ride mass transit. Walter also stated that the safety of mass transit may be considered at a later date. This is unacceptable. Given the realities of our Region's long commutes and crowded trains, buses, and subway cars, social distancing on mass transit will not be possible. In an urban environment as densely packed and as reliant on public transit as the New York Metropolitan Area, it is unavoidable that our mass transit systems will have a negative impact on employees' ability to keep themselves and their families healthy and safe. Safety is an immediate concern; it faces us the first day we return to the office. It is simply indefensible to willfully ignore this issue now.

- Exposure to the virus in our building. Much like mass transit, routine disinfection of our office spaces will not mitigate the risk of the virus's transmission from person to person. Despite our best efforts at physical distancing, we will be forced to encounter others, including third party contractors and the public, while in the building, from the lobby, to the elevator, to the hallway, to the bathrooms. Distancing while using the elevator banks seems like it will be particularly difficult, if not impossible. If, as mentioned at the June 25th meeting, the elevators will be limited to two persons, the elevator lobby and general building lobby will be densely crowded with people waiting for elevators, especially considering the rise in elevator ridership that has occurred since the immigration courts were stationed on floors utilizing the same elevator bank as EPA employees. Even the bathroom entry proposal we heard at the June 25th meeting—that three people will be allowed in the bathroom at a time, signaled by Post-It notes on the doors—is insufficient, especially given our bathroom layouts and the issues surrounding coronavirus aerosol transmissions in bathrooms. While masks are said to be required in the office, there has been no discussion of how that will be enforced throughout the building and no mention of the fact that we cannot control whether contractors or members of the public wear masks. Furthermore, many of our colleagues in SEMD and other divisions do not have individual offices, making a return to 290 Broadway even more risky for them. Our return to the office also puts the FedCap employees, many of whom belong to vulnerable groups, at greater risk.
- Exposure to asymptomatic carriers. During the June 25th meeting, management explained that visibly sick persons will be prohibited from entering our office buildings and that self-assessments will be required to certify that visitors are not sick, are not living with someone sick, and had not been directed to quarantine within the last 14 days. This, however, does not account for the fact

that many individuals infected with the virus are asymptomatic.⁶ It is virtually impossible for EPA to protect its employees from infection through asymptomatic spread. Requiring us to return to our offices before a viable treatment or vaccine is available will expose us to asymptomatic individuals who do not know they are transmitting the virus, which in turn could sicken us, our families, and our communities.

We think it's important to note that these risks are not singular, but cumulative. Once we return to the building, we will be regularly encountering these risks over and over, day in and day out, throughout the work week. It is not the same as, for example, the calculated risk incurred by going to the grocery store once every two weeks for an hour or two. And these risks are especially unjustified considering the benefits, and successes, of teleworking. Working from home allows us to keep ourselves, our families, and our communities safe while serving effectively in our roles within ORC. We feel encouraged by how well extended telework has gone: we have conducted virtual depositions and settlement conferences, held virtual public meetings, participated in telephonic court hearings, negotiated enforcement instruments, prepared for litigation, and performed countless other job-related tasks remotely and successfully. There is no reason for senior EPA management to frame a return to physical office space as "EPA's reopening," because we never closed. We have been open and operating throughout the current crisis, and have been as proud of, and as committed to, our work as ever.

In contrast, the only benefits of returning to the office that have been espoused by senior EPA management are: (1) an avoidance of the mental health impacts that may occur working from home; (2) a return to a congenial work environment with in-person interactions; and (3) the fact that we are going to have to reopen our offices one day anyway. The first two benefits aren't so clear. We believe that the mental health impacts suffered by many over the past few months are serious and deserve to be recognized. But there are ways to help employees suffering mental health impacts that don't involve exposing them to the risk of infection, like offering mental health resources as Walter Mugdan discussed during the June 25th meeting. Removing the option for employees to protect themselves, their families, and their communities by teleworking, while simultaneously undercutting their ability to exercise some control over their lives in a time of enduring uncertainty, could cause equally as detrimental effects on EPA employees' mental health, if not worse effects than those highlighted by management. And it's hard to see how returning to an in-person work environment at this time could boost morale, or could even occur, if we will be avoiding each other in the building through the closure of kitchens and conference rooms and by physically distancing in the hallways and remaining in our offices or cubicles. Reopening the building on the current timeline will not change how we have been communicating for months, since we will all err on the side of caution, staying at our desks and using the phone instead of risking physical contact and potential infection.

The final "benefit" cited by senior EPA management—the fact that we will one day have to reopen our offices—is less a benefit and more a justification. We understand that a return to physical office space will happen eventually, and we look forward to that day in the future, when we feel confident that we will be safe and that our health and the health of our families and communities will be protected. But no one in management has been able to explain how the benefits of returning to our spaces at this time outweigh the overwhelming risks. EPA is essentially asking its employees to sacrifice their own personal safety and the safety of their families and communities for no apparent reason except that the office will reopen someday anyway. Moreover, while we appreciate the consideration that those in higher risk categories

⁶ Daniel P. Oran, AM & Eric J. Topol, MD, *Prevalence of Asymptomatic SARS-CoV-2 Infection*, *Annals of Internal Medicine*, <https://www.acpjournals.org/doi/10.7326/M20-3012> (June 3, 2020).

or who share a household with someone in a higher risk category, as well as those with dependent care responsibilities, will be able to request situational/medical telework, that onus should not be placed on the employee and supervisor on a daily, or even weekly, basis. And employees who do not meet these criteria should not be forced to put their lives and the lives of their families and communities at risk by being barred from teleworking.

The relative nascency of the virus and a continuously evolving understanding of its characteristics and effects are reasons alone to delay reopening our offices until there is greater certainty about the virus, its treatment, and its prevention. Coronavirus cases have increased recently in states where other EPA regional offices have begun to reopen, and we strongly believe a rush to reopen Region 2 offices is ill-advised. By returning to the office only to provide a sense of “returning to normal,” we will not only risk our own health, but also the health of the American people, with whom we would start having in-person interactions. This puts at risk the very people whose health our Agency is charged with protecting. We love the work that we do, and we don’t want to be forced to choose between protecting human health and the environment and protecting our health and the health of our families and communities.

We ask that you transmit our concerns to senior EPA management in hopes that the Agency will agree to allow unscheduled telework for all employees until there is a viable treatment or vaccine available. Please let us know what steps you will take to transmit the concerns outlined in this letter to senior EPA management. Thank you.