

January 25, 2017

MEMORANDUM

TO: HHS Chapter Presidents

RE: HHS — Global Settlement and Claims Process for Payment of 2012–2014 Retroactive Transportation Subsidy Increases

SUMMARY: NTEU has reached agreement with HHS under which retroactive transit subsidies will be paid for calendar year 2012, January 2013, and calendar year 2014 through a claims process.

I am very pleased to report that NTEU has reached agreements with the Department of Health and Human Services (HHS or agency) to settle two separate national grievances that had been filed after HHS refused to pay retroactive transit subsidies to bargaining unit employees. A copy of the settlement agreement is attached. Pursuant to the settlement, retroactive transit subsidies will be paid to eligible HHS employees for the period January 1, 2012 through January 31, 2013, and for all of calendar year 2014. The settlement covers current, former and retired employees who participated in the HHS Transshare Program at any time during the above-referenced time periods. An eligible employee is a Transshare participant who received the maximum non-taxable transit subsidy that was in effect at the time in any given month from January 1, 2012 through January 31, 2013, and any month during 2014, and who spent more than the maximum subsidy for that month on public transit commuting costs. For example, in 2012 the maximum transit subsidy in effect was \$125 per month, so all Transshare participants who received a transit subsidy of \$125 during any month in 2012 are eligible to make a claim for 2012 under this settlement.

This settlement is excellent news for our employees. It is the culmination of actions NTEU initiated back in February 2013. In January 2013, Congress passed the 2012 American Taxpayer Relief Act (ATRA) which retroactively increased the monthly non-taxable transit subsidy from \$125 per month to \$240 per month for all months in 2012, and to \$245 per month for all months in 2013. NTEU requested that HHS pay employees retroactive transit subsidies for the costs they had expended over and above the monthly limit that was in effect prior to the enactment of ATRA. HHS refused and NTEU filed a national grievance alleging that the agency's refusal to reimburse employees violated Article 53 of the parties' collective bargaining agreement.

NTEU took the matter to arbitration and won. HHS filed exceptions to the decision with the Federal Labor Relations Authority (Authority), but the Authority upheld the arbitrator's decision. HHS appealed the Authority's decision to the U.S. Court of Appeals for the D.C. Circuit, but ultimately withdrew its appeal.

NTEU filed a second national grievance in March 2015 alleging HHS engaged in the same violations when it refused to pay employees retroactive transit subsidies up to the new non-taxable amount of \$250 for 2014 established under the 2014 Tax Increase Prevention Act (TIPA). NTEU prevailed in that grievance also, and an arbitrator found that HHS was liable to pay retroactive transit subsidies to eligible employees for 2014.

In both arbitration awards, the arbitrator ordered the parties to fashion a claims process that would make employees whole and reimburse them for the difference between the amount of the transit subsidy they received at the time, and the increased transit subsidy under both ATRA and TIPA, to the extent they incurred those increased costs. The attached settlement agreement sets forth the claims process that will be followed to make retroactive transit subsidy reimbursements to eligible bargaining unit employees.

Highlights of the settlement agreement and claims process are as follows:

- Eligible employees are all HHS bargaining unit employees (including former and retired employees) who participated in the HHS Transshare Program at any time during calendar years (CY) 2012, 2013 and 2014 and 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.
- The amount of retroactive transit subsidies which eligible employees are entitled to receive is as follows:
 - For 2012: Actual public transit commuting costs in excess of \$125 but not to exceed \$240 for each month;
 - For 2013: Actual public transit commuting costs in excess of \$125 but not to exceed \$245 for January 2013; and
 - For 2014: Actual public transit commuting costs in excess of \$130 but not to exceed \$250 for each month.
- HHS has identified all NTEU bargaining unit employees to whom it provided the maximum subsidy in effect at the time during any month in 2012–2014, and whose actual public transit commuting costs were greater than the maximum subsidy in effect at that time. HHS will notify all such employees of their eligibility within 30 days of the date of this settlement agreement.
- The eligibility notice will be followed by a letter to each eligible employee identifying the amount HHS has identified they are owed for each month, exclusive of interest. Employees will be required to respond to the letter within 30 days indicating whether they agree with the amount, or disagree. If an employee disagrees with the amount identified for any given month, they must identify the amount they assert is due for that month. All letters (disputed and agreed) must be signed by the employee and returned to HHS within 30 days of receipt.

- If an employee disagrees with the amount identified by HHS, the claims process only require employees to self-certify their actual public transportation commuting costs separately for each month they are claiming a retroactive transit benefit during the relevant time periods. Receipts will not be required. Payment of the original amount, if any, identified by HHS will not be delayed while challenges to the disputed amounts are investigated.
- Any employee who does not receive a letter notifying them they are eligible to receive a retroactive transit subsidy payment may challenge that decision within 105 days of the date of the Settlement Agreement. Challenges must be sent to :

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

- Payments will be made as soon as practicable.

HHS has taken the position that retroactive transit subsidy payments are taxable, and it will withhold taxes on claims paid under this process. However, the settlement agreement specifically reserves the right for any claimant to individually challenge the taxability of their payment, should they choose to do so.

Anthony M. Reardon
National President

Attachment

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