1. During a pandemic health crisis, can an agency require a telework-eligible employee to work from home without a telework agreement? Can agency also require an employee who has not been previously designated as telework-eligible to work from home?

Yes. The regulations at 5 CFR 550.409(a) allow an agency to order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee as a safe haven) during a pandemic health crisis without regard to whether the agency and the employee have a telework agreement in place at the time the order to evacuate is issued. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work.

2. The local school system has closed during a pandemic health crisis; can an agency require an employee to work from home with his or her children present?

OPM evacuation payment regulations do not prohibit an evacuated employee from working from home during a pandemic health crisis with children in the home. An agency may direct an evacuated employee to either telework or request personal leave (e.g., annual leave, sick leave if applicable, or leave without pay) as necessary.

3. What form should an agency’s order to evacuate take?

An order to evacuate from an assigned non-foreign area can be made orally or in writing, including by email. (See the definition of “order to evacuate” in 5 CFR 550.402.)

4. If an agency directs telework under an evacuation order, are there any collective bargaining obligations?

There may be collective bargaining obligations. Since circumstances and facts will vary from organization to organization, each agency will need to evaluate its circumstances and make its own determination regarding any applicable collective bargaining obligations. Agencies are encouraged to review applicable collective bargaining agreement provisions to determine if the matter is already covered by the collective bargaining agreement. Agencies should be mindful that the President has declared a national emergency pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5191(b), concerning the COVID-19 outbreak. Agencies should also consider guidance from the Office of Management and Budget (PDF file) which advises agencies to maximize telework across the nation for the Federal Workforce (including mandatory telework, if necessary), while maintaining mission-critical workforce needs. Finally, 5 U.S.C. 7106(a)(2) provides that an agency may “take whatever actions may be necessary to carry out the agency mission during emergencies” subject to 5 U.S.C. 7106(b) (2) and (b)(3). Agencies should consult with offices of human resources and general counsel to determine appropriate labor relations obligations as it relates to deciding what actions are needed to address the emergency in accordance with 5 U.S.C. 7106 and 22 U.S.C. 4105 (foreign service). If the agency needs to act quickly due to the circumstances of the emergency, the agency is strongly encouraged to begin communicating with the appropriate union representatives as soon as possible and otherwise satisfy any
applicable collective bargaining obligations under the law at the earliest opportunity, including on a post implementation basis.

5. **What type of work may an agency assign to an evacuated employee?**

Under OPM regulations, an agency may assign any work considered necessary without regard to the employee's grade or title. However, an agency may not assign work to an employee unless the agency knows the employee has the necessary knowledge and skills to perform the assigned work.

6. **If an evacuated employee is working from home and is unable to report to his or her regular official worksite at least twice each biweekly pay period, does the agency need to change the employee’s official worksite for purposes of location-based pay?**

No. As provided in 5 CFR 531.605(d)(2)(ii), an authorized agency official may make an exception to the twice-in-a-pay period standard in appropriate situations, such as when an employee is affected by an emergency situation that temporarily prevents the employee from commuting to his or her regular official worksite. For more information, please see the [Official Worksite for Location-Based Pay Purposes Fact Sheet](#).

7. **At what rate should agencies pay evacuated employees performing work at a safe haven (e.g., the employee’s home) due to a pandemic health crisis?**

Employees who work at a safe haven (e.g., the employee’s home) during an evacuation due to a pandemic health crisis will be paid their normal rate of pay for the hours of work performed (including any applicable premium pay, allowances, differentials, or other authorized payments).

8. **If an agency does not have work to assign to an evacuated employee, what pay status should the employee be placed?**

If an agency does not have work to assign to an evacuated employee, the agency would provide weather and safety leave to that employee for affected hours.

9. **If an employee evacuated from a non-foreign area is forced to incur additional costs due to working from home (e.g., purchasing a computer or internet service), may an agency provide payments to offset those expenses?**

The agency head, in his or her sole and exclusive discretion, may grant special allowance payments, based on a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. (See 5 CFR 550.409(b).) An employee is not entitled to special allowance payments for increased costs during an evacuation unless specifically approved by the agency head.

10. **Does an evacuated employee performing work during a pandemic health crisis need to use his or her accrued leave to take time off?**

Yes. If an evacuated employee cannot perform assigned work during his or her tour of duty due to personal reasons, the employee is required to request leave or other time off. For example, if an evacuated employee who is performing work becomes ill, he or she will need to take sick leave or other time off to cover the absence.

11. **If the need to evacuate from a non-foreign area continues beyond 180-days, can the agency continue utilizing the evacuation pay authority to provide evacuation payments?**
No. Evacuation payments may be made to cover a total of up to 180 calendar days (including the number of days for which payment has already been made) when employees continue to be prevented from performing their duties by an evacuation order. When feasible, evacuation payments must be paid on the employee's regular pay days.

12. **How does the pandemic authority in the evacuation pay regulations relate to an agency’s Continuity of Operations Plan (COOP)?**

COOP supersedes any agency telework policy. This could include any agency telework policy established through the collective bargaining process under 5 U.S.C. Chapter 71. Thus, an agency is not bound by the telework policy developed under 5 U.S.C. 6502 while operating under a COOP. Under 5 U.S.C. 6504(d)(1), an agency COOP should address telework issues. Agencies should consult with offices of human resources and general counsel to determine appropriate labor relations obligations where bargaining unit employees are impacted.

Also, under 5 CFR 550.409, during a pandemic emergency, an agency may direct employees to evacuate from (i.e., not report to) their normal worksite and perform work from their home (or an approved alternate telework location), without regard to whether the agency and the employee have a telework agreement. Thus, this provides an authority to adopt revised telework policies that supersede normal telework policies. Please consult with offices of human resources and general counsel to determine appropriate labor relations obligations where bargaining unit employees are impacted. See additional discussion on labor relations obligations under question (4). For maximum clarity, we recommend that the telework provisions of an agency COOP expressly address the use of the authority in section 550.409 to require telework in a pandemic emergency.

Under normal conditions, weather and safety leave is available to employees who are not able to safely travel to or perform work at the normal worksite, if they are not telework program participants who are expected to telework at home or another approved location. A COOP plan and/or an agency action under 5 CFR 550.409 can allow for revised telework policies to maximize the use of telework during a pandemic emergency to support continuity of Government operations. Those revised telework policies may allow an agency to direct employees who have not been participating in an agency’s telework program to be designated as telework program participants. As such, they would not be prevented from safely working at an approved location and thus would generally not be eligible for weather and safety leave, since they are not prevented from safely working at an approved location (5 U.S.C. 6329c(b)).