



U.S. Customs and  
Border Protection

TO: Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border Protection

Benjamine C. Huffman  
Acting Deputy Commissioner  
U.S. Customs and Border Protection

FROM: Adam Mervis on Behalf of

Michael V. Celli  
Acting Director, Labor Relations  
U.S. Customs and Border Protection

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MERVIS** Digitally signed by  
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SUBJECT: Agency Head Review – Employee Support Services MOU

The enclosed memorandum of understanding (MOU) signed April 28, 2023, concerns employee support services to help in removing and reducing the stigma in seeking and utilizing mental health services, resources, and treatment. The MOU was negotiated between U.S. Customs and Border Protection (CBP) and both the National Treasury Employees Union (NTEU) and National Border Patrol Council (NBPC). The negotiated terms have been reviewed in accordance with 5 U.S.C. §7114(c) and under Department of Homeland Security, Customs and Border Protection Delegation Order 10-001, dated February 23, 2010.

This MOU does not violate existing law, rule or regulation, and is hereby approved. This approval does not constitute a waiver of, or exception to, any existing law, rule, regulation, or policy.

Please note, in accordance with CBP Directive No. 2130-013, Labor and Employee Relations is the sole authority within CBP for the administration and oversight of labor and employee relations activities and provides national level program direction to all program offices within CBP.

If you have any questions or need additional assistance, you may contact Acting Labor Relations Director Mike Celli at 202-365-5293 or by e-mail at [michael.v.celli@cbp.dhs.gov](mailto:michael.v.celli@cbp.dhs.gov).

cc: Tony Reardon, National President, NTEU  
Brandon Judd, National President, NBPC  
Suzanne Kinnahan, Director, Labor & Employee Relations  
CBP HQ LR Staff

Enclosure

## Memorandum of Understanding

Between

U.S. Customs and Border Protection

And

The National Treasury Employees Union and National Border Patrol Council

The U.S. Customs and Border Protection (“CBP” or “Employer”), the National Treasury Employees Union (NTEU), and the National Border Patrol Council (NBPC) (hereinafter referred to collectively as “the Parties”) hereby enter into this initial Memorandum of Understanding (MOU) to support our dedicated workforce and help to remove the stigma surrounding the use of mental health services, resources, and treatment. The Parties agree that asking for help or assistance for mental health care, personal wellness, and recovery is a sign of strength, not a weakness. Further, employee mental health is a critical component of the CBP Health and Safety Program. To that end, the Parties are committed to working together to remove the barriers that exist and prevent employees from getting treatment. The parties acknowledge that existing policies and practices are viewed as obstacles for employees who wish to come forward to seek help with their mental health struggles. The Parties intend for this MOU to provide clarity and guidance to proactively engage employees to seek help without stigma, to reduce stressors, and promote a healthy and resilient workforce. It is the parties’ intent for this MOU to serve as the foundation for ongoing collaboration and to commit to engaging in continuing efforts to prioritize and support the mental health and well-being of CBP employees.

### **Section 1. Statement of Commitment**

- A. Employees are encouraged to utilize all available CBP Employee Well Being Support Services as means to foster a healthy and resilient workforce. Such services include:
  - a) CBP Peer Support Program;
  - b) CBP Chaplain Program;
  - c) CBP Veteran Support Program;
  - d) Employee Assistance Program (EAP).
- B. Employees will not be subjected to disciplinary or adverse actions, FFDEs, and/or retaliation solely based on the utilization of mental health resources or solely based on notifying the agency that they are possibly experiencing mental health issues and are considering seeking treatment.
- C. Management is committed to providing employees with access to CBP resources such as, EAP, Peer Support, Chaplaincy, and Veteran Support and to support employees who seek private mental health resources.
- D. Seeking or receiving mental health treatment is not an automatic reason to revoke or deny eligibility for access to classified information or eligibility to occupy a critical/sensitive position if disclosed at any time during the period of eligibility. As defined in Security Executive Agent Directive (SEAD) 4, certain emotional, mental, and personality conditions can impair judgement, reliability, or trustworthiness. A clearance suspension may be

required to protect the employee and agency until such time further assessment can be rendered regarding continued access or eligibility.

- E. Employees experiencing mental health issues will be treated in the same fashion as employees who experience physical health issues and will be afforded all appropriate flexibilities such as FMLA, LWOP, sick/annual leave, and temporary light duty. These flexibilities will be granted in accordance with the procedures and timeframes under the respective collective bargaining agreements, regulations, and relevant agency policies including the provisions of this MOU.

## **Section 2. Safe Harbor**

- A. CBP has determined that employees who are experiencing mental health issues or conditions (e.g., suicidal ideation, PTSD, depression, anxiety, substance abuse) will be granted a "safe harbor" from being referred for a possible FFDE, for that mental health issue, while seeking and receiving treatment, following the procedures listed below. The parties recognize and acknowledge that an employee who seeks help for a mental health issue or condition is demonstrating good judgment and decision-making. Accordingly, the proper course of treatment (e.g., number of therapy sessions, length of rehabilitation program, duration of care) to help an employee stabilize or recover shall be determined by the employee in conjunction with his or her mental health care provider(s).
- B. The term "treatment," as used herein, is defined to include utilizing the services of licensed health care practitioners, including psychologists, psychiatrists, therapists, counselors, and clinicians, and/or inpatient, residential, and outpatient rehabilitation programs.
- C. While an employee is receiving treatment, as defined above, for a mental health issue or condition, CBP will refrain from ordering that employee to undergo a Fitness for Duty Examination, for up to 12 months unless: 1) the mental health provider recommends such a referral, 2) CBP Medical Fitness Branch find the Certificate of Treatment, "Attachment A" provided presents a reason to make such a referral under the regulatory requirements, under 5 CFR 339.301, 3) exigent circumstances exist, or 4) objective evidence exists the employee's medical condition materially changes, in accordance with 5 CFR 339.301.
- D. An employee is eligible for this safe harbor from a referral to a FFDE for the mental health issue at hand by receiving treatment for a mental health issue or condition, as defined above and providing a completed copy of the Certificate of Treatment form (attached hereto as "Attachment A") no more than four (4) times in 12 months.
- E. The employee will return the completed Certificate of Treatment form to management, upon request, within 30 days. In the event the employee is unable to meet that timeline, the employee will provide the Agency, within that timeframe, with an update on the status of their progress in obtaining the completed form.
- F. If an employee who has self-identified as experiencing a mental health issue or condition refuses to seek treatment, or, after receiving treatment, the employee's mental health care provider deems them unlikely to recover, CBP may consider a Fitness for Duty Examination, consistent with 5 C.F.R. §339.301. The parties acknowledge that referrals for Fitness for Duty Examination must only occur when management, in consultation with CBP's Medical Fitness Branch and/or an Operational Psychologist, determine there is a reasonable belief,

based on objective evidence, that there is a question about an employee's continued capacity to meet the medical standards or physical requirements of a position, in accordance with 5 CFR 339.301.

### **Section 3. Fostering an Open Climate**

- A. CBP has determined that supervisors and managers will be trained on the CBP Employee Mental Well-Being Support Services Guidance because any misinterpretation or misapplication of that guidance would jeopardize future efforts to empower employees to self-help. CBP will offer the training on its CBP Employee Mental Well-Being Support Services Guidance to NTEU and NBPC officers and stewards.
- B. If an employee contacts a manager or supervisor with a mental health concern, or a manager or supervisor believes an employee has a mental health concern, absent exigent circumstances (i.e., there is an immediate threat to themselves or others), management will consult with a CBP Operational Psychologist and/or Suicidologist, prior to taking any action including referring an employee for a FFDE or temporarily removing an employee's firearm.
- C. When an employee initially approaches a supervisor or a supervisor initially reaches out to an employee to discuss the employee's mental health, the employee will be advised that they may have a union representative present.
- D. When meeting with an Operational Psychologist, an employee may request to have anyone who supports her/him involved in these conversations (e.g., spouse, friend, union representative, etc.), however, the operational psychologist is not obligated to continue the consultation or accept the consultation if the psychologist believes their presence would be unhelpful.
- E. When an employee confides in a supervisor/manager that they are experiencing a mental health condition or issue supervisors and managers will engage in active listening and assist the employee immediately by providing referrals to available resources and explaining leave options.
- F. If the employee is an immediate threat to themselves or others, management will temporarily remove their firearm.
- G. If, after consulting with a CBP Operational Psychologist and/or Suicidologist, the Agency determines that the employee's authorization to carry a firearm should be temporarily revoked, it will act in accordance with the CBP Use of Force Handbook and applicable collective bargaining agreement. An employee experiencing mental health issues may also voluntarily initiate the temporary transfer and storage of their firearm. The parties acknowledge that the fact that an employee voluntarily surrenders his or her government-issued weapon is evidence that they are exercising sound judgment.
- H. The temporary revocation of the authority to carry a firearm does not require the automatic temporary revocation of an employee's law enforcement authority.<sup>1</sup> Temporary revocation

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<sup>1</sup> For employees under the 1896 job series, BPAPRA eligibility requires law enforcement authority. The negative impact of the loss of BPAPRA may exacerbate the situation and should be considered in

of law enforcement authority/credentials in connection with seeking treatment for mental health will be carefully considered on a case-by-case basis, based on reasonable and articulate information available at the time that indicates that the individual retaining their law enforcement status would raise safety concerns of imminent harm to the employee, coworkers, or other third parties. This determination will be made by the appropriate Responsible Official (RO) who is above the rank of supervisor. The parties' commitment to remove the stigma and barriers to seeking mental health treatment will not be attained if law enforcement officers believe that coming forward and/or utilizing mental health services will result in having their law enforcement authority rescinded.

- I. If the determination is made to temporarily remove an employee's firearm, CBP will offer the employee an available light duty assignment and all available leave flexibilities to which they are eligible.
- J. If the Agency has a question about an employee's continued capacity to meet the medical standards or physical requirements of their position based on his or her self-professed mental health condition or issue or the Agency's perception that the employee is experiencing a mental health condition or issue, the Agency will notify that employee of this MOU and their ability to seek treatment, as defined herein.

#### **Section 4. Destigmatizing Mental Health**

- A. CBP has determined that, consistent with the federal government's role as a model employer, it has an important interest in eliminating the stigma associated with mental health and well-being treatment. To that end, employees experiencing mental health issues or receiving mental health treatment will not be automatically or arbitrarily barred from performing light duty work. The temporary revocation of a firearm does not render COPRA covered employees ineligible for all overtime assignments. The parties acknowledge that there may be overtime work available that a COPRA eligible employee can perform without carriage authority.
- B. Employees will be eligible for assignment to overtime work associated with the light duty assignment, consistent with the organization's need for such work to be performed on an overtime basis and the medical restrictions placed on the employee. To the extent possible, the employee will not have their work schedules or duties negatively impacted. The Agency will attempt to place the employee in a light duty assignment, to include duties that can be performed virtually, within their current duty location. If the Agency is unable to place the employee in a light duty assignment within their current duty location, the Agency will attempt to place the employee in a light duty assignment, to include duties that can be performed virtually, with one of the other CBP components that allows the employee to remain in their local commuting area.
- C. The Parties recognize that the fear of losing one's income while getting treatment is a barrier to employees seeking help, and that barrier must be addressed to encourage employees to get assistance. To that end, CBP has determined that it will offer available light duty work that

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removal of law enforcement authority. For employees covered by COPRA, law enforcement authority is not a prerequisite for overtime eligibility, though it may be required for certain assignments

may not require the employee to carry a firearm to employees who avail themselves of the Safe Harbor. Requests for temporary light duty will be approved in accordance with this MOU, the collective bargaining agreements, and applicable policy/directive(s). To the greatest extent possible and upon an employee's request, CBP will allow such employees to work in light duty that provide for the same or similar working conditions (e.g., pay, shift, overtime, telework, AWS, and RDOs) in accordance with respective collective bargaining agreements and current applicable policy/directives as the employee had prior to seeking treatment for a mental health condition or issue.

- D. Employees experiencing mental health issues or receiving mental health treatment may not be barred from working any aspect of their job that is normally performed by employees on light duty work, assuming the mental health issues or treatment would not interfere with the employee performing the light duty work.

### **Section 5. Services and Leave**

- A. CBP will offer an employee seeking treatment the opportunity to utilize its Peer Support Program (PSP), Chaplaincy Program, Veterans Support Program (VSP), onsite clinicians, and Employee Assistance Program (EAP). Employees are not required to utilize these programs and are equally encouraged to utilize private, non-CBP services.
- B. Employees may utilize existing programs to include, but not limited to, telework, leave options, alternative work schedule flexibilities, etc., consistent with respective collective bargaining agreements and relevant directives/policies.
- C. To the greatest extent permissible by law, CBP directives/policies and negotiated agreements, CBP agrees to extend to employees receiving mental well-being and support services, work life flexibilities and programs which include FMLA, advanced, paid, and unpaid leave, telework arrangements where eligible, voluntary leave transfer program, and flexible work programs in accordance with current policies and directives.
- D. Employees are entitled to twelve (12) free sessions per issue with EAP, which include onsite clinicians.<sup>2</sup> Employees are eligible to attend EAP counseling services on duty hours, which includes reasonable time to travel to and from the twelve (12) sessions.
- E. The Parties recognize that employees may have greater access to, and be better served by, private mental health counseling and treatment. As such, CBP has determined that, employees shall be eligible to attend private therapy sessions on duty hours, including reasonable travel time, with a mental health care provider that is not affiliated with CBP, for the equivalent number of free EAP sessions.
- F. For any sessions beyond the on-duty free EAP-arranged sessions or employee-arranged private sessions, all available leave and scheduling flexibilities will be made available to the employee.
- G. With the exception of a mental health emergency, provided the initial and routine appointments are made more than 2 weeks in advance of the requested time for the

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<sup>2</sup> If the number of free sessions is increased beyond 12 sessions, Section D, E, and F will be considered to be updated to match the number of sessions available for EAP or private therapy sessions.

appointment employees will be granted a reasonable amount of duty time to travel to and partake in such EAP counseling services, subject to operational needs. Employees working at busy and/or understaffed ports of entry or sectors in the country shall not be punished or denied duty time, however, based solely on staffing. The Agency recognizes that employees working in such locations are also in need of mental health services and will work to find suitable available duty times during which those employees may travel to and attend counseling services.

- H. In the event an employee is denied duty time to attend EAP counseling services or private mental healthcare services, CBP will inform the employee and provide as much notice as possible. CBP will also inform the employee when duty time is available. CBP will hold a formal meeting with the employee and invite a union representative to attend in an attempt to resolve the issue.
- I. During the formal meeting or at any point in the grievance procedure, if it is determined the employee was improperly denied duty time, the appropriate remedy will be restoration of the employee's used leave as a result of the Agency's denial of duty time.
- J. Supervisors should modify an employee's tour of duty to accommodate the employee's attendance at EAP sessions, to include with onsite clinicians, and private, non-CBP affiliated counseling, to the maximum extent practicable, operational needs permitting. Supervisors may not post information about an employee using EAP services on any schedule, assignment list, or other document or system that is visible to all employees (e.g., paper schedules, schedule request systems, etc.).

### **Section 6. Confidentiality**

- A. CBP acknowledges that an employee's request for mental health services, referrals, and information provided about an employee's health condition (verbal, electronic, hardcopy) is considered confidential medical information. This information must be maintained in confidential files separate from an individual's personnel file. For employees represented by NTEU, such information will be maintained in accordance with Article 31 Section 14.A of the NTEU National Collective Bargaining Agreement for employees represented by NTEU, and access to all medical information, regardless of bargaining unit, shall be limited to a "need to know" basis.
- B. Employees will normally provide appropriately requested medical information to the requesting official who will ensure the information is protected. In addition, the employee at his/her option may provide medical information (e.g., information that includes a doctor's prognosis and diagnosis) directly to a medically certified Agency representative.
- C. In the event a medically certified Agency representative provides medical information to CBP management officials for the purpose of making an informed management decision, the non-medically certified CBP management officials will only review applicable summary medical information in which they have an appropriate need to know.

### **Section 7. Collaboration**

- A. The Parties agree to establish collaborative work groups with NTEU and NBPC to examine and make recommendations to management to revise the following programs and/or processes:

- a) FFDE
  - b) Peer Support/Chaplain
  - c) EAP
  - d) Veterans Support Program
- B. These work groups will be comprised of at least two (2) representatives from each Union and should complete their work in six (6) months.
- C. The Parties also agree that many of the best ideas and practices to facilitate implementation of employee well-being and support occur at the Port, Station, Field Office, and Sector level. In that regard, the Parties agree that employee suicide prevention, mental well-being and resilience is an appropriate subject at Field Office and Sector labor-management relations meetings between the Parties.
- D. CBP will post a copy of this MOU on its website, SharePoint, or other similar system where mental health services are promoted.

### **Section 8. Dispute Resolution**

- A. The Parties agree that the implementation of this MOU demonstrates a significant cultural shift in addressing the mental health struggles of our dedicated workforce. Because any misinterpretation or misapplication of this MOU would jeopardize future efforts to encourage employees to seek help, the parties agree to establish a process to administer compliance with this MOU.
- B. This process is to attempt to informally resolve any disputes over the interpretation and application of this agreement. Employees are encouraged to resolve any dispute informally through appropriate management officials prior to raising the issue to the national union representative.
- C. Each respective national union representative may bring local issues regarding interpretation or administration of the MOU to the notice of the appropriate headquarters representative. Failure to first raise an issue via this dispute resolution process does not preclude a grievance from being filed.
- D. If the parties are not able to resolve the issue, the union may follow the grievance procedures in their respective collective bargaining agreements.

### **Section 9. Communication to Employees**

- A. Within 30 days of the effective date of the MOU, CBP may hold a series of townhall meetings, which may be held virtually or in-person, at various times over the course of three (3) weeks to provide bargaining unit employees and NTEU and NBPC with information on this initiative. No later than twenty (20) days prior to the first townhall meeting, CBP will issue an electronic mail package which includes: 1) a copy of this MOU; 2) information on the initiative; 3) notice that participation is voluntary; 4) the location of where additional information can be found online; and 5) a point of contact for employees to submit questions and receive responses regarding the initiative.
- B. Employees will be provided a reasonable amount of duty time to review this information in advance of the townhall. NTEU and NBPC representatives will be provided notice and the opportunity to attend the townhall.



**Section 10. Effective Date and Termination**

- A. As this MOU is part of the parties' ongoing efforts to encourage employees to seek help for mental health purposes the parties recognize this evolving effort may require revisitation of the provisions herein, therefore parties agree any party to this agreement may reopen the terms of this agreement with written notice to the parties.
- B. This MOU becomes effective thirty (30) calendar days from this Agreement's execution date or upon Agency Head Approval, whichever is earlier.

CERTIFICATE OF TREATMENT FORM

\_\_\_\_\_ [EMPLOYEE NAME] is:

1.     Currently under my care and/or receiving treatment from me, and I am a:
- Health care practitioner (circle one: psychologist, psychiatrist, therapist, counselor, clinician);
  - and/or
  - Currently a patient in an inpatient, residential, or outpatient rehabilitation program.

2.    At this time, it is expected that the employee will continue to receive care/treatment until \_\_\_\_\_ (date).

3.    I have reviewed the Essential Task List, if applicable, and currently, the employee  DOES  DOES NOT have work restrictions. If the employee is currently subject to work restrictions, please explain the nature of those restrictions below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

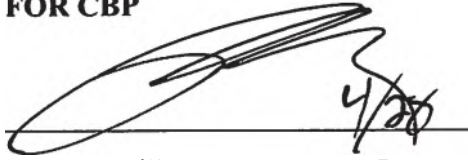
Date: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Signature: \_\_\_\_\_

**FOR CBP**

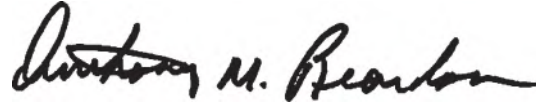


Troy A. Miller

Date

Acting Commissioner

**FOR NTEU**



Anthony Reardon

Date 4-27-23

National President

National Treasury Employees Union

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Benjamine C. Huffman

Date

Acting Deputy Commissioner



4/27/2023

Brandon Judd

Date

National President

National Border Patrol Council