

CORRECTED ISSUANCE DATE

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

US DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 222

Case No. 20 FSIP 036

DECISION AND ORDER

This case concerns a request for Panel assistance filed by the U.S. Department of Housing and Urban Development (HUD or Agency) involving the negotiations of the successor collective bargaining agreement (CBA) between it and the American Federation of Government Employees, Council 222 (AFGE or Union). This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed the matter to be resolved in the manner discussed below.

BARGAINING AND PROCEDURAL HISTORY

The Agency's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. The Parties are covered by a CBA that expired on July 23, 2018, but continues to roll over until the parties enter into a new agreement. The American Federation of Government Employees, Council 222 represents nearly 4,500 employees throughout the United States.

The Agency initiated negotiations¹ over a new agreement by emailing the Union its initial ground rules proposal on June 8, 2018. The Parties then had numerous interactions between this date and August 8, 2018, when the Agency filed a request for Panel assistance (FSIP Case No. 18075). The Panel asserted jurisdiction over the ground rules matter. The Panel ultimately imposed ground rules upon the parties, in Case No 18 FSIP 075, by way of a Decision and Order² issued on February 14, 2019. In accordance with that decision, the Parties exchanged initial proposals at the end of February. They then engaged in numerous bilateral negotiation sessions from March 2019 until August 23, 2019. Beginning September 9, 2019, the Parties began receiving mediation assistance from the Federal Mediation and Conciliation Services (FMCS). From then until January 10, 2020, the Parties utilized the services of three different FMCS mediators. The Parties reached tentative agreement on over 20 articles as a result of the foregoing process. Despite the bargaining activity, the Agency filed a request for Panel assistance on January 10, 2020 (FSIP Case No. 20026). The Panel declined jurisdiction over that request because the Parties had several weeks of impending mediation/negotiations at the time of the Agency's filing. The Panel determined that the Parties had not yet bargained to impasse.

After receiving the decision in Case No. 20 FSIP 026, the parties engaged in more bargaining with the FMCS mediator. On February 28, 2020, the parties concluded negotiations after a total of 22 weeks of negotiations and mediation. At the conclusion of negotiations, the Parties had reached agreement of 37 articles, but failed to reach agreement on 14 articles in the Parties' successor CBA. The mediator released the parties. The Panel asserted jurisdiction over the impasse and directed the parties to submit their dispute to Member Newman for an Informal Conference. The Informal Conference was held on April 23, 2020. No resolution was reached. The parties were directed by Member Newman to continue discussions for 30 days over the outstanding issues, with an attempt to find joint resolution in as many of the articles and sections as

¹ Upon initiating bargaining over the ground rules, the Union sent the Agency numerous information requests regarding the Agency's proposals; with particular interest in their proposals requiring each party to pay its own expenses in bargaining the CBA. The Agency denied the requests for information. The Union filed a grievance over the denial, alleging failure to bargain in good faith. On April 9, 2019, the Arbitrator ruled that the Agency committed a ULP by denying the information requested. The Agency filed an exception to the award with the FLRA. (71 FLRA No. 116). The Agency argued, in part, that the information request was moot due to the FSIP decision 18 FSIP 075, which included an order requiring that each party pay their own expenses. The FLRA determined that the matter was not moot and ultimately denied the exception. In the order, the FLRA discussed the Agency's behavior in its refusal to provide the Union the requested information. During the arbitration, the Arbitrator ordered the parties to engage in mediation-type discussions to determine what information could be provided. FLRA Member Abbott noted that the Agency's unrelenting position ran counter to the intent of the Trump Executive Order 13836, which promotes effective and efficient bargain.

² 18 FSIP 075 was challenged by the Union in the District Court of the District of Columbia. The Union claimed that FSIP violated the APA by issuing its decision at a time when the Panel was comprised of only four members. The case has been dismissed.

the parties could resolve on their own. The parties were advised that if, at the end of the 30-day continuation-of-bargaining period, the parties had any remaining outstanding issues, the parties were to submit the remaining issues to the full Panel.

Two weeks into the continued-bargaining period, the Agency reached out to the Panel, expressing concern that the Union had not engaged with the Agency since the Informal Conference. The Agency notified the Panel that the Agency had previously provided their last best offer and asked that the continuation-of-bargaining period be terminated. The Agency asked that the parties be directed to submit their written submissions. The Union responded with proof that they in fact had several email exchanges with the Agency and had already committed to providing revised proposals in short order. Member Newman advised the parties that she was inclined to maintain the original timeframes, as directed. After Member Newman's instruction, the parties voluntarily reduced the number of remaining articles from 14 to 12. The Panel was also informed that on May 18, 2020, the Agency modified its last best offer regarding Article 30 – Performance Appraisal. The Union responded with its final offer, which appears to accept the Agency's proposal on all substantive matters in Article 30. In its written submission and the rebuttal, the Union did not mention or discuss any disagreements in Article 30. Accordingly, the Panel orders the parties to adopt the Agency's Article 30, as modified on May 18, 2020. As a result, there are 11 remaining articles for the Panel to resolve.

On June 5, 2020, both parties submitted their statement of positions (SOPs) regarding the remaining issues. The parties were directed that their SOP was to be no more than 2 pages per remaining article. The Agency filed a Motion to Strike the Union's submission, arguing that the Union's statement of position exceeded the page-limit; the SOP included a "notes section", which was eight single-space pages of argument. The Agency asked that the Panel not consider that section of argument.

The Union responded by arguing that the Agency mischaracterizes the Union's "notes" section as "argument", but they are in fact end notes; supporting citations. The Panel instruction indicates that the SOP shall have a limited number of pages (i.e., maximum of 28 pages), excluding the attachments. The Panel concludes that the attachment (i.e., the end note), is supporting reference and, therefore, does not count against the page numbers or format expectations. The Union's arguments are in its SOP and meet the page-limit requirements imposed by the Panel.

The Union then filed a Motion to Amend its first response to the Agency's Motion to Strike. The amendment was provided after the Union had an opportunity to read the Agency's SOP in full. In its original response, the Union notes that the Agency's SOP included 102 exhibits as attachments; a submission of 772 pages. The Union drew the parallel to its inclusion of attachments. However, after the Union actually reviewed the

Agency's submission, the Union argued in its amendment that the Agency placed a number of its arguments, not in the body of the SOP, but actually in the attachments. For example, while the Agency's statement may say they are offering its proposal to "address problems", the Agency doesn't discuss what those problems are in the body of the SOP. Instead, the Agency references affidavits in the attachments, where a bargaining team member discusses what the problems are; the arguments are made in the affidavit, not in the body of the limited SOP. The Union argues that the Agency misuses the affidavits in order to not exceed the page limit in the SOP. The Union also contends that while the Agency argues that the Union's attachments were non-conforming because the endnotes were presented in single-space format, the Agency's attachments were "deceptively" presented in 1 1/2 -space format.

In a recent Panel decision (Case No. 20 FSIP 033), the Panel discussed a similar concern raised over a party exceeding the page limitation. The Panel's procedural letter states (in FN2) that Evidence may include affidavits. The Panel provides no guidance on the purpose of affidavits or limit to the number of attachments. While it appears that both parties may be avoiding the page limitation of the submissions by taking advantage of the opportunity to provide attachments, since the parties have not technically violated the Panel direction by providing their affidavits, the Panel rejects the Union's motion regarding the Agency's attachments.

The parties were directed to submit their rebuttals by June 19, 2020 at 5 PM EST. The Agency's rebuttal was received at 4:35 PM and the Union's rebuttal was received at 5:01 PM, including exhibits 1-10. Then the Union provided exhibits 11-31, received at 5:07 PM. And then at 5:23 PM, the Union sent a follow up confirming that all of the exhibits had come through; including all of the attachments in one email. On June 22, the Agency sent the Panel an email, noting that the Union's submission of its rebuttal was not in conformance with Panel instruction because it was received after 5 PM (at 5:01 PM and 5:07 PM). Additionally, the Agency asserts once again that the "notes" section exceeds the page limit. Finally, the Agency notes that the Union's last email, received at 5:23 PM, included an addition exhibit (declaration of S. Viola). The Panel's direction to parties is to submit their material by a date and time certain. However, the parties have no control over what time the emailed materials will actually be "received" by the opposing party and the Panel. It is certainly plausible that the Union submitted a document just before or at 5:00 pm and the material did not register as actually received (i.e., cleared the server) until after 5:00 PM. The Panel takes note of the submissions that were "received" at 5:01 PM and 5:07 PM.

In prior Panel cases, where one party was not in compliance with the Panel direction, the Panel noted that it would consider the totality of the circumstances, the impact of the late filing on the other party, and what the other party is seeking as a remedy. In *Dep't of State, Bureau of Consular Affairs, Passport Services* (18 FSIP 059)

(a case involving the length of the submitted statement of position), the Panel decided not to consider the additional page presented by the Union in its written submission because that extra page “prejudiced the Agency, as the Agency did not have an additional page to present its arguments and evidence.” In *Dep’t of Defense Education Activity*, 18 FSIP 069 (a case involving the length of the submitted SOP), the Panel accepted the Agency’s extra page of its written submission when the Union did not object, but did not accept the three extra pages of the Agency’s rebuttal statement (to which the Union did object) because the Union “did not have an opportunity to supplement its rebuttal statement.” The Panel recently issued a procedural decision in *Dep’t of Veterans Affairs and AFGE*, 20 FSIP 022 (June 8, 2020), in which it considered the Union’s objection to the Agency’s late filing of its submission. In that case, the Panel stated, “[S]triking Management’s position in full is simply a bridge too far, particularly where the Union has not identified any prejudice it experienced as a result.” Instead, the Panel permitted the Union to miss a deadline for one of its article submissions by five days, and granted the Agency five extra days to submit its rebuttal as a matter of parity: the Panel decided to grant the Union an extended deadline that matched the Agency’s earlier tardiness.

The Panel has a desire to see the entire record. While the Panel will not disregard lack of compliance with its procedural instructions when the opposing party raises an objection, in consideration of the circumstances in this case, there was potentially a delay of only 1 minute. That minor delay could be explained by the difference between submitting and the actual receipt once clearing the FLRA server. As for the email submitted at 5:23 PM, as the original email as confirmed to be received, there is no need to even consider the follow up email at 5:23 PM. As for the impact of the late filing on the other party, the Agency raised no adverse impact in their note to the Panel. And finally, the Agency requested no sought remedy. The Panel determines no action is warranted under the circumstances.

On July 2, 2020, the Union emailed a request to stay the Panel proceedings in this case while the Union’s court filing challenging 18 FSIP 075 (case regarding the ground rules to negotiating the CBA) is under consideration. In FSIP Case No. 18075, after the Panel issued its decision over the ground rules, the Union filed a case with the court, challenging the appointment and composition of this Panel. *American Federation of Government Employees v. Federal Service Impasses Panel et al.*, 19-cv-01934 (D.D.C) (AFGE v. FSIP). The relief sought in AFGE v. FSIP includes an order enjoining the Panel from exercising its powers and declaring that the Panel may not exercise its powers until it is composed of a Chairman and at least six other members that have been appointed “by and with the Advice and Consent of the Senate,” as required by the Appointments Clause to the United States Constitution. The Union claims that the Panel does not have authority to resolve this matter and that any action it takes will be in

violation of the Appointments Clause to the United States Constitution. The Union's argument because the Union's argument is unpersuasive. The Panel is appropriately appointed and, therefore, the Panel's jurisdiction over this matter is appropriate.

PARTIES ARGUMENTS AND PANEL DECISIONS

1. Article 7 - Professional Employees

The Parties' remain in dispute over the scope of the article and the extent to which the Agency will reimburse employees for holding licenses that are required for their jobs. The Union represents two separate bargaining units at HUD. One unit includes close to 4400 non-professional employees (including Appraisers³), the other unit includes approximately 400 professional employees (i.e., Attorneys). Under the current CBA, the Agency reimburses the Professional Employees for bar dues⁴ and attendance at meetings. The Agency seeks to maintain that language in the successor CBA. The Union seeks parity between the two units by expanding the application of the article to provide reimbursement for both professional employees (i.e., Attorneys) and for non-professional employees (i.e., Appraisers), who have licensure as a condition of their employment.

The Agency employs real estate appraisers to support various Federal Housing Administration (FHA) programs. These employees have always been required to be state-certified appraisers with credentials based on the minimum certification criteria issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and must appear on the Appraisal Subcommittee's (ASC) National Registry. While the Agency currently pays for the cost for the Attorneys to meet state bar continuing education requirements, the Agency does not currently pay for the initial certification (a requirement in order to be hired) or renewal⁵ of these state certifications (a requirement to maintain eligibility to hold the position). The Union argues that the cost of approximately \$373 per appraisal is a burden on employees, but is negligible to the Agency given its \$47.9 Billion budget. The Agency argues that the unreimbursed licensure requirements have not resulted in the position being hard to fill, has not

³ The Agency employees 78 real estate Appraisers.

⁴ Section 7.02 - Membership Dues. Where membership in a professional organization is required by Management, Management agrees to pay membership dues related to that requirement. Section 7.03 - Attendance at Meetings. If an employee is directed to attend a meeting of a professional society, organization, or association, such direction must be in writing from an authorized Management official, and, therefore, shall be considered official authorization to participate and shall be reimbursed accordingly.

⁵ The renewal frequency differs by state from annual to triennial.

caused a high rate of attrition, and the additional expense on the Agency would result in no tangible benefits to the Agency.

The Agency currently expends approximately \$85,000 annually supporting their commitment to the Attorneys. The Agency estimates that the cost of the Union's proposal would result in an additional \$20,000⁶ per year. The Agency argues that the Union has offered no tangible benefit to the Agency in exchange for this increased cost, but only offers that the benefit would improve morale. The Union argued that the reimbursement would also serve as a recruitment incentive as well as a retention incentive.

The Agency relies on *Department of the Treasury, Office of the Chief Counsel and National Treasury Employees Union*, 04 FSIP 005 (2004), where the Panel rejected a similar union proposal on the basis of the cost and the lack of tangible benefit to the Agency. In 04 FSIP 005, the Panel relied on *NFFE Local 1214*, 40 FLRA 1181 (1991) and Comptroller General decisions (e.g., B-218964 (1985)) prohibiting paying for real estate appraiser fees. The Union notes that the Comptroller General decision relied upon has since been overturned by Comptroller General decision B-302548 (2004). In the 2004 case, the Comptroller General within the General Accounting Office (GAO) determined that pursuant to 5 U.S.C. 5757(a), federal agencies are authorized to use appropriated funds to pay an employee's expenses to obtain professional credentials. However, an agency may pay only the expenses required to obtain the license or official certification needed to practice a particular profession, including licensing fees and examinations to obtain credentials. The Agency, in its rebuttal, did not refute that the Agency is not prohibited from paying the fees, but argues that the Agency does not choose to cover the expense. In the interest of parity, and in acknowledgement that the Agency does in fact receive a benefit from the Appraisers maintaining licensure, the Panel orders the parties to adopt the Union's Article 7.

2. Article 12 - Disciplinary and Adverse Actions

The Parties remain at impasse over two issues: Section 12.01 - the standard to be applied to discipline actions that does not rise to the level of an adverse action, and Union's Section 12.07 - the circumstances under which the Union will receive notice of decisions issued in disciplinary and adverse actions.

- Standard to be Applied to Discipline Actions

A disciplinary action includes suspensions of 14 days or less and reprimands, while an adverse action includes the more severe forms of discipline such as, removals,

⁶ The Union estimates the cost to be closer to \$22,000, based upon a survey of interest.

suspensions of more than 14 days, and a reduction in grade (demotion) or pay. As for the standard for taking disciplinary actions, under the current CBA, Section 12.01, discipline can only be taken for “just and sufficient cause”. The Union proposes a “just cause” standard will be used for disciplinary actions. The Agency proposes the “efficiency of the service” standard.

The principle of “just cause” standard⁷ is a common disciplinary standard adopted in contracts (and by arbitrators⁸ enforcing contracts) to ensure disciplinary actions taken by an employer against an employee are just and appropriate. Adopting that standard means that discipline of employees will only occur if the Agency establishes “just cause” for doing so.

The “efficiency of the service” standard for imposing discipline is derived from the Civil Service Reform Act; from Congress. Agencies are authorized to subject employees to adverse actions “only for such cause as will promote the efficiency of the service,” according to 5 U.S.C. § 7513(a).

The Union seeks to maintain the distinction in standards between disciplinary actions and adverse actions. The Agency argues that having two different standards would be inefficient and leads to confusion by the manager on which standard to apply. The Agency provided no evidence that having a different standard in the current CBA has caused confusion or lead to challenges in arbitration⁹.

⁷ The general “just cause” standard is a by-product of an arbitration case decided in 1966. In that case, an employee was fired for failing to perform tasks as instructed by their employer. The labor contract in force at the time included language stating that management had the right to discipline or discharge employees for “cause” but also that employees could not face discipline or termination without “proper cause.” Realizing that no provision in the labor contract in question defined the words “cause” and “proper cause” – the arbitrator overseeing the case chose to establish the standards to be applied. To this day, those standards – referred to as the “Seven Tests of Just Cause” – are applied by arbitrators when analyzing and judging an employer’s evidence supporting “just cause” in discharge and discipline cases.

The 7 tests: (1) Notice. Did the Employer give the Employee forewarning for or foreknowledge of the possible or probable disciplinary consequences of the Employee’s conduct; (2) Reasonable Rule and Order. Was the Employer’s rule (which the Employee was forewarned of) reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business and (b) performances that the Employer might expect of the Employee; (3) Investigation. Did the Employer, before administering discipline to an Employee, make an effort to conduct an investigation and discover whether the Employee did, in fact, violate or disregard a rule or order of the Employer; (4) Fair Investigation. Was the Employer’s investigation conducted fairly and objectively; (5) Proof. Did the Employer obtain substantial evidence or proof that the Employee was guilty as charged; (6) Equal Treatment. Has the Employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees; (7) Penalty. Was the degree of discipline administered by the Employer in this case reasonably related to (a) the seriousness of the Employee’s proven offense and (b) the record of the Employee in his service with the Employer.

⁸ A Supreme Court decision in 1985 (Cornelius v. Nutt) held that for adverse actions, arbitrators must apply the same standards as those used by the Merit System Protection Board (MSPB).

⁹ The Agency did reference one arbitration case (a case in the Social Security Administration, not precedential to this unit), where the Arbitrator ruled that the agency erred when it applied the wrong standard when it mitigated an adverse action down to a disciplinary action, resulting in the discipline being overturned by the Arbitrator.

The Panel addressed a similar issue in a recent FSIP case. In that case, the parties had adopted a “just and sufficient cause” standard in their CBA since at least 2001. The Parties presented no evidence or argument regarding the use of the standard. With no evidence to support the concerns offered, the Panel ordered the parties to maintain the current contract standard. Similarly, in this case, the Panel orders the parties to maintain the current contract standard – “just and sufficient cause”. The parties are ordered to add to the Agency 12.01 (2), the following modification – “Disciplinary Actions will be based on just and sufficient cause.”

- Union Notification of Decisions Issued in Disciplinary and Adverse Actions

The Agency proposes to eliminate an information requirement in the current CBA, Section 12.07. Under the current 2015-CBA:

Section 12.07 - Union Notification. When Management issues a notice of proposal and/or decision to suspend, reduce-in grade, or remove an employee in the unit, Management shall provide to the Union a general statement of the charges, proposed action, and subsequent decision.

The Agency asserts that the current contract language, requiring the Agency to release disciplinary information on an employee in the bargaining unit, violates employee privacy, particularly where that employee has not authorized the Agency to release the data to the Union. The Agency cites a 1990 FLRA case, 37 FLRA 1346, where the FLRA cautions against proposals that require the release of information that would violate personal privacy.

The Union is entitled to certain information about the administration of discipline within the bargaining unit under its statutory rights (5 USC 7114 (b))¹⁰. In an attempt to address the Agency’s concern regarding the release of information where an employee has elected not to authorize the Agency to release information, the Union has proposed an amendment to the contract language. While the Agency would continue to be obligated to provide the information (e.g., general statement of the charges, proposed action and subsequent decision) to the Union automatically, the amended language would allow the Agency, where the employee has not provided written authorization to release information to the Union, to provide a sanitized copy of the data.

¹⁰ The D.C. Circuit Court has stated that the representational functions of a union in connection with the discipline of unit employees promotes important public interests. For example, the exclusive representative serves to ensure that Federal agencies observe statutory, regulatory, and collective bargaining agreement procedures in disciplining and removing employees. We find that the public’s interest in ensuring that Federal agencies comply with their responsibilities in disciplining and removing employees outweighs an individual employee’s privacy interests. AFGE, Local 1345 v FLRA, 793 F2d 1360 (D.C. Cir. 1986)

While the Agency asserts that the current contract language presents a legal challenge, the Agency provided no evidence that the Agency has challenged the legality of the provision under the existing CBA (e.g., disallowed on Agency Head review or declining to provide the data, as supported by a law). The Panel orders the parties to adopt the Union's Section 12.07, which maintains the current language in the CBA, with modification allowing the Agency to redact information, where appropriate.

3. Article 16 - Hours of Duty, Credit Hours, Alternative Work Schedules

The primary area in dispute in this article concerns whether employees working a "flexitime" schedule will be required to notify their supervisor when they begin work each day. The Agency proposes language in the Section 16.03 (2)(d) that would require the employee approved to work on a Flexitime schedule to notify their supervisor when they actually begin their workday. Without that notification, particularly if the supervisor and the employee are not physically in the same area, there are two hours in the morning and two hours in the afternoon during which the supervisor may not be aware of the employee's presence in the work area. The Agency argues that this creates accountability problems in terms of physical verification, management-directed work assignments, validation of time and attendance records, and unintentionally forcing an accrual of credit hours or overtime.

The Union's proposal, similar to the current CBA, does not include such a requirement. Instead, the Union's proposal (16.10) prohibits the Agency from requiring the employee to use any system (e.g., T&A system, sign in sheets, security access systems, or computer log ons) to sign in or out. The Agency argues that the current CBA language has created significant problems for management because they don't know what time an employee arrives at work. The Agency provided affidavits supporting the management challenges under the current CBA language, including substantiation that supervisors regularly request information from the Agency's facilities personnel regarding the time employees have entered the building¹¹, or request data from the information technology personnel regarding what time an employee used a computer.

The Union offers that while the parties had in the current CBA that sign-in procedures would not be necessary, the parties also agreed to multiple provisions that

¹¹ Affidavit from Ronald J. Salazar, Physical Security Specialist in the Office of 5 Administration at HUD: "Frequently, management requests access reports to verify the arrival time of an employee. Due to union Supplement 116, which states that the PIV/Smartcard Logon will not be utilized for signing in and signing out for time and attendance purposes, I am not allowed to provide that information unless it is pursuant to an official Departmental request or OIG investigation. I let the manager/supervisor know that I am unable to provide them with such a report and refer them to Employee Relations/Labor Relations for guidance."

would allow management to oversee their employees without requiring any additional daily sign-in procedures. In the establishment of the flexi-time program, the parties have agreed to proposals that allow management to 1) discipline employees for abusing the flexitime schedule and 2) end the flexitime schedule and replace it with a standard fixed tour schedule (Sec. 16.03). The parties also agree on management's right to terminate any alternative work schedule if it is determined that the "employee's participation would negatively impact operational needs" (Sec. 16.04). These provisions are in the current CBA and are already agreed to by these parties. The Union argues that the Agency has not shown that there is a need to change the longstanding no sign-in practice or that there is any significant or widespread problem that has not been resolved by the aforementioned Sections.

The Panel disagrees that the Agency has shown no need for change. The Agency presented unrefuted affidavits demonstrating the supervisors have been challenged with managing the workforce and the work without knowing the status of their employees for up to 4 hours a day. It is not unreasonable for a supervisor managing a flexi-schedule employee to require a check-in from the employee at the start of their workday. Regarding using sign-in/sign-out for employees on a flexitime schedule, the Panel orders the parties to adopt the Agency proposal 16.03 (2)(D) and modify the Union proposal 16.10 by removing the last sentence – "Employees will not be required to use time recording equipment, sign-in/sign-out sheets, security systems, or communication systems for timekeeping."

The parties disagree over Section 16.03 (g)(v) concerning the resolution of conflicts regarding the scheduled day off under a compressed work schedule (CWS). Both parties provide that if two employees are unable to resolve their conflict concerning the CWS-day, it shall be resolved by seniority. The Agency's proposal limits the provision's applicability to new requests for a CWS-day off. The Agency argues that broader application of the Union's proposal could permit a senior employee to require a less senior employee to change their already established schedule. The Union provided no argument regarding their proposed language. As the Agency has presented a valid reason for their more limited provision, the Panel orders the parties to adopt the Agency's Section 16.03 (g)(v).

The last remaining impasse in Article 16 is over the last remaining sentence in 16.08; specifically, how to reference the Agency's existing Limited Personal Use Policy. The Agency refers to the policy as the "applicable" Limited Personal Use Policy. The Union refers to the policy as the Limited Personal Use Policy (as applicable under Section 57.02 of the Agreement). The Panel orders the parties to adopt the Agency's language that references the applicable Limited Personal Use Policy, and add the modified language – "to the extent that it has been bargained as required by the Statute".

4. Article 34 - Furlough for Thirty Days or Less

The 1 remaining area of disagreement in Section 34.03 concerns the extent to which negotiations will be conducted before an administrative or planned furlough. The decision to conduct a furlough is a management right, however, the Union retains the right to bargaining impact and implementation of the decision under the labor Statute. Under the Union's Section 34.03 (5), if impact and implementation bargaining is necessary, the Union proposes the parties will following Article 49 – Midterm Bargaining. The Agency would rather remain silent regarding bargaining rights. The Panel orders the parties to adopt the Union's Section 34.03 (5), with modification – “For Administrative and Planned Furloughs, to the extent the Statute requires impact and implementation bargaining, that bargaining will take place in accordance with Article 49.”

5. Article 45 - Reasonable Accommodations

The Parties are far apart on this article. The first area of disagreement is in the inclusion of a list of policies and laws that would apply. In the prior CBA and the Union's proposal, there is a list of EEOC laws and policy guidance that will be followed by the parties. The Union offers the list of relevant authorities to make it easier for the parties to identify the governing policies. The Agency provided no reason for disagreement, they offered no examples where the reference has created concern, nor does the Agency deny that they are obligated to follow those policies in the execution of the Reasonable Accommodation program. Those same authorities are listed in section 1-6 of the HUD Reasonable Accommodation Handbook (RA Handbook; discussed below). As the parties have agreed to reference that RA Handbook in the CBA, there is no need to duplicate the list of authorities in the CBA. The Article is exceptionally long. Eliminating duplication will help make the article easier to follow. The Panel orders the parties to eliminate the reference to the authorities in section 45.01.

Under Section 45.01, the parties disagree over the reference to the HUD RA Handbook on Reasonable Accommodation (RA). The parties agreed under the former CBA to reference the applicable RA Handbook (Handbook 7855.1). In an effort to improve the overall RA process and experience, the Agency updated the RA Handbook: HUD Handbook 7855.1, Rev. 2, Reasonable Accommodations for Individuals with Disabilities Policy Procedures. The Agency submitted the revised RA Handbook to the EEOC on August 23, 2019 for review and approval. The EEOC determined that the revised reasonable accommodation procedures comply with EEOC regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), as amended, 29 U.S.C. § 791(b); 29 C.F.R. § 1614.203, and Executive Order 13164, 65 Fed. Reg. 46565 (2000). The RA Handbook was approved. Both parties agree to incorporate the

revised RA Handbook into the CBA. Where they disagree is over the Agency's proposal to incorporate not just the revised RA Handbook, but also any "successor" to that RA Handbook, that has not yet been created, approved by the EEOC, or bargained with the Union. The Panel orders the parties to adopt the Union's proposal regarding the Handbook 7855.1 (Rev 2).

Section 45.02 provides a list, not all inclusive, of examples of reasonable accommodations. As the parties cannot reach agreement, and a list of examples are included in the RA Handbook, Section 1-7, the Panel orders the parties to eliminate the list of examples in Section 45.02.

Section 45.03 covers the RA request process. The RA Handbook, CHAPTER 3: THE REASONABLE ACCOMMODATION REQUEST PROCESS, also covers the process for requesting and approving a RA. It appears that the Agency added language in the CBA provision that was not included in its August 2019 policy that was approved by the EEOC. As the parties agreed to follow the RA Handbook, which was approved by the EEOC, the Panel orders the parties to follow the procedures reflected in the RA Handbook, without modification.

Section 45.04 covers reassignment as a form of a Reasonable Accommodation. The RA Handbook, CHAPTER 3: THE REASONABLE ACCOMMODATION REQUEST PROCESS, also covers reassignment as a form of a RA. As the parties agreed to follow the RA Handbook, which was approved by the EEOC, the Panel orders the parties to follow the procedures and criteria reflected in the RA Handbook, without modification.

Section 45.05 covers confidentiality of Medical Documentation provided during the Reasonable Accommodation process. The RA Handbook, CHAPTER 4: MEDICAL DOCUMENTATION AND CONFIDENTIALITY, covers the handling of medical documentation during the RA process. As the parties agreed to follow the RA Handbook, which was approved by the EEOC, the Panel orders the parties to follow the procedures and criteria reflected in the RA Handbook, without modification.

The last area of substantive disagreement is in Agency Section 45.06 – Previously Approved Accommodation. The Agency argues that there have been problems with revisiting previously approved RAs. As a result, the Agency would like to add a provision to the CBA that makes it clear that the Agency is free to revisit its decision to approve a RA. The Union argues that the Agency's proposed language, forcing an employee, at the request of the Agency, to re-substantiate the need for the accommodation after already being approved for the accommodation, is in violation of EEOC regulations. In a 2014-court decision, decided under the American with Disabilities Act (ADA, 42 USC 12117(a)), the court indicated that an employer cannot

withdraw an accommodation that had previously worked for both the employer and the employee. In *Isbell v. John Crane*¹², Inc., a federal district court ruled an employer violated the ADA when it withdrew an employee's previously approved modified work schedule which had allowed her to start later in the morning so her medication could actuate. The employee, who was diagnosed with ADHD, bipolar disorder, and a joint-affecting disorder known as Ehlers Danlos, had been prescribed medication that did not take effect until several hours after she woke up in the morning, which necessitated a later start to her work day. The employee enjoyed a modified work schedule with the approval of her supervisor for two years which allowed her to arrive to work later than her co-workers. The employee was later assigned a new supervisor who unilaterally withdrew the accommodation after attempting to institute a uniform start time, claiming the late arrival time placed an "undue hardship" on the employer. She was then required to submit new documentation to support her need to renew the old work schedule.

At trial, both sides filed motions for Summary Judgment. The court granted Isbell a Summary Judgment on the ADA discrimination claim. But the District Court commented that both Isbell and the employer completely missed the main issue by "focusing their attention on the question of whether a start time of 9:15 a.m. was reasonable." The real issue was whether it was reasonable for the employer to remove an accommodation (i.e., the 10:00 a.m. start time) that was already in place, and working successfully for both parties, for more than two years. The Court concluded it was unreasonable for the employer to withdraw the accommodation in the absence of evidence suggesting the employee's later start time presented an "undue burden." The Court also found the employer had not worked with the employee to adjust the accommodation or presented evidence suggesting the employee's performance suffered as a result of her modified work schedule. Thus, the employer's sudden change to the employee's schedule, done without consideration of her known disability, "constituted an unreasonable failure to continue to accommodate that disability under the ADA."

This case provides warning that employers should think twice before considering discontinuation of a long-held disability accommodation as a hardship without going through an interactive process with the employee. Given this need to be cautious, and the fact that the Agency did not include this provision in the RA Handbook approved by the EEOC, the Panel orders the Agency to withdraw their Section 45.06 regarding previously approved accommodations.

¹² *Isbell v John Crane, Inc.*, Case No. 11 C2347 (Northern District of Illinois Eastern Division, March 21, 2014).

6. Article 47 - Union Representation and Official Time¹³

The Parties disagree on a number of major topics in this Article, many of which are provisions that are the subject of Executive Order 13837 - Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use. The first dispute concerns the amount of official time that will be available to the Union to conduct representational duties. The current CBA provides for about 60,000 hours of Official Time to provide representation in the Headquarters and the 9 Regional Offices across the country. For the two most recent fiscal years (FY18 and FY19), the Agency submits that AFGE charged 24,371 and 20,343 respectively in official time. With approximately 4500 bargaining unit employees, the rate of official time actually approved for use was 4.6 hours per bargaining unit employee in FY18 and 4.12 per bargaining unit employee in FY19. This is significantly higher than the rate generally considered under public policy guidance by the Administration¹⁴ to be reasonable, necessary and in the public interest.

The Agency has proposed to reduce the amount of official time available in the bank to 2000 hours. The Agency proposes to achieve that reduction by eliminating official time for a number of representation activities. The largest reduction, the Agency argues, will come from the Agency's proposal to no longer offer official time for grievance activities, the largest category of official time used by AFGE in FY18 and FY19. This proposed exclusion will be discussed further below. The Agency claims that the Union used 1922 hours on such activity in FY18 and 2611 in FY19; thus, substantiating the offer of 2000 hours (less than half of the Executive Order amount of approximately 4500 hours).

The Agency supports their proposal to disallow the use of official time for grievance preparation by arguing that allowing union representatives to use official time to prepare grievances artificially increases the filing of grievances. The Union refutes that claim by providing an affidavit from a former Labor Relations representative that asserts that the work the Union does to help a bargaining unit employee evaluate and

¹³ On January 16, 2020, the Union filed an Unfair Labor Practice (ULP) grievance against the Agency, charging that the Agency's proposals would harm the Union because they limit the amount of official time that would be available to the Union; requiring the Union Representatives to engage with the bargaining unit on some representational activities on personal time. Those charges are working their way through the grievance procedure. Arbitration has not yet been scheduled.

¹⁴ Trump Executive Order 13837 - No agency shall agree to authorize any amount of taxpayer-funded union time under section 7131(d) of title 5 ... unless such time is reasonable, necessary, and in the public interest. Agreements authorizing taxpayer-funded union time under 7131(d) that would cause the union time rate in a bargaining unit to exceed 1 hour should, taking into account the size of the bargaining unit, and the amount of taxpayer-funded union time anticipated to be granted under sections 7131(a) and 7131(c) of title 5 ... ordinarily not be considered reasonable, necessary, and in the public interest, or to satisfy the "effective and efficient" goal set forth in section 1 of this order and section 7101(b) of title 5.... Agencies shall commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less, and to fulfill their obligation to bargain in good faith.

prepare a grievance is invaluable and actually leads to less frivolous grievances being filed by the bargaining unit. The Agency also argues that not offering official time for preparing grievances is on par with the non-bargaining unit, who are not granted duty time to prepare an administrative grievance. The Union has filed a ULP grievance, alleging bad faith bargaining over the insistence for eliminating official time for grievance preparation. That case has not been scheduled with an arbitrator.

The Union argues that their proposal would voluntarily reduce the bank of hours by 75%, to 15,000 hours; approximately 3 hours per BU employee. While it is not as low as the E.O. guidance of 1 hour per bargaining unit employee, the Union argues that the offer is consistent with the Agency's stated goal to reduce the impact of official time.

The Agency demonstrated where the official time reduction would come from, the elimination of grievance preparation, in support of the need for approximately 2000-2600 hours. The Agency's historic figure assumes that there will be no increase in the formal filing and processing of grievances. The evidence does not require the conclusion that there would be less grievances. In fact, there may actually be more grievances (less developed grievances) that may very well take more time to address through the formal grievance process. With this uncertainty over the likely impact of eliminating grievance processing on official time, the Panel does not believe the Agency has substantiated the quantitative number of hours in the official time bank they are seeking.

The Panel believes that the Union has also failed to substantiate the need for the quantitative number they are seeking; 15,000 hours. Besides offering an arbitrary number less than what they were entitled to under the former contract (a 75% reduction), the Union did not substantiate how the Union will need to use those hours to support its representational role under the new CBA.

Neither party substantiated the quantitative number they are seeking in the official time bank. As the Panel has relied on the E.O. 13837 standard of 1-hour per bargaining unit employee as valuable public policy guidance, the Panel orders the parties to adopt that calculation for the official time bank that applies to Section 47.01 (1).

The Agency also proposed to cap the amount of official time any individual union representative can use. The Agency provided affidavits demonstrating that Union leaders that are 100% or nearly 100%-Union officials are unable to effectively perform the assignments of their position of record. The E.O. 13837 provides that an individual

cap of 25%¹⁵ is generally appropriate. The Union is willing to agree with a 25% individual cap. However, the Agency is proposing a cap of 15%. The Agency argues that a 15% individual cap provides an “acceptable impact” on the Agency mission; an acceptable amount of time for the Union representative to be away from performing their mission-related work assignments. The Union argues that 15% is arbitrary and artificially low, and will prevent consistent representation of the bargaining unit; forcing the Union to continually shift Union representatives in order to remain under the individual cap. While the Agency did demonstrate how 100% designation has an impact on being able to make assignments to particular individuals, the Agency did not demonstrate how the E.O. recommended cap of 25% would adversely impact the delivery of the agency mission or could be managed. The Panel orders the parties to adopt the Union’s 25% individual cap.

The next section of impasse between the parties is in Section 47.04 – Procedures. The Agency’s proposal requires the Union representative to provide an advanced written request to use official time. The Union’s proposal only requires that the request and approval be provided in advance, but not necessarily in writing. Written request and written approval formalize the process and protect both the Union and the Agency should there be a challenge to a denial of official time. The Panel orders the parties to adopt the Agency’s proposal of requiring that the request and approval be in writing.

The parties are also in dispute over the basis for denial of a request to use official time. Under the Agency’s Section 47.04 (4), the supervisor may deny the use of official time due to “operational needs”, but should work with the employee to reschedule the time. This is a change from the standard under the prior CBA and the standard proposed by the Union, Section 47.04 (4) – “mission critical necessities”. The Agency argues, but provides no examples or evidence, that the Union’s standard is too onerous to administer. Official Time is statutorily authorized and protected (5 USC 7131). The Agency presented no evidence that the standard it has in the current CBA has been problematic. The Panel orders the parties to maintain the current standard for denying official time – “mission critical necessities or ineligibility to use official time”.

The parties are in dispute over the Agency’s language which would charge an employee absence without leave (AWOL) (subject to discipline) if that employee is performing union duties during their tour of duty without prior written approval of official

¹⁵ Employees shall spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by their agency), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively. Employees who have spent one-quarter of their paid time in any fiscal year on non-agency business may continue to use taxpayer-funded union time in that fiscal year for purposes covered by sections 7131(a) or 7131(c) of title 5, United States Code.

Any time in excess of one-quarter of an employee's paid time used to perform non-agency business in a fiscal year shall count toward the limitation set forth in subparagraph (1) of this subsection in subsequent fiscal years.

time. The Agency provided no explanation for proposing this language. Without any explanation for the need for the language, the Panel orders the Agency to withdraw this proposal. Similarly, the Agency is ordered to withdraw its proposal in Section 47.06 – Disciplinary and /or Adverse Actions for Failure to Follow Official Time Procedures. If a Union representative has not properly requested official time in advanced, as required by the CBA, the Agency is free to deny that request for Official Time. Additionally, Union representatives are not exempt from discipline under Article 12 of the CBA.

The parties are in dispute over Section 47.04 concerning the requirements for a Union official to enter another work area in order to provide representation to that employee. The Agency proposes that the Union representative receive written approval in advance of any visit for representational purposes. The Union simply proposes advance notice for visits of more than 10 minutes. Consistent with the recommendation above, the Panel orders that the approval should be in writing. As it may be difficult for the Union representative to know in advance if their conversation with a bargaining unit employee will last for more than 10 minutes, it is best to eliminate any potential disputes over meetings that are more than 10 minutes or not. The Panel orders that the notification requirement apply to all meetings with employees, whether they are anticipated to be more than 10 minutes or not. The final sentence in the Agency's Section 47.04 (2) provides for punishment if there is any misstep in the notification requirement. Similar to the issues discussed above, the Agency provided no explanation for proposing this language. Without any explanation for the need for the language, the Panel orders the Agency to withdraw this sentence.

The parties are in dispute over the Union's Section 47.04 – Adjustment of Workload. The Union provided a detailed proposal on adjusting a Union representative's workload in order to facilitate their release. The Union provided no explanation for proposing this language. Without any explanation for the need for the language, the Panel orders the Union to withdraw this proposal.

7. Article 48 - Union's Use of Official Facilities

In this article, the Agency commits to providing private office space in Headquarters, as well as in the Regional Offices. Under the current CBA, Article 48, the Agency is required to provide the Union private offices in Headquarters and "for each Local President and at those field locations that currently provide private office space for local representatives." While the Agency has 10 regional offices, the Agency has approximately 60 field offices, and approximately 12 of them house less than 10 staff members. The Agency submitted an affidavit that explained that there are numerous field offices across the country that previously had larger staffs, union stewards, and a union office but have undergone drastic staff reductions. The result is that there are numerous field offices with under 30 employees that are required by the current CBA language to continue to provide a union office, including in future space

when there is an office move, despite the fact that the union office is rarely, if ever, used. Further, many of these offices, such as San Juan, PR and Albuquerque, NM, do not have a union steward in the office and very little, if any, union activity; yet those offices are required under the current CBA language to continue to provide a union office and will be required to rent space and provide for a union office in the future.

In some of those small offices, the Agency argues that they have a need to use space occupied by a rarely used union office or, the Agency is moving and doesn't believe there's a reasonable need to lease space for a union office that has been rarely used. Under the new CBA, the Agency is seeking the flexibility to more efficiently manage its space and have the ability to either save costs by not leasing a union office in a future move, or utilize current union office space to meet agency operational needs. The Union seeks to maintain the current space commitment, but also acknowledges that if the Agency has other business reasons to take that space back, they can do so, subject to bargaining under the Statute.

The parties agree over much of the provisions of Section 48.01, save the level of commitment (i.e., will consider providing the space vs. will provide the space); the criteria for leasing existing space; and the Union's right to bargaining over a notification to change the existing space. The Panel believes that the Agency has offered appropriate criteria for determining that space will no longer be provided. The Panel orders the parties to adopt the Agency's Section 48.01.

The parties disagree over Section 48.02, concerning the use of meeting space by the Union. The Agency proposes that the Union can use the space only during off-duty time. The Union's proposal includes use of the space during duty and non-duty time, but also subjects the use to management approval and subject to cancellation by the Agency where there is a conflict. The Agency provided no specific concerns with the Union's proposed language, except that it is a change from the current CBA language. The Union provided no specific need for the change from the current CBA. The Panel orders the parties to maintain the current CBA language for Section 48.02 – Meeting Space.

The parties disagree over Section 48.03 concerning usage of the Agency's telephone system. The Agency commits to allowing use of the telephones at the individual's worksite or at other HUD offices. The Union proposes that the Agency will allow use of the telephone at the individual's worksite or Union office (if that office is provided by the Agency). The Agency is concerned that the language will commit to providing a Union office, when the Agency may choose not to (per Section 48.02). The Agency's proposal addresses the commitment to provide access to Agency telephones. The Panel orders the parties to adopt the Agency Section 48.03 concerning the use of Telephones and VTC.

The parties disagree over a number of provisions in Section 48.05 concerning Union office equipment and supplies provided to the Union. Under the Union's proposal and consistent with the terms of the current CBA, the Agency would be required to furnish the Union with a computer for each local office. The Agency estimated the cost for that commitment to be approximately \$2795¹⁶ per Union office or a total of \$136,995. The Agency's proposal is for the Union to provide its own office equipment, including computers, furniture and file cabinets. The Union argues that much of the requested equipment has already been provided by the Agency, in accordance with the current CBA. The Union argues that there is no gain to the Agency to dispose of the items already provided. The Union offers no argument regarding why the Union cannot cover the Union's equipment expenses.

There is one concern that hasn't been addressed by either party. While the Agency proposes that the Union provide its own computer equipment, the Agency also asserts that connecting that private equipment to the Agency's computer network (i.e., LAN) must be approved by the Office of Chief Information Officer (OCIO). Security network requirements are extensive and often changing, requiring continuous updates and equipment replacements to maintain a safe and secure environment. The Agency prefers the Union to be connected with the internal systems¹⁷. However, without providing the proper and appropriately maintained equipment, the Union's access to the system would quickly become limited or non-existent.

The Panel orders the parties to adopt the Agency's Section 48.05, with modification. In Section 48.05 (1), the parties will add, "The Union is responsible for procuring its own office equipment, except for the Union's office computer that is approved to be connected to the LAN. The Agency will provide and maintain that computer in the Union's Headquarter office and in 9 Union regional offices." The Panel also orders the parties to adopt language that allows the Union to maintain its current (upon execution of the CBA) equipment, but not be entitled to replacement of that equipment under the new CBA.

Neither party demonstrated a need to change Section 48.07, concerning Electronic Mail. The Panel orders the parties to maintain the current contract language for Section 48.07 concerning Electronic Mail. The Agency proposes a new Section 48.07, concerning punitive actions against Union representatives for any failed compliance with the Article. Disciplinary and Adverse Actions for all bargaining unit employees are addressed in other Articles and applicable Agency policy. The Panel

¹⁶ Costing per Debbie Jankowski, June 2020. The price of \$2,795 includes the laptop, docking station, keyboard, mouse and two monitors. There are 49 offices, including HQ. $49 \times \$2,795 = \$136,955$

¹⁷ The Agency proposes to give the Union an electronic mail box (email) and agrees to communicate using the email system (e.g., notice requirements).

orders the Agency to withdraw their Section 48.07 concerning Disciplinary and/or Adverse Actions for Failure to Comply with Article 48.

8. Article 49 - Mid-Term Bargaining

The purpose of this Article is to prescribe the criteria and procedures by which the Union and the Agency will engage in negotiations during the term of the Agreement. The provisions of this Article would apply to mid-term bargaining when required by law. The Parties disagree on a number of topics in this Article. The first disagreement is in Section 49.01 – General. The Union’s proposal references back to the parties commitment in Article 4. Neither provided argument or discussion over that language, and that Article is not before the Panel in this impasse. The Panel orders the parties to withdraw their second paragraph in Section 49.01; otherwise, the parties agree over Section 49.01.

In Section 49.02, the parties disagree over whether the procedures of the Article would apply to union-initiated midterm bargaining changes. The history of bargaining over union-initiated changes in working conditions is reiterated in *Dep’t of Interior*, 56 FLRA 45 (2000). That case was an unfair labor practice case before the Authority on remand from the U.S. Court of Appeals for the Fourth Circuit. In 1999, the U.S. Supreme Court vacated a Fourth Circuit decision (132 F.3d 157 (4th Circ 1997)). The Supreme Court found that the Statute was ambiguous with respect to the question of whether agencies are required to bargain over union-initiated midterm proposals and Congress delegated to the Authority the power to determine when bargaining is required. The Supreme Court remanded the case to the Authority for further consideration, consistent with the Court’s opinion. In *Dep’t of Interior*, the Authority discussed Congress’ intent regarding the bargaining obligation under 5 U.S.C. Section 7103 (a) (12). Congress defined the obligation to bargain as “mutual”. The Authority determined that requiring an agency, during the term of an agreement, to bargain over a union’s proposed change in negotiable conditions of employment maintains the mutuality of the bargaining obligation prescribed in the Statute.

The Agency recognizes that *Dep’t of Interior*, decided by the Authority in 2000, continues to be the law. However, the Agency would prefer to not include any mention of the Union’s right to propose mid-term changes, with the hope that the state of the law “could change in the future”. The Agency also argues that the parties have had no problems with the language not being included; the Agency argues the language is not necessary. However, the Agency discussed in their SOP that the parties actually had an arbitration case over the matter of a union-initiated change. The Arbitrator ruled, not that the Union could not initiate bargaining over a union-initial change, but instead, that the parties did not have procedures in their CBA to process such a request to bargain.

The Arbitrator ruled that Article 49 in the current CBA only applies to Agency-initiated changes. To address the absence of procedures for Union-initiated changes, the Union has proposed procedures in the Union's Section 49.02 (2). The Panel orders the parties to adopt the Union's proposed procedures in Section 49.02 (2) for Union-initiated changes.

The parties also disagree over local and regional bargaining. The FLRA has determined that a mandatory bargaining obligation exists only at the level of recognition. Bargaining below the level of recognition is permissive. *Federal Aviation Administration*, 62 FLRA 174 (FLRA 2007). That case was before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Statute and concerning the negotiability of 8 proposals, one of which would have required the agency to bargaining below the level of recognition. The FLRA found that a union proposal required bargaining at the local level over some issues arising after the national agreement was reached was negotiable only at the election of the agency. The level of recognition in that bargaining unit was national. The FLRA determined that a party may, but does not have to bargain below the level of recognition. This Panel has consistently stated that it would not force a party to waive its permissive rights to decline to bargain. In order to preserve both parties' right to maintain bargaining at the level of recognition (i.e., the national level), the Panel orders the parties to adopt the following modification to the Agency's Section 49.02, "the parties agree that there is no obligation to bargain matters below the national level of recognition, unless the parties mutually agree to do so." The Panel orders the Union to withdraw its remaining sentence in Section 49.02 (1) concerning the time frame for management to provide notice because that matter will be addressed below.

The parties disagree over the time period for the Union to demand bargaining after receiving notice of a proposed change. As a general rule, an agency or activity is free to make changes in conditions of employment not covered in a collective bargaining agreement following adequate notice of the proposed change to the union. Adequate notice of a proposed change in conditions of employment triggers the Union's responsibility to request bargaining over the change. See *United States Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 715 (1999). Failure to request bargaining may result in a finding that the union has waived its bargaining rights. *Bureau of Engraving and Printing, Washington, D.C.*, 44 FLRA 575, 582-83 (1992).

In Section 49.03, the Agency proposes that it will provide the Union notice of the proposed change no less than 15 days prior to the implementation date of the change. The Union proposes that the notice will be provided in no less than 25 days prior to the proposed change, providing more time for the parties to exchange information and proposals before the scheduled implementation date. Both parties agree that once bargaining is complete, even if it is before the 15-day or 25-day timeframe, the Agency

is free to move forward with implementation. The Panel orders the parties to adopt a modified timeframe - 20-days.

In Section 49.04, concerning the Agency's response when the Union has submitted a demand to bargain, the parties agree in principle, even regarding the timeframes to commence bargaining. The Union's language is clearer: submit proposals on time or bargaining is waived; begin bargaining within 10 days; the Union has the right to request information; and parties will exchange proposals in writing. The Panel orders the parties to adopt the Union's Section 49.04.

In Section 49.05, concerning the bargaining venue and the number of negotiators, the parties agree with most of the principles, including agreement that each party will pay their own cost for travel to negotiations and the ability to conduct bargaining virtually. The Panel orders the parties to adopt the provisions where there is agreement, and withdraw the provisions where they do not agree. Neither party offered explanation or justification for their unagreed to provisions.

In Section 49.06, concerning the ground rules for midterm bargaining. The Agency indicated, through the affidavits, that bargaining has been delayed due to travel demands or the delay in providing the Union information. The travel cost-issue has been resolved under Section 49.05. There is a body of case law that addresses the Agency's obligation to provide information to facilitate negotiations. The Panel orders the parties to adopt the Agency's Section 49.06, except Section 49.06 (9), which references a provision in Section 49.04 that was not adopted.

In Section 49.07, concerning negotiability disputes, the parties disagree over a number of issues. First, the parties disagree over whether the negotiability determination will be a grievable matter under this CBA. The matter of grievability will be addressed under Article 51, Grievance Procedures. The parties will adopt only the first sentence to Section 49.07.

The parties also disagree over Section 49.07 (1), concerning the treatment of proposals when there is a determination by the Agency that part of the Union's proposal is not negotiable. The Agency seeks the agreement to implement the proposed change, with the commitment that if they are later found by the Authority to be in error in making the negotiability determination, they will resume bargaining. Essentially, they are asking the Union to waive its rights to challenge the declaration of negotiability through the filing of a ULP. The Union's proposal allows for the implementation of only the agreed upon proposals. The Panel orders the parties to adopt the Union's Sections 49.07 (1) and (2).

In Section 49.08, concerning bargaining impasse procedures, the parties disagree over 2 main issues. The first is in the Union's Section 49.08 (1), requiring that

impasse be reached and the FMCS Mediator declares the impasse before either party can request the assistance of FSIP. That is inconsistent with the Panel regulations. The Mediator is not required to “declare an impasse” before a party can file for FSIP assistance. The Agency’s Section 49.08 (1) includes a provision that allows for part of the agreement to be implemented prior to complete agreement on all negotiable issues; a severability clause. The Panel has determined in several cases that they will not order a severability ground rules clause because, under *Carswell*¹⁸, it is not clear that the proposal is a negotiable proposal. The Panel orders the parties to adopt the Union’s Section 49.08, modified by removing the language in Section 49.08 (1) – “If impasse is reached and declared by the FMCS mediator”.

9. Article 51 - Grievance Procedures

The Parties have not reached agreement over a number of issues including, primarily, the exclusions from the grievance procedure. The scope of the grievance procedure, meaning the types of matters considered, is fully negotiable. However, the party moving to exclude matters from the negotiated grievance procedure will have a difficult time excluding subjects and narrowing the scope because Congress has expressed a strong preference for "broad scope" grievance procedures. (*AFGE Local 225 v. FLRA*, 712 F. 2d 640 (D.C. Cir 1983)). If a bargaining impasse is reached on the scope of the negotiated grievance procedure, the FLRA has stated that FSIP is to impose a broad scope grievance procedure, unless the limited-scope proponent can persuade it to do otherwise. (*Pension Benefit Guarantee Corporation*, 59 FLRA 937 (FLRA 2004)).

The Agency proposes to exclude: (1) Agency Section 51.03 (6) - classification of any position (even those that do not result in a reduction of grade or pay¹⁹); (2) termination of a temporary appointment; (3) official reprimand; (4) adverse action, (5) performance-based action; (6) interim appraisal; (7) annual performance rating; (8) retention/relocation/recruitment payments or the failure to grant such payments; (9) performance standards; (10) failure to grant or process a within grade increase (WIGI); (11) changes to the union’s use of agency space and equipment; (12) negotiability disputes; (13) attorney fee disputes in excess of \$10,000; and (14) the granting of, failure to grant, or failure to timely process awards²⁰.

¹⁸ Commander Carswell Air Force Base, TX and AFGE, Local 1364, 31 FLRA 620 (1988).

¹⁹ Re-classifications that result in a reduction of grade is an adverse action; appeal to MSPB. The Union agrees to exclude the reduction of grade cases under their Section 51.03(16).

²⁰ The Union agrees, in its Section 51.03 (20) to exclude on the spot awards.

The Agency argues that it is consistent with public policy to exclude matters from the negotiated grievance procedure when the employees have alternative avenues of redress to expert adjudicators. The Agency relies on a footnote in an appealed arbitration (i.e., arbitration exception) regarding the awarding of attorney fees in a hazardous duty case. In *AFGE and VA*, 71 FLRA No.38 (July 2019), Member Abbott observes that the Arbitrator in this case, by finding that the housekeepers are entitled to environmental-differential pay, reached the opposite conclusion as the arbitrator in another recent case – *AFGE, Local 933*, 70 FLRA 508 (2018) (Local 933). Member Abbott noted that these cases illustrated the limitations of pursuing every possible complaint through the negotiated-grievance procedure to be decided ultimately by a third-party arbitrator. Member Abbott offered, as a suggestion in Footnote #3, that when employees are concerned about serious hazards and workplace safety, it may be more effective and efficient to have those concerns addressed by expert adjudicators at the Occupational Safety and Health Administration (OSHA), a government entity designed to address workplace safety.

The Agency in this case is relying on that advisory footnote to support its exclusion of some matters from the grievance procedure. The Agency argues that some of the matters are otherwise appealable to the Merit Systems Executive Board (MSPB): (2) – termination of temporary promotions; (4) – adverse actions; (5) - performance based actions); and (10) failure to grant or process a within grade increase (WIGI), and therefore, they don't need to be appealed in the negotiated grievance procedure. The Agency argues that the MSPB is staffed with judges that have more expertise to address those claims than an arbitrator. The Agency argues that item (12) is appealable to FLRA, where they have the superior expertise. The Agency argues that allowing for expert adjudicators is paramount to allowing claims to be adjudicated before arbitrators selected by the parties.

The Agency argues that other items should be excluded because of the cost associated with litigating some of those matters and other items should be excluded because non-bargaining unit employees are not allowed to grieve those matters. And finally, the Agency asserts that some items (6 7, 8, and 14) should be excluded because the Agency has been asked to excluded them under E.O. 13839, Section 4.

The Panel has repeatedly stated in its recent decisions regarding grievance exclusions that the Panel will not ignore the United States Court of Appeals for the District of Columbia's holding that a proponent of grievance exclusion will be held to a elevated burden when a particular matter must be excluded in a particular setting. See, *Social Security Administration and AFGE*, 19 FSIP 019 (May 2019). With that standard in mind, the Agency has failed to demonstrate that in this setting, exclusions are more reasonable than allowing the matters to be subject to the negotiated grievance

procedure. Absent that demonstration, the Panel orders the parties to maintain the exclusions in the current CBA.

The parties disagree over Section 51.04 regarding the time lines for filing a grievance. The Union included in its proposal language regarding continuing violations. The continuing violations doctrine holds that for every day a violation of the CBA continues, a new and separate violation accrues; restarting the timeline for filing a claim. The Agency has not agreed with including this provision in the CBA, arguing that the inclusion of the provision would render the timeframes for grievance filings meaningless.

An arbitrator should not be precluded from applying equitable doctrines, even if that application may toll the time period for filing, in the interest of justice. The Arbitrator should be free to make a finding of fact on the continuing nature of a violation and the appropriate remedy given that finding. The Panel orders the parties to adopt the Agency's 51.04, with modification by adding a statement that an arbitrator may determine that a matter is not time time-barred if all acts constituting the claim are part of the same practice and at least one act falls within the filing period.

The next area of disagreement is in Section 51.05 concerning grievances filed by an employee who chooses to not be represented by the Union. In its proposal, the Union included a provision asking the Agency to provide the Union with a copy of the final grievance decisions that are also provided to the unrepresented employee. Such information would be relevant and necessary to the Union's monitoring the Agency's commitment to not resolve any grievance inconsistent with the terms of the CBA (Section 51.05.) The Panel orders the parties to adopt the Union's Section 51.05.

In Section 51.06, the parties disagree over the number of Union representatives that can be present in a grievance meeting. The Agency proposes (Section 51.06 (3)) that the Union can only have one representative present at the grievance meeting, regardless of how many Agency representatives are present. The Union's proposal (Section 51.06 (3)) provides for an equal number of Union representatives in the meeting to the number of Agency representatives. The Panel orders the parties to adopt the Agency's proposal, with modification - the Union may be represented by one bargaining unit employee on official time and such other representatives as it chooses.

The parties also disagree over using Official Time to prepare grievances. As discussed in Article 48 above, the Agency has proposed to reduce the amount of official time available in the bank to 2000 hours. The Agency proposes to achieve that reduction by eliminating official time for a number of representation activities. The largest reduction, the Agency argues, will come from the Agency's proposal in Section 51.06 (5) to no longer allow official time for grievance handling activities, the largest category of official time used by AFGE in FY18 and FY19. The Panel orders the parties

adopt the Agency's proposal for Section 51.06 (5), prohibiting Union representatives to use Official Time for grievance preparation.

As for the bargaining unit employee, the Agency provided no language or argument on how the bargaining unit employee involved in a grievance should charge their time in preparing for a grievance. The Union argues that as the parties have agreed to allow the employee to be on duty in the grievance meetings and arbitrations, they should also be allowed to be on duty time in preparing their grievance. Absent any rebuttal argument from the Agency to the Union's proposals, the Panel orders the parties to adopt the Union Section 51.07.

The parties disagree over the timing of raising a specific violation or remedy under Section 51.08. The Agency has proposed that all issues be raised in the originally drafted grievance, otherwise waived. The grievance procedure is intended to be a less formal, administrative procedure than a court procedure, with advocates and drafters of the grievance that are more often not attorney's or even labor-relations professionals. Additionally, the Agency provided no evidence that a less restrictive process has been troublesome to the Agency. The Agency simply argues that a more limiting grievance procedure will "facilitate amicable resolutions", without any evidence to support that assertion. The Panel orders the Agency to withdraw its language in Section 51.08 that limits the raising of issues or remedies.

10. Article 52 – Arbitration

The disagreement in Sections 52.01, 52.02, and 52.10 primarily relate to the arguments regarding exclusions to the grievance procedure. As the Panel ordered that new proposed matters not be excluded from the negotiated grievance procedure above, those matters should not be referenced in this article. The parties are also in disagreement over the Union's proposal in Section 52.01 (5) to allow some matters to go directly to arbitration, with no consideration under the grievance procedure. The Union provided no justification for such a treatment. Those matters should go through the grievance procedure as with other matters.

The parties disagree over the treatment of witnesses in Sections 52.04 and 52.09. The Agency argues that witnesses should normally appear in person. The Agency also proposes that each party will pay for their travel and per diem for them to appear. The Union proposes that witnesses can be virtual or in-person, at the discretion of the arbitrator, who is the one determining the credibility of the testimony offered. Finally, the Agency proposes that witnesses not identified in the prehearing

submissions shall not be permitted to testify. The Panel orders the parties to adopt the Agency's Sections 52.04 and 52.09 (4).

The parties disagree over the submission of exhibits. In Section 52.08 (4), the Agency proposes that any exhibit that was not identified in the prehearing submission will be excluded from the hearing. The Agency has proposed the same for the statement of the issue; if a party doesn't offer a proposed statement of the issue in the prehearing submissions, they are excluded from do so later (e.g., in the post hearing brief). The arbitrator is in the best position to determine the weight he or she will provide to the submissions. The Panel orders the parties to adopt the Union's Section 52.08.

The parties disagree over the issuance of attorney's fees in the case where the employee has been granted back pay by the arbitrator. Attorney's fees may be recovered in connection with grievance arbitration, but only as authorized by Statute. The Back Pay Act (BPA), 5 USC 5596, grants jurisdiction to an arbitrator to consider a request for attorney fees. Once the BPA's threshold requirements are met, fees may be awarded by an arbitrator consistent with the provisions of 5 USC 7701 (g). The requirements for an award of attorney's fees are: 1) the employee (or union) must be the prevailing party; 2) the award of fees must be warranted in the interest of justice; 3) the amount must be reasonable; and 4) the fees must have been incurred by the employee (or union). Fees may also be awarded under other fee-shifting statutes, such as the Fair Labor Standards Act. There must be a specific statutory authorization for an award of attorney's fees. *Naval Surface Warfare Center*, 60 FLRA 530 (FLRA 2004). When an arbitrator fails to sufficiently explain the basis for a fee award, necessary to ensure the statutory requirements have been met, that is subject to review by the FLRA. The arbitrator will determine the entitlement to attorney fees and the FLRA will assess whether the legal sufficiency has been met by the arbitrator in making the award.

There is a body of FLRA case law concerning the reasonableness of attorney fees. Under Section 52.07, the parties disagree over the language that acknowledges the arbitrator's authority to determine fees. The Union's proposal simply states that the arbitrator may authorize fees in accordance with law, including the BPA. The Agency's proposal goes further by trying to interpret specific FLRA case precedent (e.g., whether a waiver of sovereign immunity is required; whether the employee must have a retainer agreement with the Union; and whether the Agency can artificially cap the attorney rate to match the rate of the GS-14 Agency Attorneys). As the Back Pay Act and other statutes grant jurisdiction to the arbitrator to determine the entitlement to attorney fees, subject to the review of the Authority, the Panel orders the parties to adopt the Union's Section 52.10 (7) concerning attorney fees.

11. Article 53 - Duration

The Parties disagree over the duration of the CBA. The Agency proposes the duration of the CBA to be seven (7) years. The Union proposes a term of three (3) years²¹. The Agency argues that its proposal will help to reduce resource expenditures²². The Agency argued that these negotiations have cost the Agency roughly \$517,831 in lost productivity for Union and Agency representatives to participate in ground rules and term negotiations in 2019 and 2020. The Agency did not pay travel and per diem for the Union representatives. In addition to the cost savings in renegotiating a successor CBA less frequently, the Agency proposes a 7-year duration because throughout the parties' bargaining history (dating back to 1979), with the terms rolling over by mutual agreement, the contracts have generally been in place for nearly nine years, on average. Consistent with a number of recent Panel orders (i.e., FSIP Case No. 19031, FSIP Case No. 19019 and FSIP Case No. 20012), where the cost of bargaining and the concern over perpetual negotiations of a CBA were considered by the Panel, the Panel orders the parties to adopt a 7-year term, with roll over unless either provides notice of reopener.

The parties disagree over the supplemental agreements the parties have bargained. While there appears to be hundreds of policies and agreements that were adopted by the parties under the current CBA, the parties are only in agreement to carry the terms of 9 agreements into the new CBA. The Panel orders the parties to only adopt those supplements that the parties have agreed to: Supplements: 5B, 6, 7, 10, 20, 129, 134, 141, and 146. All other past practices, prior local agreements, and prior oral agreements will not be references in Section 53.01.

The parties disagree over 53.02, concerning the impact of changes in law, government-wide rule, rulings that impact the Department. The Agency proposes that those changes go into effect, with no reference to bargaining implications. The Union's proposal acknowledges that there may be a bargaining obligation, subject to waiver of the Union. The Panel orders the parties to adopt the Union's Section 53.02.

²¹ Although the Agency has not declared the Union's provision non-negotiable (i.e., was a waiver on a parties' right to bargain over a permissive subject), the Union filed a ULP charge over the Union's provision: the effect of the terms of the CBA when the parties are negotiating over the terms of the new CBA: ground rules provisions for negotiating the successor CBA. The Agency is not contesting the negotiability of the provision, additionally, the Panel does not order the adoption of that portion of the Union's provision. This negotiability appeal does not change the Panels order that the parties adopt the Agency's proposal, but has been noted as an argument raised by the Union.

²² Trump Executive Order, "Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining" provides guidance on reducing expenditures, including establishing a 7-year contract duration to save cost associated with negotiations.

The parties disagree over the option to allow the contract to roll over under Section 53.04. Under the Agency's proposal, even if neither party seeks to reopen the contract, the Agency would preserve the opportunity at that time (annually) for the Agency to conduct an agency head review of the contract. 5 USC 7114 (c) provides that an agreement between a union and an agency is subject to approval by the head of the agency. The agency head is required to approve the agreement within 30 days of the date of its execution if the agreement is in accordance with the provisions of the statute and other applicable laws, rules, or regulations. If the agency head fails to approve or disapprove the agreement within the 30-day window, the agreement takes effect and becomes binding on the parties. If the agency head disapproves an agreement, the union may file a negotiability petition with the Federal Labor Relations Authority, challenging the agency head's determination that a provision is unlawful.

Generally, an automatic renewal provision of a contract provides that the contract shall continue in effect after its expiration date if no action to amend or terminate it is taken within a specified period prior to its expiration date. However, a contract with an automatic renewal or "rollover" provision is still subject to agency head review upon renewing itself. *Kansas Army National Guard*, 47 FLRA 937 (FLRA 1993, *Kansas National Guard*). In *Kansas National Guard*, the FLRA clarified the effect of automatically renewing a CBA. The Authority found that the use of automatic contract renewal dates was consistent with efficient and effective government because it preserved the time and resources that would be expended in renegotiating collective bargaining agreements where the parties deemed such to be unnecessary. The Authority found, however, that an automatically renewed agreement was still subject to agency head review under 5 USC 7114 (c) because governing laws and government-wide regulations might have changed during the term of the agreement. The Authority held that for automatically renewing collective bargaining agreements, the execution date (for purposes of triggering the time limits for agency head review) was the date on which no further action was necessary to finalize a complete agreement. The Panel orders the parties to adopt the Agency's 53.04.

The parties disagree over Section 53.07 concerning the electronic distribution of the CBA and the referenced supplements. Consistent with the recommendation above, the Panel orders the parties to adopt the Union's Section 53.07, requiring the Agency to electronically distribute not only the CBA, as they have agreed to do, but also the supplements listed in 53.01.

ORDER

Pursuant to the authority vested in the Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter
FSIP Chairman

August 12, 2020
Washington, D.C.

Attachments:

Original CBA

Agency Proposals

Union Proposals

Exhibit 1

Article 7 – Existing CBA

ARTICLE 7
PROFESSIONAL EMPLOYEES

Section 7.01 - General. The parties recognize the additional requirements of employees in the professional bargaining unit.

Section 7.02 - Membership Dues. Where membership in a professional organization is required by Management, Management agrees to pay membership dues related to that requirement. The employee must be instructed in writing by an authorized Management official to participate in an organization on behalf of, and in the name of, the Department.

Upon receipt of proof of payment and consistent with other legal and fiscal requirements, the Department agrees to partially reimburse Office of General Counsel and the Office of Chief Financial Officer attorneys for their mandatory state bar dues in one state. The Department agrees to a minimum of \$100 per attorney, on an annual basis, unless sequestration, a federally imposed hiring freeze, furloughs, or a reduction-in-force occurs.

Section 7.03 - Attendance at Meetings. If an employee is directed to attend a meeting of a professional society, organization, or association, such direction must be in writing from an authorized Management official, and, therefore, shall be considered official authorization to participate and shall be reimbursed accordingly.

Exhibit 2

Article 7 – AFGE Final Written Proposal

Union #5

4/22/2020

4:30 p.m. 5/8/2020

9:00 a.m.

ARTICLE 7

PROFESSIONAL ~~EMPLOYMENT REQUIREMENTS EMPLOYEES~~

Section 7.01 - General. The parties recognize ~~that the additional requirements of certain employees (i.e. attorneys and real estate appraisers) have licensure and/or training requirements that must be satisfied in order for them to retain their jobs as a condition of employment.~~

Section 7.02 - Membership Dues and Licensure Fees and Mandatory Training.

a) ~~Where membership in a professional organization is required by Management, Management agrees to pay membership dues or licensure fees related to that requirement. In order to be reimbursed for a membership or licensure fee required by Management, the employee must be instructed in writing by an authorized Management official to participate in an organization on behalf of, and in the name of, the Department.~~

b) ~~Management recognizes that appraisers are required to complete continuing education to maintain their license. In allocating training funds, management agrees to prioritize mandatory training for any appraiser required to complete training in order to maintain professional licensure required to perform their job.~~

~~Upon receipt of proof of payment and consistent with other legal and fiscal requirements, the Department agrees to reimburse the Office of General Counsel and Office of Chief Financial Officer attorneys for their mandatory state bar dues in one state, on an annual basis unless there is a lack of funds, due to sequestration or a planned furlough.~~

e) ~~Upon receipt of proof of payment and consistent with other legal and fiscal requirements, the Department agrees to reimburse the Office of Housing for the mandatory real estate appraiser license fees for one state on an annual basis unless there is a lack of funds.~~

Section 7.03 - Attendance at Meetings. If an employee is directed to attend a meeting of a professional society, organization, or association, such direction must be in writing from an authorized Management official, and, therefore, shall be considered official authorization to participate and shall be reimbursed accordingly.

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Exhibit 3

Article 7 – HUD Final Written Proposal

ARTICLE 7
PROFESSIONAL EMPLOYEES

1
2
3
4 **Section 7.01 - General.** The parties recognize the additional requirements of employees in the
5 professional bargaining unit.

6
7 **Section 7.02 - Membership Dues.** Where membership in a professional organization is
8 required by Management, Management agrees to pay membership dues related to that
9 requirement. In order to be reimbursed for a membership required by management, the
10 employee must be instructed in writing by an authorized Management official to participate in
11 an organization on behalf of, and in the name of, the Department.

12
13 Upon receipt of proof of payment and consistent with other legal and fiscal requirements, the
14 Department agrees to reimburse the Office of General Counsel and the Office of Chief Financial
15 Officer attorneys for their mandatory state bar dues in one state on an annual basis unless there is
16 a lack of funds.

17
18 **Section 7.03 - Attendance at Meetings.** If an employee is directed to attend a meeting of a
19 professional society, organization, or association, such direction must be in writing from an
20 authorized Management official, and, therefore, shall be considered official authorization to
21 participate and shall be reimbursed accordingly.

ARTICLE 12 DISCIPLINE

Section 12.01 - General.

(1) The objective of discipline is to correct and improve employee behavior so as to promote the efficiency of the service. The parties agree to the concept of private, progressive discipline designed primarily to correct and improve employee behavior. However, major offenses may be cause for severe action, including removal, regardless of whether previous discipline has been taken against the offending employee. Bargaining unit employees shall be the subject of disciplinary action only for just and sufficient cause.

(2) Actions shall be fair and equitable, i.e., Management shall consider the relevant factors given the circumstances of each individual case and similar cases, if any, to make a fair decision.

(3) Investigations and disciplinary actions shall be timely. Timeliness shall be based upon the circumstances and complexity of each case.

(4) The term "days" as used in this Article shall mean calendar days.

(5) This Article applies to:

- (a) An action based solely on misconduct reasons; or
- (b) An action that involves both performance and misconduct related reasons.

(6) This Article does not apply to:

- (a) Actions based solely on unacceptable performance; or
- (b) Termination of employees serving on temporary or probationary appointments; or
- (c) Non-preference eligibles in the excepted service who are suspended for more than fourteen (14) days, reduced in grade, or removed.

Section 12.02 - Counseling. Counseling shall be conducted in a private setting.

- (a) **Verbal Counseling.** Verbal counseling is not considered disciplinary action. It cannot be grieved by the employee nor be relied upon by Management in any disciplinary action.
- (b) **Written Counseling.** Letters of Counseling are not considered disciplinary actions but may be cited in any subsequent disciplinary or adverse action against the employee.

Section 12.03 - Definitions

Disciplinary Actions.

- (a) **Official Reprimand.** An official written notice which sets forth specific actions of misconduct of such a nature that routine discussions and/or counseling sessions are not sufficient.

(b) **Suspensions of fourteen (14) days or less.** The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.

Adverse Actions.

- (a) **Suspensions of fifteen (15) days or more.** The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons.
- (b) **Reduction in Grade.** The involuntary assignment of an employee to a position at a lower classification or job grading level.
- (c) **Removal.** The involuntary separation of an employee from employment with the Department for misconduct reasons.
- (d) **Furloughs of thirty (30) days or less.** The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

Section 12.04 - Official Reprimands. Letters of reprimand shall be placed in an employee's Official Personnel Folder for a period not to exceed two (2) years. However, at Management's discretion, it may be for a lesser period of time.

Section 12.05 - Suspensions of Fourteen (14) Days or Less

- (1) Management shall provide the employee with at least fifteen (15) days advance written notice, stating the specific reasons for the proposed action with sufficient specificity so as to enable the employee to prepare a response (response time may result in delays beyond thirty (30) days). Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses, if any, involved in supporting the charges.
- (2) Upon receipt of the official notice of proposed suspension action, an employee shall have twenty-one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Management will consider requests for duty time up to sixteen (16) hours for the preparation of oral and written responses.
- (3) Management shall issue a final written decision within twenty-one (21) days of the twenty-one (21) day response period, stating the specific reasons, including a statement of the employee's appeal rights. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter. The decision shall be made by a management official at or above the level of the official who proposed the action.
- (4) The employee may be represented by an attorney or other representative, which includes the right to Union representation.

- (5) If arbitration is not invoked by the Union within twenty (20) days, the matter is closed for purpose of the grievance/arbitration procedure.
- (6) Management may stay implementation of suspensions of fourteen (14) days or less pending a final decision. Such a stay shall last no longer than sixty (60) days from the date of issuance, and can be withdrawn at any time, for good cause. Disciplinary actions which have been stayed may be considered in any subsequent disciplinary action or proceeding.

Section 12.06 - Adverse Action

Suspensions of Fifteen (15) Days or More, Reduction in Grade or Pay, Removals, or Furloughs for 30 Days or Less.

An employee shall be entitled to:

- (1) At least thirty (30) days advance written notice of the proposed action with sufficient specificity so as to enable the employee to prepare a response. Management shall provide the employee and the Union with one (1) copy each of the documentation relied upon to support the proposed action, which shall include the names of witnesses if any, involved in supporting the charges.
- (2) Upon receipt of the official notice of proposed disciplinary action, an employee shall have twenty one (21) days to respond to the proposed action. The response may be made orally or in writing, or both. The employee's response may include any statements or material the employee believes is relevant to defending against the proposed action. Upon a reasonable written demonstration of need, the employee may be granted sufficient additional time to respond. This request for additional time must be made within the twenty one (21) day period.
- (3) Be represented by an attorney or other representative, which includes the right to Union representation.
- (4) Up to sixteen (16) hours of duty time, if needed, within the period in (1) above, for preparing the oral and/or written response. Requests for additional time will be considered. The supervisor authorizes when the time may be used. Disputes between the supervisor and employee regarding the scheduling of use of duty time will be resolved by the deciding official.
- (5) A written decision, which includes the specific reasons at the earliest practicable date. Such a decision, including a statement of the employee's appeal rights, shall be made within twenty-one (21) days of the receipt of the employee's response, or after the expiration of the twenty-one (21) day response period if the employee does not respond. The decision shall be made by a management official at or above the level of the official who proposed the action. If Management determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter.

- (6) Within thirty (30) days of the effective date of the action, the employee may appeal the matter to the Merit Systems Protection Board (MSPB).
- (7) If the employee elects not to appeal the matter to the Merit Systems Protection Board, then the Union may invoke arbitration in accordance with this Agreement.
- (8) If an employee believes the action to be based in whole or in part on prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.) they may either file a grievance or file an EEO complaint in accordance with the statutory appeals process.

(Note: Indefinite suspensions are covered under OPM regulations at 5 CFR 752.404(d))

Section 12.07 - Union Notification. When Management issues a notice of proposal and/or decision to suspend, reduce-in grade, or remove an employee in the unit, Management shall provide to the Union a general statement of the charges, proposed action, and subsequent decision.

Section 12.08 - Alternative Discipline.

(1) General:

- (a) Alternative discipline is an effort to correct behavior in lieu of traditional discipline when management determines an alternative has a greater potential to prevent repetition of the misconduct.
- (b) Alternative discipline may be used at management's discretion in lieu of an official reprimand or a suspension of fourteen (14) days or less.
- (c) Alternative discipline is not intended to diminish the seriousness of employee misconduct.

(2) Types of alternative discipline include:

- (a) The employee makes an annual leave donation through the leave donation program equal to the amount of time that would have been spent on suspension;
- (b) Employee attends an appropriate program approved by the Employee Assistance Program;
- (c) The employee's suspension is recorded as LWOP so that there will be no permanent record of a disciplinary action; and
- (d) The employee serves a suspension on paper only, no loss of pay, but the suspension is recorded in the employee's OPF.

The above is not intended to be an exhaustive list or to limit a manager's ability to propose other alternatives to traditional discipline. Any alternative discipline must be consistent with law, rule, regulation and/or HUD policy.

(3) Process:

If Management determines that alternative discipline is appropriate, it will offer in writing the alternative discipline simultaneously with providing the employee the notice of decision on the traditional discipline.

Exhibit 6

Article 12 – AFGE Final Written Proposal

Article 12: Disciplinary and Adverse Actions

Section 12.01 - General.

- 1
2
3
4 (1) Management shall determine when the need arises for disciplinary or adverse actions.
5 The objective of discipline is to hold employees accountable for their performance and
6 conduct and to correct employee behavior so as to promote the efficiency of the service.
7 Certain misconduct and offenses may be cause for severe action, including removal,
8 regardless of whether prior discipline has been taken against the offending employee.
9 Progressive discipline is not required, but it may be an effective means to correcting
10 employee behavior.
11
12 (2) Management shall consider the relevant factors given the circumstances of each
13 individual case to make an appropriate decision. Disciplinary and Adverse Actions will
14 be reasonable, lawful and not for arbitrary or capricious reasons. ~~The specific penalty for~~
15 ~~an instance of misconduct shall be tailored to the facts and circumstances of the situation.~~
16 Disciplinary Actions will not be based on arbitrary or capricious reasons but should shall
17 be based on just cause. In addition, Disciplinary and Adverse Actions may not be taken
18 against an employee if the action is based on unlawful discrimination or a personnel
19 practice prohibited by any law, rule or regulation.
20
21 (3) To address misconduct or performance problems under this Article, employees will be
22 subject to ~~Disciplinary or~~ Adverse Action only for such cause that promotes the
23 efficiency of the service. The specific penalty for an instance of misconduct shall be
24 tailored to the facts and circumstances of the situation. ~~The specific penalty for an~~
25 ~~instance of misconduct shall be tailored to the facts and circumstances of the situation.~~ In
26 evaluating whether a penalty (such as a suspension or Adverse Action) promotes the
27 efficiency of the service, Management will, subject to applicable law, rule, and
28 regulation, consider the relevant factors as determined by governing law (for example,
29 applying the “Douglas Factors” articulated by the Merit Systems Protection Board in
30 *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981)).
31
32 (4) If Management believes that a Disciplinary or Adverse Action is necessary, such action
33 will be initiated in a timely manner after the offense was committed or made known to
34 Management. Timeliness shall be based upon the circumstances and complexity of each
35 case.
36
37 (5) This Article applies to:
38 (a) An action based solely on misconduct reasons;
39 (b) An action that involves both performance and misconduct related reasons; and
40 (c) Unacceptable performance being addressed under 5 U.S.C. Chapter 75
41 procedures.
42
43 (6) This Article does not apply to:
44 (a) Actions based solely on unacceptable performance when Management elects to
45 address it under 5 U.S.C. Chapter 43 procedures; or

(b) Actions taken against persons not considered “employees” within the meaning of 5 U.S.C. Sections 7501 or 7511, as applicable.

(7) The Article(s) in this Agreement on grievance and arbitration procedures determine whether disciplinary or adverse actions may be grieved under the negotiated grievance procedures. If an employee believes the action to be based in whole or in part on prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.) they may file an EEO complaint in accordance with the statutory appeals process.

Section 12.02 – Investigations.

Prior to issuing any proposed Disciplinary or Adverse Action, Management will consider pertinent, available evidence. Management may determine it is necessary to gather additional evidence, such as through an informal investigation or inquiry.

Section 12.03 – Counseling.

Counseling shall be conducted in a private setting.

(1) *Verbal Counseling.* Verbal counseling is not considered Disciplinary action, but may be cited as notice in any subsequent discipline against the employee. It cannot be grieved by the employee.

(2) *Written Counseling.* Letters of counseling are not considered Disciplinary actions but may be cited as notice in any subsequent Disciplinary or Adverse Action against the employee. It cannot be grieved by the employee under the Article in this Agreement on grievance procedures and it will not be placed in the employee’s eOPF.

Section 12.04 - Definitions.

(1) "Adverse Actions" include the following actions:

- (a) *Suspensions of 15 days or more.* The temporary placement of an employee in non-duty, non-pay status for disciplinary reasons. A permanent record of the suspension will be placed in the employee’s eOPF.
- (b) *Reduction in Grade.* The involuntary assignment of an employee to a position at a lower classification or job grade level.
- (c) *Removal.* The involuntary separation of an employee from employment with the Department for misconduct reasons.
- (d) *Furloughs of 30 days or less.* The placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

(2) "Disciplinary Actions" include the following actions:

- (a) *Official Reprimand.* An official written notice which sets forth specific instances of misconduct. An Official Reprimand, also known as a Letter of Reprimand, will be placed in an employee's eOPF for a period not to exceed two years from its date of issue. However, at Management's sole discretion, it may be for a lesser period of time.

1 (b) *Suspensions of 14 days or less.* The temporary placement of an employee in non-
2 duty, non-pay status for disciplinary reasons. A permanent record of the
3 suspension will be placed in the employee's eOPF.
4

5 **Section 12.05 - Suspensions of 14 Days or Less.**

6 An employee shall be entitled to:

7 (1) *Notice Period.* Management shall provide the employee with at least 15 days advance
8 written notice of a proposed suspension of fourteen days or less, stating the reasons for
9 the proposed action with sufficient specificity so as to enable the employee to prepare a
10 response. The proposed notice shall include notification that the employee may be
11 represented by an attorney or other representative and will include the telephone number
12 (and email if available) of the employee's local union office as listed on the AFGE
13 Council 222 website. The employee must designate the representative, in writing, to the
14 Deciding Official prior to any oral or written reply. The employee's written notice of
15 representative may include an authorization for the Department to release any final
16 decision to the Union. The Department shall provide to the employee one copy of the
17 documentation relied upon to support the proposed action. This shall include the names
18 of witnesses, if any, involved in supporting the charges.
19

20 (2) *Response Period.* Upon receipt of the official notice of proposed suspension action, an
21 employee shall have 14 days to respond to the proposed action. The response may be
22 made orally or in writing, or both. The employee's response may include any statements
23 or material the employee believes is relevant to defending against the proposed action.
24 The deciding official may extend the response period if they determine that good cause
25 exists for an extension. Any request for an extension must be received by the deciding
26 official within the 14-day response period.
27

28 (3) *Decision.* Management shall consider the employee's response and issue a final written
29 decision as soon as practicable, but no sooner than the expiration of the Response Period
30 described above stating the specific reasons for the decision, including a statement of the
31 employee's appeal rights. The decision shall be made by an organizationally higher-level
32 official of the Department, when that exists, than the official who proposed the
33 Disciplinary Action. If the decision has not been issued within 30 days of the expiration
34 of the notice period, the employee shall be notified and shall continue to be notified at
35 30-day intervals thereafter.
36

37 (4) *Representation.* The employee may be represented by an attorney or other representative,
38 which includes the right to Union representation.
39

40 (5) *Duty Time.* Preparation of oral and written responses should be done on the employee's
41 own time. However, the employee may be granted up to four (4) hours of duty time, if
42 requested, within the period in (2) above, for preparing the oral and/or written response.
43 Upon a written demonstration of need, the employee may be granted additional duty time
44 to prepare the response. This request for additional time must be made within the 14-day
45 response period. An employee's supervisor authorizes when, and how much time may be
46 used. Disputes between the supervisor and employee regarding the scheduling of use of

1 duty time will be resolved by the deciding official. The employee may present the oral
2 response during regular duty time.
3

4 **Section 12.06 - Adverse Actions**

5 **Suspensions of 15 Days or More, Reduction in Grade or Pay, Removals, or Furloughs for**
6 **30 Days or Less.**

7 An employee shall be entitled to:

- 8 (1) *Notice Period.* Management shall provide the employee with at least 30 days advance
9 written notice of the proposed Adverse Action stating the reasons for the proposed action
10 with sufficient specificity so as to enable the employee to prepare a response. When there
11 is reasonable cause to believe an employee has committed a crime for which a sentence
12 of imprisonment may be imposed, HUD may give the employee less than the 30-day
13 advance written notice when proposing a removal or suspension (including an indefinite
14 suspension). The proposed notice shall include notification that the employee may be
15 represented by an attorney or other representative and will include the telephone number
16 (and email if available) of the employee's local union office as listed on the AFGE
17 Council 222 website. The employee must designate the representative, in writing, to the
18 Deciding Official prior to any oral or written reply. The employee's written notice of
19 representative may include an authorization for the Department to release any final
20 decision to the Union. The Department shall provide to the employee one copy of the
21 documentation relied upon to support the proposed action. This shall include the names
22 of witnesses, if any, involved in supporting the charges.
23
- 24 (2) *Response Period.* Upon receipt of the official notice, an employee shall have twenty-one
25 (21) days to respond to the proposed Adverse Action. The response may be made orally
26 or in writing, or both. The employee's response may include any statements or material
27 the employee believes is relevant to defending against the proposed action. The deciding
28 official may extend the response period if they determine that good cause exists for an
29 extension. Any request for such an extension must be received by the deciding official
30 within the 21-day response period.
31
- 32 (3) *Representation.* The employee may be represented by an attorney or other representative,
33 which includes the right to Union representation.
34
- 35 (4) *Duty Time.* The employee may be granted up to 16 hours of duty time, if needed, within
36 the period in (2) above, for preparing the oral and/or written response. Upon a written
37 demonstration of need, the employee may be granted additional duty time to respond.
38 This request for additional time must be made within the 21-day response period. An
39 employee's supervisor authorizes when, and how much time may be used. Disputes
40 between the supervisor and employee regarding the scheduling of use of duty time will be
41 resolved by the deciding official.
42
- 43 (5) *Decision.* Management shall consider the employee's response and issue a final written
44 decision as soon as practicable, but no sooner than the expiration of the Response Period
45 described above stating the specific reasons for the decision, including a statement of the
46 employee's appeal rights. The Adverse Action will not be implemented before the

1 expiration of the Notice Period, unless there is reasonable cause to believe an employee
2 has committed a crime for which a sentence of imprisonment may be imposed. The
3 decision shall be made by an organizationally higher-level official of the Department,
4 when that exists, than the official who proposed the Adverse Action. Management may
5 determine that additional time is necessary for issuance of the decision. If the decision
6 has not been issued within 30 days of the expiration of the notice period, the employee
7 shall be notified and shall continue to be notified at 30-day intervals thereafter.
8

- 9 (6) Within 30 days of the effective date of the action, the employee may appeal the matter to
10 the Merit Systems Protection Board (MSPB).
11

12 (Note: Indefinite suspensions are addressed in OPM regulations at 5 CFR §752.403 and 5 CFR
13 §752.404.)
14

15 **Section 12.07 – Union Notification**

16 When Management issues a ~~notice of proposal and/or~~ decision to suspend, reduce-in grade, or
17 remove an employee in the unit, Management shall provide to the Union a general statement of
18 the charges, proposed action and subsequent decision. If the employee has not provided a written
19 authorization for representation, Management will provide a general statement of the charges,
20 proposed action and subsequent decision that is sanitized of personal identifying information.
21

22 **Section 12.08 – Alternatives to Disciplinary Actions and Adverse Actions.**

- 23 (1) *General:* Alternative discipline may, under the right circumstances, be an efficient and
24 effective approach in lieu of or in addition to traditional discipline.
25 (a) Alternative discipline may be used at management's discretion in lieu of an
26 official reprimand or a suspension of fourteen (14) days or less or an adverse
27 action.
28 (b) Alternative discipline may be used to correct behavior in lieu of traditional
29 discipline when management determines an alternative has a greater potential to
30 prevent repetition of the misconduct. Employees have no entitlement to
31 alternative discipline.
32 (c) Alternative discipline is not intended to diminish the seriousness of employee
33 misconduct.
34 (d) Alternative discipline is based on the unique circumstances of each situation and
35 may not be appropriate in other situations. Under no circumstances will
36 alternative discipline be used when comparing the consistency of any penalty with
37 those imposed upon other employees for the same or similar offenses.
38 (e) Management and the Union recognize that any alternative discipline taken by
39 management is non-precedential.
40
- 41 (2) *Examples of Alternative Discipline:* The following is a non-exhaustive list of types of
42 alternative discipline that Management, the employee, and the employee's designated
43 representative (if any) may consider or propose.
44 (a) The employee makes an annual leave donation through the leave donation program
45 equal to the amount of time that would have been spent on suspension;

Union #6
5/8/2020
9:00 a.m.

- 1 (b) Employee attends an appropriate program recommended by the Employee
- 2 Assistance Program;
- 3 (c) Placing the employee on leave without pay (LWOP) in lieu of a formal
- 4 disciplinary action;
- 5 (d) A “paper suspension,” whereby the employee does not lose pay, but the
- 6 suspension is recorded in the employee’s eOPF and may be relied upon in future
- 7 disciplinary actions for purposes of progressive discipline; and
- 8 (e) A “Last Chance Agreement” (LCA), in which Management agrees to hold an
- 9 adverse action decision in abeyance in exchange for an employee’s:
- 10 i. Commitment to abide by a certain set of behaviors or conditions for a set
- 11 period of time as determined by Management;
- 12 ii. Waiver of the employee’s rights to challenge the decision; and
- 13 iii. Agreement that if the employee fails to fulfill the terms of the agreement,
- 14 the decision will be implemented.
- 15
- 16 (3) Nothing in this Article limits the ability of management and affected employees to
- 17 propose or agree upon other types of alternatives to proposed discipline.

Exhibit 7

Article 12 – HUD Final Written Proposal

Article 12: Disciplinary and Adverse Actions

Section 12.01 - General.

- (1) Management shall determine when the need arises for disciplinary or adverse actions. The objective of discipline is to hold employees accountable for their performance and conduct and to correct employee behavior so as to promote the efficiency of the service. Certain misconduct and offenses may be cause for severe action, including removal, regardless of whether prior discipline has been taken against the offending employee. Progressive discipline is not required, but it may be an effective means to correcting employee behavior.
- (2) Management shall consider the relevant factors given the circumstances of each individual case to make an appropriate decision. Disciplinary and Adverse Actions will be reasonable, lawful and not for arbitrary or capricious reasons. In addition, Disciplinary and Adverse Actions may not be taken against an employee if the action is based on unlawful discrimination or a personnel practice prohibited by any law, rule or regulation.
- (3) To address misconduct or performance problems under this Article, employees will be subject to Disciplinary or Adverse Action only for such cause that promotes the efficiency of the service. The specific penalty for an instance of misconduct shall be tailored to the facts and circumstances of the situation. In evaluating whether a penalty (such as a suspension or Adverse Action) promotes the efficiency of the service, Management will, subject to applicable law, rule, and regulation, consider the relevant factors as determined by governing law (for example, applying the “Douglas Factors” articulated by the Merit Systems Protection Board in *Douglas vs. Veterans Administration*, 5 M.S.P.R. 280 (1981)).
- (4) If Management believes that a Disciplinary or Adverse Action is necessary, such action will be initiated in a timely manner after the offense was committed or made known to Management. Timeliness shall be based upon the circumstances and complexity of each case.
- (5) This Article applies to:
 - (a) An action based solely on misconduct reasons;
 - (b) An action that involves both performance and misconduct related reasons; and
 - (c) Unacceptable performance being addressed under 5 U.S.C. Chapter 75 procedures.
- (6) This Article does not apply to:
 - (a) Actions based solely on unacceptable performance when Management elects to address it under 5 U.S.C. Chapter 43 procedures; or
 - (b) Actions taken against persons not considered “employees” within the meaning of 5 U.S.C. Sections 7501 or 7511, as applicable.
- (7) The Article(s) in this Agreement on grievance and arbitration procedures determine whether Disciplinary or Adverse Actions may be grieved under the negotiated grievance

1 procedures. If an employee believes the action to be based in whole or in part on
2 prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.)
3 they may file an EEO complaint in accordance with the statutory appeals process.
4

5 **Section 12.02 – Investigations.**

6 Prior to issuing any proposed Disciplinary or Adverse Action, Management will consider
7 pertinent, available evidence. Management may determine it is necessary to gather additional
8 evidence, such as through an informal investigation or inquiry.
9

10 **Section 12.03 – Counseling.**

11 Counseling shall be conducted in a private setting.

12 (1) *Verbal Counseling.* Verbal counseling is not considered Disciplinary action but may be
13 cited as notice in any subsequent Disciplinary or Adverse Action against the employee. It
14 cannot be grieved by the employee.
15

16 (2) *Written Counseling.* Letters of counseling are not considered Disciplinary actions but
17 may be cited as notice in any subsequent Disciplinary or Adverse Action against the
18 employee. It cannot be grieved by the employee under the Article in this Agreement on
19 grievance procedures and it will not be placed in the employee's eOPF.
20

21 **Section 12.04 - Definitions.**

22 (1) **"Adverse Actions"** include the following actions:

23 (a) *Suspensions of 15 days or more.* The temporary placement of an employee in non-
24 duty, non-pay status for disciplinary reasons. A permanent record of the
25 suspension will be placed in the employee's eOPF.

26 (b) *Reduction in Grade.* The involuntary assignment of an employee to a position at a
27 lower classification or job grade level.

28 (c) *Removal.* The involuntary separation of an employee from employment with the
29 Department for misconduct reasons.

30 (d) *Furloughs of 30 days or less.* The placing of an employee in a temporary status
31 without duties and pay because of lack of work or funds or other non-disciplinary
32 reasons.
33

34 (2) **"Disciplinary Actions"** include the following actions:

35 (a) *Official Reprimand.* An official written notice which sets forth specific instances
36 of misconduct. An Official Reprimand, also known as a Letter of Reprimand, will
37 be placed in an employee's eOPF for a period not to exceed two years from its
38 date of issue. However, at Management's sole discretion, it may be for a lesser
39 period of time.

40 (b) *Suspensions of 14 days or less.* The temporary placement of an employee in non-
41 duty, non-pay status for disciplinary reasons. A permanent record of the
42 suspension will be placed in the employee's eOPF.
43

44 **Section 12.05 - Suspensions of 14 Days or Less.**

45 An employee shall be entitled to:

- 1 (1) *Notice Period.* Management shall provide the employee with at least 15 days advance
2 written notice of a proposed suspension of fourteen days or less, stating the reasons for
3 the proposed action with sufficient specificity so as to enable the employee to prepare a
4 response. The proposed notice shall include notification that the employee may be
5 represented by an attorney or other representative, and will include the telephone number
6 (and email if available) of the employee's local union office as listed on the AFGE
7 Council 222 website. The employee must designate the representative, in writing, to the
8 Deciding Official prior to any oral or written reply. The employee's written notice of
9 representative may include an authorization for the Department to release any final
10 decision to the Union. The Department shall provide to the employee one copy of the
11 documentation relied upon to support the proposed action. ~~The notice will be~~
12 ~~accompanied by the material relied upon to support the reasons for action.~~ This shall
13 include the names of witnesses, if any, involved in supporting the charges.
14
- 15 (2) *Response Period.* Upon receipt of the official notice of proposed suspension action, an
16 employee shall have 14 days to respond to the proposed action. The response may be
17 made orally or in writing, or both. The employee's response may include any statements
18 or material the employee believes is relevant to defending against the proposed action.
19 The deciding official may extend the response period if they determine that good cause
20 exists for an extension. Any request for an extension must be received by the deciding
21 official within the 14-day response period.
22
- 23 (3) *Decision.* Management shall consider the employee's response and issue a final written
24 decision as soon as practicable, but no sooner than the expiration of the Response Period
25 described above stating the specific reasons for the decision, including a statement of the
26 employee's appeal rights. The decision shall be made by an organizationally higher-level
27 official of the Department, when that exists, than the official who proposed the
28 Disciplinary Action. If the decision has not been issued within 30 days of the expiration
29 of the notice period, the employee shall be notified and shall continue to be notified at
30 30-day intervals thereafter.
31
- 32 (4) *Representation.* The employee may be represented by an attorney or other representative,
33 which includes the right to Union representation.
34
- 35 (5) *Duty Time.* Preparation of oral and written responses should be done on the employee's
36 own time. However, the employee may be granted up to four hours of duty time, if
37 requested, within the period in (2) above, for preparing the oral and/or written response.
38 Upon a written demonstration of need, the employee may be granted additional duty time
39 to prepare the response. This request for additional time must be made within the 14-day
40 response period. An employee's supervisor authorizes when, and how much time may be
41 used. Disputes between the supervisor and employee regarding the scheduling of use of
42 duty time will be resolved by the deciding official. The employee may present the oral
43 response during regular duty time.
44

45 **Section 12.06 - Adverse Actions**

1 **Suspensions of 15 Days or More, Reduction in Grade or Pay, Removals, or Furloughs for**
2 **30 Days or Less.**

3 An employee shall be entitled to:

- 4 (1) *Notice Period.* Management shall provide the employee with at least 30 days advance
5 written notice of the proposed Adverse Action stating the reasons for the proposed action
6 with sufficient specificity so as to enable the employee to prepare a response. When there
7 is reasonable cause to believe an employee has committed a crime for which a sentence
8 of imprisonment may be imposed, HUD may give the employee less than the 30-day
9 advance written notice when proposing a removal or suspension (including an indefinite
10 suspension). The proposed notice shall include notification that the employee may be
11 represented by an attorney or other representative, and will include the telephone number
12 (and email if available) of the employee's local union office as listed on the AFGE
13 Council 222 website. The employee must designate the representative, in writing, to the
14 Deciding Official prior to any oral or written reply. The employee's written notice of
15 representative may include an authorization for the Department to release any final
16 decision to the Union. The Department shall provide to the employee one copy of the
17 documentation relied upon to support the proposed action. ~~The notice will be~~
18 ~~accompanied by the material relied upon to support the reasons for action.~~ This shall
19 include the names of witnesses, if any, involved in supporting the charges.
20
- 21 (2) *Response Period.* Upon receipt of the official notice, an employee shall have 21 days to
22 respond to the proposed Adverse Action. The response may be made orally or in writing,
23 or both. The employee's response may include any statements or material the employee
24 believes is relevant to defending against the proposed action. The deciding official may
25 extend the response period if they determine that good cause exists for an extension. Any
26 request for such an extension must be received by the deciding official within the 21-day
27 response period.
28
- 29 (3) *Representation.* The employee may be represented by an attorney or other representative,
30 which includes the right to Union representation.
31
- 32 (4) *Duty Time.* The employee may be granted up to 16 hours of duty time, if needed, within
33 the period in (2) above, for preparing the oral and/or written response. Upon a written
34 demonstration of need, the employee may be granted additional duty time to respond.
35 This request for additional time must be made within the 21-day response period. An
36 employee's supervisor authorizes when, and how much time may be used. Disputes
37 between the supervisor and employee regarding the scheduling of use of duty time will be
38 resolved by the deciding official.
39
- 40 (5) *Decision.* Management shall consider the employee's response and issue a final written
41 decision as soon as practicable, but no sooner than the expiration of the Response Period
42 described above stating the specific reasons for the decision, including a statement of the
43 employee's appeal rights. The Adverse Action will not be implemented before the
44 expiration of the Notice Period, unless there is reasonable cause to believe an employee
45 has committed a crime for which a sentence of imprisonment may be imposed. The
46 decision shall be made by an organizationally higher-level official of the Department,

1 when that exists, than the official who proposed the Adverse Action. Management may
2 determine that additional time is necessary for issuance of the decision. If the decision
3 has not been issued within 30 days of the expiration of the notice period, the employee
4 shall be notified and shall continue to be notified at 30-day intervals thereafter.
5

- 6 (6) Within 30 days of the effective date of the action, the employee may appeal the matter to
7 the Merit Systems Protection Board (MSPB).
8

9 (Note: Indefinite suspensions are addressed in OPM regulations at 5 CFR §752.403 and 5 CFR
10 §752.404.)
11

12 **Section 12.07 – Alternatives to Disciplinary Actions and Adverse Actions.**

- 13 (1) *General:* Alternative discipline may, under the right circumstances, be an efficient and
14 effective approach in lieu of or in addition to traditional discipline.
15 (a) Alternative discipline may be used at management's discretion in lieu of an
16 official reprimand or a suspension of fourteen (14) days or less or an adverse
17 action.
18 (b) Alternative discipline may be used to correct behavior in lieu of traditional
19 discipline when management determines an alternative has a greater potential to
20 prevent repetition of the misconduct. Employees have no entitlement to
21 alternative discipline.
22 (c) Alternative discipline is not intended to diminish the seriousness of employee
23 misconduct.
24 (d) Alternative discipline is based on the unique circumstances of each situation and
25 may not be appropriate in other situations. Under no circumstances will
26 alternative discipline be used when comparing the consistency of any penalty with
27 those imposed upon other employees for the same or similar offenses.
28 (e) Management and the Union recognize that any alternative discipline taken by
29 management is non-precedential.
30
- 31 (2) *Examples of Alternative Discipline:* The following is a non-exhaustive list of types of
32 alternative discipline that Management, the employee, and the employee's designated
33 representative (if any) may consider or propose.
34 (a) The employee makes an annual leave donation through the leave donation program
35 equal to the amount of time that would have been spent on suspension;
36 (b) Employee attends an appropriate program recommended by the Employee
37 Assistance Program;
38 (c) Placing the employee on leave without pay (LWOP) in lieu of a formal
39 disciplinary action;
40 (d) A "paper suspension," whereby the employee does not lose pay, but the
41 suspension is recorded in the employee's eOPF and may be relied upon in future
42 disciplinary actions for purposes of progressive discipline; and
43 (e) A "Last Chance Agreement" (LCA), in which Management agrees to hold an
44 adverse action decision in abeyance in exchange for an employee's:
45 i. Commitment to abide by a certain set of behaviors or conditions for a set
46 period of time as determined by Management;

- 1 ii. Waiver of the employee’s rights to challenge the decision; and
- 2 iii. Agreement that if the employee fails to fulfill the terms of the agreement,
- 3 the decision will be implemented.
- 4
- 5 (3) Nothing in this Article limits the ability of management and affected employees to
- 6 propose or agree upon other types of alternatives to proposed discipline.

Exhibit 8

Article 12 – Excerpt from existing CBA

- (6) Within thirty (30) days of the effective date of the action, the employee may appeal the matter to the Merit Systems Protection Board (MSPB).
- (7) If the employee elects not to appeal the matter to the Merit Systems Protection Board, then the Union may invoke arbitration in accordance with this Agreement.
- (8) If an employee believes the action to be based in whole or in part on prohibited discrimination (race, color, religion, sex, national origin, age, disability, etc.) they may either file a grievance or file an EEO complaint in accordance with the statutory appeals process.

(Note: Indefinite suspensions are covered under OPM regulations at 5 CFR 752.404(d))

Section 12.07 - Union Notification. When Management issues a notice of proposal and/or decision to suspend, reduce-in grade, or remove an employee in the unit, Management shall provide to the Union a general statement of the charges, proposed action, and subsequent decision.

Section 12.08 - Alternative Discipline.

(1) General:

- (a) Alternative discipline is an effort to correct behavior in lieu of traditional discipline when management determines an alternative has a greater potential to prevent repetition of the misconduct.
- (b) Alternative discipline may be used at management's discretion in lieu of an official reprimand or a suspension of fourteen (14) days or less.
- (c) Alternative discipline is not intended to diminish the seriousness of employee misconduct.

(2) Types of alternative discipline include:

- (a) The employee makes an annual leave donation through the leave donation program equal to the amount of time that would have been spent on suspension;
- (b) Employee attends an appropriate program approved by the Employee Assistance Program;
- (c) The employee's suspension is recorded as LWOP so that there will be no permanent record of a disciplinary action; and
- (d) The employee serves a suspension on paper only, no loss of pay, but the suspension is recorded in the employee's OPF.

The above is not intended to be an exhaustive list or to limit a manager's ability to propose other alternatives to traditional discipline. Any alternative discipline must be consistent with law, rule, regulation and/or HUD policy.

(3) Process:

If Management determines that alternative discipline is appropriate, it will offer in writing the alternative discipline simultaneously with providing the employee the notice of decision on the traditional discipline.

ARTICLE 16
HOURS OF DUTY, CREDIT HOURS, ALTERNATIVE WORK SCHEDULES

Section 16.01 - Introduction. All employees shall be governed by the provisions set forth in this Article. Nothing in the Article prohibits the addition of work schedules in the future, should they become available. The official lunch period established by each office is added to the work schedule hours defined below.

Section 16.02 - Definitions.

- (1) **Official Business Hours.** The period each day when a **HUD** office is officially open for business.
- (2) **Core Hours.** The hours each day that a full-time employee must be present for work. Core hours for employees stationed in all **HUD** offices shall be 9:30 a.m. - 2:30 p.m., on all scheduled workdays.
- (3) **Standard Fixed Tour.** A standard work schedule of 8 hours a day/5 days a week with a set start and finishing time.
- (4) **Alternative Work Schedules (AWS).** In addition to a standard fixed tour, the Department offers the following work schedule options:
 - (a) **Flexitime/Time Bands.** A flexible work schedule program consisting of five (5) consecutive work days of eight (8) hours a day that allows employees to select an arrival time between 6:00 a.m. and 9:30 a.m. and have a one-hour window of flexibility. This flexible work schedule includes core hours and flexible hours. An employee must be at work during core hours and must account for the total number of hours he or she is scheduled to work.
 - (b) **Maxiflex Schedule.** A type of alternative work schedule that contains core hours on 10 workdays or fewer in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week.
- (5) **Credit Hours.** Credit for work performed by an employee in excess of an eight-hour tour of duty on any workday in order to vary the length of a subsequent workday. Such work is compensated by an equal amount of time off (i.e., one (1) hour of work in excess of the employee's regularly scheduled eight-hour tour of duty is compensated by one (1) hour off on a subsequent workday). Work performed for credit hours is differentiated from overtime work, which is ordered or directed by Management Work performed for credit hours is not compensated as, nor is it subject to the rules and regulations governing overtime work.
- (6) Operational needs are defined for the purpose of this article as requirements for office coverage/functions.

Section 16.03 - Tours of Duty.

- (1) **Flexitime.** Full-time employees, excluding those working Maxiflex Schedules, shall be permitted to vary their daily work hours subject to the following limitations:

- (a) The standard workweek shall be Monday through Friday.
- (b) Employees are able to select an arrival time between 6:00 a.m. and 9:30 a.m. and have a one-hour window of flexibility. Employees shall not begin work before 6:00 a.m. local time nor complete work after 7:30 p.m. local time. It is understood that management shall not be required to incur additional expense for facilities as a result of this option.
- (c) Leave may be taken in conjunction with the established lunch period for the office.
- (d) Supervisors may approve occasional variances from the pre-selected arrival time. A variance is an employee's arrival time that is more than one hour before or after the pre-selected arrival time, but within the band of flexitime. Approval of a variance does not require modification of the established work schedule, provided that the eight-hour work day and core hour requirements are met.

(2) **Maxiflex Schedules.** Full-time employees shall be permitted to work Maxiflex Schedules, as defined in this Article, subject to the following limitations:

- (a) Employees working the Maxiflex Schedule have a basic work requirement of 80 hours in each biweekly pay period. They may designate a different starting time from 6:00 a.m. to 9:30 a.m. for each workday, and they may designate a varying number of hours to work each workday, between six (6) and ten (10) hours on any given workday, exclusive of the meal period. The number of hours per workweek may vary between 30 and 50 hours each workweek, or be set to the standard 40 hour workweek. They are required to work during the core hours established in Section 16.02 (2) of this Article, and may designate no more than one (1) workday off per week. The previous 5/4/9 and 4/10 compressed work schedules are types of Maxiflex Schedules and are included under this section. All work schedules are subject to supervisory approval. An employee may participate in both maxiflex and telework programs. Management has the responsibility to coordinate maxiflex and telework.

Following are examples of a Maxiflex Schedule:

Example 1:

First Monday 8:00 a.m. 4:30 p.m.	(8hrs)
First Tuesday 8:00 a.m. -6:30 p.m.	(10hrs)
First Wednesday 8:15 a.m. -5:45 p.m.	(9hrs)
First Thursday 8:30 am. -3:30 p.m.	(6.5hrs)
First Friday 7:30 a.m. -2:30 p.m.	<u>(6.5hrs)</u>
	40hrs
Second Monday 8:30 a.m. -5:00 p.m.	(8hrs)
Second Tuesday 9:30 a.m. - 4:00 p.m.	(6hrs)
Second Wednesday 7:00 a.m. -5:30 p.m.	(10hrs)
Second Thursday 8:15 a.m. -5:15 p.m.	(8.5hrs)
Second Friday 9:30 a.m. - 5:30 p.m.	<u>(7.5hrs)</u>
	40hrs

Example 2:

First Monday 8:00 a.m. - 3:30 p.m.	(7hrs)
First Tuesday 7:00 a.m. - 5:30 p.m.	(10hrs)
First Wednesday 6:30 a.m. - 5:00 p.m.	(10hrs)
First Thursday 6:00 a.m. -4:30 p.m.	(10hrs)
First Friday No work	<u>(0hrs)</u>
	37hrs
Second Monday 7:00 a.m. -4:30 p.m.	(9hrs)
Second Tuesday 7:30 am. -6:00 p.m.	(10hrs)
Second Wednesday 9:00 a.m. -3:30 p.m.	(6hrs)
Second Thursday 7:30 a.m. -4:00 p.m.	(8hrs)
Second Friday 7:00 a.m. -5:30 p.m.	<u>(10hrs)</u>
	43hrs

37 +43 =80 hrs

Example 3:

A 5/4/9 Work Schedule

Example 4:

A4/10 Work Schedule

- (b) Employees who request to work a Maxiflex Schedule or change their schedule must submit form HUD-25017 or its successor for supervisory approval in advance with a proposed daily schedule. The Parties recognize that any successor form or system changes may be subject to bargaining in accordance with this Agreement Employees will be notified in writing of approval or disapproval. An initial change to maxiflex can be made with supervisory approval at the start of a pay period, and then no more than one change can be made per quarter, unless approved by the supervisor. Management may delay the start or change request for up to two weeks for operational needs . Employees utilizing maxiflex are not eligible to earn Credit Hours. As with other work schedules, management may disapprove, suspend, or cancel the work schedule options listed above for an employee(s) if it is determined that it interferes with operational needs.
- (c) It is understood that supervisors retain the right to assign work, and institute various methods to meet operational needs, as defined in this Article.
- (d) Management shall approve day(s) off, if applicable, for all employees working Maxiflex Schedules, using the following guidelines:
 - I. Days off shall be scheduled so as not to interfere with operational needs.

- II. In scheduling days off, supervisors shall give due consideration to work requirements and the preferences of individual employees.
 - III. Employees' telework schedules.
 - IV. In the event of a conflict among employees regarding the scheduling of days off, supervisors may, if appropriate, give the affected employees an opportunity to resolve such conflicts among themselves.
- (e) Employees may make changes in their Maxiflex Schedules (e.g., their scheduled day off or length of workday) or may change from a Maxiflex Schedule to a five-day-per-week flexitime work schedule (or vice versa), subject to the following limitations:
- I. No change shall be made in the middle of a pay period.
 - II. A temporary change of the day off within the same week may be made by mutual agreement between the supervisor and employee to meet management or employee needs.
6. Overtime work under a Maxiflex Schedule shall be defined as work which has been ordered or approved by Management in excess of the designated work schedule.
7. Employees working after 6:00 p.m. as part of any Maxiflex Schedule shall not be entitled to night differential or other premium pay for such work.

Section 16.04 - Individual Alternate Work Schedules Denials, Suspensions, or Terminations.

Management may, at its discretion, temporarily suspend or adjust an employee's Maxiflex Schedule for any biweekly pay period(s). Notice of non-travel and/or training related denials, suspensions, or terminations of an alternative work schedule shall be provided in advance to the individual employee in writing. The notice shall include the basis for the decision and may discuss alternatives, if available. The supervisor may deny an employee's request for an alternative work schedule, or suspend or terminate an employee's participation in a particular alternative work schedule if it is determined that the employee's participation would negatively impact operational needs.

For employees in travel and/or training status management may, at its discretion, temporarily suspend or adjust an employee's Maxiflex Schedule for any biweekly pay period(s) during which the employee is, for all or part of the pay period, in travel and/or training status. The employee's work schedule during the affected pay period(s) shall be within the discretion of Management. Employees on travel and/or training will be informed in advance of the temporarily adjusted work schedule. Such temporary suspensions shall cover the full pay period(s) in which the travel and/or training occurs when the training or travel will affect the work schedule for the pay period. The employee shall return to their Maxiflex Schedule no later than the beginning of the pay period following completion of the travel and/or training.

If an employee's flexible work arrangement is suspended, it will be restored as soon as possible after the operational needs have been met. If the work schedule suspension lasts longer than two (2) pay periods or the employee's work schedule is terminated the Union will be notified.

Section 16.05 - Credit Hours.

Full-time employees not working Maxiflex Schedules may elect to earn credit hours, subject to the following limitations:

- (1) Employees shall notify their supervisors in advance of their intention to work longer than their regularly scheduled work hours and of the specific date(s) and time(s) they plan to perform such work. Managers may discuss the work to be conducted by employees requesting Credit Hours. The supervisor may disapprove a request to work credit hours based on lack of work, other operational needs or demonstrated budgetary constraints.
- (2) Employees may earn up to 3 credit hours on any workday. Credit hours shall not be earned on a non-workday. Credit hours shall be earned in one-quarter (1/4) hour increments.
- (3) Work performed in order to earn credit hours shall not begin prior to 6:00 a.m. local time nor extend past 7:30 p.m. local time.
- (4) An employee not working a Maxiflex Schedule, with prior acknowledgement of their supervisor may earn credit hours while in training and/or travel status. The training and/or travel must be to an office which would support the employee working in excess of eight (8) hours. However, an alternate worksite may be utilized, with supervisory approval.
- (5) Employees may carry over up to twenty-four (24) credit hours from one biweekly pay period to the next biweekly pay period. Employees may accrue more than 24 hours during the pay period. Accrued credit hours in excess of 24 credit hours at the end of the pay period shall be forfeited.
- (6) Employees who have earned credit hours may use these credit hours to take time off during their regularly scheduled work hours, subject to the following:
 - (a) Use of credit hours shall be requested and approved in the same manner as leave.
 - (b) Credit hours may be used in combination with approved leave and/or compensatory time off. Credit hours may be used in one-quarter (1/4) hour increments.
 - (c) Credit hours shall not be used on the same workday that they are earned. Employees may use previously earned credit hours on the same day that they earn additional credit hours.
- (7) Union representatives entitled to official time may earn credit hours while performing representational functions, in accordance with the provisions of this article and Article 47.
- (8) Credit hours must be earned prior to being used.
- (9) Employees will not be required to earn credit hours in lieu of ordered overtime.
- (10) Employees working after 6:00 p.m. in order to earn credit hours shall not be entitled to night differential or other premium pay for such work.

- (11) Unused credit hours accumulated by an employee shall be paid in accordance with the law or statute when an employee retires, transfers to another Department, or otherwise terminates their employment with the Department.

Section 16.06 - Crediting and Use of Leave under Flexitime/Credit Hours/Maxiflex Work Schedules.

- (1) When excused absences (e.g., voting leave; delayed arrival or early departure due to inclement weather) are granted, determinations regarding entitlement to an excused absence, the amount of excused absence to be granted, and/or the time period during which an excused absence is granted shall *be* based upon each employee's daily arrival times during the preceding biweekly pay period (or the last pay period in which the employee worked at least five (5) days, if the employee did not work at least five (5) days in the preceding pay period). Each employee's daily arrival times during that pay period shall be rounded to the nearest quarter-hour (e.g., 7:22 a.m. shall be rounded to 7:15 a.m.; 7:23 a.m. shall be rounded to 7:30 a.m.), and the most frequent of these rounded arrival times for each employee shall be used as the basis for all determinations regarding excused absence for that employee. If there is a tie with respect to an employee's most frequent arrival time (including those situations in which each arrival time is different), the earliest of the tied arrival times (rounded) shall be used to make such determinations.
- (2) The following additional provisions shall apply to employees working Maxiflex Schedules:
- (a) For Maxiflex Schedules, an employee who is on annual, sick, or other leave for the full workday shall be charged leave according to the number of hours they were scheduled to work for that day.
 - (b) When an employee's scheduled day off falls on a holiday, the employee shall be entitled to an in-lieu-of holiday on the immediately preceding workday.
 - (c) For Maxiflex Schedules, an employee shall be credited with holiday leave according to the number of hours they were scheduled to work on that holiday.
 - (d) The amount of excused absence to be granted to an employee working a Maxiflex Schedule shall be based on the employee's scheduled tour of duty on the day on which the excused absence is granted. An employee shall not be entitled to an excused absence on their scheduled day off, regardless of whether excused absences are granted to other employees in the same work unit on that day.
 - (e) Any other necessary determinations with respect to the crediting or use of leave under flexitime, credit hours, and/or Maxiflex Schedules shall be made in accordance with OPM regulations.
- (3) Part-Time Employees.
- (a) At Management's discretion, part-time employees may participate in the flexitime provisions of this Article.
 - (b) Part-time employees shall not work a Maxiflex Schedule, i.e., they shall not work a regular tour of duty in excess of eight (8) work hours on any workday.

- (c) Part-time employees may earn credit hours on any eight hour workday. Accumulated credit hours may not carry over more than one-fourth (1/4) of the employee's bi-weekly work requirement to the next pay period (e.g., if an employee's bi-weekly work schedule is forty-eight (48) hours, no more than twelve (12) credit hours can be carried over to the next pay period). Accrued credit hours in excess of one-fourth (1/4) of the biweekly work requirement at the end of the pay period shall be forfeited.

Section 16.07 - Overtime Work. The parties explicitly recognize Management's right to order or approve overtime work by any employee on any work schedule/tour of duty.

Section 16.08 - Telework. Working under the Department's Telework program will not in and of itself disqualify an employee from working an alternative work schedule, provided they comply with the provisions of the Telework policy and all the negotiated Contract Provisions.

Section 16.09 - Timekeeping. Employees will self-certify their time using the current Departmental automated time keeping system. Employees will not be required to use time recording equipment, sign-in/sign-out sheets, security systems, or communication systems for timekeeping.

Section 16.10 - Employee Responsibilities.

- (1) Each employee shall be responsible for ensuring that their alternate work schedule does not interfere with the continuing responsibility to carry out their assigned duties and to complete assigned work on schedule.
- (2) Each employee shall be responsible for their own compliance with the rules governing this Alternative Work Schedules program.

Section 16.11 - Management Responsibilities. Management is responsible for ensuring that the mission of the Department is carried out effectively and efficiently and for determining the operational requirements of the Department. Accordingly, Management shall have the following specific responsibilities with respect to administering this Alternative Work Schedules program:

- (1) Management shall be responsible for providing the information to employees regarding the rules and procedures governing this Alternative Work Schedules program.
- (2) Management shall be responsible for ensuring that offices are adequately covered during all official business hours, and for determining office coverage requirements, in terms of both the numbers and types of employees needed and skills required. Office coverage as defined for purposes of this article may not be limited to the physical location. Work that can be completed at an alternative work site may constitute office coverage.

"Office coverage" includes but is not limited to the following:

- (a) Answering phones;
- (b) Expeditious handling of inquiries from the public;

- (c) Maintaining clerical, technical, and professional support of the office functions;
 - (d) Providing official representation at essential meetings;
 - (e) Handling occasional or recurring peak workload periods;
 - (f) Meeting deadlines; and
 - (g) Meeting other operational needs.
- (3) Management may designate certain positions to be exempted from AWS. Predecisional discussions regarding the designations will be held at the local level.

Section 16.12 - Department-wide Alternative Work Schedules Termination. The Secretary has the authority to terminate AWS in accordance with 5 U.S.C. 6131 (b). If such a determination is made the Department will provide notice to the Union and comply with applicable regulations.

Section 16.13 - Rest Breaks.

- (1) Employees who work a full eight hour workday or more shall be entitled to two (2) authorized rest breaks, not to exceed fifteen (15) minutes, on that workday, one (1) to be taken before the lunch period and one (1) to be taken after it. Employees who work at least four (4) hours but less than eight (8) hours on a workday shall be entitled to one (1) authorized rest break, not to exceed fifteen (15) minutes on that workday.
- (2) Rest periods may not be taken either within one (1) hour of the employee's arrival or departure times or within one (1) hour of the beginning or ending of the employee's lunch periods; they may not be taken in any combination nor accumulated or accrued for future use.
- (3) Rest breaks shall be taken so as not to unduly interrupt the work of the Department.

Exhibit 9

Article 16 – AFGÉ Final Written Proposal

1 **ARTICLE 16**
2 **HOURS OF DUTY, CREDIT HOURS, ALTERNATIVE WORK SCHEDULES**

3 **Section 16.01 - General.** All employees shall be governed by the provisions set forth in this Article.
4 Any other necessary determinations with respect to work schedules, including Flexitime, Credit Hours
5 and/or Alternative Work Schedules will be made in accordance with OPM regulations. Work
6 schedules require Management’s approval in advance and are subject to Management’s discretion,
7 however, Management’s decisions may not be arbitrary. Nothing in the Article prohibits the addition
8 of work schedules in the future, should they become available. The official lunch period established by
9 each office is added to the work schedule hours defined below.

10 **Section 16.02 - Definitions.**

11 (1) **“Alternative Work Schedules (AWS)”** are work schedule options other than a Standard Fixed
12 Tour, which employees may request. These requests are subject to Management’s approval and
13 discretion, however, decisions may not be arbitrary and are subject to the provisions of this
14 Article. The Department offers the following Alternative Work Schedule options:
15

16 (a) Flexitime. A flexible work schedule program consisting of five consecutive
17 workdays of eight hours a day with a set arrival time between 6:00 a.m. and 9:30
18 a.m., of the employee’s Local Time. Arrival may vary up to one hour prior to or
19 after the set time, as more fully described later in this Article.
20

21 (b) Compressed Work Schedule. Compressed work schedules (CWS) are work
22 schedules that allow employees to complete the 80-hour biweekly pay period in less
23 than the standard ten workdays. Compressed work schedules include the “5/4/9
24 compressed work schedule” and the “4-10 compressed work schedules” as more
25 fully described later in this Article.
26

27 (2) **“Core Hours”** are the designated period of the day when all full-time employees must be at
28 work whether they are teleworking or in the office. Core hours in all HUD offices shall be 9:30
29 a.m. - 2:30 p.m. (~~Local Time~~) on all scheduled workdays.
30

31 (3) **“Credit Hours”** refer to credit for work performed by an employee in excess of an eight-
32 hour tour of duty on any workday in order to vary the length of a subsequent workday,
33 subject to the limitations in Section 16.05. Such work is compensated by an equal amount of
34 time off (i.e., one hour of work in excess of the employee's regularly scheduled eight-hour
35 tour of duty is compensated by one hour off on a subsequent workday). Work performed for
36 credit hours is different from overtime work, which is ordered or directed by Management.
37 Work performed for credit hours is not compensated under, nor is it subject to, the rules and
38 regulations governing overtime work or compensatory time.
39

1 (4) **“Duty Hours”** are the hours of an employee’s tour of duty, which shall not begin before 6:00
2 a.m. nor complete after 7:30 p.m. (Local Time), including the use of credit hours, subject to
3 provisions in this Article.

4
5 (5) **“Local Time”** refers to the time in the time zone of the employee’s official duty station or
6 temporary duty station while on travel.

7
8 (6) **“Official Business Hours”** refer to the period during workdays when a HUD office is
9 officially open for business as established by Management.

10
11 (7) **“Operational Needs”** are defined for the purpose of this Article as requirements for office
12 coverage/functions.

13
14 (8) **“Standard Fixed Tour”** is a standard work schedule of eight hours a day/five days a week
15 with a set arrival and departure time.

16
17 **Section 16.03 - Tours of Duty.**

18 (1) *Standard Fixed Tour.* A standard work schedule of eight hours a day/five days a week with a
19 set arrival and departure time. ~~An Example~~ of ~~an~~ employees who may be assigned to a
20 standard fixed tour include but are not limited to ~~an~~ employees whose primary functions are
21 customer service. This is not a flexible schedule.

22
23 (2) Flexitime. Full-time employees who are approved for Flexitime, shall be permitted to vary their
24 daily work hours, subject to the following limitations:

25 (a) The standard workweek shall be Monday through Friday.

26 (b) The approved arrival time has a one-hour window of flexibility from the set time, but may
27 not begin before 6:00 a.m. or after 9:30 a.m. (Local Time) and the departure time must be
28 adjusted accordingly.

29 (c) Supervisors may approve occasional variances from the one-hour window of flexibility.
30 Approval of a variance does not require modification of the established work schedule,
31 provided that the eight-hour workday and core hour requirements are met.

32 (d) Work requirements may vary, as determined by Management, at any individual
33 facility or work unit and generally will not permit additional expense, such as for
34 heating, lighting, security, office coverage, and/or overtime pay.

35
36 (3) *Compressed Work Schedules.* Full-time employees, excluding those working Flexitime and
37 Standard Fixed Tour, may be permitted to complete the 80-hour biweekly pay period in less
38 than the standard ten workdays, in accordance with the following options:
39

- 1 (a) The "5-4/9 Compressed Work Schedule" allows employees to work eight 9-hour
2 work shifts and one 8-hour work shift during each bi-weekly pay period, with one
3 workday off.
- 4 (b) The "4-10 Compressed Work Schedule" allows employees to work eight 10-hour
5 work shifts during each biweekly pay period and have one workday off each
6 week.
- 7
- 8 (c) Employees may not combine a compressed work schedule with the flexible
9 schedule. Employees on a Compressed Work Schedule are not eligible to earn
10 credit hours.
- 11
- 12 (d) An employee working a compressed work schedule shall account for 80 work
13 hours during each bi-weekly pay period and may not vary their arrival and
14 departure times from their approved schedule. Employees who work a
15 compressed work schedule must be on a fixed work schedule.
- 16
- 17 (e) Employees on a 5-4/9 schedule shall not begin work before 6:00 a.m. or after 9:30
18 a.m. nor complete work before 2:30 p.m. or after 7:00 p.m.
- 19
- 20 (f) Employees on a 4-10 schedule shall not begin work before 6:00 a.m. or after 9:00
21 a.m. nor complete work before 4:30 p.m. or after 7:30 p.m.
- 22
- 23 (g) Management may consider approving the requested day(s) off in an employee's
24 CWS schedule request using the following guidelines:
- 25
- 26 i. Days off shall be scheduled so as not to interfere with operational needs.
- 27
- 28 ii. In scheduling days off, supervisors shall give due consideration to work
29 requirements and the preferences of individual employees. Work
30 requirements may vary, as determined by management, at any individual
31 facility or work unit and generally will not permit additional expense, such
32 as for heating, lighting, security, office coverage, and/or overtime pay.
- 33
- 34 iii. Employees' telework schedules.
- 35
- 36 iv. In the event of a conflict among employees regarding the scheduling of
37 CWS days off, supervisors may, if appropriate, give the affected
38 employees an opportunity to resolve such conflicts among themselves.
- 39
- 40 v. If employees are unable to resolve a conflict concerning a CWS day off, it
41 shall be resolved on the basis of seniority within the work unit, as
42 determined by Management.
- 43
- 44 (h) Employees may make changes in their CWS (e.g., their scheduled day off or
45 length of workday) or may change from a CWS to a five-day-per-week Flexitime

1 work schedule or standard fixed tour, provided it is consistent with (4), "Work
2 Schedule Request, HUD-25017," below, and subject to the following limitations

3
4 A temporary change of the day off within the same week may be made by mutual
5 agreement between the supervisor and employee to meet management or
6 employee needs without filling out a HUD-25017.

7
8 (i) Overtime work under a CWS shall be defined as work which has been ordered or
9 approved by management in excess of the designated work schedule. Employees
10 utilizing CWS are not eligible to earn or use Credit Hours.

11
12 (4) Work Schedule Request, HUD-25017

13 Employees who request to work a CWS or Flexitime Schedule or change their schedule,
14 must submit form HUD-25017 or its successor for supervisory approval in advance with a
15 proposed daily schedule. The Parties recognize that any successor form or system changes
16 may be subject to bargaining in accordance with this Agreement. Employees will be
17 notified in writing of approval or disapproval. An initial change to a CWS or Flexitime
18 can be made with supervisory approval at the start of a pay period, and then no more than
19 one change can be made per quarter, unless approved by the supervisor. Management
20 may delay the start or change request for up to two weeks for operational needs.
21 Employees utilizing CWS are not eligible to earn Credit Hours. As with other work
22 schedules, management may disapprove, suspend, or cancel the work schedule options
23 listed above for an employee(s) if it is determined that it interferes with Operational
24 Needs.

25
26 (5) Employees working after 6:00 p.m. as part of any alternative work schedule (Flexitime
27 or CWS) shall not be entitled to night differential or other premium pay for such work.

28 **Section 16.04 - Individual Alternate Work Schedules Denials, Suspensions, or**
29 **Terminations.**

30 Management may, at its discretion, temporarily suspend or adjust an employee's Alternative Work
31 Schedule (AWS) for any biweekly pay period(s). Notice of non-travel and/or training related denials,
32 suspensions, or terminations of an AWS shall be provided in advance to the individual employee in
33 writing. The notice shall include the basis for the decision and may discuss alternatives, if available. The
34 supervisor may deny an employee's request for an Alternative Work Schedule or suspend or terminate an
35 employee's participation in a particular alternative work schedule if it is determined that the employee's
36 participation would negatively impact Operational Needs. Any decision regarding AWS shall not be
37 arbitrary.

38 For employees in travel and/or training status management may, at its discretion, temporarily suspend or
39 adjust an employee's CWS Schedule for any biweekly pay period(s) during which the employee is, for all
40 or part of the pay period, in travel and/or training status. The employee's work schedule during the
41 affected pay period(s) shall be within the discretion of Management. Employees on travel and/or training
42 will be informed in advance of the temporarily adjusted work schedule. Such temporary suspensions
43 shall cover the full pay period(s) in which the travel and/or training occurs when the training or travel will

1 affect the work schedule for the pay period. The employee shall return to their CWS Schedule no later
2 than the beginning of the pay period following completion of the travel and/or training.

3 If an employee's flexible work arrangement is suspended, it will be restored as soon as possible after the
4 Operational Needs have been met.

5 **Section 16.05 - Credit Hours.**

6 Full-time employees working Flexitime Work Schedules may elect to earn credit hours, subject
7 to the following limitations:

- 8
- 9 (1) Employees shall request and must receive approval for credit hours in advance.
10 Employees shall include the specific date(s) and time(s) they plan to perform such work.
11 Managers may discuss the work to be conducted by employees requesting Credit Hours.
12 The supervisor may disapprove a request to work credit hours based on lack of work,
13 other Operational Needs or demonstrated budgetary constraints.
14
 - 15 (2) Employees may earn up to three credit hours on any workday. Credit hours shall not be
16 earned on a non-workday. Credit hours shall be earned in one-quarter hour increments.
17
 - 18 (3) Work performed in order to earn credit hours shall not begin prior to 6:00 a.m. nor extend
19 past 7:30 p.m. (Local Time).
20
 - 21 (4) With prior approval by their supervisor, employees may earn credit hours while in
22 training and/or travel status. The training and/or travel must be to an office which would
23 support the employee working in excess of eight hours. However, an alternate worksite
24 may be utilized, with supervisory approval.
25
 - 26 (5) Employees may carry over up to 24 credit hours from one biweekly pay period to the
27 next biweekly pay period. Employees may accrue more than 24 hours during the pay
28 period, however, accrued credit hours in excess of 24 credit hours at the end of the pay
29 period shall be forfeited.
30
 - 31 (6) Employees who have earned credit hours may use these credit hours to take time off
32 during their regularly scheduled work hours, subject to the following:
 - 33 (a) Use of credit hours shall be requested and approved in the same manner as leave.
 - 34 (b) Credit hours may be used in combination with approved leave and/or
35 compensatory time off. Credit hours may be used in one-quarter hour increments.
 - 36 (c) Credit hours shall not be used on the same workday that they are earned.
37 Employees may use previously earned credit hours on the same day that they earn
38 additional credit hours.
39
 - 40 (7) Union representatives entitled to official time may earn credit hours for time spent in
41 excess of their normal workday if a Management official is present (e.g. a meeting or
42 negotiation). Upon request, the Management official will notify the Union official's
43 supervisor promptly that the employee worked credit hours.
44

- 1 (8) Credit hours must be earned prior to being used.
2
3 (9) Employees will not be required to earn credit hours in lieu of ordered overtime.
4
5 (10) Employees working after 6:00 p.m. (Local Time) in order to earn credit hours shall not be
6 entitled to night differential or other premium pay for such work.
7
8 (11) Unused credit hours accumulated by an employee shall be paid in accordance with the
9 law or statute when an employee retires, transfers to another Department, or otherwise
10 terminates their employment with the Department.

11 **Section 16.06 - Crediting and Use of Leave under Flexitime/ and CWS.**

- 12 (1) The following provisions shall apply to employees working Flexitime:
13 (a) Leave may be taken in conjunction with the established lunch period for the office.
14 (b) The amount of excused absence to be granted to an employee shall be based on the
15 employee's scheduled tour of duty and the employee's actual arrival time on the day on
16 which the excused absence is granted.
17 (c) Any other necessary determinations with respect to the crediting or use of leave under
18 Flexitime or credit hours shall be made in accordance with OPM regulations.
- 19 (2) The following provisions shall apply to employees working CWS:
20 (a) For CWS, an employee who is on annual, sick, or other leave for the full workday shall
21 be charged leave according to the number of hours they were scheduled to work for that
22 day.
23 (b) When an employee's scheduled day off falls on a holiday, the employee shall be
24 entitled to an in-lieu-of holiday on the immediately preceding workday. This applies
25 even if the immediately preceding workday is in another pay period.
26 (c) For CWS Schedules, an employee shall be credited with holiday leave according to
27 the number of hours they were scheduled to work on that holiday.
28 (d) The amount of excused absence to be granted to an employee working a CWS shall be
29 based on the employee's scheduled tour of duty on the day on which the excused
30 absence is granted. An employee shall not be entitled to an excused absence on their
31 scheduled day off, regardless of whether excused absences are granted to other
32 employees in the same work unit on that day.
33 (e) Any other necessary determinations with respect to the crediting or use of leave under
34 CWS Schedules shall be made in accordance with OPM regulations.

1 **Section 16.07 Part-Time Employees.**

- 2 (a) At Management's discretion, part-time employees may participate in the Flexitime
3 provisions of this Article.
- 4 (b) Part-time employees shall not work a CWS, i.e., they shall not work a regular tour
5 of duty in excess of eight work hours on any workday.
- 6 (c) Part-time employees on Flexitime schedules may earn credit hours on any eight-hour
7 workday. Accumulated credit hours may not carry over more than one-fourth of the
8 employee's bi-weekly work requirement to the next pay period (e.g., if an employee's bi-
9 weekly work schedule is 48 hours, no more than 12 credit hours can be carried over to the
10 next pay period). Accrued credit hours in excess of one-fourth of the biweekly work
11 requirement at the end of the pay period shall be forfeited.

12 **Section 16.08 - Overtime Work.** The parties explicitly recognize Management's right to order or
13 approve overtime work by any employee on any work schedule/tour of duty. Employees may not
14 work overtime hours without prior written authorization from Management. FLSA
15 nonexempt employees are not permitted to use any electronic device during non-duty hours
16 to conduct official HUD business. If it is deemed necessary by Management for an
17 employee to conduct HUD business during non-duty hours, the work must be ordered and/or
18 approved in writing in accordance with HUD policy, rules, and regulations governing
19 overtime/compensatory time. The parties recognize employees may be permitted to use
20 electronic devices to access HUD systems during non-duty hours consistent with the
21 Limited Personal Use of Government Office Equipment Policy (as [bargained by the](#)
22 [Parties applicable under Section 57.02 of the Agreement](#)) provided the employee is not
23 conducting HUD business.

24 **Section 16.09 - Telework.** Working under the Department's Telework program will not in and of itself
25 disqualify an employee from working an Alternative Work Schedule, provided they comply with the
26 provisions of the Telework policy and all the negotiated Contract Provisions.

27 **Section 16.10- Timekeeping.** Employees will validate their time using the current Departmental
28 automated time keeping system no later than 12:00 noon on the Monday following the last workday of the
29 pay period. However, early validation may be required due to the employee's leave schedule or advanced
30 payroll processing due to Federal holiday or other exigent circumstances. Employees will not be required
31 to use time recording equipment, sign-in/sign-out sheets, security systems, or communication systems for
32 timekeeping.

33 **Section 16.11 - Employee Responsibilities.**

- 34 (1) Each employee shall be responsible for ensuring that their Alternate Work Schedule does not
35 interfere with the continuing responsibility to carry out their assigned duties and to complete
36 assigned work on schedule.
- 37
- 38 (2) Each employee shall be responsible for their own compliance with the rules governing this
39 Alternative Work Schedules program.

1 **Section 16.12 - Management Responsibilities.** Management is responsible for ensuring that the
2 mission of the Department is carried out effectively and efficiently and for determining the
3 Operational Needs of the Department. Accordingly, Management shall have the following specific
4 responsibilities with respect to administering this Alternative Work Schedules program:

5 (1) Management shall be responsible for providing the information to employees regarding the rules
6 and procedures governing this Alternative Work Schedules program.

7 (2) Management shall be responsible for ensuring that offices are adequately covered during all official
8 business hours, and for determining office coverage requirements, in terms of both the numbers and
9 types of employees needed and skills required. Office coverage as defined for purposes of this Article
10 may not be limited to the physical location. ~~Work that can be completed at an alternative work site
11 may constitute office coverage.~~

12 "Office coverage" includes but is not limited to the following:

13 (a) Answering phones;

14 (b) Greeting visitors and attending in-person meetings;

15 (c) Expeditious and efficient handling of inquiries or assignments internal and external
16 customers and stakeholders;

17 (d) Maintaining clerical, technical, and professional support of the office functions;

18 (e) Handling occasional or recurring peak workload periods;

19 (f) Meeting deadlines; and

20 (g) Meeting other Operational Needs.

21
22
23
24 (3) Management may designate certain positions to be exempted from CWS, Flexitime
25 or Credit Hours because of office coverage requirements or specific job-related
26 requirements of the position.

27 **Section 16.13 - Department-wide Alternative Work Schedules Termination.** The
28 Secretary has the authority to terminate AWS in accordance with 5 U.S.C. 6131 (b). If such
29 a determination is made the Department will provide notice to the Union and comply with
30 applicable regulations.

31 **Section 16.14 - Rest Breaks.**

32 (1) Employees who work a full eight-hour workday or more shall be entitled to two authorized
33 rest breaks, not to exceed 15 minutes, on that workday, one to be taken before the lunch
34 period and one to be taken after it. Employees who work at least four hours but less than

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- 1 eight hours on a workday shall be entitled to one authorized rest break, not to exceed fifteen
- 2 (15) minutes on that workday.
- 3
- 4 (2) Rest periods may not be taken either within one hour of the employee's arrival or departure times
- 5 or within one hour of the beginning or ending of the employee's lunch periods; they may not be
- 6 taken in any combination nor accumulated or accrued for future use.

- 7 (3) Rest breaks shall be taken so as not to unduly interrupt the work of the Department.
- 8

Exhibit 10

Article 16 – HUD Final Written Proposal

1 Article 16: Hours of Duty, Credit Hours, Alternative Work Schedules
2

3 **Section 16.01 - General.**

4 All employees shall be governed by the provisions set forth in this Article. Any other necessary
5 determinations with respect to work schedules, including Flexitime, Credit Hours, and/or
6 Alternative Work Schedules will be made in accordance with OPM regulations. Work schedules
7 require Management's approval in advance and are subject to Management's discretion,
8 however, Management's decisions may not be arbitrary. Nothing in the Article prohibits the
9 addition of work schedules in the future, should they become available. The official lunch period
10 established by each office is added to the work schedule hours defined below.
11

12 **Section 16.02 - Definitions.**

13 (1) **"Alternative Work Schedules (AWS)"** are work schedule options other than a standard
14 fixed tour, which employees may request. These requests are subject to Management's
15 approval and discretion, however, decisions may not be arbitrary and are subject to the
16 provisions of this Article. The Department offers the following alternative work schedule
17 options:

18 (a) *Flexitime*. A flexible work schedule program consisting of five consecutive work
19 days of eight hours a day with a set arrival time between 6:00 a.m. and 9:30 a.m.
20 of the employee's Local Time. Arrival may vary up to one hour prior to or after
21 the set time, as more fully described later in this Article.

22 (b) *Compressed Work Schedule*. Compressed work schedules (CWS) are work
23 schedules that allow employees to complete the 80-hour biweekly pay period in
24 less than the standard ten workdays. Compressed work schedules include the "5/4/9
25 compressed work schedule" and the "4-10 compressed work schedule" as more fully
26 described later in this Article.
27

28 (2) **"Core Hours"** are the designated period of the day when all full-time employees must be
29 at work, whether they are teleworking or in the office. Core hours for employees
30 stationed in all HUD offices shall be 9:30 a.m. - 2:30 p.m., on all scheduled workdays.
31 ~~While Management is encouraged to consider the employees' duty hours, core hours do~~
32 ~~not place limitations on management's scheduling of work assignments and business~~
33 ~~activities.~~
34

35 (3) **"Credit Hours"** refer to credit for work performed by an employee in excess of an eight-
36 hour tour of duty on any workday in order to vary the length of a subsequent workday,
37 subject to the limitations in Section 16.05. Such work is compensated by an equal amount
38 of time off (i.e., one hour of work in excess of the employee's regularly scheduled eight-
39 hour tour of duty is compensated by one hour off on a subsequent workday). Work
40 performed for credit hours is different from overtime work, which is ordered or directed
41 by Management. Work performed for credit hours is not compensated under, nor is it
42 subject to, the rules and regulations governing overtime work or compensatory time.
43

44 (4) **"Duty Hours"** are the hours of an employee's tour of duty, which shall not begin before
45 6:00 a.m. nor complete after 7:30 p.m. (Local Time), including the use of credit hours,
46 subject to the provisions of this Article.

- 1
2 (5) "**Local Time**" refers to the time in the time zone of the employee's official duty station or
3 temporary duty station while on travel.
4
5 (6) "**Official Business Hours**" refer to the period during work days when a HUD office is
6 officially open for business as established by Management.
7
8 (7) "**Operational Needs**" are defined for the purpose of this Article as requirements for
9 office coverage/functions.
10
11 (8) "**Standard Fixed Tour**" is a standard work schedule of eight hours a day/five days a
12 week with a set arrival and departure time.
13

14 **Section 16.03 - Tours of Duty.**

- 15 (1) *Standard Fixed Tour.* A standard work schedule of eight hours a day/five days a week
16 with a set arrival and departure time. Examples of employees who may be assigned to a
17 standard fixed tour include but are not limited to employees whose primary functions are
18 customer service. This is not a flexible schedule.
19
20 (2) *Flexitime.* Full-time employees who are approved for Flexitime shall be permitted to vary
21 their daily work hours, subject to the following limitations:
22 (a) The standard workweek shall be Monday through Friday.
23 (b) The approved arrival time has a one-hour window of flexibility from the set time,
24 but may not begin before 6:00 a.m. or after 9:30 a.m. (Local Time), and the
25 departure time must be adjusted accordingly.
26 (c) Supervisors may approve occasional variances from the one-hour window of
27 flexibility. Approval of a variance does not require modification of the established
28 work schedule, provided that the eight-hour work day and core hour requirements
29 are met.
30 (d) Employees may be required to notify their supervisor when they begin their
31 workday.
32 (e) Work requirements may vary, as determined by Management, at any individual
33 facility or work unit and generally will not permit additional expense, such as for
34 heating, lighting, security, office coverage, and/or overtime pay.
35
36 (3) *Compressed Work Schedules.* Full-time employees, excluding those working Flexitime
37 and Standard Fixed Tour, may be permitted to complete the 80-hour biweekly pay period
38 in less than the standard ten workdays, in accordance with the following options:
39 (a) The "5-4/9 Compressed Work Schedule" allows employees to work eight 9-hour
40 work shifts and one 8-hour work shift during each bi-weekly pay period, with one
41 workday off.
42 (b) The "4-10 Compressed Work Schedule" allows employees to work eight 10-hour
43 work shifts during each biweekly pay period and have one workday off each
44 week.

- 1 (c) Employees may not combine a compressed work schedule with the flexible
2 schedule. Employees on a Compressed Work Schedule are not eligible to earn
3 credit hours.
- 4 (d) An employee working a compressed work schedule shall account for 80 work
5 hours during each bi-weekly pay period and may not vary their arrival and
6 departure times from their approved schedule. Employees who work a
7 compressed work schedule must be on a fixed work schedule.
- 8 (e) Employees on a 5-4/9 schedule shall not begin work before 6:00 a.m. or after 9:30
9 a.m. nor complete work before 2:30 p.m. or after 7:00 p.m.
- 10 (f) Employees on a 4-10 schedule shall not begin work before 6:00 a.m. or after 9:00
11 a.m. nor complete work before 4:30 p.m. or after 7:30 p.m.
- 12 (g) Management may consider approving the requested day(s) off in an employee's
13 CWS schedule request, using the following guidelines:
- 14 i. Days off shall be scheduled so as not to interfere with Operational Needs.
 - 15 ii. In scheduling days off, supervisors shall give due consideration to work
16 requirements and the preferences of individual employees. Work
17 requirements may vary, as determined by management, at any individual
18 facility or work unit and generally will not permit additional expense, such
19 as for heating, lighting, security, office coverage, and/or overtime pay.
 - 20 iii. Employees' telework schedules.
 - 21
 - 22 iv. In the event of a conflict among employees regarding the scheduling of
23 CWS days off, supervisors may, if appropriate, give the affected
24 employees an opportunity to resolve such conflicts among themselves.
 - 25 v. If employees are unable to resolve a conflict concerning a new requested
26 for a CWS day off, ties between new requests for the same day off will be
27 resolved on the basis of seniority within the work unit, as determined by
28 Management. ~~Absent Operational Needs, a new request will not require~~
29 ~~any employee to change their current CWS day.~~
- 30 (h) Employees may make changes in their CWS (e.g., their scheduled day off or
31 length of workday) or may change from a CWS to a five-day-per-week Flexitime
32 work schedule or standard fixed tour, provided it is consistent with (4), "Work
33 Schedule Request, HUD-25017," below, and subject to the following limitation:
- 34 i. A temporary change of the day off within the same week may be made by
35 mutual agreement between the supervisor and employee to meet
36 management or employee needs without filling out a HUD-25017.
- 37 (i) Overtime work under a CWS shall be defined as work which has been ordered or
38 approved by Management in excess of the designated work schedule. Employees
39 utilizing CWS are not eligible to earn or use Credit Hours.

40
41 (4) Work Schedule Request, HUD-25017

42 Employees who request to work a CWS or Flexitime Schedule or change their schedule,
43 must submit form HUD-25017 or its successor for supervisory approval in advance with
44 a proposed daily schedule. The Parties recognize that any successor form or system
45 changes may be subject to bargaining in accordance with this Agreement. Employees will
46 be notified in writing of approval or disapproval. An initial change to a CWS or Flexitime

1 can be made with supervisory approval at the start of a pay period, and then no more than
2 one change can be made per quarter, unless approved by the supervisor. Management
3 may delay the start or change request for up to two weeks for Operational Needs.
4 Employees utilizing CWS are not eligible to earn Credit Hours. As with other work
5 schedules, management may disapprove, suspend, or cancel the work schedule options
6 listed above for an employee(s) if it is determined that it interferes with Operational
7 Needs.

- 8
9 (5) Employees working after 6:00 p.m. as part of any alternative work schedule (Flexitime or
10 CWS) shall not be entitled to night differential or other premium pay for such work.
11

12 **Section 16.04 - Individual Alternate Work Schedules Denials, Suspensions, or**
13 **Terminations.**

14
15
16 Management may, at its discretion, temporarily suspend or adjust an employee's Alternative
17 Work Schedule (AWS) for any biweekly pay period(s). Notice of non-travel and/or training
18 related denials or terminations of an AWS shall be provided in advance to the individual
19 employee in writing. The notice shall include the basis for the decision and may discuss
20 alternatives, if available. The supervisor may deny an employee's request for an Alternative
21 Work Schedule or suspend or terminate an employee's participation in a particular alternative
22 work schedule if it is determined that the employee's participation would negatively impact
23 Operational Needs. Any decision regarding AWS shall not be arbitrary.
24

25 For employees in travel and/or training status management may, at its discretion, temporarily
26 suspend or adjust an employee's CWS Schedule for any biweekly pay period(s) during which the
27 employee is, for all or part of the pay period, in travel and/or training status. The employee's
28 work schedule during the affected pay period(s) shall be within the discretion of Management.
29 Employees on travel and/or training will be informed in advance of the temporarily adjusted
30 work schedule. Such temporary suspensions shall cover the full pay period(s) in which the travel
31 and/or training occurs when the training or travel will affect the work schedule for the pay
32 period. The employee shall return to their CWS Schedule no later than the beginning of the pay
33 period following completion of the travel and/or training.

34 If an employee's flexible work arrangement is suspended, it will be restored as soon as possible
35 after the Operational Needs have been met.
36

37 **Section 16.05 - Credit Hours.**

38 Full-time employees working the Flexitime Work Schedule may elect to earn credit hours,
39 subject to the following limitations:
40

- 41 (1) Employees shall request and must receive approval for credit hours in advance.
42 Employees shall include the specific date(s) and time(s) they plan to perform such work.
43 Managers may discuss the work to be conducted by employees requesting Credit Hours.
44 The supervisor may disapprove a request to work credit hours based on lack of work,
45 other Operational Needs or demonstrated budgetary constraints.
46

- 1 (2) Employees may earn up to three credit hours on any workday. Credit hours shall not be
2 earned on a non-workday. Credit hours shall be earned in one-quarter hour increments.
3
- 4 (3) Work performed in order to earn credit hours shall not begin prior to 6:00 a.m. nor extend
5 past 7:30 p.m. (Local Time).
6
- 7 (4) With prior approval by their supervisor, employees may earn credit hours while in
8 training and/or travel status. The training and/or travel must be to an office which would
9 support the employee working in excess of eight hours. However, an alternate worksite
10 may be utilized, with supervisory approval.
11
- 12 (5) Employees may carry over up to 24 credit hours from one biweekly pay period to the
13 next biweekly pay period. Employees may accrue more than 24 hours during the pay
14 period, however, accrued credit hours in excess of 24 credit hours at the end of the pay
15 period shall be forfeited.
16
- 17 (6) Employees who have earned credit hours may use these credit hours to take time off
18 during their regularly scheduled work hours, subject to the following:
19 (a) Use of credit hours shall be requested and approved in the same manner as leave.
20 (b) Credit hours may be used in combination with approved leave and/or compensatory
21 time off. Credit hours may be used in one-quarter hour increments.
22 (c) Credit hours shall not be used on the same workday that they are earned.
23 Employees may use previously earned credit hours on the same day that they earn
24 additional credit hours.
25
- 26 (7) Union representatives entitled to official time may earn credit hours for time spent in
27 excess of their normal workday if a Management official is present (e.g. a meeting or
28 negotiation). Upon request, the Management official will notify the Union official's
29 supervisor promptly that the employee worked credit hours.
30
- 31 (8) Credit hours must be earned prior to being used.
32
- 33 (9) Employees will not be required to earn credit hours in lieu of ordered overtime.
34
- 35 (10) Employees working after 6:00 p.m. (Local Time) in order to earn credit hours shall not be
36 entitled to night differential or other premium pay for such work.
37
- 38 (11) Unused credit hours accumulated by an employee shall be paid in accordance with the
39 law or statute when an employee retires, transfers to another Department, or otherwise
40 terminates their employment with the Department.
41

42 **Section 16.06 - Crediting and Use of Leave under Flexitime and CWS.**

- 43 (1) The following provisions apply to employees working Flexitime:
44 (a) Leave may be taken in conjunction with the established lunch period for the
45 office.

- 1 (b) The amount of excused absence to be granted to an employee shall be based on
2 the employee's scheduled tour of duty and the employee's actual arrival time on
3 the day on which the excused absence is granted.
4 (c) Any other necessary determinations with respect to the crediting or use of leave
5 under Flexitime or credit hours shall be made in accordance with OPM
6 regulations.

7
8 (2) The following provisions shall apply to employees working CWS:

- 9 (a) For CWS, an employee who is on annual, sick, or other leave for the full workday
10 shall be charged leave according to the number of hours they were scheduled to
11 work for that day.
12 (b) When an employee's scheduled day off falls on a holiday, the employee shall be
13 entitled to an in-lieu-of-holiday on the immediately preceding workday. This
14 applies even if the immediately preceding workday is in another pay period.
15 (c) For CWS, an employee shall be credited with holiday leave according to the
16 number of hours they were scheduled to work on that holiday.
17 (d) The amount of excused absence to be granted to an employee working a CWS
18 shall be based on the employee's scheduled tour of duty on the day on which the
19 excused absence is granted. An employee shall not be entitled to an excused
20 absence on their scheduled day off, regardless of whether excused absences are
21 granted to other employees in the same work unit on that day.
22 (e) Any other necessary determinations with respect to the crediting or use of leave
23 under CWS shall be made in accordance with OPM regulations.
24

25 **Section 16.07 - Part-Time Employees.**

- 26 (a) At management's discretion, part-time employees may participate in the Flexitime
27 provisions of this Article.
28 (b) Part-time employees shall not work a CWS, i.e., they shall not work a regular tour
29 of duty in excess of eight work hours on any workday.
30 (c) Part-time employees on Flexitime schedules may earn credit hours on any eight-
31 hour workday. Accumulated credit hours may not carry over more than one-fourth
32 of the employee's bi-weekly work requirement to the next pay period (e.g., if an
33 employee's bi-weekly work schedule is 48 hours, no more than 12 credit hours
34 can be carried over to the next pay period). Accrued credit hours in excess of one-
35 fourth of the biweekly work requirement at the end of the pay period shall be
36 forfeited.
37

38 **Section 16.08 - Overtime Work.**

39 The parties explicitly recognize management's right to order or approve overtime work by any
40 employee on any work schedule/tour of duty. Employees may not work overtime hours without
41 prior written authorization from management. FLSA nonexempt employees are not permitted to
42 use any electronic device during non-duty hours to conduct official HUD business. If it is
43 deemed necessary by management for an employee to conduct HUD business during non-duty
44 hours, the work must be ordered and/or approved in writing in accordance with HUD policy,
45 rules, and regulations governing overtime/compensatory time. The parties recognize employees
46 may be permitted to use electronic devices to access HUD systems during non-duty hours

1 consistent with the applicable Limited Personal Use of Government Office Equipment Policy,
2 provided the employee is not conducting HUD business.

3
4 **Section 16.09 - Telework.**

5 Working under the Department's Telework program will not in and of itself disqualify an
6 employee from working an Alternative Work Schedule, provided they comply with the provisions of
7 the Telework policy and all the negotiated Contract Provisions.

8
9 **Section 16.10 - Timekeeping.**

10 Employees will validate their time using the current Departmental automated time keeping
11 system no later than 12:00 noon on the Monday following the last workday of the pay period.
12 However, early validation may be required due to the employee's leave schedule or advanced
13 payroll processing due to Federal holiday or other exigent circumstances.

14
15 **Section 16.11 - Employee Responsibilities.**

16 (1) Each employee shall be responsible for ensuring that their alternate work schedule does
17 not interfere with the continuing responsibility to carry out their assigned duties and to
18 complete assigned work on schedule. ~~Employees must be present in the office when
19 required and must adjust their work schedule, as necessary.~~

20
21 (2) Each employee shall be responsible for their own compliance with the rules governing
22 this Alternative Work Schedules program.

23
24 **Section 16.12 - Management Responsibilities.**

25 Management is responsible for ensuring that the mission of the Department is carried out
26 effectively and efficiently and for determining the Operational Needs of the Department.
27 Accordingly, Management shall have the following specific responsibilities with respect to
28 administering this Alternative Work Schedules program:

- 29 (1) Management shall be responsible for providing information to employees regarding the
30 rules and procedures governing this Alternative Work Schedules program
31 (2) Management shall be responsible for ensuring that offices are adequately covered during
32 all official business hours, and for determining office coverage requirements, in terms of
33 both the numbers and types of employees needed and skills required. Office coverage as
34 defined for purposes of this article may not be limited to the physical location.

35
36 "Office coverage" includes but is not limited to the following:

- 37 (a) Answering phones;
38 (b) Greeting visitors and attending in-person meetings;
39 (c) Expeditious and efficient handling of inquiries or assignments from internal and
40 external customers and stakeholders;
41 (d) Maintaining clerical, technical, and professional support of the office functions;
42 (e) Handling occasional or recurring peak workload periods;
43 (f) Meeting deadlines; and
44 (g) Meeting other Operational Needs.
45

- 1 (2) Management may designate certain positions to be exempted from CWS, Flexitime, or
2 Credit Hours because of office coverage requirements or specific, job-related
3 requirements of the position.
4

5 **Section 16.13 -Department-wide Alternative Work Schedules Termination.**

6 The Secretary has the authority to terminate AWS in accordance with 5 U.S.C. 6131 (b). If such
7 a determination is made the Department will provide notice to the Union and comply with
8 applicable regulations.
9

10 **Section 16.14 - Rest Breaks.**

- 11 (1) Employees who work a full eight-hour workday or more shall be entitled to two
12 authorized rest breaks, not to exceed 15 minutes, on that workday, one to be taken before
13 the lunch period and one to be taken after it. Employees who work at least four hours but
14 less than eight hours on a workday shall be entitled to one authorized rest break, not to
15 exceed 15 minutes on that workday.
16
- 17 (2) Rest periods may not be taken either within one hour of the employee's arrival or
18 departure times or within one hour of the beginning or ending of the employee's lunch
19 periods; they may not be taken in any combination nor accumulated or accrued for future
20 use.
21
- 22 (3) Rest breaks shall be taken so as not to unduly interrupt the work of the Department.

ARTICLE 34
FURLOUGHS FOR THIRTY (30) DAYS OR LESS

Section 34.01 - General. To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Department mission, the Department will resort to a planned furlough after other good faith alternatives have been considered (e.g., unpaid leave, hiring freeze). This Article sets forth definitions and procedures which shall be followed if Management determines it is necessary to furlough employees for thirty (30) days or less.

1. Planned Furloughs are due to the lack of work or lack of funds.
2. Emergency Furloughs, including Shutdown Furloughs, are due to unforeseeable circumstances such as a sudden breakdown of equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities. Unforeseeable circumstances, in addition to meeting the definition of emergency, also include the inability of Management to continue operations to a practical extent. A shutdown furlough is necessary when funds are not available through an appropriations law or continuing resolution and an agency no longer has the necessary funds to operate, requiring the shutdown of those activities which are not excepted pursuant to the Anti-deficiency Act.

These procedures shall be carried out in accordance with law and Government-wide regulations. Furloughs of thirty (30) days or more must be carried out according to reduction-in-force procedures.

Section 34.02 - Furlough Employee/Position Designations.

- (1) Emergency Furlough Excepted Positions/Employees. "Excepted" employees are described as "employees who are excepted from a furlough by law because they are (1) performing work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. For the purpose of this Article excepted employees is the term used to refer to employees in positions who are funded through annual appropriations that are excepted from the furlough because of the duties as required by law that may continue to be performed during a lapse in appropriations. Excepted employees include those employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work. All work place provisions of this Agreement shall apply to employees considered excepted during a furlough.
- (2) Planned Furlough Employee Designations. As required, Management will determine the numbers, types and grades of employees necessary to accomplish the mission of the Department.
- (3) Union Officials. If permitted by law, rule, regulation, or executive order, union officials can be excepted employees by virtue of their official Departmental position.

Employee Voluntary Unpaid Leave to Avoid Planned Furloughs. Once the Department determines the number, types, and grades of employees necessary to accomplish the work, the Department shall notify the affected employees at the work site and shall solicit volunteers for the liberal use of leave without pay (LWOP) as a means to avoid a planned furlough. The rules regarding leave approval in Article 15 apply. If insufficient numbers of volunteers do not come forth for LWOP to avoid a planned furlough, the Department will accept those volunteers and create a limited planned furlough for the remaining positions in the affected program areas.

Section 34.03 - Notification to Union and Impact Bargaining.

- (1) For Emergency Furloughs: Under an Emergency Furlough, as time and circumstances permit, the Department will provide employees and the Union with information, as soon as it becomes available. For emergency furloughs, bargaining may take place as soon as possible or post-implementation.
- (2) For Planned Furloughs: Impact and implementation bargaining which is necessitated by a Management decision to furlough employees shall take place at the local or National level as appropriate. If differences arise, the procedure for handling an impasse shall be resolved during impact bargaining.

Note: OMB does not currently require the Department to submit an Administrative Furlough Plan for approval so management cannot meet the language provided by the union.

- (3) Content of Notice:
 - (a) The reason for the furlough(s);
 - (b) The organizational segments affected by the furlough(s);
 - (c) The estimated number of employees to be furloughed; and
 - (d) Information on outside employment. HUD shall provide a plain language ethics questions and answer information sheet on outside employment prior to any furlough. This shall be included in the notice and posted on the HUD.gov site.
- (4) The Department and the Union agree that alternatives to furlough shall be considered in the event of lack of work or funds to minimize the need for furloughs.
- (5) Impact and implementation bargaining may include appropriate arrangements for employees affected by the furlough, such as seniority determinations, delivery of exempt position lists, methods of notifying employees, and other applicable provisions. Bargaining shall take place at the National or local level as appropriate and as soon as possible.

Section 34.04 - Scheduling Planned Furlough Days.

When Management has made a decision to furlough employees for a specified number of weeks, days, or hours during a specified period of time, employees shall be provided an opportunity to submit a schedule identifying their preferences in accomplishing the necessary number of weeks, days, or hours off. These schedules shall be accommodated as much as practicable giving due consideration to workload, employee hardship, staffing, and office coverage requirements.

Section 34.05 - Notice to Employees for Planned Furloughs.

Management shall provide written, individual notices to those employees who are to be furloughed thirty (30) days prior to the effective date of the furlough. The furlough notice shall include at a minimum the expected start and end of the furlough, the expected number of days, the reason, contact information with HUD management, as necessary, and information on unemployment benefits availability, eligibility, and location and phone number(s) of the state unemployment office(s).

Section 34.06 - Employee Benefits During Planned or Emergency Furloughs.

- (1) **Continuous Furlough.** Life insurance and health benefits enrollment shall continue without cost to the employee on consecutive and continuous furlough of thirty (30) days or less.
- (2) **Discontinuous Furlough.** Life insurance and health benefits enrollment shall continue. Contributions by the employee shall continue if the salary in the pay period is sufficient to cover the full deduction.

Section 34.07 - Employee Compensation During an Emergency Furlough.

- (1) Excepted employees who are required to report for duty during an emergency furlough shall be fully compensated in accordance with law and regulation.
- (2) Non-excepted employees who are furloughed shall not be retroactively paid and otherwise compensated unless authorized by law.

Section 34.08 - Employee Leave During an Emergency Furlough.

- (1) Upon an emergency furlough, all leave is cancelled (annual leave, sick leave, or other).
- (2) The period of a furlough does not count against the leave entitlement granted under the provisions of FMLA.

Section 34.09 - Union Officials and Office Access During an Emergency Furlough.

Union officials cannot work on official time during a shutdown. Furloughed employees are prohibited from working on official time, because official time is a paid status, and agencies may not incur financial obligations during a lapse in appropriations. Excepted employees are only permitted to work on activities that are authorized under the Anti-deficiency Act. Access to facilities during a furlough may be

restricted based on funding, security or other issues. If the offices are accessible and furloughed union officials are allowed access, it will be solely for the purpose of performing voluntary unpaid representational functions (i.e., they could not be working on official time or in any other way incurring obligations that would require subsequent agency payment).

Exhibit 20

Article 34 – AFGE Final Written Offer

ARTICLE 34
FURLOUGHS FOR THIRTY (30) DAYS OR LESS

Section 34.01 - General. This Article sets forth definitions and procedures which shall be followed if Management determines it is necessary to furlough employees for 30 days or less. These procedures shall be carried out in accordance with law and Government-wide regulations. To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Department mission, the Department will resort to an administrative furlough only after other good faith alternatives have been considered (e.g., unpaid leave, hiring freeze). Furloughs of 30 days or more must be carried out according to reduction-in-force procedures.

(1) An Administrative or Planned Furlough is a planned event by the Department which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any situation other than a lapse in appropriations.

(2) Emergency Furloughs, including Shutdown Furloughs, are due to unforeseeable circumstances such as a sudden breakdown of equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities. Unforeseeable circumstances, in addition to meeting the definition of emergency, also include the inability of Management to continue operations to a practical extent. A shutdown furlough is necessary when funds are not available through an appropriations law or continuing resolution and an agency no longer has the necessary funds to operate, requiring the shutdown of those activities which are not excepted pursuant to the Anti-deficiency Act.

Section 34.02 - Furlough Employee/Position Designations.

(1) Emergency Furloughs Excepted Positions/Employees. "Excepted" employees are described as "employees who are excepted from a furlough by law because they are (1) performing work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. For the purpose of this Article excepted employees is the term used to refer to employees in positions who are funded through annual appropriations that are excepted from the furlough because of the duties as required by law that may continue to be performed during a lapse in appropriations. Excepted employees include those employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work. All workplace provisions of this Agreement shall apply to employees considered excepted during a furlough.

(2) Administrative or Planned Furlough Employee Designations. As required, Management will determine the numbers, types and grades of employees necessary to accomplish the mission of the Department.

Union #67
5/8/2020
9:00 a.m.

(3) Union Officials. If permitted by law, rule, regulation, or executive order, union officials can be excepted employees by virtue of their official Departmental position.

Section 34.03 - Notification to Union and Impact Bargaining.

(1) For Emergency Furloughs: As time and circumstances permit, the Department will provide employees and the Union with information, as soon as it becomes available.

~~(1)~~

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(2) Content of Notice of Furlough (Administrative/Planned or Emergency)

(a) The reasons for the furlough;

(b) The organizational segment(s) affected by the furlough(s);

(c) The estimated number of employees to be furloughed;

(d) The Department's provision of letters to creditors;

(e) The Departments provision of information on unemployment compensation;

(f) Contact information and guidance related to ethics in accordance with the Article on Employee Rights/Standards of Conduct.

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~~(2) For Administrative Furloughs: Impact and implementation bargaining, which is necessitated by a Management decision to furlough employees, shall take place at the local or National level as appropriate.~~

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(3) For Administrative or Planned Furloughs, the Department and the Union agree that alternatives to furlough shall be considered in the event of lack of work or funds to minimize the need for furloughs.

~~(a) The Department and the Union agree that alternatives to furlough shall be considered in the event of lack of work or funds to minimize the need for furloughs. will consider suggestions from the Union on cost savings that may eliminate the need for furlough.~~

~~(b) Furlough time will be expressed in hours.~~

~~(c) The Department will provide information to employees on the furlough impact and any related changes.~~

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(4) If Management intends to follow a plan that has been previously provided to the Union, no further notice of bargaining is required. If Management intended to deviate from a previously provided plan notice and bargaining will be completed as soon as practicable, before implementation or post-implementation.

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(5) For Administrative or Planned Furloughs: Impact and implementation bargaining, which is necessitated by a Management decision to furlough employees, shall take place in accordance with Article 49.

~~(4)~~

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Union #67
5/8/2020
9:00 a.m.

- ~~(5)(1) Content of Notice of Furlough (Administrative/Planned or Emergency)~~
- ~~(a) The reasons for the furlough;~~
- ~~(b)(a) The organizational segment(s) affected by the furlough(s);~~
- ~~(c)(a) The estimated number of employees to be furloughed;~~
- ~~(d)(a) The Department's provision of letters to creditors;~~
- ~~(e)(a) The Department's provision of information on unemployment compensation;~~
- ~~(f)(a) Contact information and guidance related to ethics in accordance with the Article on Employee Rights/Standards of Conduct.~~

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Section 34.04 – Scheduling Administrative or Planned Furlough Days.

When Management has made a decision to furlough employees for a specified number of weeks, days, or hours during a specified period of time, employees shall be provided an opportunity to submit a schedule identifying their preferences in accomplishing the necessary number of weeks, days, or hours off. These schedules shall be accommodated as much as practicable giving due consideration to workload, employee hardship, staffing, and office coverage requirements.

Section 34.05 - Notice to Employees for Administrative or Planned Furloughs.

Management shall provide written, individual notices to those employees who are to be furloughed 30 days prior to the effective date of the furlough. The furlough notice shall include at a minimum the expected start and end of the furlough, the expected number of days, the reason, contact information with HUD management, as necessary, and information on unemployment benefits availability, eligibility, and location and phone number(s) of the state unemployment office(s).

Section 34.06 - Employee Benefits During Administrative/Planned or Emergency Furloughs.

- (1) **Continuous Furlough.** Life insurance and health benefits enrollment shall continue without cost to the employee on furlough of 30 days or less, in accordance with applicable law.
- (2) **Discontinuous Furlough.** Life insurance and health benefits enrollment shall continue. Contributions by the employee shall continue if the salary in the pay period is sufficient to cover the full deduction.
- (3) **Non-Pay Status Due to Lapse of Appropriations.** If employees are in a non-pay status due to a lapse of appropriations (Emergency Furlough), the Department will notify the employees that the premiums will accumulate and be paid upon return to duty. The Department shall advise employees of what will occur if the furlough shutdown takes place during the period when an employee expected a change in health benefits to take effect, or if the furlough shutdown interrupts an open enrollment season.

Union #67
5/8/2020
9:00 a.m.

1 **Section 34.07 – Employee Leave During Furloughs.**

- 2 (1) Upon a Emergency Furlough, all leave is cancelled (annual leave, sick leave,
3 or other).
4 (2) For furloughed employees, the period of a furlough does not count against the
5 leave entitlement granted under the provisions of FMLA.

6 **Section 34.08 - Union Officials and Office Access During an Emergency Furlough.**

7 (1) Union officials cannot work on official time during a shutdown. Furloughed employees
8 are prohibited from working on official time, because official time is a paid status, and
9 agencies may not incur financial obligations during a lapse in appropriations. Excepted
10 employees are only permitted to work on activities that are authorized under the Anti-
11 deficiency Act. ~~If excepted employees are working on-site in any HUD office or~~
12 ~~program area the Union shall be provided access, unless a~~ Access to facilities during a
13 furlough ~~may be~~ restricted based on funding, security or other issues. ~~If excepted~~
14 ~~employees are working on-site in any HUD office or program area the Union shall be~~
15 ~~provided access.~~ Union officials will be allowed access, solely for the purpose of
16 performing voluntary representation functions (i.e., they could not be working on
17 official time or in any other way incurring obligations that would require subsequent
18 agency payment). ~~Union officials will be allowed to access emails during furloughs.~~

19
20 (2) — The Union will use the mailbox: ELRDivision@hud.gov or successor as ~~a~~ their means
21 of communicating with Management during ~~a~~ furlough. The Union recognizes that
22 communications sent to Management officials through any other means during a
23 furlough may not receive a response. The Union may submit to the Department
24 alternative methods for communicating with Union representatives during an
25 Emergency Furlough.

26 (2) —

27

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Exhibit 21

Article 34 – HUD Final Written Offer

Article 34: Furloughs for 30 Days or Less

Section 34.01- General.

This Article sets forth definitions and procedures which shall be followed if Management determines it is necessary to furlough employees for 30 days or less. These procedures shall be carried out in accordance with law and Government-wide regulations. To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Department mission, the Department will resort to a planned furlough after other good faith alternatives have been considered (e.g., unpaid leave, hiring freeze). Furloughs of 30 days or more must be carried out according to reduction-in-force procedures.

- (1) An Administrative or Planned Furlough is designed by the Department to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any situation other than a lapse in appropriations.
- (2) Emergency Furloughs, including Shutdown Furloughs, are due to unforeseeable circumstances such as a sudden breakdown of equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities. Unforeseeable circumstances, in addition to meeting the definition of emergency, also include the inability of Management to continue operations to a practical extent. A shutdown furlough is necessary when funds are not available through an appropriations law or continuing resolution and an agency no longer has the necessary funds to operate, requiring the shutdown of those activities which are not excepted pursuant to the Anti-deficiency Act.

Section 34.02 - Furlough Employee/Position Designations.

- (1) Emergency Furlough Excepted Positions/Employees. "Excepted" employees are described as "employees who are excepted from a furlough by law because they are (1) performing work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough. For the purpose of this Article excepted employees is the term used to refer to employees in positions who are funded through annual appropriations that are excepted from the furlough because of the duties as required by law that may continue to be performed during a lapse in appropriations. Excepted employees include those employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work. All work place provisions of this Agreement shall apply to employees considered excepted during a furlough.
- (2) Administrative or Planned Furlough Employee Designations. As required, Management will determine the numbers, types and grades of employees necessary to accomplish the mission of the Department.
- (3) Union Officials. If permitted by law, rule, regulation, or executive order, union officials can be excepted employees by virtue of their official Departmental position.

Section 34.03 - Notification to Union and Impact Bargaining.

- 1 (1) For Emergency Furloughs, as time and circumstances permit, the Department will
2 provide employees and the Union with information, as soon as it becomes available.
3
- 4 (2) Content of Notice of Furlough (Administrative/Planned or Emergency):
 - 5 (a) The reason for the furlough(s);
 - 6 (b) The organizational segments affected by the furlough(s);
 - 7 (c) The estimated number of employees to be furloughed;
 - 8 (d) The Department's provision of letters to creditors;
 - 9 (e) The Department's provision of information on unemployment compensation; and
 - 10 (f) Contact information and guidance related to ethics in accordance with the Article
11 on Employee Rights/Standards of Conduct.
12
- 13 (3) For Administrative or Planned Furloughs, the Department and the Union agree that
14 alternatives to furlough shall be considered in the event of lack of work or funds to
15 minimize the need for furloughs.
 - 16 (a) The Department will consider suggestions from the Union on cost savings that
17 may eliminate the need for furlough.
 - 18 (b) Furlough time will be expressed in hours.
 - 19 (c) The Department will provide information to employees on the furlough impact
20 and any related changes.
21
- 22 (4) If Management intends to follow a plan that has been previously provided to the union,
23 no further notice or bargaining is required. If Management intends to deviate from a
24 previously provided plan, notice and bargaining, if necessary, will be completed as soon
25 as practicable, before implementation or post-implementation.
26

27 **Section 34.04 - Scheduling Administrative or Planned Furlough Days.**

28 When Management has made a decision to furlough employees for a specified number of weeks,
29 days, or hours during a specified period of time, employees shall be provided an opportunity to
30 submit a schedule identifying their preferences in accomplishing the necessary number of weeks,
31 days, or hours off. These schedules shall be accommodated as much as practicable giving due
32 consideration to workload, employee hardship, staffing, and office coverage requirements.
33

34 **Section 34.05 - Notice to Employees for Administrative or Planned Furloughs.**

35 Management shall provide written, individual notices to those employees who are to be
36 furloughed 30 days prior to the effective date of the furlough. The furlough notice shall include at
37 a minimum the expected start and end of the furlough, the expected number of days, the reason,
38 contact information with HUD management, as necessary, and information on unemployment
39 benefits availability, eligibility, and location and phone number(s) of the state unemployment
40 office(s).
41

42 **Section 34.06 - Employee Benefits During Administrative/Planned or Emergency 43 Furloughs.**

- 44 (1) *Continuous Furlough.* Life insurance and health benefits enrollment shall continue
45 without cost to the employee during a furlough of 30 days or less, in accordance with
46 applicable law.

1
2 (2) *Discontinuous Furlough.* Life insurance and health benefits enrollment shall continue.
3 Contributions by the employee shall continue if the salary in the pay period is sufficient
4 to cover the full deduction.
5

6 (3) *Non-Pay Status Due to Lapse of Appropriations.* If employees are in a non-pay status due
7 to a lapse of appropriations (shutdown furlough), the Department will notify the employees
8 that the premiums will accumulate and be paid upon return to duty. The Department shall
9 advise employees of what will occur if the furlough shutdown takes place during the period
10 when an employee expected a change in health benefits to take effect, or if the furlough
11 shutdown interrupts an open enrollment season.
12

13 **Section 34.07 - Employee Leave During an Emergency Furlough.**

- 14 (1) Upon an emergency furlough, all leave is cancelled (annual leave, sick leave, or other).
15
16 (2) For furloughed employees, the period of a furlough does not count against the leave
17 entitlement granted under the provisions of FMLA.
18

19 **Section 34.08 - Union Officials and Office Access During an Emergency Furlough.**

- 20 (1) Union officials cannot work on official time during a shutdown. Furloughed employees
21 are prohibited from working on official time, because official time is a paid status, and
22 agencies may not incur financial obligations during a lapse in appropriations. Excepted
23 employees are only permitted to work on activities that are authorized under the Anti-
24 deficiency Act. If excepted employees are working on-site in any HUD office or program
25 area the Union shall be provided access, unless Aaccess to facilities during a furlough
26 may be restricted based on funding, security or other issues. If the offices are accessible
27 and furloughed union officials are allowed access, it will be solely for the purpose of
28 performing voluntary unpaid representational functions (i.e., they could not be working
29 on official time or in any other way incurring obligations that would require subsequent
30 agency payment).
31
32 (2) The Union will use the mailbox: ELRDivision@hud.gov or successor, as their means of
33 communicating with Management during a furlough. The Union recognizes that
34 communications sent to Management officials through any other means during a furlough
35 may not receive a response. The Union may submit to the Department alternative methods
36 for communicating with Union representatives during an Emergency Furlough.

Exhibit 24

Article 45 – HUD’s Final Written Offer

Article 45: Reasonable Accommodation

Section 45.01 - General.

The Department is committed to the removal of workplace barriers that may interfere with, inhibit, or prevent qualified individuals with disabilities, including disabled veterans, from performing jobs which they could do with some form of accommodation. The Department will provide a Reasonable Accommodation to the known physical or mental limitations of a qualified applicant or employees with a disability unless the Department demonstrates that the accommodation would impose an Undue Hardship, as defined in the U.S. Equal Employment Opportunity Commission's regulations at 29 CFR 1630.

The parties agree that the Departmental Reasonable Accommodation policy Handbook 7855.1 (Rev 2), or successor, describes the responsibilities and processes for managers and employees to follow regarding Reasonable Accommodation requests. If changes are made to the Handbook, notice and bargaining will take place to the extent required by the Statute and in accordance with the Article on Mid-Term Bargaining. Should the CBA and the Handbook conflict, the CBA shall govern.

Section 45.02 - Examples of Reasonable Accommodations.

Reasonable Accommodations may include but shall not be limited to:

- (1) Job restructuring (altering how or when job duties are performed without removing any essential job function);
- (2) Modification of job environment (i.e., making existing facilities accessible);
- (3) Modification of Departmental policies (e.g., work schedules);
- (4) Acquisition or modification of equipment (e.g., furniture and assistive technology);
- (5) Modifying work instructions or guidance and training materials format or media (e.g. Braille, large print);
- (6) Providing qualified readers or sign language interpreters;
- (7) Parking accommodations;
- (8) Modifications or adjustments to the job application process;
- (9) Providing an appropriate private space where an individual can perform medically necessary procedures, such as injecting insulin
- (10) *Telework Accommodation:* In order for telework to be considered as an accommodation, the essential job duties must be portable and should not create an Undue Hardship as a result of the Essential Functions of the job not being carried out or inappropriately fall to other employees. Several factors should be considered in determining the feasibility of telework as an accommodation. These may include, but are not limited to:

- 1 (a) If the duties require the use of certain equipment that cannot be accessed or
- 2 replicated at home;
- 3 (b) If there is a need for face-to-face interaction with Management, other employees,
- 4 outside colleagues, members of the public, consumers, grantees, or clients;
- 5 (c) If the employee is required to be present at a particular site to conduct reviews or
- 6 is needed to be present to conduct other on-site work; or
- 7 (d) To work with specific materials that cannot be moved from the office site.

8 If approved, the employee must follow all rules of the Telework policy and the Article on
9 Telework, unless specifically modified as part of an approved Reasonable
10 Accommodation. This may include completing the telework application and training
11 prior to the implementation of the telework schedule. If employees have completed the
12 telework program requirements (training and approved agreement in place), completion
13 of a new agreement will not be required unless the work arrangement changes (i.e.,
14 increase in the number of days, adjustment to the type of schedule—situational to
15 regular). Instead, the employee must submit a modified agreement to reflect the approved
16 accommodation.

17 **Section 45.03 - Reasonable Accommodation Process.**

18 **(1) Initiation of a Reasonable Accommodation Request**

19 An employee with a disability may request a Reasonable Accommodation at any time
20 during the period of employment. The request does not have to contain any special words
21 such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” The
22 Department and any employee who requires a Reasonable Accommodation due to a
23 disability shall follow the procedures below.

24 (a) Initial Request for Reasonable Accommodation.

- 25 i. An employee or their designated representative (e.g. family member,
26 union representative) will request an accommodation of a Receiving
27 Official or Deciding Official, in person or by electronic communication.
28 The Receiving Official is typically the employee’s immediate supervisor
29 or another manager in the chain-of-command, a member of the ODEEO
30 staff, or an employee of the Reasonable Accommodation Branch (RAB).
31
32
- 33 ii. If the employee directs the Reasonable Accommodation request to a
34 Receiving or Deciding Official, a Deciding Official will acknowledge
35 receipt of the request to the employee in writing as soon as possible but no
36 later than seven days, with a copy to the RAB. Receipt of request runs
37 from the Deciding Official’s actual knowledge of the request for
38 accommodation (e.g. if Deciding Official is on leave or business travel,
39 they may receive it upon return rather than on the day it was submitted by
40 the employee). If the employee has not completed a HUD-1000, the
41 Deciding Official will complete the form on the employee’s behalf and
42 transmit the HUD-1000 to the RAB within that seven-day period.
43
- 44 iii. If the employee directs the Reasonable Accommodation request to the
45 RAB, then the Disability Program Manager (DPM) or other RAB
46 designee, will acknowledge receipt of the request to the employee in

1 writing as soon as possible but no later than seven days. The DPM or RAB
2 designee will copy the Deciding Official on the acknowledgement of
3 receipt of the Reasonable Accommodation request. If the employee has
4 not completed a HUD-1000, the DPM or RAB designee will complete the
5 form on the employee's behalf, or specifically inform the Deciding
6 Official that they must do so and transmit the HUD-1000 to the RAB.
7

8 (b) Employee Reasonable Accommodation Documentation Responsibilities:

- 9 i. Unless the employee's disability is obvious (e.g., quadriplegia), and the
10 need for an accommodation is obvious (e.g., a ramp for a wheelchair user),
11 at the time of request, but no later than 15 days after the initial request, the
12 employee must provide the following medical documentation:
13 a. Documentation demonstrating that they are an Individual with a
14 Disability.
15 b. Documentation establishing the functional limitations resulting
16 from the disability that interfere with performance of the job, how
17 long each functional limitation is expected to continue, and
18 prognosis of the disability; and
19 c. Documentation or explanation as to how the requested
20 accommodation facilitates the performance of the Essential
21 Functions of their job, where a specific Reasonable
22 Accommodation has been requested.
23
- 24 ii. Individuals' disabilities can manifest differently and some functional
25 limitations can be different at different times. Consequently, an employee
26 with an obvious disability may need to provide documentation or updated
27 documentation regarding the employee's specific functional limitations,
28 and/or documentation regarding how the requested accommodation
29 facilitates the performance of the Essential Functions of his or her job.
30 However, if both the disability and need for Reasonable Accommodation
31 are obvious the employee will not be required to submit additional
32 medical documentation.
33
- 34 iii. Even where an employee submits medical documentation along with the
35 initial request for Reasonable Accommodation, that documentation may
36 be insufficient or additional medical documentation or information may be
37 needed for the Deciding Official to conduct an informed review and make
38 a decision. In this circumstance, the employee will be notified that
39 additional documentation will be needed. The employee will be given 30
40 days after the request for additional documentation to provide the
41 requested documentation.
42
- 43 iv. A requesting employee may choose to submit medical documentation to
44 either the RAB or the Deciding Official at the employee's sole discretion.
45

- v. Unless sufficient medical documentation is provided at the time of request, all deadlines for the Deciding Official to respond to the Reasonable Accommodation are suspended until the employee has submitted all documentation necessary for the Deciding Official to conduct an informed review of the request and make a decision.
- vi. When seeking medical documentation for purposes of evaluating an employee's reasonable accommodation request, the Department may only request documentation that is related to the request for Reasonable Accommodation and associated disability. Management may not request an employee's complete medical records
- vii. The RAB will review the requesting employee's medical documentation to determine if the employee is an Individual with a Disability, which confirms their eligibility to continue in the Reasonable Accommodation process. Once eligibility is established, the RAB will immediately convey to the Deciding Official the requesting employee's specific functional limitations, who will then communicate the Essential Functions of the employee's position to the RAB. A review of the requesting employee's functional limitations, as well as available accommodations, will then be conducted to determine if the employee is a Qualified Individual with a Disability.
- viii. Failure to provide sufficient medical documentation within the specified timeframes may result in delay or discontinuation of the processing of a Reasonable Accommodation request, with written notice to the requesting employee.

(2) Interactive Process

(a) *Initiation of the Interactive Process.* The Interactive Process between employee and Deciding Official begins at the earliest stage of the processing of a Reasonable Accommodation request. Its purpose is for the requesting employee and Deciding Official to communicate with each other to determine if there is an effective accommodation that will address the employee's functional limitations in a manner that will enable them to perform the Essential Functions of the job without posing an Undue Hardship on the Department.

The Initiation of the Interactive Process will proceed as follows:

- i. The Deciding Official shall initiate the Interactive Process as soon as possible but no later than 14 days of the initial request. The Employee shall respond to the Deciding Official as soon as possible but no later than seven days after this contact.
- ii. The Interactive Process will be conducted in person, by telephone or other electronic means and may, but is not required to, include the DPM or RAB

1 designees or other employee or management representatives as
2 participants.
3

4 (b) The Deciding Official and the requesting employee both have a duty to engage in
5 the Interactive Process.
6

7 (c) During the Interactive Process, the employee and Deciding Official will review
8 the requested accommodation(s), functional limitations and Essential Functions of
9 the employees' position. The Deciding Official will explore and respond to the
10 employee's requests for accommodation and, where appropriate, offer alternative
11 effective accommodations. The Deciding Official will consider approving an
12 employee's requested accommodation before proposing an alternative
13 accommodation or denying the employee's requested accommodation.
14

15
16 ~~(d)~~

17
18 ~~(e)~~(d) The Deciding Official shall consider, if necessary and available, Interim
19 Accommodations that may be implemented during the Interactive Process or
20 when an accommodation is agreed upon, but not yet implemented. Since Interim
21 Accommodations may be provided before the process for determining whether an
22 employee is a Qualified Individual with a Disability is complete, Interim
23 Accommodations may be revoked if

- 24 i. The employee is not a Qualified Individual with a Disability;
- 25 ii. The employee would pose a direct threat, meaning a significant risk of
26 substantial harm to the health or safety of the individual or others that
27 cannot be eliminated; or
- 28 iii. An accommodation would impose an Undue Hardship on the Agency.
- 29 iv. A different accommodation is approved and implemented in accordance
30 with the procedures below.

31 The Deciding Official shall not implement any Interim Accommodation if the
32 employee objects to that accommodation.
33

34 ~~(f)~~(e) The Interactive Process concludes when an effective accommodation has
35 been identified and agreed upon by the employee and the Deciding Official, or the
36 Interactive Process is no longer productive in identifying effective
37 accommodations.
38

39 ~~(g)~~(f) An employee's failure to engage in the Interactive Process may result in
40 delay or discontinuation of the processing of a Reasonable Accommodation
41 request, with written notice to the requesting employee.
42

43 ~~(h)~~(g) If no effective accommodation can be agreed upon, other options will be
44 explored, including reassignment, if requested by the employee as a reasonable
45 accommodation of last resort as set out in Section 45.03(6).
46

1 **(3) Approval of Accommodation**

2 (a) Where a Deciding Official determines that a Reasonable Accommodation should
3 be granted, the following steps must be taken:

- 4
- 5 i. The Deciding Official must put the approval of a Reasonable
6 Accommodation in writing on the HUD-1000, send it to the requesting
7 employee, and copy the DPM or RAB designee.
- 8 a. The Deciding Official may approve an alternative accommodation
9 to the one that is requested by the employee, as long as it is
10 effective in addressing the employee's functional limitations in
11 performing the Essential Functions of his or her job.
- 12 b. For purposes of this Article, approval of a "partial"
13 accommodation or an "alternative" accommodation have the same
14 meaning, in that they both propose an effective accommodation
15 that is other than the accommodation that was specifically
16 requested by the employee.
- 17
- 18 ii. The Deciding Official must inform the requesting employee in writing of
19 the anticipated effective date of the accommodation or the date on which
20 the accommodation is expected to be implemented.
- 21
- 22 a. When approved, most accommodations will be granted and
23 implemented within 45 days of the initial request.
- 24 1. Extenuating circumstances may delay the consideration or
25 implementation of a Reasonable Accommodation.
- 26 2. The suspension of deadlines in this Article (e.g., for failure
27 to timely submit medical documentation) may also delay
28 implementation of a Reasonable Accommodation.
- 29 3. The Deciding Official will advise the requesting employee
30 of any extenuating circumstances or other reasons for
31 delay of implementation in writing, copying the DPM or
32 RAB designee.
- 33
- 34 b. Time sensitive accommodations may be expedited, where
35 reasonable and necessary, within five days, of the initial request.
- 36 1. Some time-sensitive accommodations may be implemented
37 in fewer than five days (e.g., a policy to allow an employee
38 with diabetes to take regular breaks to check blood sugar
39 and take medication may be implemented immediately).
- 40 2. Some time-sensitive accommodations may be implemented
41 in more than five days, but fewer than 45 days as the
42 accommodation becomes available (e.g., the Agency
43 locates a sign language interpreter with the requisite skills
44 to interpret at a technical meeting).
- 45

1 c. Deciding Official will ensure that the approved accommodation is,
2 in fact, implemented and working effectively. Requesting
3 employee must inform the Deciding Official, the DPM or RAB
4 designee within 10 days after receipt of the approved
5 accommodation if an approved accommodation is not implemented
6 or not fully implemented. Once implemented, the requesting
7 employee must inform the Deciding Official as soon as the
8 employee is aware if an accommodation is not effective (e.g., the
9 equipment does not work in the anticipated manner and is not
10 effective for the employee to access the necessary functions).

11
12 iii. Employee will respond to Deciding Official's offer of Reasonable
13 Accommodation.

14 a. A requesting employee is not required to accept the Reasonable
15 Accommodation that is offered by the Deciding Official. However,
16 the employee must communicate that they either accept or reject
17 the offered accommodation in writing, copying the DPM or RAB
18 designee. If the employee fails to respond to the offered
19 Reasonable Accommodation within 15 days after the offer, barring
20 extenuating circumstances (e.g. hospitalization), the employee will
21 be considered to have abandoned the Interactive Process and the
22 Department may cease processing of the Reasonable
23 Accommodation request, with written notification to the employee,
24 copying the DPM or RAB designee.

25 b. If the requesting employee rejects the offered accommodation the
26 Deciding Official may reopen the Interactive Process to determine
27 if there are adjustments to the offered Reasonable Accommodation
28 that may be acceptable to the requesting employee, or if an
29 alternative effective accommodation can be identified.

30 c. If no alternative accommodation can be agreed upon, the
31 Department may cease processing the Reasonable Accommodation
32 request, with notification to the requested employee, or deny the
33 request, with written notification to the requesting employee,
34 documented on the HUD-1000, and copied to the DPM or RAB
35 designee.
36

37 **(4) Denial of Requested Accommodation.**

38 (a) Where a Deciding Official determines that a Reasonable Accommodation should
39 not be granted the following steps must be taken:

40
41 i. The Deciding Official must put the denial of a Reasonable
42 Accommodation in writing on the HUD-11600, send it to the requesting
43 employee, and copy the DPM or RAB designee. A decision to provide an
44 accommodation other than the one specifically requested is considered a
45 decision to grant an accommodation. The Department must issue the
46 employee notice in accordance with 45.03(4)(a)(ii), below, for the portion

1 of the request that was not approved, and identify alternative
2 accommodation(s) to be provided, if any.
3

- 4 ii. Denials will be communicated within 45 days after the initial request,
5 absent extenuating circumstances (e.g., prolonged Interactive Process) or
6 suspension of deadlines (e.g., due to employee's delay in providing
7 sufficient medical documentation). The denial notice shall include an
8 explanation for the denial in plain language that includes the reasons for
9 the denial, the name of the Reconsideration Official, and notify the
10 employee of the internal appeal process. Where the Deciding Official has
11 denied a specific requested accommodation but has offered an alternative
12 accommodation, the denial notice should explain the reasons for the denial
13 of the requested accommodation and provide reasons the approved
14 accommodation will be effective.
15
16 iii. A Reasonable Accommodation may also be denied on any basis permitted
17 by law.
18
19 iv. If the requesting employee wishes to appeal the Denial, they must follow
20 the Reconsideration or Appeal processes set forth in this Agreement.
21

22 **(5) Reconsideration**

23 (a) Reconsideration of Approved Alternative Accommodations.
24

- 25 i. If a requesting employee is unsatisfied with the alternative
26 accommodation that they have been offered by the Deciding Official, they
27 may, within 15 days after the Deciding Official's offer of Reasonable
28 Accommodation, make a written request for reconsideration to a
29 Reconsideration Official. This Reconsideration Official will be a
30 management designee at a higher level than the Deciding Official. The
31 Reconsideration Official will acknowledge the request for reconsideration
32 within five days after the employee's request, absent extenuating
33 circumstances. The Reconsideration Official will then have 15 days after
34 acknowledging the employee's request for reconsideration, absent
35 extenuating circumstances, to render a decision.
36
37 ii. If the Reconsideration Official denies the request for reconsideration or
38 the Reconsideration Official offers an accommodation or renders a
39 decision that the requesting employee considers unfavorable, the
40 employee will have the choice of accepting the accommodation offered by
41 Management. If accepted, the employee must communicate the acceptance
42 to the Reconsideration Official in writing within 15 days after the
43 decision. If the employee elects not to accept management's offer of
44 accommodation, the Department will terminate processing of the
45 employee's request for accommodation. The process concludes if the
46 employee elects not to accept management's offer of accommodation.

1
2 (b) Reconsideration of a Denied Reasonable Accommodation:
3

4 i. If a Reasonable Accommodation is denied, the requesting employee may,
5 within 15 days after receipt of the Notice of Denial of Accommodation,
6 make a written request for reconsideration to a Reconsideration Official.
7 The Reconsideration Official will acknowledge the request for
8 reconsideration within five days of the employee's request, absent
9 extenuating circumstances. The Reconsideration Official will then have
10 150 days after acknowledging the employee's request for reconsideration,
11 absent extenuating circumstances, to render a decision.
12

13 ii. If the Reconsideration Official offers an accommodation, the employee
14 will have the choice of accepting the accommodation offered by
15 Management. If accepted, the employee must communicate the acceptance
16 to the Reconsideration Official in writing within 15 days after the
17 decision.
18

19 iii. If the Reconsideration Official renders a decision, that the requesting
20 employee considers to be unfavorable, the employee may, within 5 days
21 after the Reconsideration Official's decision, request in writing, with
22 notice to the Disability Program Manager (DPM) or RAB designee and
23 Deciding Official, that a Reasonable Accommodation Committee (RAC)
24 be empaneled for review of the Reasonable Accommodation request. Once
25 empaneled, the RAC will meet and issue a recommendation.
26

27 iv. When convened, the RAC reviews all facts and provides written
28 recommendations to the Appeals Official to inform their final decision to
29 sustain or revoke denied accommodation. Upon request, the requesting
30 employee and designated representative, if any, will be provided an
31 opportunity to meet with the RAC, in person or by telephone, to provide
32 additional information or clarification. The RAC may also provide an
33 opportunity for the Deciding Official to provide additional information or
34 clarification.
35

36 v. The Appeals Official will be designated by Management at a higher level
37 than the Reconsideration Official. If there is no official at a higher level
38 than the Reconsideration Official, then the Appeals Official will be
39 designated at a lateral level. If the RAC returns a recommendation to the
40 Appeals Official concerning the reconsideration of the denial, then the
41 Appeals Official must consider the recommendation of the RAC prior to
42 making and issuing a final offer or decision within 14 days.
43

44 (6) *Reassignment as an Accommodation:*

45 (a) The following criteria govern the circumstances under which reassignment may
46 be authorized as a form of Reasonable Accommodation:

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- 1 i. Reassignment is considered as a last resort accommodation after all other
2 possible accommodations have been explored and ruled out, ~~or if both the~~
3 ~~Deciding Official and employee mutually agree that reassignment is~~
4 ~~preferable and the position is under the supervision of the Deciding~~
5 ~~Official, to remaining in the current position with some form of~~
6 ~~accommodation.~~
- 7 ii. Reassignment as an accommodation is available only to employees and
8 not to applicants for employment. Employees may only be reassigned to
9 ~~available, classified, funded, vacant vacant funded~~ positions for which
10 they are qualified absent an Undue Hardship on HUD's operations. An ~~an~~
11 ~~available, classified, funded, vacant vacant funded position~~ is one that the
12 Department has determined to fill, has authorization to fill, and for which
13 funding is available ~~and no selection has been made at the conclusion of~~
14 ~~the reassignment search and the notification to the employee.~~
- 15 iii. The employee is qualified if they satisfy the requisite skills, experience,
16 education, and other job-related requirements of the position, and can
17 perform the Essential Functions of the position with or without
18 Reasonable Accommodation, ~~which requires evaluation by both the Office~~
19 ~~of the Chief Human Capital Officer (OCHCO) and the receiving program~~
20 ~~office(s).~~ An employee does not need to be the best qualified individual
21 for the position in order to obtain it as a reassignment.
- 22 iv. Reassignment may be made to a lower-graded position if no suitable
23 vacant funded positions are available at the employee's grade and the
24 employee has indicated that they would consider such positions.
- 25 v. Reassignments as a Reasonable Accommodation should be non-
26 competitive. Reassignment does not include giving the employee a
27 promotion. Thus, the employee must compete for any vacant position(s)
28 that would constitute a promotion.
- 29 (b) ~~For an employee seeking a reasonable accommodation, reassignment is~~
30 ~~considered as a last resort accommodation after all other possible~~
31 ~~accommodations have been explored and ruled out.~~ Employees' requests for
32 reassignment as a Reasonable Accommodation shall be processed in accordance
33 with this Article and the Departmental Reasonable Accommodation policy
34 Handbook 7855.1 (Rev 2), or successor, including the following procedures:
- 35 i. Within seven days after a determination that there is no accommodation
36 that would be effective in enabling the employee to perform the essential
37 functions of their position, an employee may request reassignment through
38 the Department's designee by identifying the parameters of their request
39 for reassignment (i.e., grade level, position location, willingness to take a
40 part-time position, program office preference, ~~and any necessary~~
41 ~~reasonable accommodations in the new position~~) and submitting a resume.
- 42 ii. Based on the parameters provided by the employee, the Department will
43 begin a search for available, classified, funded, vacant positions within 15
44 days of notification. The Department will conduct the search consistent
45 with the parameters of the employee's request for reassignment. If no
46 results are found for which the employee is qualified, the Department will

1 repeat the search 14 days after the initial search results are shared with the
2 employee. The total time period for conducting both searches cannot
3 exceed 45 days. Results of searches will be shared with the employee as
4 quickly as practicable and will ordinarily be ready within 15 days of the
5 end of the search.

- 6 iii. The Department will provide the employee with a list of available
7 positions, if any, for which the employee is qualified. The employee will
8 have no more than seven days to inform the Department's designee which
9 position he or she selects.
- 10 iv. Once the employee has communicated their selection of a position on the
11 list, the Department will start to make arrangements for the reassignment.
12 1. If the employee does not wish to accept any of the positions, the
13 process is complete.
14 2. If the search does not result in any listings, the process is complete.
- 15 v. The Department will not be required to conduct any additional searches
16 for reassignment beyond the one, or potentially two, described in
17 45.03(11)(b).
18

19 **Section 45.05 – Confidentiality of Medical Documentation.**

- 20 (1) Medical Documentation submitted in support of Reasonable Accommodation requests
21 will be kept strictly confidential by the Department, in compliance with Departmental
22 Policy, EEOC guidelines, and applicable law.
- 23 (2) Details of a requesting employee's disability and request for accommodation will be
24 similarly kept confidential, with any information provided on a strictly need-to-know
25 basis, for purposes of evaluation and implementation of an accommodation.
- 26 (3) The Department shall maintain medical and other information that the Department
27 obtains in connection with a request for reasonable accommodation in files separate from
28 the employee's electronic Official Personnel Folder (eOPF).
29

30 **Section 45.06 – Previously Approved Accommodation**

31
32 Employees may be asked to provide documentation to address changed circumstances, such as
33 the changing functional limitations of the employee's physical or mental impairment or changes
34 in the employee's job (e.g., duties, environment, position, way in which work is performed), in
35 accordance with applicable law. For example, the Department may request appropriate medical
36 documentation if the Essential Functions of the job, other job-related factors, or the functional
37 limitations of the employee change. If changes occur that no longer allow the Department to
38 support an approved accommodation, the employee and Department will engage in the
39 Interactive Process in an effort to identify an alternative accommodation.
40

41
42 **Section 45.07 – Training.**

43 The Department will offer training on Reasonable Accommodation, including use of the
44 Reasonable Accommodation Portal. The training may be conducted via various methods
45 including interactive and distance learning.
46

1 **Section 45.08 – Assistive Technology Equipment.**

2 Reasonable accommodation requests for Assistive Technology equipment will be submitted via
3 Form 22006, or successor. If the employee does not submit the form with the Reasonable
4 Accommodation request, the RAB or designee shall be responsible for preparing the Form
5 22006. Once submitted, the procedures set forth above in Section 45.03(1) shall apply to requests
6 for Assistive Technology equipment.
7

8 **Section 45.09 - Distribution of Disability Program Manager (DPM) Information. The**
9 **Reasonable Accommodation policy, which includes information on how to request a Reasonable**
10 **Accommodation and the Department's DPM contact information, is posted on HUD@work**
11 **under the A to Z index - "Reasonable Accommodation." To accommodate disabled applicants**
12 **and disabled employees' family members who may need to contact the DPM on behalf of the**
13 **employee, the Department shall also provide contact the information for the RAB on a non-**
14 **secured public-facing website such as hud.gov.**
15
16

17 **Section 45.0910 – Reasonable Accommodation Portal.**

18 The Reasonable Accommodation Portal is an automated record-keeping system whose functions
19 include the secure storage of information on Reasonable Accommodation requests.

- 20 (1) The Department shall ensure that the portal (including the user interface, instructions,
21 policies and procedures, and guidance) is accessible to individuals with disabilities –
22 including but not limited to the standards under Section 504 and 508 of the Rehabilitation
23 Act of 1973. The Department shall ensure that the portal is user-friendly.
24
- 25 (2) To facilitate understanding and usage, the Agency shall provide a user manual that can be
26 accessed within the portal. Prior to implementation of the portal, the Union shall be
27 provided a copy of the Portal user manual for review and comment.
28
- 29 (3) If the Portal has not been implemented when this Agreement becomes effective, or when
30 a significant update or modification to the Portal is to be implemented, the Department
31 shall provide the Union with instructions, policies and procedures, or other guidance
32 related to the Portal.
33
- 34 (4) The entry or transfer of past Reasonable Accommodation decisions, current cases, or
35 non-electronic requests into the portal shall not result in a material alteration of the record
36 and the requestor shall be permitted to review to ensure completion. To the extent
37 practicable, the entry of such data and information shall not impede the review and
38 processing of open or new Reasonable Accommodation requests.
39
- 40 (5) The Department shall not make updates, revisions, new releases, or other modifications
41 of the Portal, its instructions, policies and procedures, or guidance without providing
42 notice to the Union. Notice shall include a description of the modifications and
43 explanation of the purpose of the modifications. The Department will provide an
44 invitation to the Union to attend a demonstration of the proposed changes, which may be
45 provided prior to the notice but occur no later than at the time of the notice.
46

ARTICLE 45 REASONABLE ACCOMMODATION

Section 45.01 - General. The Department will provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employees with a disability unless the Department demonstrates that the accommodation would impose an undue hardship on its operations, as defined by the U.S. Equal Employment Opportunity Commission's regulations at 29 CFR 1630. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with disability to enjoy equal employment opportunities. Categories of reasonable accommodations include, but are not limited to:

- (1) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential function of that position.
- (2) Modifications or adjustments that enable a qualified individual with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated individuals without disabilities.
- (3) Modifications or adjustments to the job application process that enables a qualified applicant with a disability to be considered for the position that such qualified applicant desires.

The parties agree that Handbook 7855.1 provides the responsibilities and processes for managers and employees to follow regarding reasonable accommodation requests. Where there is a conflict between this Agreement and the Departmental policies on Reasonable Accommodation, this Agreement will prevail.

The policy, procedures, and terminology established in this Article are in conformance with the governing law, rule, and regulations, including but not limited to:

- (1) The Rehabilitation Act of 1973;
- (2) The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008;
- (3) Executive Order 13164;
- (4) EEOC's regulations implementing the ADA (29 CFR part 1630); and
- (5) Handbook 7855.1, dated April 2003.

Section 45.02 – Definitions.

- (1) **Undue hardship.** Undue hardship means significant difficulty or expense and focuses on the resources and circumstances of the Department in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship means significant difficulty or expense incurred by the Department, in consideration of the following factors: (1) the nature and net cost of the accommodation; (2) the overall financial resources of the Department, the number of persons employed in the office or program area of the employee, and the effect on expenses and resources; (3) the overall financial resources of the Department, the overall size of the Department with respect to the number of employees, the number, type, and locations; (4) the type of operations of the Department including the composition, structure, and functions of the workforce; and (5) the impact of the accommodation on the Department’s operations, including the impact on the ability of other employees to perform their duties and the impact on the Department’s ability to conduct business; or would fundamentally alter the nature or operations of the Department. The Department must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship.
- (2) **Individual with a Disability.** An individual who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such impairment.
- (3) **Qualified Individual with a Disability.** An individual with a disability who, with or without reasonable accommodation, can perform the essential functions (grade controlling duties) of the position in question without endangering the health and safety of themselves or others.
- (4) **Major life activities.** Major Life Activities include but are not limited to (1), caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and (2) Major bodily functions including functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.
- (5) **Essential Functions.** In general, the term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position. The grade controlling duties that an employee must be able to perform, with or without a reasonable accommodation are a factor in determining whether job duties are essential functions. (See EEOC regulations at 29 CFR 1630.2(n) for more examples of factors.)

Section 45.03 - Examples of Reasonable Accommodations. Reasonable accommodations may include but shall not be limited to:

- (1) Modification of job duties including job restructuring.
- (2) Modification of job environment (i.e., making facilities readily accessible to and usable by disabled persons).
- (3) Telework modification, work at home (separate and apart from the Department's Telework policy), or an alternate worksite as a reasonable accommodation for disabled employees.
- (4) Part-time or modified work schedules.
- (5) Acquisition or modification of equipment.
- (6) Make available alternate forms of written examinations, Departmental written program and training materials, policies, laws, rules, and regulations.
- (7) Providing qualified readers and interpreters.
- (8) Reassignment. This type of reasonable accommodation is a last resort accommodation provided to an employee who, because of a disability, can no longer perform the essential functions of their current position, with or without reasonable accommodation, unless the Department can show that it would be an undue hardship. The reassignment accommodation will be based on positions the employee qualifies for at the same or lower grade, if necessary.

An employee must be "qualified" for the position to which they are reassigned. An employee is "qualified" for a position if they: (1) satisfy the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation. The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

Before considering reassignment as a reasonable accommodation, the Department shall first consider those accommodations that would enable an employee to remain in their current position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of their current position, or (2) all other reasonable accommodations would impose an undue hardship. However, if both the Department and the employee voluntarily agree that the reassignment is preferable to remaining in the current position with some form of reasonable accommodation, then the Department may reassign the employee.

A vacant position is one in which the Department has an interest and authorization to fill.

Unless doing so would constitute an undue hardship, the Department must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the Department must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the Department must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the Department should consult with the employee about their preference before determining the position to which the employee will be reassigned. Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

- (9) **Funded Positions.** The Department may consider reassigning the employee to a funded vacant position as a reasonable accommodation.

Section 45.04 - Process for Requesting a Reasonable Accommodation. The following are procedures for requesting and processing a request for reasonable accommodation as described Handbook 7855.1.

- (1) **Request for Reasonable Accommodation.** The process for requesting a reasonable accommodation may be initiated by an employee, a representative of the employee, the employee's supervisor, or other Departmental official. The request for the reasonable accommodation will be processed within 30 business days from the date of the written or oral request, absent any mitigating circumstances allowed under the law or unless otherwise agreed upon by the employee and the Department. If the proposed accommodation or an acceptable counter-proposal does not require expenditures of Departmental funds outside the control of the supervisor, the process should be concluded with the agreement between the employee and the supervisor.
- (2) **Interactive Process.** The employee and supervisor shall engage in an interactive process to propose and determine an appropriate accommodation. During the process, the Disability Program Manager may be utilized to facilitate the interactive process. This process should identify the precise workplace limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. It should provide the employee's supervisors with an opportunity to discuss how the proposed accommodation might affect other employees' performance and other aspects of Departmental operations. It is the Department's and Union's objective that the entire reasonable accommodation process be resolved, to the extent possible, between the employee and supervisor -to preserve privacy and confidentiality and to resolve matters in the most expeditious, informal means possible.

The process to consider a reasonable accommodation request should begin immediately upon the receipt by the receiving official of an oral or written request by the individual asking for the accommodation or their representative with a response due to the employee within seven (7) days of receipt. If the decision maker renders a "recommended denial" determination, they must, within three (3) business days, complete a "Denial of Request"

form and forward it, with all the supporting documentation, to the Disability Program Manager. The explanation for the denial must be written in plain language, clearly stating the specific reasons for the denial.

The supervisor may participate in a discussion with the employee concerning Reasonable Accommodation options, but it is not appropriate to independently initiate a request if the employee does not wish an accommodation.

Where the decision maker has denied a specific requested accommodation, but has offered to make a different one in its place which was not agreed to during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that the decision maker believes that the recommended accommodation will be effective.

If an individual wishes reconsideration, they should first ask the decision maker to reconsider the decision. The decision maker will respond to the request for reconsideration within five (5) business days. If the decision maker does not reverse the decision, the individual can ask the Principal Organization Head for reconsideration. The Principal Organization Head shall respond to this request within seven (7) business days.

If the Principal Organization Head does not reverse the decision, the individual can ask the Principal Organization Head to have the decision reviewed and evaluated by the Reasonable Accommodation Committee. The Principal Organization Head shall contact the Disability Program Manager who, in turn, will schedule a Reasonable Accommodation Committee meeting. The Committee will respond to this request within seven (7) business days.

(3) Documentation.

- (a) If medical information is needed, the receiving official or Disability Program Manager (DPM) will explain to the individual seeking the accommodation, in specific terms, why the need for information or if the provided information is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request.
- (b) Upon reviewing and ensuring that the employee's position description is accurate, the manager or supervisor will provide the employee with a copy of their position description and a list of any supplemental essential job functions. The manager may also provide a copy of the employee's performance standards, when needed.
- (c) Documentation from the employee is not necessary when both the disability and the need for reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate that the employee has a disability and needs the requested reasonable accommodation. The employee's supervisor may forego requesting documentation of the employee's disability

and/or need for an accommodation if the disability is known to the supervisor and the supervisor believes the accommodation is reasonable and necessary.

- (d) When requested, the employee shall provide a written justification regarding the employee's medical condition from a health care provider or other credible source, including but not limited to a licensed professional social worker, rehabilitation counselor, representative of a benefits agency such as Social Security or similar agency, or other credible source. The employee may self-certify that the accommodation is necessary when the employee's disability is obvious or known to the Department. The justification will include an explanation of how the accommodation will permit the employee to perform essential functions, as well as the duration of the necessary accommodation.
- (e) If after submission of the information, the Department believes that it is insufficient, they shall provide to the employee, in writing, the reason and allow the employee an opportunity to provide the missing information within 15 days. Examples include medical documentation is inadequate to establish that the individual has a disability and/or the proposed reasonable accommodation meets the needs of the individual. Should the employee fail to produce documentation the process will be discontinued. The employee then has the right to appeal the Department's decision to discontinue the process through the Reasonable Accommodation Committee (RAC).
- (f) When the justification resubmitted to the Department is insufficient, at its option, the DPM may do any of the following:
 - i. offer a medical examination and/or review (including a psychiatric evaluation), at the agency's expense (Management will grant the employee a reasonable amount of administrative leave to attend an agency offered examination);
 - ii. allow the employee to provide additional medical documentation to the Department;
 - iii. allow the employee to provide the additional medical documentation in a sealed envelope directly to the Department to be forwarded to the DPM, or
 - iv. allow the employee's physician to provide the medical documentation directly to the DPM.
- (g) If additional documentation is required, the employee shall have up to 15 days to provide the additional documentation. However, the timeframes in Handbook 7855.1 will be suspended until the information is received.

- (4) **Denial.** Any disapproval of a reasonable accommodation must be made in writing in plain language providing the detailed reasons for denial of the accommodation, if alternate accommodations were considered and what was considered.
- (a) The Department is not legally required to accommodate an employee's disability in accordance with 29 CFR 1630, which includes the following:
- The disabled employee is unable to perform the essential functions of the job and that no reasonable accommodation exists that would enable the person to perform the essential functions of the job.
 - The employee would create an imminent and substantial danger or harm to him/herself or a substantial danger to others by performing the job; and that no reasonable accommodation can be made to remove or reduce the danger.
 - The Department can demonstrate that the accommodation would impose an undue hardship.
- A reasonable accommodation may also be denied on other bases consistent with statute and regulations.
- (b) The Department shall document the results of Reasonable Accommodation requests.
- (5) **Final Decision/Reconsideration.** The Department official(s) who denies a reasonable accommodation request will complete the Form HUD-11600, "Denial of Reasonable Accommodation Request," and forward it to the HUD DPM within 5 days of the denial. The employee has the option of taking a reconsideration request to the Principal Organization Head (POH) or directly to the Reasonable Accommodation Committee (RAC). The decision maker will provide details of the decision as outlined on the form to include the reconsideration process and will notify the employee of the next steps in the process.
- (6) **Appellate Rights.** If an employee's request for reasonable accommodation is denied or the decision maker does not reverse the decision in the reconsideration process, the employee has a right to file an EEO complaint. The employee may elect alternatively to appeal the denial through the Grievance process; however, they may only choose one process.

Section 45.05 - Previously Approved Accommodation. Once a permanent disability has been established it will not be subject to further medical documentation or revocation. However, when an employee requests a new or additional reasonable accommodation based on changing or expanding needs associated with an existing medical condition, only the new or additional needs shall be subject to review and evaluation.

Section 45.06 - Training. The Department shall provide training to all Departmental employees on Reasonable Accommodation. The training may be conducted via various methods including interactive and distance learning.

Section 45.07 - Report. The Department agrees to provide electronic access to the MD-715 EEO report which includes the Department's reasonable accommodation activity to the HUD Council of AFGE Locals (the Union).

Section 45.08 - Assistive Technology Equipment. Reasonable accommodation requests for Assistive Technology (AT) equipment will be submitted via Form HUD-22006. Form HUD-22006 will be submitted to the local Information Technology Director (ITD) representative for processing. Once the request is approved, the equipment requested or an appropriate alternative will be provided to the employee within the Reasonable Accommodation process timeframes outlined in Handbook 7855.1. If the request for AT equipment cannot be provided within the timeframes outlined in Handbook 7855.1, IT will provide the individual and the immediate supervisor a notice of when the equipment is expected to be provided. Requests that involve both electronic technology and other reasonable accommodation request processing will run concurrently.

Section 45.09 - Update To Departmental Policies. When the law on reasonable accommodations changes, the Department shall revise its reasonable accommodation policies accordingly. Where there is a conflict with this Agreement and the Departmental policies on Reasonable Accommodation, this Agreement will prevail.

Section 45.10 - Emergency Evacuation Plan. Any medical information released to assist in the development of the emergency evacuation plan shall be subject to the confidentiality requirements of Handbook 7855.1.

Section 45.11 - Non-Essential Duties. Once a reasonable accommodation is approved, the Department will review all assigned duties to determine whether any non-essential duties should be modified.

Section 45.12 - Service Animals. Requests for arrangements for an employee's service animal will follow the same procedures as outlined in Handbook 7855.1.

Section 45.13 - Distribution of Disability Program Manager (PPM) Information. The Reasonable Accommodation policy which includes information on how to request a reasonable accommodation and the Department's DPM contact information, will be posted on HUD@work under the A to Z index -"Reasonable Accommodation".

Section 45.14 - Privacy. All information in support of a reasonable accommodation request, approval, or denial will be confidential. This means that all medical and other information the agency obtains in connection with a request for reasonable accommodation must be kept in files

separate from the individual's personnel files. It also means that any employee who obtains or receives such information is strictly bound by these confidentiality requirements. Managers and supervisors are responsible for the safe keeping and confidentiality of all information obtained during the processing of reasonable accommodation requests. Any employee who obtains or receives such information as part of the reasonable accommodation process is strictly bound by these confidentiality requirements.

Exhibit 22

Article 45 – HUD’s Updated Reasonable
Accommodation Policy, Approved by the
U.S. Equal Employment Opportunity
Commision



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P. O. Box 77960
Washington, D.C. 20013

August 23, 2019

Via Email: ([REDACTED])

Chad Cowan
Principal Deputy Assistant Secretary for Administration
Department of Housing and Urban Development
Office of the Assistant Secretary for Administration
451 7th Street SW, Suite 6100
Washington, DC 20410

Dear Mr. Cowan:

Thank you for submitting the Department of Housing and Urban Development's (HUD) reasonable accommodation procedures (HUD Handbook 7855.1, Rev. 2, *Reasonable Accommodations for Individuals with Disabilities Policy Procedures*, received August 23, 2019) to Equal Employment Opportunity Commission (EEOC) for review. We find that HUD's revised reasonable accommodation procedures comply with EEOC regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), as amended, 29 U.S.C. § 791(b); 29 C.F.R. § 1614.203, and Executive Order 13164, 65 Fed. Reg. 46565 (2000).

We understand that HUD's procedures will be going through collective bargaining negotiations. If HUD modifies these procedures as a result, HUD must submit the revised procedures to EEOC for review. Please forward any such submission to [REDACTED].

We look forward to continuing to work together toward our shared goal of making the federal government a model employer. If you have any questions about this letter or other aspects of your disability program, please contact [REDACTED] at (202) [REDACTED], or [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Dexter Brooks". The signature is written in a cursive, slightly slanted style.

Dexter Brooks, Associate Director
Office of Federal Operations



REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES POLICY PROCEDURES

Disabilities



HANDBOOK 7855.1 (Rev.2)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Procedures for Providing Reasonable Accommodation
for Individuals with Disabilities**

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CHAPTER 1: GENERAL PROVISIONS

1-1: Introduction

In accordance with the Rehabilitation Act of 1973, as amended by, the Americans with Disabilities Act Amendments Act of 2008, among other authorities (Rehabilitation Act), the Department of Housing and Urban Development (HUD) has a legal obligation to provide reasonable accommodations for qualified employees and job applicants with disabilities. This document provides examples of the types of accommodations that are appropriate and will be provided to qualified Department employees and applicants with disabilities. It also describes basic procedures for processing requests for accommodations. The examples of accommodations identified in these Guidelines are not exhaustive. Instead, they illustrate the broad spectrum of possible or potential accommodations that will be provided at no cost to the qualified employee or applicant when there is a disability-related need for such accommodations.

1-2: Background

Executive Order 13164 directs all federal agencies to establish procedures to facilitate the provision of reasonable accommodations to qualified employees and job applicants with disabilities. Pursuant to this Executive Order and our continuing obligations under the Rehabilitation Act, the Secretary has issued these guidelines for use by all offices throughout the Department.

1-3: Purpose

This document establishes policy and procedural requirements that govern the Reasonable Accommodations Program at the Department of Housing and Urban Development (HUD). HUD implements Section 501 and 504 of the Rehabilitation Act of 1973, as amended, implementing regulations, and Executive Order 13164, by designating responsibilities and establishing requirements for submitting, receiving, responding to and, processing requests for reasonable accommodation for qualified employees and applicants with disabilities. Further, this document ensures that the Department meets program compliance requirements in accordance with all governing authorities.

1-4: Departmental Reasonable Accommodation Program Policy Statement

It is the policy of HUD to:

1. Not discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharges of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
2. Reasonably accommodate the known physical or mental limitations of otherwise qualified employees and job applicants with disabilities; unless it can be shown that the accommodation would impose an undue hardship on HUD's operations.
3. Promote active recruitment and placement of individuals with disabilities; provide selective placement assistance to assure retention and career advancement opportunities; and to ensure that persons with disabilities have a full opportunity to be represented at every level of the workforce.
4. Endeavor to be a model employer for individuals with disabilities by providing full and fair consideration, employment, advancement, and retention of persons with disabilities in a broad range of grade levels and occupations appropriate to their knowledge, skills, and abilities. Managers and supervisors are responsible for achieving these goals, as expressed in the Department's Affirmative Employment Program (AEP) plan covering the hiring, placement, and

advancement of individuals with disabilities, at their respective office levels and providing reasonable accommodations to qualified individual with disabilities.

5. Assure individuals with disabilities are not unnecessarily excluded or limited because of job design or because of architectural, communication, procedural, or attitudinal barriers.

1-5: Scope

The policies and procedures herein apply to all HUD employees and applicants for employment. This document supersedes and replaces HUD Handbook 7855.1 "Procedures for Providing Reasonable Accommodation for Individuals with Disabilities," dated April, 2003.

1-6: Authorities

The following summarizes the most relevant laws, regulations, authorities and program guidance related to the Agency's obligation to provide reasonable accommodations:

Section 501 of the Rehabilitation Act of 1973, as amended 29 U.S.C. Section 791 Section 501

prohibits discrimination based on disability against a qualified individual in all aspects of the Federal employment relationship and:

1. Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Federal employers shall ensure that their policies do not unnecessarily exclude or limit individuals with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.
2. Requires employers to make "reasonable accommodation" to the known physical or mental limitations of qualified applicants and employees with disabilities unless the Department can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
3. Prohibits the use of selection criteria and standards which tend to screen out individuals with disabilities, unless such criteria have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

Executive Order 13164 (October 20, 2000), provides that the Federal government promote a model Federal workplace that provides reasonable accommodation for individuals with disabilities by "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," and mandates that Federal agencies, among other things, establish effective written procedures to facilitate the provision of reasonable accommodation.

Equal Employment Opportunity Commission revised Enforcement Guidance, dated October 22, 2002: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (October 17, 2002), clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship.

Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 24 C.F.R. Part 9.

Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by Executive agencies, including HUD.

Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d; 36 C.F.R. Part 1194. Section 508 requires HUD to ensure, when developing, procuring, maintaining, or using information and communications technology (ICT), that the ICT allows persons with disabilities to access and use information and data on a comparable basis as is made available to and used by those without disabilities unless an undue burden would result to the federal agency.

1-7: Definitions

These definitions are provided for use in the context of this policy as applied at HUD. If any definition, through operation of law, becomes inconsistent with a binding legal definition, the binding legal definition shall be applicable in lieu of the below definitions.

1. **Essential Job Functions:** Essential functions are those job duties that are fundamental to the position that the individual holds or desires. The term "essential functions" does not include marginal functions of the position. "Marginal functions" are those job duties that are less important or critical to the success or failure of the specific position. A qualified individual with a disability must be able to perform the essential functions of the position, with or without reasonable accommodations.
2. **Extenuating Circumstances:** Factors that could not reasonably have been anticipated or avoided in connection with the request for accommodation or limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation.
3. **Deciding Official:** Management official who has the authority to render the decision for the requested accommodation.
4. **Disability:** Is defined by the Rehabilitation Act, 29 U.S.C. § 705 9(b) (which adopts the definition in the Americans with Disabilities Act) at 42 U.S.C. § 12102 and 29 C.F.R. Part 1630, and means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of that individual; a record of that impairment; or being regarded as having such impairment.
5. **Genetic Information:** As defined by the Genetic Information Nondiscrimination Act (GINA) of 2008, includes information concerning the manifestation of disease/disorder in family members ("family medical history"), information about an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
6. **Health Care Professional:** An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

- 7. Interactive Process:** The process by which the individual requesting an accommodation and the agency (often acting through a deciding official) communicate regarding the request for accommodation and/or what accommodations may be effective, determine whether an accommodation will be recommended for approval, and examine potential alternative effective accommodations.
- 8. Interim Accommodation:** Any temporary or short-term measure put in place during the interactive process or processing of a reasonable accommodation request. Providing a temporary or short-term accommodation does not imply that a longer term or permanent accommodation will be required.
- 9. Invisible/Hidden Disabilities:** Impairments or conditions that are not obviously apparent or visible and can include, but are not limited to asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, HIV Infection, AIDS, chronic depression, learning disabilities, and intellectual impairment.
- 10. Major Life Activities:** Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- 11. Mental Impairment:** Any mental or psychological disorder such as intellectual impairment, organic brain syndrome, emotional or mental illness (e.g., major depression, bipolar disorder, anxiety disorders), schizophrenia, and specific learning disabilities, etc.
- 12. Personal Assistance Services:** Assistance for employees with targeted disabilities with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom.
- 13. Physical Impairment:** Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, immune systems, respiratory, genitourinary, hemic, circulatory and lymphatic, skin, normal cell growth, and endocrine system.
- 14. Qualified Individual with a Disability:** An individual with a disability that satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires with or without reasonable accommodation, that can perform the essential functions of such a position.
- 15. Reasonable Accommodation:** Any change or adjustment to a job, the work environment or in

the way things are customarily done, that permits a qualified individual with a disability to perform the essential functions of the position, thereby enjoying equal employment opportunities. Categories of reasonable accommodations may include:

- a) Modifications or adjustments to a job application process that enables a qualified applicant with a disability to be considered for the desired position (such as providing application forms in alternative formats like large print or Braille);
- b) Modifications or adjustments to the work environment, the way or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform the essential functions of that position (such as providing sign language interpreters); and,
- c) Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges or employment as are enjoyed by other similarly situated employees without disabilities (such as removing physical barriers in an organization's cafeteria, fitness center, or office space).
- d) Reasonable accommodations under Section 501 may be the same obligation as providing appropriate auxiliary aids and services necessary to ensure effective communication under Section 504, such as interpreters, large print materials, Braille materials, accessible documents, qualified reader assistants as requested by the 2017 EEOC regulation, and other ICT, etc.

- 16. Reassignment:** The accommodation of last resort, that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to funded, vacant positions and for employees who are qualified to fill the vacant position.
- 17. Receiving Official:** The first individual to be notified by the Requester or the Requester's representative of the need to be accommodated. The HUD person designated to: officially receive a request for reasonable accommodation from an employee or applicant (or an individual acting on his/her behalf), to determine who will forward the request to the Deciding Official. Typically, this is the employee's immediate supervisor or another manager in the chain of command, the Disability Program Manager or RAB designee, a member of the ODEEO staff, or in the case of an applicant for employment, a Human Resources Specialist or the Hiring Manager. Specific roles of those identified are described in Chapter 2 of this Handbook.
- 18. Request for Reasonable Accommodation:** A statement (oral or written) that an individual needs an adjustment or change at work, in the application process, benefits or privileges of employment, or the way in which a job is performed for a reason related to a disability.
- 19. Requester:** An employee or applicant for employment with a disability who requests reasonable accommodation.
- 20. Targeted Disability:** A disability that is designated as a "targeted disability or health condition" on the Office of Personnel Management's Standard Form 256, Self- Identification of Disability, or that falls under one of the first 12 categories of disability listed in Part A of question 5 of the Equal Employment Opportunity Commission's Demographic Information on Applicants' form.

21. Undue Hardship: An action requiring significant difficulty or expense, when considered in light of the following factors, when considered on an individualized, case-by-case basis:

- a) The nature and cost of the accommodation needed;
- b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- c) The overall financial resources of the Department; the overall size of the activities of the Department with respect to the number of its employees; the number, type, and location of the Department's facilities; and
- d) The type of operation or operations of the Department, including the composition, structure, and functions of the workforce of the Department; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the Department.

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CHAPTER 2: ROLES AND RESPONSIBILITIES

Chapter 2 is intended to provide an overview of each office and/or position who has a role in the process to request and provide Reasonable Accommodations. Roles are defined below in order to avoid conflicts of interest, in accordance with MD-110, Ch.1. For a full description of the process and timelines, refer to Chapter 3.

2-1: Office of the Chief Human Capital Officer (OCHCO)

1. Oversee the management and administration of the reasonable accommodation program to ensure implementation of this Handbook;
2. Develop program policy and procedures and maintaining centralized control over the processing of reasonable accommodation requests for the tracking and the reporting of reasonable accommodation program efforts and activities;
3. Develop appropriate training programs to ensure that HUD employees, supervisors, managers, and officials are aware of and have the skills and information necessary to comply with this Handbook; and ensure that employees who request and qualify for accommodations are successfully processed;
4. Designate the Disability Program Manager (DPM) function in accordance with Section 2-8 of this Chapter, who will have lead responsibility to carry out this guidance; and Inform the workforce about HUD's program requirements and promote awareness of the reasonable accommodation program throughout HUD.
5. Provide advice to management on individual RA cases in the capacity of a management representative. Such representative(s) will not be the DPM, or member of RAB. Such representatives will be trained prior to assuming responsibility for providing such advice. Such representatives will not be individuals responsible for responding to grievances concerning the reasonable accommodation process or for processing removals from federal service for any employee's medical inability to perform the functions of the position.

2-2: Office of Departmental Equal Employment Opportunity (ODEEO)

1. Examine, process, and report on Departmental compliance with the Rehabilitation Act of 1973, as amended, Executive Order 13164, and other applicable legal authorities;
2. Provide support to the DPM regarding data collection and reporting requirements; and
3. Serve as a resource on matters regarding rights as authorized under Executive Order 13164, "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," July 26, 2000, Section 501 of The Rehabilitation Act of 1973, as amended.

2-3: Office of the Chief Financial Officer (OCFO)

1. Take appropriate steps to ensure the HUD has adequate funding for reasonable accommodation program, and
2. Maintain centralized program funding mechanisms that support efficient program administration and timely implementation of accommodations.

2-4: Office of the Chief Information Officer (OCIO)

1. Ensure the Department is compliant with Section 508 of the Rehabilitation Act of 1973, as amended, which requires that Departmental information technology systems and equipment be

accessible to employees and applicants with disabilities and other members of the general public;
and

2. Provide assistive technology and information technology accommodations to HUD employees and applicants with disabilities.

2-5: Office of the Chief Procurement Officer (OCPO)

1. Ensure that all contracts regarding the use of facilities, such as leased buildings and hotels for training programs or conferences, reflect the obligation that such facilities be accessible to all participants including those with disabilities in accordance with applicable Federal disability law, e.g. Architectural Barriers Act of 1968, as amended, and the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act, as applicable; and
2. Provide contracting support mechanisms for the provision of reasonable accommodation and appropriate auxiliary aids and services, such as sign language interpretive services, readers, and other assistants, and computer-assisted real time captioning, consistent with obligations of Sections 501, 504, and 508 of the Rehabilitation Act.

2-6: Office of Administration (OA)

1. Ensure HUD Facilities are compliant with applicable laws and statutes, including for example, the Architectural Barriers Act and Sections 504 and 508 of the Rehabilitation Act;
2. Implement approved accommodation requests for parking and building-related accommodations throughout the Department;
3. Collaborate with the DPM or designee to ensure proper fitting and compatibility with HUD systems and equipment; and
4. Provide support for the coordination and/or installation of furniture or equipment for Headquarters and Field employees.

2-7: Office of General Counsel (OGC)

1. Provide legal advice and guidance to OCHCO on reasonable accommodation issues and decisions; and
2. Serve on the Reasonable Accommodation Committee (RAC) reviewing denied reasonable accommodation requests for which a RAC review is requested, in accordance with Section 2-16 of this Chapter.

2-8: Disability Program Manager (DPM)

1. Manage the Department's Reasonable Accommodation program, in accordance with this Handbook and applicable Collective Bargaining Agreements;
2. Administer, through staff, the reasonable accommodation program by reviewing requests for accommodation for employees and applicants for completeness, assessing requests to determine whether the person requesting a reasonable accommodation meets the definition of an individual with a disability, initiating, as requested, the interactive process with the requesting employee and Deciding Official, and evaluating the necessary actions required to promptly, effectively, and reasonably accommodate qualified employees with disabilities;
3. Coordinate with appropriate organizations including but not limited to the Office of Departmental Equal Employment Opportunity (ODEEO), Office of Administration (OA), Office of the Chief Information Officer (OCIO), and the Office of General Counsel (OGC) to implement this Handbook, as required;

4. Confer and coordinate actions with the Director, HCS and Human Resources Representatives in its role in providing reasonable accommodation for employees being reassigned as a reasonable accommodation and applicants with a disability seeking employment;
5. Chair the Reasonable Accommodation Committee (RAC) for the review of denials in accordance to Section 2-16 of this Chapter. The DPM is a non-voting member of the RAC;
6. Provide instruction about this Handbook to all HUD employees, supervisors, and management officials so that they may understand the procedures supporting requests for accommodation and where to access this information;
7. Compile and maintain data to evaluate the Department's performance in responding to requests for reasonable accommodation. Consult with ODEEO when reporting requests for reasonable accommodation(s) and dispositions to ensure compliance with EEOC regulations and federal law;
8. Ensure that all accommodations have been exhausted prior to reassignment, and to ensure consistency in providing reasonable accommodation and compliance with statutory, regulatory and Departmental policy and collective bargaining agreements;
9. Liaison with the Medical Reviewing Official (MRO) for the purpose of obtaining independent assessments of medical information submitted in support of a request for an accommodation by an employee or applicant for employment with HUD; and
10. Maintain secure storage for all medical information provided in the reasonable accommodation process in accordance with federal regulations and ensure access to such medical information is strictly limited to those with a legitimate need to know in accordance with the requirements of the Rehabilitation Act, the Privacy Act of 1974, 5 U.S.C. § 552a, as amended, and Chapter 4 of this Handbook.

2-9: OCHCO/Director, Human Capital Services (HCS)

1. Oversee the activities performed by the Human Resource Representative as prescribed in Section 2-9 and Chapter 3-5, (B), 3 of this Handbook;
2. Administer accurate and timely processing of required personnel actions as a result of reasonable accommodation for employees throughout the Department; and
3. Ensure HUD's attempts to execute intra-Departmental reassignments and or details, comply with established requirements in Chapter 3, Section 3-5(B) 3 of this Handbook.

2-10: OCHCO/HCS Human Resource Representative

1. Ensure job postings contain appropriate notices to applicants regarding HUD's reasonable accommodation policy, including appropriate contact information for accommodation-related matters;
2. Process accommodation requests from applicants during the application process and promptly notifying the DPM or designee about the number, nature, and disposition of such requests;
3. Identify vacant positions for which an employee may be qualified in cases where reassignment is being considered as a possible reasonable accommodation;
4. As it relates to job applicants, even in the absence of receiving a written request, the human resource specialist or other contact person should acknowledge and begin to act on an oral request for reasonable accommodation.

2-11: Receiving Official

Generally, this is the employee's immediate supervisor or another manager in the chain of command, the DPM or designee, a member of the ODEEO staff, or in the case of an applicant for employment, a

Human Resources Specialist or the Hiring Manager.

1. Acknowledge requests for accommodation; when the Receiving Official is not the Deciding Official, forward to the DPM or designee;
2. Restrict discussions of reasonable accommodation matters and related information to the Deciding Official, DPM or designee, or other approved officials with a legitimate need to know. Treat all documents containing personally identifiable information (PII) and medical information as confidential. Protect such documents from unauthorized disclosure by promptly forwarding all documents provided by the employee as part of a reasonable accommodation request to the DPM or designee; and
3. Recognize and refer all other requests for reasonable accommodation from employees outside his or her area of responsibility to the DPM or designee for further action.

2-12: Deciding Official (Generally the Immediate Supervisor or Second Level Supervisor)

1. Ensure that reasonable accommodation requests are handled appropriately and expeditiously by management, in accordance with this Handbook and any applicable collective bargaining agreements;
2. Engage fully in the interactive process with the employee or applicant and collaborate as appropriate with the DPM or designee and other entities;
3. Report all requests for disability accommodation to the Department's DPM or designee;
4. Consult, when necessary, with the DPM or designee on whether the Requester is a qualified individual with a disability;
5. Determine whether to grant a reasonable accommodation request and document the decision as described in Chapter 3 of this Handbook;
6. Restrict discussion of reasonable accommodation matters and related information to the DPM or designee, or other approved officials on a legitimate need to know basis. Treat all documents containing Personally Identifiable Information (PII) and medical information as confidential and ensuring that such documents are not intermingled with other employee files. Protect such documents from unauthorized disclosure by promptly forwarding all documents provided by the employee as part of a reasonable accommodation request to the DPM or designee;
7. Implement reasonable accommodation for an employee or applicant, if an accommodation has been granted and accepted by an employee and the accommodation to be provided does not present an undue hardship to the Department or violate Departmental policies. Deciding Officials should act as soon as practicable if the reasonable accommodation can be easily provided;
8. Consider expedited processing in the event of a time-sensitive reasonable accommodation request and when there may be a delay in processing a request or implementing a reasonable accommodation. To the extent practicable, implement interim accommodations during delays in processing a reasonable accommodation request or in implementing the approved reasonable accommodation; and
9. Report decisions to grant reasonable accommodation to the DPM or designee documenting the request on the form HUD-1000, the date of the request, the reasonable accommodation provided, and the date the reasonable accommodation was provided in accordance to the procedure described in Chapter 3 of this Handbook.

2-13: Reconsideration Official (Generally a management designee at a higher level than the Deciding Official)

1. Reviews approved alternate accommodations or denials of accommodation requests, when a

- requesting employee is unsatisfied with the determination and requests a reconsideration.
2. Renders a decision on reconsiderations of approved alternate accommodation or denied accommodation requests.

2-14: Appeals Official (Generally a management designee at a higher level than the Reconsideration Official)

1. Reviews recommendations of the Reasonable Accommodation Committee (RAC) concerning a denial of accommodation requests, when a requesting employee is unsatisfied with the determination and requests an appeal to the RAC.
2. Issues a final offer or decision of accommodation.

2-15: Requester (Generally, Employees and Applicants with Disabilities)

1. Request an accommodation from an appropriate management representative or designee (e.g., but not limited to, first line supervisor, another supervisor or manager in the employee's chain-of-command, DPM), in accordance to the provisions described in this Handbook and applicable collective bargaining agreements;
2. Cooperate in the interactive process throughout the reasonable accommodation process. Failure on the part of the Requester to cooperate in the interactive process may result in a discontinuation of processing of the reasonable accommodation;
3. Promptly provide a medical release, where appropriate, or respond to requests for medical documentation that may be necessary to evaluate a reasonable accommodation request within 14 calendar days after receipt. An additional time may be granted by the DPM or designee for extenuating circumstances as described in Chapter 4 of this Handbook; and
4. Submit a request for reconsideration on a reasonable accommodation decision within 7 business days to the Deciding Official.

2-16: Reasonable Accommodation Committee (RAC)

1. Conduct a review of disapproved reasonable accommodation requests, where requested by the employee, to explore accommodation options;
2. Review all facts and provide written recommendations to the Appeals Official to inform his/her final decision to sustain or revoke denied accommodation; and
3. Ensure that all RAC decisions are compliant with statutes and taking past practice into consideration, where appropriate.

Note: Members of the RAC will include representation from the following functions:

- Disability Program Manager (DPM/Committee Chair) — Non-Voting
- Office of General Counsel (OGC) — Two Voting Members
- Employee and Labor Relations (ELRD) — Voting Member
- Program Office Subject Matter Expert (i.e. Administrative Officer or management official).
This is a non-voting member of the RAC — Observer

A RAC member must recuse him or herself whenever the case being adjudicated involves an employee within the RAC member's direct office or when there is a conflict of interest. The Chair of the RAC reserves the authority to replace a member from the RAC due to a conflict of interest or any other concerns regarding the RAC member's ability to be objective and free from bias or favoritism of any kind.

2-17: Program Office of the Requestor

1. Ensure that the reasonable accommodation process is administered within their organization in accordance with this Handbook and any applicable collective bargaining agreements;
2. Appoint the Deciding Official, as required. Occasionally, it may be necessary to appoint an alternate Deciding Official. The responsibility to appoint an alternate Deciding Official in lieu of the immediate supervisor or second level management official;
3. Designate a person within the program office who shall be responsible for making reassignment decisions pursuant to Chapter 3, Section 3-5 (B)3 of this Handbook; and
4. Assign a neutral Subject Matter Expert (SME) (i.e., Administrative Officer or management official) to serve as a non-voting member on the RAC; the SME shall be familiar with the essential position requirements of the employee with a disability, in accordance with Chapter 5, Section 5-2 of this handbook.

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CHAPTER 3: THE REASONABLE ACCOMMODATION REQUEST PROCESS

3-1: Overview

1. The duty to provide reasonable accommodation is a fundamental statutory requirement authorized by the Rehabilitation Act of 1973, as amended, and Executive Order 13164 because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply for and perform their job duties without any reasonable accommodation, workplace barriers can keep others from performing a job that they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment) or they may be policies or procedures. Simply put, reasonable accommodation removes work-place barriers for qualified individuals with disabilities.
2. Managers and supervisors are required to provide reasonable accommodation, where one exists, to enable a qualified employee with a disability to perform the essential functions of his or her job in a manner that fulfills performance/production standards. A reasonable accommodation should provide the qualified individual with a disability with equal employment opportunity- an opportunity to attain the same level of performance or the same level of benefits and privileges of employment as are available to average similarly situated employees. An individual with a disability who is unable to perform the essential function(s), with or without reasonable accommodation, is not "qualified" within the meaning of the Rehabilitation Act. There may be situations in which a supervisor perceives that an employee's work situation might improve with reasonable accommodation, but the employee has not raised a problem or asked for an accommodation. In this instance, it would be inappropriate for the supervisor/manager to ask the individual about the disability or independently initiate an accommodation request or implement an accommodation if the employee does not wish an accommodation. Instead, the supervisor/manager may advise an employee with a known disability that she or she can request a reasonable accommodation when the supervisor/manager reasonably believes that the employee may need an accommodation and inform the employee of HUD's RA process to initiate a request.
3. To fulfill the Department's commitment to ensure individuals with disabilities enjoy full access to equal employment opportunities, HUD will provide reasonable accommodation:
 - a. When an applicant with a disability needs an accommodation to apply for or be interviewed for a job;
 - b. When an employee with a disability needs an accommodation to enable him/her to perform the essential functions of the position, or to gain physical access to the workplace; and
 - c. When an employee with a disability requires an accommodation to enjoy equal benefits and privileges of employment like other non-disabled employees.
4. Authorization of personal items, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids or similar devices when needed by the employee in accomplishing daily activities both on and off the job, will not be provided by the Department. Further, managers and supervisors are not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. Equally, RA provisions do not

require managers and supervisors to eliminate an essential function/duty, lower production standards — whether qualitative or quantitative that is applied uniformly to employees with and without disabilities.

3-2: Initiation of a Reasonable Accommodation Request

1. The request does not have to contain any special words such as "reasonable accommodation", "disability", or "Rehabilitation Act". The employee may request an accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability. Submitting a request does not require HUD to provide the specific accommodation requested. Where the need and right to reasonable accommodation is established, Deciding Officials may provide an equally effective accommodation. Note that the alternate accommodation offered by the Agency must be effective in meeting the needs of the individual. The preference of the individual with a disability should be given primary consideration. The maximum timeframe for either providing the accommodation or denying requests begin on the date the individual makes the request, regardless of how it is made.
2. Request for Reasonable Accommodation and Acknowledgment of Employee Request for Reasonable Accommodation.
 - a. Employee or his or her representative will request an accommodation of a Receiving Official or Deciding Official, typically his or her manager or an employee of the Reasonable Accommodation Branch (RAB), in person or by electronic communication. Employees must provide the following information when requesting a reasonable accommodation on Form HUD-1000 or another form of communication:
 - i. Basic identification and contact information, including the Requester's name, employing organization, office location, telephone number, and e-mail address.
 - ii. The employees' supervisor's name, telephone number, and e-mail address.
 - iii. A description of the reasonable accommodation requested if the employee has identified a specific accommodation when making the request.
 - iv. A brief description of the reason for the request.
 - b. If employee directs a reasonable accommodation request to a Receiving or Deciding Official, a Deciding Official will acknowledge receipt of the request to the employee in writing within 15 calendar days. If the employee has not completed a HUD-1000, the Deciding Official will complete the form on the employee's behalf and transmit the HUD-1000 to the DPM or designee within that 15-day period. Receipt of request runs from the Deciding Official's actual knowledge of the request for accommodation (e.g., if Deciding Official is on leave or business travel, s/he may receive it upon his or her return, rather than on the day that it was requested by the employee.).
 - c. If employee directs Reasonable Accommodation request to the RAB, the Disability Program Manager (DPM) or designee, will acknowledge receipt of the request to the employee in writing within 15 calendar days. If the employee has not completed a HUD-1000, the DPM or designee will complete the form on the employee's behalf, or specifically inform the Deciding Official that s/he must do so within that 15-day period and transmit the HUD-1000 to the DPM or designee.

- d. Employee Reasonable Accommodation Documentation Responsibilities: Unless employee's disability is obvious (e.g., quadriplegia) or otherwise known, and/or need for accommodation obvious (e.g. a ramp for a wheelchair user) or otherwise known, at the time of request, but no later than 15 calendar days after the Deciding Official's acknowledgement of receipt of the Reasonable Accommodation request, the employee must provide the following medical documentation to the DPM or designee:
- i. Documentation demonstrating that s/he has a disability as defined by the Rehabilitation Act.
 - ii. Identification of impairment, including the duration of the impairment.
 - iii. Identification of major life function(s) (e.g., learning, interacting with others, thinking, concentrating, sleeping, walking) that are affected by the impairment or any treatment, to include medication.
 - iv. An explanation addressing how the illness, condition, or treatment (including, but not limited to, medication) impairs the identified major life function(s).
 - v. A description of which function(s) or entitlements of the position are made difficult as a result of the identified impairment or treatment, including medication. The description should identify and explain the link between the condition (including the effects of any treatment) and the aspects of the job that are impacted by the condition.
- e. Identification and explanation of how the requested reasonable accommodation will assist in the performance of the essential functions of the position or to enjoy equal access to benefits and privileges of employment (e.g., Department sponsored events, training). An individual does not have to have a particular accommodation in mind before making a request.
- i. Individuals already determined eligible for reasonable accommodation may not be required to submit a separate written request for each subsequent occasion in which they need the same or similar reasonable accommodation. However, such individuals must give advance notice for each subsequent occasion the reasonable accommodation is needed, unless it is needed on a recurring basis. If the reasonable accommodation is needed on a recurring basis, the supervisor should ensure that the appropriate arrangements are made without requiring a request in advance of each occasion.
 - ii. Even where a disability is obvious (e.g., visual impairment or hearing impairment) or otherwise known; as individual disabilities manifest differently, the employee may still need to provide documentation regarding the employee's specific functional limitations, and/or documentation regarding how the requested accommodation individually facilitates the performance of the essential functions of his or her job. If both the disability *and* need for reasonable accommodation are obvious the employee will not be required to submit additional medical documentation.
 - iii. Even where an employee submits medical documentation along with the initial request for Reasonable Accommodation, that documentation may be insufficient or additional medical documentation or information may be needed for eligibility determination or for the Deciding Official to conduct an informed review and

make a decision. In this circumstance, the employee will be notified that additional documentation will be needed. The employee will be given 15 calendar days after receipt of the request for additional documentation to provide the requested documentation. Failure to do so may result in the request for accommodation to be discontinued.

- iv. A requesting employee may choose to submit medical documentation to the Deciding Official at his or her sole discretion.
- v. Documentation submitted in support of Reasonable Accommodation requests will be kept strictly confidential by the Department, in compliance with Departmental Policy and EEOC guidelines.
- vi. Details of a requesting employee's disability and request for accommodation will be similarly kept confidential, with any information provided on a strictly need-to-know basis, for purposes of evaluation and implementation of an accommodation.
- vii. The RAB will review the requesting employee's medical documentation to determine if the employee has a "disability" as defined by the Rehabilitation Act, which confirms his or her tentative eligibility for the Reasonable Accommodation process. Once tentative eligibility is established, the RAB will immediately convey the requesting employee's specific functional limitations to the Deciding Official, who will then communicate the essential functions of the employee's position to the RAB. The RAB will then make a final determination of eligibility. The Deciding Official will review the requesting employee's functional limitations, as well as available accommodations.

3. Applicants for Employment

- a. Job applicants may make requests for reasonable accommodation orally or in writing at any time to the individual identified in the appropriate vacancy announcement as the point of contact for reasonable accommodations, HR representative, the selecting official, or any agency employee connected with the application process. All vacancy announcements will provide Department contact information and instructions for applicants with disabilities who require assistance with any part of the application or hiring process.
- b. Applicant Required Information
 - i. Applicants may direct their request for reasonable accommodation to the HR Representative identified in the posting or to the person contacting the applicant for an interview.
 - ii. Requests for a reasonable accommodation should include the following information: The applicant's name, vacancy number, a description of the reasonable accommodation being requested, and a brief description of the reason for the request.

4. Third Party Requests

- a. The third-party requester may be a family member, health care professional or any other representative identified by the individual with a disability (e.g., union representative). A third party may make a reasonable accommodation request, on behalf of the individual with a disability. The DPM or designee will consult with the employee or in the case of

an applicant, the HR Specialist will contact the individual to ensure that they need and want to be accommodated.

- b. Upon consent by the employee or applicant, the interactive process will begin. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, the third party's request will be processed as soon as it is practicable.

3-3: Interactive Process

- a. Initiation of the Interactive Process. The interactive process between Employee and Deciding Official (D.O.) begins at the very earliest stage of the processing of a Reasonable Accommodation request. Its purpose is for the requesting employee and Deciding Official to communicate with each other to determine if there is an effective accommodation that will address the employee's functional limitations in a manner that will assist him or her to perform the essential functions of the job without posing an undue hardship on the Department.
- b. Supervisors should be familiar with how to recognize requests for reasonable accommodations. Examples can be found within the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship. (https://www.eeoc.gov/policy/docs/accommodation.html#N_35)
- c. The Initiation of the Interactive Process will proceed as follows:
 - 1. The Deciding Official shall initiate the Interactive Process as soon as possible but no later than fifteen (15) calendar days after acknowledging an employee's Reasonable Accommodation request. The Employee shall respond to the Deciding Official within six (6) calendar days after this contact.
 - 2. The interactive process may be in person, by telephone or other electronic means and may, but is not required to, include the DPM or designee or other employee or management representatives as participants.
- d. The Deciding Official and the requesting employee both have a duty to engage in the interactive process.
- e. During the interactive process, the employee and the Deciding Official will explore effective accommodations and the employee respond to offers of accommodation, if any, from the Department.
- f. During the interactive process, the Deciding Official will explore or respond to requests for accommodation and, where appropriate, offer alternative effective accommodations. Some questions that may be explored in the interactive process include:
 - 1. Is the accommodation necessary to perform the essential duties of the position or remove a workplace barrier?
 - 2. What effect will the accommodation have on the Department's operations?
 - 3. To what extent does the accommodation assist the employee or applicant in performing the essential functions of the position?

4. Will the accommodation give the person the opportunity to function, participate, or compete on a more equal basis with co-workers?
 5. Are there other accommodations that would accomplish the same purpose?
- g. Deciding Officials must communicate early in the interactive process and periodically throughout the entire process with individuals who have requested a reasonable accommodation. This is particularly important when a specific problem or barrier is unclear; when an effective accommodation is not obvious; or when there may be more than one way to accommodate the employee. The employee and the manager must actively exchange information in order to reach a resolution within the appropriate timeframe, normally within 30 days absent extenuating circumstances to grant or deny the request and to implement the approved accommodation within 60 days, if any, absent extenuating circumstances. Both time limits begin to run when the accommodation is first requested. However, the Department will not be expected to adhere to its usual timelines if an employee or his or her health care professional fails to provide needed documentation in a timely manner.
- i. If no effective accommodation can be agreed upon, before determining that the employee does not meet the definition of a qualified person with a disability, other options for the employee's continued employment with the Department will be explored.
 - ii. Management will consider the effectiveness of an employee's preferred accommodation before denying or proposing an alternative accommodation.
 - iii. Employees are entitled to effective accommodations, not necessarily their preferred accommodations, and may be offered an alternative effective accommodation over a preferred accommodation. Management has sole discretion over which effective accommodation to implement.
 - iv. When all facts and circumstances known to the deciding official make it reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately, the deciding official will provide the individual with an interim accommodation that allows the individual to perform some or all of the essential functions of the job absent undue hardship.
 - v. An employee's failure to engage in the interactive process may result in delay or discontinuation of the processing of a Reasonable Accommodation request, with written notice to the requesting employee.
 - vi. Timeframes for processing requests will not result in undue delay.

3-4: Approval of Accommodation

- (a) Whether a requested accommodation will be granted or denied, or an alternative accommodation will be granted is exclusively a management decision. (The RAB is a neutral facilitator and not a management representative.)

- (b) Where a Deciding Official determines that a Reasonable Accommodation should be granted, the following steps must be taken:
- i. The Deciding Official must put the approval of a Reasonable Accommodation in writing on the HUD-1000, send it to the requesting employee, and copy the DPM or designee.
 - a. The Deciding Official may approve an alternative accommodation to the one that is requested by the employee, as long as it is effective in addressing the employee's functional limitations and in performing the essential functions of his or her job.
 - b. For purposes of this Handbook, approval of an "alternative" accommodation is considered an approval.
 - ii. The Deciding Official must inform the requesting employee in writing of the anticipated effective date of the accommodation or the date on which the accommodation is expected to be implemented, except in an accommodation necessitating a procurement, in which case the RAB would inform the employee.
 - a. When approved, most accommodations will be granted and implemented within sixty (60) calendar days of the Deciding Official's formal acknowledgment of the requesting employee's request for accommodation.
 1. Extenuating circumstances may delay the consideration or implementation of a reasonable accommodation. Extenuating circumstances include but are not limited to: natural disasters, government shutdowns, emergency evacuations, information technology outages and other circumstances that limit the ability of the Agency to grant or implement an accommodation.
 2. The tolling of deadlines in this Handbook (e.g., for failure to timely submit medical documentation) may also delay implementation of a reasonable accommodation.
 3. The Deciding Official or RAB will advise the requesting employee of any extenuating circumstances or other reasons for delay of implementation in writing, copying the DPM or designee.
 4. Approved accommodations must be provided as soon as they are available and must not be delayed merely because most approved accommodations may take sixty (60) days to grant and implement, i.e. sixty (60) days is the expected maximum.
 - b. Time sensitive accommodations may be expedited, where reasonable and necessary, within nine (9) calendar days, of the Deciding Official's formal acknowledgment of the requesting employee's request for accommodation.
 1. Some time-sensitive accommodations may be implemented in fewer than nine (9) calendar days (e.g., allowing an employee with

diabetes to take regular breaks to check blood sugar and take medication may be implemented immediately).

2. Some time-sensitive accommodations may be implemented in more than nine (9) calendar days, but fewer than 60 calendar days as the accommodation becomes available.
 - c. Requesting employee will inform the Deciding Official or RAB if the accommodation is ineffective or has not been implemented. Requesting employee must inform the Deciding Official, the DPM or designee within six (6) calendar days after receipt of the approved accommodation if an approved accommodation is not implemented or not fully implemented, or not effective, once implemented (e.g., the equipment does not work in the anticipated manner and is not effective for the employee to access the necessary functions).
- iii. Employee will respond to Deciding Official's offer of Reasonable Accommodation.
 - a. A requesting employee is not required to accept the Reasonable Accommodation that is offered by the Deciding Official. However, s/he must communicate that she either accepts or rejects the offered accommodation in writing, copying the DPM or designee. If the employee fails to respond to the offered Reasonable Accommodation within 15 calendar days after the offer, barring extenuating circumstances (e.g. hospitalization), the employee will be considered to have abandoned the interactive process and the Department will cease processing of the Reasonable Accommodation request, with written notification to the employee, copying the DPM or designee.
 - b. If no alternative accommodation can be agreed upon, the Department may cease processing the Reasonable Accommodation request, with notification to the requested employee, or deny the request, with written notification to the requesting employee, documented on the HUD-1000, and copied to the DPM or designee.
 - iv. If the requesting employee wishes to appeal the Decision-Maker's offer of Reasonable Accommodation, s/he must follow the Reconsideration or Appeal processes set forth in this Handbook.

3-5: Denial of Requested Accommodation

- (a) Whether a requested accommodation will be granted or denied is exclusively a management decision. (The RAB is a neutral facilitator and is not a management representative.)
- (b) Where a Deciding Official determines that a Reasonable Accommodation should not be granted the following steps must be taken:

- i. The Deciding Official must put the denial of a Reasonable Accommodation in writing on the HUD-11600, send it to the requesting employee, and copy the DPM or designee. An alternative accommodation is not a denial of a Reasonable Accommodation but the agency must nevertheless issue the employee a notice in accordance with 3-5(b)ii below for the portion of the request that was not approved.
- ii. Most denials will be communicated within sixty (60) calendar days after the Deciding Official's formal acknowledgment of the requesting employee's request for accommodation, absent extenuating circumstances (e.g., prolonged interactive process) or tolling of deadlines (e.g., due to employee's delay in providing sufficient medical documentation). The written denial notice must explain the reasons for the denial and notify the employee or job applicant of the internal appeal process in this policy.
- iii. The Department is not legally required to accommodate an employee's disability in the following circumstances:
 - a. The requesting employee is unable to perform the essential functions of the job with or without reasonable accommodation and no reasonable accommodation exists that would enable the employee to perform the essential functions of the job and there are no positions to which s/he can be reassigned.
 - b. The employee poses a direct threat- significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses such a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job.
 - c. The Department can demonstrate that the accommodation would impose an undue hardship.
- iv. A reasonable accommodation may also be denied on other bases consistent with statute and regulations.
- v. If the requesting employee wishes to appeal the Denial, s/he must follow the Reconsideration or Appeal processes set forth in this Handbook.

3-6: Reconsideration

(a) Reconsideration of Approved Alternative Accommodations.

- i. If a requesting employee is unsatisfied with the alternative accommodation that s/he has been offered by the Deciding Official, s/he may, within fifteen (15) calendar days after the Deciding Official's offer of Reasonable Accommodation, make a written request for reconsideration to a Reconsideration Official. This Reconsideration Official will be a management designee at a higher level than the deciding official. The Reconsideration Official will acknowledge the request for

reconsideration within nine (9) calendar days after the employee's request, absent extenuating circumstances. The Reconsideration Official will then have fifteen (15) calendar days after acknowledging the employee's request for reconsideration, absent extenuating circumstances, to render a decision.

- ii. If the Reconsideration Official denies the request for reconsideration or the Reconsideration Official offers an accommodation or renders a decision that the requesting employee considers unfavorable, the employee will have the choice of accepting the accommodation offered by management, which acceptance the employee must communicate to the Reconsideration Official in writing within 15 calendar days after the decision. The process concludes if the employee elects to not to accept management's offer of accommodation.

(b) Reconsideration of a Denied Reasonable Accommodation:

- i. If a reasonable accommodation is denied, the requesting employee may, within 5 calendar days after receipt of the Notice of Denial of Accommodation, make a written request for reconsideration to a Reconsideration Official. The Reconsideration Official will acknowledge the request for reconsideration within 9 calendar days of the employee's request, absent extenuating circumstances. The Reconsideration Official will then have 15 calendar days after acknowledging the employee's request for reconsideration, absent extenuating circumstances, to render a decision.
- ii. If the Reconsideration Official denies the accommodation, the employee may, within 5 calendar days after the Reconsideration Official's decision, request in writing, with notice to the DPM or designee and Deciding Official, that a Reasonable Accommodation Committee (RAC) be empaneled for review of the reasonable accommodation request. An alternative accommodation is not a denial and cannot be forwarded to the RAC or Appeals Official.
- iii. If the RAC returns a recommendation to the Appeals Official concerning the reconsideration of the denial, the Appeals Official will be designated by management at a higher level than the Reconsideration Official. The Appeals Official must consider the recommendation of the RAC prior to making and issuing a final offer or decision within 15 calendar days.
- iv. Individuals that have had accommodation request denied have the right to file EEO compliant pursuant to 29 C.F.R. §1614.106, and invoke other statutory process as appropriate.

3-7: Guidance on Determining an Accommodation

1. The following information illustrates how to determine an effective accommodation and typical options the Department may provide for certain disabilities where such accommodations would enable the individual to perform the essential functions of the job or receive equal employment benefits and privileges as enjoyed by similarly situated employees without disabilities.
2. **How is it determined?** An accommodation is effective if it enables an employee with a disability to perform the essential functions of the position and/or allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. Similarly, an effective accommodation will enable an applicant with a disability to have an equal opportunity to participate in the merit staffing process and to be considered for a job. Consequently, the Department satisfies statutory obligations relative to the execution of reasonable accommodation program requirements.
3. **Types of reasonable accommodation.** This list is not exhaustive and is intended as a guide only.
 - a. There are several possible reasonable accommodations that HUD managers and supervisors may be required to provide in connection with modifications to the work environment or adjustments to how and when a job is performed. These may include:
 - i. making existing facilities accessible;
 - ii. job restructuring (altering how or when job duties are performed);
 - iii. modified work schedule/location;
 - iv. granting breaks or providing leave;
 - v. parking accommodations;
 - vi. acquiring or modifying assistive technology hardware and/or software;
 - vii. providing qualified readers or interpreters;
 - viii. modifying training materials or format or media (i.e. Braille, large print);
 - ix. authorizing telework, including as an accommodation to HUD's Departmental Telework Policy¹ (If approved the employee must complete the telework application and training prior to the implementation of the telework schedule and follow all other rules of the Telework policy, unless specifically modified as part of an approved reasonable accommodation.); and
 - x. personal assistance services during work hours and job-related travel if the employee requires such services because of a targeted disability.
Note: The process for requesting personal assistance services, the process for determining whether such services are required, and the Department's right to deny such requests when provision of the services would impose an undue hardship, are the same as for reasonable accommodations.
4. Telework as an Accommodation
 - a. In order for telework to be considered, the essential job duties must be portable and should not create an undue hardship as a result of the essential functions of the job not being carried out or would inappropriately fall to other employees. Several factors should be considered in determining the feasibility of telework as an accommodation.

¹ RA Telework agreements must be approved within the employee's immediate managerial chain of command and a copy provided to the DPM or designee for placement in the employee's RA casefile.

These may include:

- i. Whether the duties require the use of certain equipment that cannot be replicated at home; or
 - ii. Whether there is a need for face-to-face interaction with other employees, outside colleagues, or clients; or
 - iii. Whether employee is required to be present at a particular site to supervise other employees, or
 - iv. Whether specific materials required to perform the essential functions of the position may be moved from the office site.
- b. The Deciding Official will decide as to the effectiveness of telework as a RA, based on the essential job duties and the extent to which telework is effective in meeting the employee's disability-related need.
 - c. If approved, the employee must complete the telework application and training prior to the implementation of the telework schedule. All other parts of the Telework Policy remain in effect except those that are specifically modified by a reasonable accommodation. Employees who have completed the telework program requirements (training and approved agreement in place), the completion of a new agreement will not be required unless the work arrangement changes (i.e., increase in the number of days, adjustment to the type of schedule—situational to regular.) Instead, the employee must submit a modified agreement to reflect the approved accommodation.
 - d. Approval of telework as an accommodation shall be in accordance with *Laverne B. v HUD*, EEOC No. 0720130029 (EEOC OFO 02/12/15), as long as that case remains precedential, in that HUD must modify application of telework policy for a qualified individual if such a change is needed as a reasonable accommodation, as long as the accommodation would be effective and not cause an undue hardship
5. Reassignment as an Accommodation
- a. The following criteria govern the circumstances under which reassignment may be authorized as a form of reasonable accommodation:
 - i. Reassignment is considered as a last resort accommodation after all other possible accommodations have been explored and ruled out. An employee may request reassignment through the DPM or designee within 7 calendar days after a determination that there is no accommodation that would be effective in enabling the employee to perform the essential functions of his or her position.
 - ii. Reassignment as an accommodation is available only to employees and not to applicants for employment. Employees may only be reassigned to vacant positions for which they are qualified absent an undue hardship on HUD's operations.
 - b. The employee will be required to submit Reassignment Preference Form which will provide the parameters of his or her request for reassignment (grades and locations).

- i. If an employee selects a different geographical location, salary may be impacted based on locality pay and could possibly go up or down. Also, the employee will be responsible for all relocation costs.
 - ii. If the employee chooses a lower grade, retained pay is not applicable.
 - iii. Under no circumstances can a reassignment result in a promotion or be to a position with greater promotion potential than the position the employee currently holds.
 - iv. An employee's failure to submit the Reassignment Preference Form and resume could result in action to remove the employee from the Federal Service.
- c. Based on the criteria provided by the employee, the DPM will notify HCS/Recruitment and Staffing Division (RSD). RSD will start a search for available, classified, funded positions within 15 calendar days of notification. RSD will conduct a search consist with the information on Reassignment Preference Form once every 7 calendar days over a period of 14 calendar days
- d. RSD will review the list of all identified vacancies and ensure a qualifications review is conducted.
- e. RSD will submit to the DPM or designee a list of those positions for which the employee is found to be qualified.
- f. The DPM or designee will provide available positions, if any. The employee will have 7 calendar days to inform the DPM or designee which position he or she selects.
 - i. If the employee does not wish to accept any of the positions, the process is completed. Appropriate action will be taken, which may include removing the employee from the Federal Service.
 - ii. If the search does not result in any listings, the process is completed. Appropriate action will be taken, which may include removing the employee from the Federal Service.
- g. Once the employee has communicated their selection of a position on the list, the DPM or designee will contact RSD who will contact the gaining office and start arrangements for the reassignment. The program office may not appeal or request reconsideration, reject the reassignment, or otherwise delay the reassignment.
- h. At the completion of this process, the RSD must send to the DPM or designee a written report of the search process, which includes full details including the dates of the searches and the results. The DPM or designee will provide the conclusion report to the employee and program office.

CHAPTER 4: MEDICAL DOCUMENTATION AND CONFIDENTIALITY

4-1: Medical Documentation

1. Necessity for Medical Documentation
 - a. When a reasonable accommodation is requested, it is the responsibility of the requesting employee to provide appropriate medical documentation related to the functional limitation at issue and the requested accommodation where the disability and/or need for accommodation is not obvious. Generally, medical documentation is not necessary when both the disability and the need for reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate the disability and the need for the requested accommodation. In cases where the medical disability is obvious or known and no medical documentation is required, the Deciding Official must provide proper documentation of the decision to the DPM or designee for record keeping in the event of supervisory change. HUD's right to request medical documentation and the limited nature of the request is consistent with EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 22-23, 8 FEP Manual (BNA) 405:7461, 7472-73 (1997) and EEOC Enforcement Guidance: Disability Related Inquiries and Medical Examinations under the Americans with Disabilities Act at Q.5-11.
 - b. When evaluating a request for a reasonable accommodation, management is entitled to know that an employee or applicant has a covered disability and a disability-related need for the requested accommodation, and the specific functional limitations, as distinguished from the diagnosis, that impede performance of the essential functions of the employee's position. HUD will only require documentation that is needed to establish that a person has a covered disability and that the disability necessitates a reasonable accommodation, and specific functional limitations that impact upon performance of the position. Medical documentation may be requested by the DPM or designee to explain:
 - i. The diagnosis of medical condition;
 - ii. Prognosis (severity and duration of the impairment)
 - iii. Affected major life activities;
 - iv. Specific functional limitations that impact upon performance of the position; and
 - v. Requested accommodation and how the accommodation will help the employee perform the job, apply for the job, or enjoy a benefit of the workplace.
2. Employees are required to provide sufficient documentation to support their request that addresses the criteria above within 15 calendar days. If the documentation is not sufficient, the agency may request relevant supplemental medical information. The requesting employee may be required to provide consent to allow a medical expert of the Department's choosing to review the medical documentation. Failure to comply with any of the above provisions may result in the discontinuation of the processing request.
3. The DPM or designee shall maintain custody of all records obtained or created during and after the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. Section 1611.

4. If a copy of the medical documentation is provided to the supervisor or manager, the documentation must be forwarded to the DPM or designee for review. The supervisor or manager should destroy the medical information after forwarding to the DPM or designee.
5. The supervisor or manager should provide the DPM or designee with copies of the employee's current position description, outlining the essential functions and performance standards, as well as any other relevant information that clearly explains the duties of the job where needed.
6. Reasonable accommodation determinations will be based on the unique medical condition of the employee's disability. Once a permanent disability has been established, no additional medical documentation or request for accommodation may be necessary. Exceptions to this medical circumstance include, but are not limited to, the following:
 - i. Employee requests a new or additional accommodation based on changing or expanding needs associated with an existing medical condition.
 - ii. The employee changes positions.
 - iii. The employees essential job functions change.

4-2: Confidentiality

1. **Rehabilitation Act:** The Rehabilitation Act requires that all medical information be kept confidential. Therefore, all medical information that the Department obtains in connection with a request for reasonable accommodation should be immediately forwarded to the DPM or designee upon receipt. Anyone other than the DPM or designee receiving medical documentation should not retain a copy and must not place a copy in the individual's personnel or office file. The documentation must be stored in a separate, confidential, secure location. Confidentiality rules apply to all employees and applicants, regardless of whether or not they are individuals with disabilities. Further, any employee who obtains or receives such information is strictly bound by these requirements.
2. **Sharing Information:** Employees may provide the medical information directly to the DPM or designee for review. The employee is not required to share sensitive medical information with a supervisor, outside of the functional limitations.
3. **Responsibilities of DPM:** The DPM or designee shall maintain custody of all records obtained or created during the processing of a request for reasonable accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. Section 1611.
4. **Disclosure of Medical Information:** Medical information may only be disclosed as follows:
 - a. To a Reasonable Accommodation Committee when empaneled to review a case;
 - b. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
 - c. First aid and safety personnel may be informed if the disability might require emergency treatment;
 - d. Government officials may be given information necessary to investigate the Department's compliance with the Rehabilitation Act; or

- e. The information may, in certain circumstances, be disclosed to workers compensation offices or insurance carriers.

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CHAPTER 5: DISPOSITION OF ACCOMMODATION REQUEST AND PROGRAM ACCOUNTABILITY

5-1: Tracking

1. HUD is required to track the processing of requests for reasonable accommodation. The DPM or designee maintains a system of records to track the processing of requests for reasonable accommodation and the confidentiality of medical information received in accordance with applicable laws and regulations. Supporting documentation, specifically relating to medical information, must not become part of an employees' personnel file. The Deciding Official must forward all medical documentation involving reasonable accommodation requests to the DPM or designee for storage and maintenance.

5-2: Reporting

1. The DPM will prepare an annual report and submit to the Office of the Departmental Equal Employment Opportunity (ODEEO) based on their specified format and reporting timeframes for inclusion into HUD's MD-715 data requirements.
2. The ODEEO and the OCHCO will analyze the data to provide a qualitative assessment of the reasonable accommodation program including any recommendations for improvement of HUD's reasonable accommodation policies and procedures.

5-3: Information Request Procedures

1. Any person wanting further information concerning these procedures may contact the Disability Program Manager (DPM) at Reasonableaccommodationbranch@hud.gov or the Office of Departmental Equal Employment Opportunity (ODEEO) at (202) 708-5921. Individuals with hearing or speech impairments may reach these offices through the Federal Relay Information Service at (800) 877-8339 (toll free).

5-4: Distribution and Postings

1. Distribution: All employees shall be informed of the procedures herein upon issuance. All new employees shall also be informed as part of their New Employee Orientation (NEO) at HUD.
Postings: This Handbook will be posted on HUD's Intranet and Internet sites.

5-5: Accountability

Ensuring accountability is a necessary component of any successful program. This includes assigning responsibility within HUD for monitoring, evaluating and reporting on progress.

1. Record Keeping
 - a. The DPM or designee will ensure RAB office files are maintained as prescribed by law.
 - b. Record keeping questions may be directed to the Disability Program Manager at reasonableaccommodationbranch@hud.gov.

2. Questions: Questions about HUD's Reasonable Accommodation Program may be directed to the Disability Program Manager on 202-402-4690 or at reasonableaccommodationbranch@hud.gov.

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APPENDICES

APPENDIX A: Request for Reasonable Accommodation, Form HUD-1000

NOTE: Forms are available in alternative formats that are accessible to people with disabilities

eCase electronic system Form HUD-1000

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APPENDIX B: Denial of Reasonable Accommodation, Form HUD-11600

NOTE: Forms are available in alternative formats that are accessible to people with disabilities

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APPENDIX C: Reasonable Accommodation Information Reporting, Form HUD-11601

NOTE: Forms are available in alternative formats that are accessible to people with disabilities

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AVAILABLE RESOURCES

SELECTED INTERNAL REASONABLE ACCOMMODATION RESOURCES

The OCHCO, Reasonable Accommodations Branch (RAB) is available to provide assistance to employees and decision makers in processing requests and is a referral resource. The OCHCO, RAB will coordinate with OCIO Staff to receive and review medical documentation prior to processing assistive technology requests.

SELECTED EXTERNAL REASONABLE ACCOMMODATION RESOURCES

U.S. Equal Employment Opportunity Commission (EEOC)

1-800-669-3362 (Voice) 1-800-800-3302 (TTY) <http://www.eeoc.gov/>

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship to include: EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000) and EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002). The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997), and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); (5) Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (March 1, 1999); and (6) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory, are also available through the Internet at <http://www.eeoc.gov/>.

Job Accommodation Network (JAN)

1-800-526-7234 (Voice), 1-877-781-9403 (TTY)

<http://askjan.org> is funded by the U.S. Department of Labor's Office of Disability Employment (ODEP) Policy and provides information on the Americans with Disabilities Act (ADA) and a wide range of reasonable accommodations options for many different types of disabilities.

JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TTY)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TTY)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TTY)

<http://www.justice.gov/cgi-bin/outside.cgi?http://www.resna.org>

The Rehabilitation Engineering and Assistive Technology Society of North America (RESNA), can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products);
- centers where individuals can try out devices and equipment;
- assistance in obtaining funding for and repairing devices; and
- equipment exchange and recycling programs.

Exhibit 23

Article 45 – AFGE’s Final Written Offer

Article 45: Reasonable Accommodation

Section 45.01 - General.

The Department is committed to the removal of workplace barriers that may interfere with, inhibit, or prevent qualified individuals with disabilities including disabled veterans from performing jobs which they could do with some form of accommodation. The Department will provide a Reasonable Accommodation to the known physical or mental limitations of a qualified applicant or employees with a disability unless the Department demonstrates that the accommodation would impose an Undue Hardship, as defined by the U.S. Equal Employment Opportunity Commission's regulations at 29 CFR 1630.

- (1) The policy, procedures, and terminology established in this Article are in conformance with the governing law, rule, and regulations, including but not limited to:
 - (a) The Rehabilitation Act of 1973, as amended, particularly but not limited to Sections 501 and 508;
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 et seq., including but not limited to the definition of disability at 42 U.S.C. § 12102;
 - (c) Executive Order 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation;
 - (d) U.S. Equal Employment Opportunity Commission (EEOC) regulations implementing the ADA (29 CFR part 1630), including but not limited to the definitions provided at 29 CFR § 1630.2;
 - (e) EEOC Policy Guidance on Executive Order 13164;
 - (f) EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (EEOC Guidance: Reasonable Accommodation); and
 - (g) EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) (EEOC Guidance: Inquiries).

The parties agree that the Departmental Reasonable Accommodation Policy Handbook 7855.1 (Rev 2), describes the responsibilities and processes for managers and employees to follow regarding Reasonable Accommodation requests. Should the CBA and the Handbook conflict, the CBA shall govern. If changes are made to the Handbook, notice and bargaining will take place in accordance with the Article on Mid-term Bargaining.

Section 45.02 – Examples of Reasonable Accommodations.

Reasonable Accommodations may include but shall not be limited to:

- (1) Modification of job duties including job restructuring;

- 1
- 2 (2) Modification of job environment (i.e., making existing facilities accessible);
- 3
- 4 (3) Acquisition or modification of equipment (e.g., furniture and assistive technology);
- 5
- 6 (4) Modifying work instructions or guidance and training materials format or media (e.g.
- 7 Braille, large print);
- 8
- 9 (5) Providing qualified readers or sign language interpreters;
- 10
- 11 (6) Parking accommodations;
- 12
- 13 (7) Modifications or adjustments to the job application process;
- 14
- 15 (8) Providing a clean, appropriate private space where an individual can perform medically
- 16 necessary procedures, such as injecting insulin;
- 17
- 18 (9) Change in an assigned or approved worksite/duty station to enable work at home or at an
- 19 alternative worksite or work station.
- 20
- 21 (10) Reassignment. See Section 45.06 on reassignments below and
- 22
- 23 (11) Modification of Departmental policies (e.g. work schedules).
- 24

25 **Section 45.03 - Reasonable Accommodation Process.**

26

27 (1) **Initiation of a Reasonable Accommodation Request**

28 An employee with a disability may request a Reasonable Accommodation at any time
29 during the period of employment. The request does not have to contain any special words
30 such as “reasonable accommodation,” “disability,” or “Rehabilitation Act,” The
31 Department and any employee who requires a Reasonable Accommodation due to a
32 disability shall follow the procedures below.

33

34 (a) Initial Request for Reasonable Accommodation.

- 35 i. An employee or their designated representative (e.g. family member,
36 Union representative) will request an accommodation of a Receiving
37 Official or Deciding Official, in person or by electronic communication.
38 The Receiving Official is typically the employee’s immediate supervisor
39 or another manager in the chain-of-command, a member of the ODEEO
40 staff, or an employee of the Reasonable Accommodation Branch (RAB).
- 41 ii. If the employee directs the Reasonable Accommodation request to a
42 Receiving or Deciding Official, a Deciding Official will acknowledge
43 receipt of the request to the employee in writing as soon as possible but no
44 later than seven days, with a copy to the RAB.

- 1 iii. If the employee directs the Reasonable Accommodation request to the
2 RAB, then the Disability Program Manager (DPM) or other RAB
3 designee, will acknowledge receipt of the request to the employee in
4 writing as soon as possible but no later than seven days. The DPM or RAB
5 designee will copy the Deciding Official on the acknowledgement of
6 receipt of the Reasonable Accommodation request. If the employee has
7 not completed a HUD-1000, the DPM or RAB designee will complete the
8 form on the employee's behalf, or specifically inform the Deciding
9 Official that they must do so within that seven-day period and transmit the
10 HUD-1000 to the RAB.
- 11 iv. The Department's obligation to consider an individual's request begins
12 when the individual makes that request to any of the following: his/her
13 supervisor; a supervisor or manager in his/her immediate chain of
14 command; the EEO office; the Reasonable Accommodation Branch; or, in
15 connection with the application process, any agency employee with whom
16 the applicant has contact.

17
18 (b) Reasonable Accommodation Documentation Responsibilities:

- 19 i. Unless the employee's disability is obvious (e.g., quadriplegia), and/or the
20 need for an accommodation is obvious (e.g. a ramp for a wheelchair user), at
21 the time of request, but no later than 15 days after the Deciding Official's
22 acknowledgement of receipt of the Reasonable Accommodation Initial
23 Request, the employee must provide the following medical documentation:
24 a. Documentation demonstrating that they are an Individual with a
25 Disability;
26 b. Documentation establishing the functional limitations resulting from
27 the disability that interfere with performance of the job, that interfere
28 with performance of the job, how long each functional limitation is
29 expected to continue and prognosis of the disability; and
30 c. Documentation or explanation as to how the requested accommodation
31 facilities the performance of the Essential Functions of their job, where
32 a specific Reasonable Accommodation has been requested.
- 33
- 34 ii. Individuals' disabilities can manifest differently, and some functional
35 limitations can be different at different times. Consequently, an employee with
36 an obvious disability may need to provide documentation or updated
37 documentation regarding the employee's specific functional limitations as
38 stated in 45.03 (1)(b)(i) above. However, if both the disability and need for
39 Reasonable Accommodation are obvious the employee will not be required to
40 submit additional medical documentation.
- 41
- 42 iii. Even where an employee submits medical documentation along with the
43 initial request for Reasonable Accommodation, that documentation may be
44 insufficient or additional medical documentation or information may be

1 needed for the Deciding Official to conduct an informed review and make a
2 decision. The Deciding official will include the reason for needing additional
3 information and the type of additional information needed. The employee will
4 be given 30 days after receipt of the request for additional documentation to
5 provide the requested documentation.
6

7 iv. A requesting employee may choose to submit medical documentation to either
8 the RAB or the Deciding Official at the employee's sole discretion.
9

10 v. Unless sufficient medical documentation is provided at the time of request, all
11 deadlines for the Deciding Official to respond to the Reasonable
12 Accommodation are suspended until the employee has submitted the
13 documentation necessary for the Deciding Official to conduct an informed
14 review of the request and make a decision.
15

16 vi. When seeking medical documentation for purposes of evaluating an
17 employee's reasonable accommodation request, the Department may only
18 request documentation that is related to the request for Reasonable
19 Accommodation and associated disability Management may not request an
20 employee's complete medical records.
21

22 vii. The RAB will review the requesting employee's medical documentation to
23 determine if the employee is an Individual with a Disability, which confirms
24 their eligibility to continue in the Reasonable Accommodation process. Once
25 eligibility is established, the RAB will immediately convey to the Deciding
26 Official the requesting employee's specific functional limitations, who will
27 then communicate the Essential Functions of the employee's position to the
28 RAB. A review of the requesting employee's functional limitations, as well as
29 available accommodations, will then be conducted to determine if the
30 employee is a Qualified Individual with a Disability.
31

32 viii. Failure to provide sufficient medical documentation within the specified
33 timeframes may result in delay or discontinuation of the processing of a
34 Reasonable Accommodation request, with written notice to the requesting
35 employee.
36

37 **(2) Interactive Process**

38 (a) *Initiation of the Interactive Process.* The Interactive Process between employee
39 and Deciding Official begins at the earliest stage of the processing of a
40 Reasonable Accommodation request. Its purpose is for the requesting employee
41 and Deciding Official to communicate with each other to determine if there is an
42 effective accommodation that will address the employee's functional limitations
43 in a manner that will enable them to perform the Essential Functions of the job
44 without posing an Undue Hardship on the Department.
45

1 The Initiation of the Interactive Process will proceed as follows:

- 2 i. The Deciding Official shall initiate the Interactive Process as soon as
3 possible but no later than 14 days of the initial request. The employee shall
4 respond to the Deciding Official as soon as possible but no later than
5 seven days after this contact, unless the employee is unavailable for
6 medical reasons, other leave, travel, or training.
7
8 ii. The Interactive Process will be conducted in person, by telephone or other
9 electronic means and may, but is not required to, include the DPM or RAB
10 designees or other employee or management representatives as
11 participants.
12

13 (b) The Deciding Official and the requesting employee both have a duty to engage in
14 the Interactive Process.
15

16 (c) During the Interactive Process, the employee and Deciding Official will review
17 the requested accommodation(s), functional limitations and Essential Functions of
18 the employees' position. The Deciding Official will explore and respond to the
19 employee's requests for accommodation, and where appropriate, offer alternative
20 effective accommodations. The Deciding Official will consider approving an
21 employee's requested accommodation before proposing an alternative
22 accommodation or denying the employee's requested accommodation.
23

24 (d) The Deciding Official shall consider, if necessary and available, Interim
25 Accommodations that may be implemented during the Interactive Process or
26 when an accommodation is agreed upon but not yet implemented. Since Interim
27 Accommodations may be provided before the process for determining whether an
28 employee is a Qualified Individual with a Disability is complete, Interim
29 Accommodations may be revoked if:
30

- 31 i. The employee is not a Qualified Individual with a Disability;
32 ii. The employee would pose a direct threat, meaning a significant risk of
33 substantial harm to the health or safety of the individual or others that
34 cannot be eliminated; or
35 iii. The Interim Accommodation imposes an Undue Hardship on the Agency;
36 iv. A different accommodation is approved and implemented in accordance
37 with the procedures below.
38

39 The Deciding Official shall not implement any Interim Accommodation if the
40 employee objects to that accommodation.
41

42 (e) The Interactive Process concludes when an effective accommodation has been
43 identified and agreed upon by the employee and the Deciding Official, or the
44 Interactive Process is no longer productive in identifying effective
45 accommodations.
46

1 (f) An employee's failure to engage in the Interactive Process may result in delay or
2 discontinuation of the processing of a Reasonable Accommodation request, with
3 written notice to the requesting employee.
4

5 (g) If no effective accommodation can be agreed upon, other options will be
6 explored, including reassignment, if requested by the employee.

7 (3) Management may start an interactive process if the Agency has a reasonable belief based
8 on objective evidence that the employee will not be able to perform the essential
9 functions of his/her job because of a medical condition. However, once a permanent
10 disability has been established, Management cannot ask for documentation when the
11 individual has already provided sufficient information to substantiate that they have a
12 disability as defined by the Americans with Disabilities Act (Individual with a Disability)
13 and needs the reasonable accommodation requested. If the employee has a change in their
14 permanent disability which will require a modification of their Reasonable
15 Accommodation, the employee will initiate the interactive process.
16

17 **(4) Approval of Accommodation**
18

19 (a) Where a Deciding Official determines that a Reasonable Accommodation should
20 be granted, the following steps must be taken:
21

- 22 i. The Deciding Official must put the approval of a Reasonable
23 Accommodation in writing on the HUD-1000, send it to the requesting
24 employee, and copy the DPM or RAB designee.
25 a. The Deciding Official may approve an alternative accommodation
26 to the one that is requested by the employee, as long as it is
27 effective in addressing the employee's functional limitations in
28 performing the Essential Functions of his or her job.
29 b. For purposes of this Article, approval of a "partial"
30 accommodation or an "alternative" accommodation have the same
31 meaning, in that they both propose an effective accommodation
32 that is other than the accommodation that was specifically
33 requested by the employee.
34 c. If the Deciding Official does not approve the employee's requested
35 Reasonable Accommodation, even if a partial or alternative
36 accommodation is approved, the Deciding Official must address
37 the requested accommodation as a denial, as described below.
38
- 39 ii. The Deciding Official must inform the requesting employee in writing of
40 the anticipated effective date of the accommodation or the date on which
41 the accommodation is expected to be implemented.
42
- 43 a. When approved, most accommodations will be granted and
44 implemented within 45 days of the initial request.
45 1. Extenuating circumstances may delay the consideration or
46 implementation of a Reasonable Accommodation.

- 1 2. The suspension of deadlines in this Article (e.g., for failure
2 to timely submit medical documentation) may delay
3 implementation of a Reasonable Accommodation.
- 4 3. The Deciding Official will advise the requesting employee
5 of any extenuating circumstances or other reasons for
6 delay of implementation in writing, copying the DPM or
7 RAB designee.
8
- 9 b. Time sensitive accommodations will be expedited, where
10 reasonable and necessary, within five days, of the initial request.
11 1. Some time-sensitive accommodations may be implemented
12 in fewer than five days (e.g., a policy to allow an employee
13 with diabetes to take regular breaks to check blood sugar
14 and take medication may be implemented immediately).
15 2. Some time-sensitive accommodations may be implemented
16 in more than five days, but fewer than 45 days as the
17 accommodation becomes available (e.g., the Agency
18 locates a sign language interpreter with the requisite skills
19 to interpret at a technical meeting).
20
- 21 c. Deciding Official will ensure that the approved accommodation is,
22 in fact, implemented and working effectively. Requesting
23 employee must inform the Deciding Official, the DPM or RAB
24 designee within 10 days after receipt of the approved
25 accommodation if an approved accommodation is not implemented
26 or not fully implemented. Once implemented, the requesting
27 employee must inform the Deciding Official as soon as the
28 employee is aware if an accommodation is not effective (e.g., the
29 equipment does not work in the anticipated manner and is not
30 effective for the employee to access the necessary functions).
31
- 32 d. Once an alternate or partially approved reasonable accommodation
33 is implemented the requesting employee must inform the Deciding
34 Official as soon as they are aware that an accommodation is not
35 effective. Once the employee notifies the Deciding Official that the
36 accommodation is not effective, another interactive process will
37 begin. Additional medical documentation may not be necessary.
38
- 39 iii. Employee will respond to Deciding Official's offer of Reasonable
40 Accommodation.
41 a. A requesting employee is not required to accept the Reasonable
42 Accommodation that is offered by the Deciding Official. However,
43 the employee must communicate that they either accept or reject
44 the offered accommodation in writing, copying the DPM or RAB
45 designee. If the employee fails to respond to the offered
46 Reasonable Accommodation within 15 days after the offer, barring

1 extenuating circumstances (e.g. hospitalization), the employee will
2 be considered to have abandoned the Interactive Process and the
3 Department may cease processing of the Reasonable
4 Accommodation request, with written notification to the employee,
5 copying the DPM or RAB designee.
6

7 b. If the requesting employee rejects the offered accommodation the
8 Deciding Official may reopen the Interactive Process to determine
9 if there are adjustments to the offered Reasonable Accommodation
10 that may be acceptable to the requesting employee, or if an
11 alternative effective accommodation can be identified.
12

13 c. If no alternative accommodation can be agreed upon, the
14 Department may cease processing the Reasonable Accommodation
15 request, with notification to the requested employee, or deny the
16 request, with written notification to the requesting employee,
17 documented on the HUD-1000, and copied to the DPM or RAB
18 designee.
19

20 d. Once the Department has granted a Reasonable Accommodation, it
21 shall not be revoked due to the employee's reassignment to a new
22 position or a new location. For example, if an employee needs a
23 reasonable accommodation such as but not limited to sitting closer
24 to natural light, away from an air vent, wider aisles, access to
25 refrigeration, work from home, or flexible start times, the approved
26 reasonable accommodation will continue to be provided to the
27 employee in the new position or location. The employee shall not
28 be required to start the Reasonable Accommodation process over
29 again. The employee may, at any time, request a new or modified
30 reasonable accommodation, whether due to changing medical
31 needs, job requirements, or relocation.
32

33 **(5) Denial of Requested Accommodation.** Where a Deciding Official determines that a
34 requested Reasonable Accommodation should not be granted the following steps
35 must be taken:
36

37
38 (a) The Deciding Official must put the denial of a Reasonable Accommodation in writing
39 on the HUD-11600, send it to the requesting employee, and copy the DPM or RAB
40 designee. A decision to provide an effective accommodation other than the one
41 specifically requested is considered a decision to grant an accommodation. The
42 Department must issue the employee notice in accordance with 45.03(5)(b) below, for
43 the portion of the request that was not approved and identify alternative
44 accommodation(s) to be provided, if any.
45

- 1 (b) Denials will be communicated within 45 days after the initial request, absent
2 extenuating circumstances (e.g., prolonged Interactive Process) or suspension of
3 deadlines (e.g., due to employee's delay in providing sufficient medical
4 documentation). The denial notice shall include an explanation for the denial in plain
5 language that includes the reasons for the denial in plain language that includes the
6 reasons for the denial, the name of the Reconsideration Official, and notify the
7 employee of the internal appeal process. Where the Deciding Official has denied a
8 specific requested accommodation but has offered an alternative accommodation, the
9 denial notice should explain the reasons for the denial of the requested
10 accommodation and provide reasons why the approved accommodation will be
11 effective.
12
- 13 (c) A Reasonable Accommodation may also be denied on any basis permitted by law.
14
- 15 (d) If the requesting employee wishes to appeal the Denial, they must follow the
16 Reconsideration process set forth in this Agreement.
17

18 **(6) Reconsideration**
19

- 20 (a) Reconsideration of a Denial, Partial Approval, or Approval of Alternative
21 Reasonable Accommodation:
22

- 23 i. If an employee is denied, partially approved, or an approved alternative
24 Reasonable Accommodation is not satisfactory, the employee may, within
25 15 days after receipt of the notice of denial of accommodation, make a
26 written request for reconsideration to a Reconsideration Official. This
27 Reconsideration Official will be a management designee at a higher level
28 than the Deciding Official. The Reconsideration Official will acknowledge
29 the request for reconsideration within five days of the employee's request,
30 absent extenuating circumstances. The Reconsideration Official will issue
31 a decision in writing within 15 days after acknowledging the employee's
32 request for reconsideration, absent extenuating circumstances. The
33 Reconsideration Officer shall either approve the employee's request or
34 shall provide the reasons for the denial, partial approval, or approval of an
35 alternative accommodation, and an explanation of why providing the
36 denied accommodation would cause an undue hardship, and shall notify
37 the employee of the necessary procedures for requesting a review by a
38 Reasonable Accommodation Committee, including the name and contact
39 information of the DPM.
40
- 41 ii. If the Reconsideration Official offers an accommodation that the
42 employee finds acceptable, the employee must communicate their
43 acceptance to the Reconsideration Official in writing within 15 days after
44 the decision.
45

- 1 iii. If the Reconsideration Official denies the request for reconsideration or
2 renders a decision that the requesting employee considers to be
3 unfavorable, the employee may, within 5 days after the Reconsideration
4 Official’s decision, send a request in writing to the Disability Program
5 Manager (DPM) that a Reasonable Accommodation Committee (RAC) be
6 empaneled for review of the Reasonable Accommodation request.
7
- 8 iv. When convened, the RAC reviews all facts and provides written
9 recommendations to the Appeals Official to inform their final decision to
10 sustain or revoke the denied accommodation. Upon request, the requesting
11 employee and designated representative, if any, will be provided an
12 opportunity to meet with the RAC, in person or by telephone, to provide
13 additional information or clarification. The RAC may also provide an
14 opportunity for the Deciding Official to provide additional information or
15 clarification.
16
- 17 v. Based on the information provided, including information provided in
18 person by the employee and Deciding Official, the Committee will vote to
19 determine whether to approve or deny the request. The RAC shall ensure
20 that its decision complies with all applicable laws and regulations, and
21 with this Agreement. The RAC will be empaneled, meet, and issue a final
22 decision on the Reasonable Accommodation within 14 days of the
23 employee’s request.
24
- 25 vi. The Disability Program Manager shall inform the employee and
26 representative, if any, of the RAC’s decision. The DPM shall be
27 responsible for providing the requestor with a copy of all written
28 statements and supporting documents related to the RAC’s decision, along
29 with a written copy of the final decision.
30

31 **Section 45.04 – Reassignment**

32 The following criteria govern the circumstances under which reassignment may be authorized as
33 a form of Reasonable Accommodation:

- 34 (1) Reassignment is considered as a last resort accommodation after all other possible
35 accommodations have been explored and ruled out, or if both the Deciding Official and
36 employee mutually agree that reassignment is preferable, to remaining in the current
37 position with some form of accommodation.
38
- 39 (2) Reassignment as an accommodation is available only to employees and not to applicants
40 for employment. Employees may only be reassigned to vacant funded positions for
41 which they are qualified absent an Undue Hardship on HUD's operations. A vacant
42 funded position is one that the Department has determined to fill, has authorization to
43 fill, and for which funding is available.

- 1
2 (3) The employee is qualified if they satisfy the requisite skills, experience, education, and
3 other job-related requirements of the position, and can perform the Essential Functions
4 of the position with or without Reasonable Accommodation. An employee does not need
5 to be the best qualified individual for the position in order to obtain it as a reassignment.
6
7 (4) Reassignment may be made to a lower-graded position if no suitable vacant funded
8 positions are available at the employee's grade and the employee has indicated that they
9 would consider such positions.
10
11 (5) Reassignments as a Reasonable Accommodation should be non-competitive.
12 Reassignment does not include giving the employee a promotion. Thus, the employee
13 must compete for any vacant position(s) that would constitute a promotion.
14
15 (6) Requests for reassignment as a Reasonable Accommodation shall be processed in
16 accordance with this Article and the Departmental Reasonable Accommodation policy
17 Handbook 7855.1 (Rev. 2) or successor, including the following procedures:
18
19 i. Within seven days after a determination that there is no accommodation
20 that would be effective in enabling the employee to perform the essential
21 functions of their position, an employee may request reassignment through
22 the Department's designee by identifying the parameters of their request
23 for reassignment (i.e., grade level, position location, willingness to take a
24 part-time position, and program office preference) and submitting a
25 resume.
26
27 ii. Based on the parameters provided by the employee, the Department will
28 begin a search for available, classified, funded, vacant positions within 15
29 days of notification. The Department will conduct the search consistent
30 with the parameters of the employee's request for reassignment. If no
31 results are found for which the employee is qualified, the Department will
32 repeat the search 14 days after the initial search results are shared with the
33 employee. Results of searches will be shared with the employee as quickly
34 as practicable and will ordinarily be ready within 15 days of the end of the
35 search.
36
37 iii. The Department will provide the employee with a list of available
38 positions, if any, for which the employee is qualified. The employee will
39 have no more than seven days to inform the Department's designee which
40 position he or she selects.
41

- 1 iv. Once the employee has communicated their selection of a position on the
- 2 list, the Department will start to make arrangements for the reassignment.
- 3
- 4 v. If the employee does not wish to accept any of the positions, the process is
- 5 complete.
- 6
- 7 vi. The Department shall complete the search for a vacant position within 45
- 8 days.

9 **Section 45.05 – Confidentiality of Medical Documentation.**

- 10 (1) Medical Documentation submitted in support of Reasonable Accommodation requests
- 11 will be kept strictly confidential by the Department, in compliance with Departmental
- 12 Policy, EEOC guidelines, and applicable law.
- 13 (2) Details of a requesting employee’s disability and request for accommodation will be
- 14 treated as confidential medical information, with any information provided on a strictly
- 15 need-to-know basis, for purposes of evaluation and implementation of an
- 16 accommodation.
- 17
- 18 (3) The Department shall maintain medical and other information that the Department
- 19 obtains in connection with a request for reasonable accommodation in files separate from
- 20 the employee’s electronic Official Personnel Folder (eOPF).
- 21

22 **Section 45.06 – Training.**

23 The Department will offer training on Reasonable Accommodations, including use of the

24 Reasonable Accommodation Portal. The training may be conducted via various methods

25 including interactive and distance learning.

26

27 **Section 45.07 – Assistive Technology Equipment.**

28 Reasonable accommodation requests for Assistive Technology equipment will be submitted via

29 Form 22006, or successor. If the employee does not submit the form with the Reasonable

30 Accommodation request, the RAB or designee shall be responsible for preparing the Form

31 22006. Once submitted, the procedures set forth above in Section 45.04(1) shall apply to requests

32 for Assistive Technology equipment.

33

34 **Section 45.08 - Distribution of Disability Program Manager (DPM) Information.** The

35 Reasonable Accommodation policy, which includes information on how to request a Reasonable

36 Accommodation and the Department's DPM contact information, is posted on HUD@work

37 under the A to Z index - “Reasonable Accommodation.” To accommodate disabled applicants

38 and disabled employees’ family members who may need to contact the DPM on behalf of the

39 employee, The Department shall also provide the information on a non-secured website such as

40 hud.gov.

41

42 **Section 45.09 – Reasonable Accommodation Portal.**

43 The Reasonable Accommodation Portal is an automated record-keeping system whose functions

44 include the secure storage of information on Reasonable Accommodation requests.

- 45 (1) The Department shall ensure that the portal (including the user interface, instructions,
- 46 policies and procedures, and guidance) is accessible to individuals with disabilities –

1 including but not limited to the standards under Sections 504 and 508 of the
2 Rehabilitation Act of 1973. The Department shall ensure that the portal is user-friendly.

3
4 (2) To facilitate understanding and usage, the Agency shall provide a user manual that can be
5 accessed within the Portal. Prior to implementation of the Portal, the Union shall be
6 provided a copy of the Portal user manual for review and comment.

7
8 (3) If the Portal has not been implemented when this Agreement becomes effective, or
9 whenever a significant update or modification to the Portal is to be implemented, the
10 Department shall provide the Union with instructions, policies and procedures, and other
11 guidance related to the Portal.

12
13 (4) The entry or transfer of past Reasonable Accommodation decisions, current cases, or
14 non-electronic requests into the Portal shall not result in a material alteration of the record
15 and the requestor shall be permitted to review it to ensure completion. To the extent
16 practicable, the entry of such data and information shall not impede the review and
17 processing of open or new Reasonable Accommodation requests.

18
19 (5) The Department shall not make updates, revisions, new releases, or other modifications
20 of the Portal, its instructions, policies and procedures, or guidance without providing
21 notice to the Union. Notice shall include a description of the modifications and
22 explanation of the purpose of the modifications. The Department will provide an
23 invitation to the Union to attend a demonstration of the proposed changes, which may be
24 provided prior to the notice but occur no later than at the time of the notice.
25

Article 47: Union Representation and Official Time

Section 47.01 - Representational Functions.

- (1) Only after obtaining written approval from the Agency may an employee utilize allocated official time subject to the limitations in this Article and applicable law.
- (2) Official time allocated under this Agreement is authorized ~~may be used only~~ for the representational functions set forth below. Official time approved for these purposes is subject to total allocations set forth in Section 47.02 and the individual cap of 15% of paid time per fiscal year:
 - (a) Attending formal discussions in accordance with the Article on Rights and Obligations of the Parties;
 - (b) Preparing for mid-term negotiations;
 - (c) Preparing for proceedings before the Federal Labor Relations Authority (FLRA);
 - (d) Attending authorized meetings held in accordance with the Article on Labor Management Relations Meetings;
 - (e) Training for Union representatives that constitutes representational activity; and
 - (f) Attending investigatory interviews in accordance with the Article on Employee Rights/Standard of Conduct.
- (3) Official time spent on the following representational activities is not subject to total allocations set forth in Section 47.02 or and to the individual cap of 15% of paid time per fiscal year.
 - (a) Representing the Union in proceedings before the FLRA. Such time must be certified by the FLRA, in accordance with 5 U.S.C. § 7131(c);
 - (b) Representing the Union at mid-term negotiations, including any impasse proceedings, subject to the limitations in 5 U.S.C. § 7131(a); and
 - (c) Meetings with the Union requested by Management that do not include employees.
- (4) No employee may use or be allocated official time to represent an employee in a bargaining unit other than the bargaining unit the employee union representative is employed in.
- (5) Employees serving as Union representatives shall not use their official title, position, or designation in correspondence or communications with the Department while engaging in representational activities.

Section 47.02 - Certification of National and Local Representatives.

National and Local office representatives certified by the Union in accordance with this Agreement shall be recognized as employee representatives for bargaining unit employees and shall be entitled to the use of official time under the provisions of this Agreement. No other person shall be entitled to such use of official time except as specifically authorized in this Agreement. Two weeks prior to the start of each quarter, the respective presidents shall certify to the appropriate Department

1 official at the National and Local levels, in writing via e-mail, fax, hard copy, or
2 other written means, the name, title, duty station, phone number, and allocation of
3 official time of the Union's representatives who are authorized to use official time
4 as provided under 47.03 of this Agreement. Any official or representative not
5 identified in this manner shall not be entitled to the use of official time.
6

7 **Section 47.032 – Amounts of Official Time.**

8 (1) *Individual Cap.* Both parties recognize that an organization's effectiveness depends on its
9 ability to assign work as it deems necessary and appropriate among the employees of the
10 organization. The parties agree that no employee may utilize official time that exceeds
11 15% of the employee's paid time during each fiscal year, with the exception of time
12 granted in accordance with Section 47.01(3).
13

14 (2) Union representatives who reach the 15% cap will be authorized official time in
15 accordance with Section 47.01(3). However, if the individual cap has been reached, time
16 will be charged to the individual cap for the following fiscal year.
17

18 (3) *Quarterly Official Time Allocations.*

19 (a) On a quarterly basis, two weeks prior to the beginning of the quarter, the Union
20 will identify to Management its designated representatives eligible to use official
21 time and the number of hours allocated to each representative, subject to the total
22 hours below in (b). Quarters begin on the first day of October, January, April, and
23 July, and October. The Union may request one change in distribution during the
24 quarter, except that the Council President, in unusual circumstances, may request
25 one additional change.

26 **(b)** Official time is limited to 2,000 hours per fiscal year for the activities detailed in
27 Section 47.01(2) above. The number and types of Union representatives and
28 the amount of official time that may be allocated are as follows:
29

30 i. National: 24 hours total per quarter

31 ii. Regional Vice Presidents (RVP): 24 hours per quarter to be distributed
32 by each of the 10 Regional Vice Presidents (240 hours total per quarter).

33 iii. Local:

34 1. Headquarters, including the Washington, D.C. Field Office and
35 the Los Angeles Departmental Enforcement Center: 16 hours total
36 per quarter.

37 2. Local – A total of 220 hours per quarter may be allocated among
38 the non-headquarters locals. Once a portion of the 220 hours has
39 been allocated to a Local, the Local president shall distribute their
40 allocation of official time among their Local representatives for
41 that quarter.
42

43 ~~(b)~~(c) Unused hours may be carried over into the next quarter, however the
44 Union must designate the number of hours to Management prior to the start of
45 each quarter. Unused hours may not be carried over to the next fiscal year.

1 (e)(d) If a substantial change in the number of employees occurs, relative to the
2 size of the affected pool, through attrition, hiring, RIF, transfer of function, office
3 closure, or other condition, in any of the pools for which official time is allocated,
4 the change in the amount of official time allocated to that pool shall be negotiated
5 by the Parties promptly upon either Party's request.
6

- 7 (4) *Eligibility.* Individuals designated as a Union representative that are placed on an
8 Opportunity to Demonstrate Acceptable Performance (ODAP) in accordance with the
9 Article on Unacceptable Performance Actions will not be authorized official time during
10 the period of the ODAP.
11

12 **Section 47.043 - Procedure.**

- 13 (1) When it is necessary to use official time, the Union representative shall first submit a
14 written request and receive written approval from his/her immediate supervisor or
15 designee who has supervisory authority. The representative shall advise the supervisor of
16 the following in his or her written request:
17 (a) the estimated amount of official time needed,
18 (b) the date and time when the official time will be used,
19 (c) where the representational activity will occur,
20 (d) the reason for which the official time is requested per Section 47.01. If the
21 purpose is to represent another employee, identify the bargaining unit in which
22 the individual is employed, and
23 (e) the total cumulative number of official time hours used in the current fiscal year.
24

25 Employees performing union duties during their tour of duty without prior written
26 supervisory approval of official time shall be considered absent without leave (AWOL)
27 and subject to disciplinary and/or adverse action up to and including removal from
28 federal service.
29

- 30 (2) The Union representative must, in addition, when entering a work area to meet with an
31 employee, obtain advance approval from the supervisor of the employee. Upon
32 conclusion of the representational activity, the representative shall inform the employee's
33 and the representative's supervisors or designees that the activity has been completed. An
34 employee who fails to comply with this provision may be subject to discipline and/or
35 adverse action up to and including removal from federal service.
36
- 37 (3) When requesting official time for Union-sponsored training or conferences, the Union
38 will provide the appropriate Management official with documentation, at the time of the
39 request, denoting the date, location, subject matter and provider or sponsor of the training
40 or conference. Official time may be used for travel; however, Union representatives shall
41 not be eligible for, or entitled to, travel expenses and per diem. Requests, including an
42 agenda describing the training to be conducted, shall be submitted in writing via hard
43 copy, email, or fax, at least seven days in advance to the representative's immediate
44 supervisor.
45

1 (4) Supervisors may deny the use of official time due to ineligibility or operational needs, but
2 should work with an eligible employee to reschedule the time.
3

4 (5) All Union representatives who are entitled to official time under this Agreement shall
5 record the use of all representational time in WebTA or its successor system(s), or any
6 other system(s) implemented for the purpose of requesting, approving, or tracking official
7 time, and shall indicate the appropriate WebTA codes.
8

9 **Section 47.054 - Official Time for Union Representatives Outside of Immediate Offices.**

10 A representative who goes from their duty station to another office during duty hours in order to
11 represent the Union or an employee, is on official time for representational purposes and when
12 traveling. The official time used shall count against that individual's allocation. There shall be no
13 travel expenses and/or per diem for Union-designated representatives except where expressly
14 stated in this Agreement.
15

16 **Section 47.065 - Disciplinary and/or Adverse Actions for Failure to Follow Official Time
17 Procedures**

18 (1) An employee's failure to follow official time procedures outlined in this Article may
19 result in disciplinary and/or adverse action up to and including removal from federal
20 service.
21

22 **Section 47.076 – Leave of Absence for Union Officials.**

23
24 (1) Consistent with the needs of the Department, the Department agrees to approve a leave of
25 absence, without pay, not to exceed three years for a bargaining unit employee who is
26 elected to a position of National officer of the American Federation of Government
27 Employees, AFL-CIO, for the purpose of serving full time in the elected position, or who
28 is selected as an AFGE National Union representative. The Department shall be given not
29 less than two weeks advance notice.
30

31 (2) The Union agrees that all of the leaves of absence granted or approved in accordance
32 with this Section are subject to appropriate Government-wide regulations or other outside
33 authority binding on the Department. The Department, to the extent of its authority, shall
34 place the employee, at the end of the leave of absence, in the position the employee left,
35 or one of like seniority, status, grade, and pay.
36

The Department may consider reassigning the FTE between locations or program areas for a hardship reassignment request.

Section 46.12 - Expiration of Consideration. Hardship reassignment applications expire one (1) year after the Hardship Reassignment request is made, or when a hardship reassignment is accepted or declined by the employee. An employee may reapply for a hardship reassignment upon the expiration of the application.

Section 46.13 - Employee Assistance. The Department shall support employees experiencing hardship with empathy and understanding. The employee may request assistance and advice through the Employee Assistance Program, and may authorize them to share information regarding the hardship situation with Management. The Department's career counseling and job search counseling services shall also be made available to the employee if needed.

Section 46.14 - Confidentiality. Pursuant to the Privacy Act, all information in support of a hardship reassignment or disapproval shall be confidential. All documentation obtained in connection with a request for a hardship reassignment shall be kept in files separate from the electronic Official Personnel Files (eOPFs).

Section 46.15 - Exclusion from Hardship Reassignments. It is always at Management's discretion to reassign an employee outside of the hardship reassignment policy process. This may be the case in an emergency situation where an expeditious reassignment may be necessary.

The Department's procedures for considering Hardship Reassignment requests is not intended to circumvent the Department's Procedures for Reasonable Accommodations for Individuals with Disabilities, or any employee's opportunity to apply for vacant positions with promotion or promotion potential opportunities under merit promotion.

Section 46.16 - Information. Upon request, Management shall provide the Union with a list of all hardship transfer requests and the number of requests accommodated.

ARTICLE 47
UNION REPRESENTATION AND OFFICIAL TIME

Section 47.01 - Representational Functions.

- (1) Official time allocated under this Agreement is authorized for:
- a. Attending investigatory interviews;
 - b. Meetings with the Department representatives, except as noted below;
 - c. Meeting with employees to resolve complaints and grievances;
 - d. Attending grievance meetings with managers and employees;
 - e. Attending formal discussions;
 - f. Participating as a representative of the Union at an arbitration;
 - g. Attending a meeting with the Federal Labor Relations Authority (FLRA) Field Agent or Attorney, pursuant to an Unfair Labor Practice charge or complaint;
 - h. Completing business required by the Department of Labor;
 - i. Participating as the representative of the Union at an arbitration or unfair labor practice hearing related to the AFGE/HUD unit;
 - j. Communicating with Congress in their capacity as Union representatives regarding matters concerning bargaining unit working conditions, except when prohibited by federal statute; and
 - k. Other representational functions permitted by law.
- (2) Time spent on the following representational activities is not counted against the allocation of official time in this Agreement:
- a. Collective bargaining with the Department including mediation, impasse resolution, and reasonable preparation; and
 - b. Meetings with the Union requested by Management that do not include employees.
- (3) Although not covered as representational time under this Agreement, Union representatives may spend administrative time, without it counting against the allocation of official time, on the following activities, subject to Management notification or approval as necessary:
- a. Time granted under the regulations of the Equal Employment Opportunity Commission (EEOC);
 - b. Time granted to participate in Merit Systems Protection Board (MSPB) matters;
 - c. Time granted in connection with an Office of Special Counsel (OSC) matters;
 - d. Time granted in connection with an Office of Workers' Compensation Program (OWCP) claim;
 - e. Time granted in connection with a matter before the Employee Compensation Appeals Board (ECAB); and
 - f. Time granted during Occupational Safety and Health Administration (OSHA) visits.

Participation in proceedings, including reasonable preparation time as well as attendance at meetings, shall be governed by the applicable statutory provisions.

Section 47.02 - Certification of National and Local Representatives. National and Local office representatives certified by the Union in accordance with this Agreement shall be recognized as employee representatives for bargaining unit employees and shall be entitled to the use of official time under the provisions of this Agreement. No other person shall be entitled to such use of official time except as specifically authorized in this Agreement. Prior to the start of each quarter, the respective presidents shall certify to the appropriate Department official at the National and Local levels, in writing via e-mail, fax, hard copy, or other written means, the name, title, duty station, phone number, and allocation of official time of the Union's representatives who are authorized to use official time as provided under Section 3 of this Agreement. Any official or representative not identified in this manner shall not be entitled to the use of official time. An employee from one Union Local's office may not be designated as a representative or steward in another Union Local's office.

Section 47.03 - Representatives and Amounts of Official Time.

(1) **Allocation of Official Time.** Both parties recognize that an organization's effectiveness depends on its ability to assign work as it deems necessary and appropriate among the members of the organization. Therefore, just as the Union shall respect Management's right to assign work among its employees, Management shall not in any way control how the Union allocates duties among its representatives. Management recognizes that it is an internal Union function to determine the number of representatives needed at full-time or part-time levels to carry out its responsibilities. The only restriction on the Union's allocation of official time is the maximum amount of official time that may be allocated each quarter, which shall be as stated below.

- a. Time shall be allotted on a quarterly basis. Quarters shall begin on the first day of January, April, July, and October.
- b. Allocations shall be provided in four pools: National, Regional Vice Presidents, Headquarters and Field Offices.
- c. Two weeks prior to the beginning of the quarter, the Council President shall provide in writing via e-mail, fax, hard copy, or other written means to the appropriate Headquarters official any changes to the current pool allocations. Failure to provide a timely quarterly allocation in writing to the Headquarters official designated by Management shall result in the use of the designations and allocations from the previous quarter. Notifications of transfers from one pool to another pool will be provided by the Council President or designee.
- d. Management shall be responsible for notifying the relevant supervisors of current allocations in a timely manner upon receipt of the National, Regional, or Local president's allocation of time to designated Union representatives. The Union shall not be responsible for such notification, nor shall any representative's assumption of Union responsibilities be delayed due to the lack of timely notice to a supervisor.
- e. A representative may receive official time from more than one pool. This may result in individual field offices being allocated more official time than shown below.
- f. Nothing precludes the Union from requesting or the Department from granting additional official time as reasonable, necessary and in the public interest.
- g. Unused allocated hours may not be rolled over from one quarter to another.

- (2) Allocations are expressed as a total number of hours per quarter.
- (3) Union representatives assigned 364 hours or more in a quarter will complete administrative tasks, e.g. Time & Attendance, on Union official time.
- (4) The Union may request one (1) change in distribution during the quarter, except that the Council President, in unusual circumstances, may request one (1) additional change.
- (5) **Quarterly Official Time Allocations.** The number and types of Union representatives and the amount of official time provided are as follows:
 - a. **National:** 1700 hours per quarter.
 - b. **Regional Vice Presidents (RVP):** 1690 hours per quarter to be used by a maximum of 10 Regional Vice Presidents.
 - c. **Local:**
 - (1) **Headquarters,** including the Washington, D.C. Field Office and the Los Angeles Departmental Enforcement Center: 3130 hours.
 - (2) **Field Offices -** Field Offices and Regional Offices shall be allocated a total of 8112 hours per quarter. (See Appendix.) Local presidents shall distribute their allocation of the official time among representatives from their local offices.
 - (3) If a substantial change in the number of bargaining unit employees, relative to the size of the affected pool, through attrition, hiring, RIF, transfer of function, office closure, or other condition, occurs in any of the pools for which official time is allocated, the change in the amount of official time allocated to that pool shall be negotiated by the parties promptly upon either party's request. All negotiations under this section shall be in accordance with Article 49.

Section 47.04 - Adjustments of Workload. In order to facilitate release of Union representatives on official time, individual workloads shall be adjusted up front, where practical, to reflect time needed away from official duties. Up-front workload adjustments may not be appropriate when small amounts of official time are allocated and used in irregular patterns. In these circumstances, the adjustment may be made at the time of usage. Such adjustments shall not diminish an employee's right to fair and equitable treatment with regard to performance appraisals and promotions. If a dispute arises with respect to the fairness of the workload adjustment, the parties are encouraged to resolve it informally prior to any formal actions.

Section 47.05 - Official Time for Union Representatives Outside of Immediate Offices. A representative who goes from his/her duty station to another office during duty hours in order to represent the Union or a bargaining unit employee, is on official time for representational purposes and when traveling. The official time used shall count against that individual's allocation. There shall be no travel expenses and/or per diem for Union-designated representatives except where expressly stated in this Agreement.

Section 47.06 - Procedure.

- (1) When it is necessary to use official time, the representative shall first obtain approval from his/her immediate supervisor or designee who has supervisory authority in advance.
- (2) The representative must, in addition, when entering a work area to meet with an employee, obtain advance approval from the supervisor of the employee if meeting with the employee for more than ten (10) minutes on duty time. Upon conclusion of the representational activity, the representative should inform the representative's supervisor or designee that the activity has been completed.
- (3) Supervisors may deny the use of official time based only on Departmental mission-critical necessities; e.g., emergency conditions. If denied, the supervisor shall give the reason in writing at the time of denial and the supervisor will discuss an alternative time when official time can be utilized. Such denial may be appealed to the representative's second line supervisor who shall promptly meet with the Union representative to make a determination on the appeal. Denials of official time are subject to the grievance procedure. The Union may immediately reallocate any official time that a representative is unable to use due to mission-critical emergency situations to another representative or to designate a new representative to fulfill the affected representative's Union responsibilities.
- (4) All designated Union representatives who are entitled to official time under this Agreement shall record the use of all representational time in WebTA or its successor system(s).

Section 47.07 - Official Time for Union-Sponsored Training. Up to forty (40) hours per year of official time may be granted to designated representatives authorized under Section 7.03 to attend appropriate Union-sponsored instruction or briefing consistent with applicable decisions of the Comptroller General. Official time for such Union-sponsored training shall be in addition to the number of hours of official time allocated under Section 7.03 above. The number of hours may be increased when the instruction or briefing is mutually deemed to benefit both the Department and the Union. Official time may be used for travel; however, Union representatives shall not be eligible for, or entitled to, travel expenses and per diem. Requests, including an agenda describing the training to be conducted, shall be submitted in writing via hard copy, email, or fax, at least seven (7) days in advance to the representative's immediate supervisor.

Section 47.08 - Leave of Absence for Union Officials.

- (1) Consistent with the needs of the Department, the Department agrees to approve a leave of absence, without pay, not to exceed three (3) years for a bargaining unit employee who is elected to a position of National officer of the American Federation of Government Employees, AFL-CIO, for the purpose of serving full time in the elected position, or who is selected as an AFGE National Union representative. The Department shall be given not less than two (2) weeks advance notice.
- (2) The Union agrees that all of the leaves of absence granted or approved in accordance with this Section are subject to appropriate Government-wide regulations or other outside authority binding on the Department. The Department, to the extent of its authority, shall

place the employee, at the end of the leave of absence, in the position the employee left, or one of like seniority, status, grade, and pay.

ARTICLE 47
UNION REPRESENTATION AND OFFICIAL TIME

Section 47.01 - Representational Functions.

The Parties recognizes that in the furtherance of good labor-management relations as provided for in the Civil Service Reform Act of 1978, Union officials have the responsibility of carrying out representational duties.

(1) Consistent with 5 U.S.C. §7131 (d) official time allocated under this Agreement is authorized for the following representational activities:

- a. Attending formal discussions in accordance with the Article on Rights and Obligations of the Parties;
- b. Preparing for Mid-Term negotiations
- c. Preparing for proceedings before the Federal Labor Relations Authority (FLRA);
- d. Attending authorized meetings held in accordance with the Article on Labor/management Relations Meetings;
- ~~e.~~ Training for Union representatives that constitutes representational activity;
- e.f. Attending investigatory interviews;
- f.g. Meeting with employees to resolve complaints and grievances;
- g.h. Attending grievance meetings with managers and employees;
- h.i. Participating as a representative of the Union at an arbitration;
- ~~i.~~ Participating as the representative of the Union at an arbitration or unfair labor practice hearing related to the AFGE/HUD unit; and
- j. ~~and~~
- k. Other representational functions permitted by law.

(2) Official time spent on the following representational activities is not ~~counted~~ subject to total allocations set forth in Section 47.03 and to the individual cap of 25% of official time per fiscal year against the allocation of official time in section 47.03:

- a. Representing the Union at Mid-Term negotiations, including mediation and any impasse proceedings, subject to the limitations in 5 U.S.C. §7131 (a); Collective bargaining with the Department including mediation and impasse resolution, (consistent with 5 U.S.C. §7131 (a));
- b. Representing the Union in proceedings before the FLRA. Such time must be certified by the FLRA, in accordance with 5 U.S.C. §7131 (c); Attending a meeting with the Federal Labor Relations Authority (FLRA) Field Agent or Attorney, pursuant to an Unfair Labor Practice charge or complaint (consistent with 5 U.S.C. 7131 (e)) and
- c. Meetings with the Union requested by Management that do not include employees.

(3) ~~Although not covered as representational time under this Agreement, Union representatives may spend administrative time, without it counting against the allocation of official time, on the following activities, subject to Management notification or approval as necessary:~~

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- 1
- 2 a. ~~Time granted under the regulations of the Equal Employment Opportunity Commission~~
- 3 ~~(EEOC) (29 CFR 1614.605(b));~~
- 4 b. ~~Completing business required by the Department of Labor;~~
- 5 c. ~~Time granted to participate in Merit Systems Protection Board (MSPB) matters (5~~
- 6 ~~CFR Chapter II Subchapter A Part 1201);~~
- 7 d. ~~Time granted in connection with an Office of Special Counsel (OSC) matters;~~
- 8 e. ~~Time granted in connection with an Office of Workers' Compensation Program~~
- 9 ~~(OWCP) claim;~~
- 10 f. ~~Time granted in connection with a matter before the Employee Compensation Appeals~~
- 11 ~~Board (ECAB); and~~
- 12 g. ~~Time granted during Occupational Safety and Health Administration (OSHA)~~
- 13 ~~visits.~~

14 ~~Participation in proceedings, including reasonable preparation time as well as attendance at~~
15 ~~meetings, shall be governed by the applicable statutory provisions.~~

16 **Section 47.02 - Certification of National and Local Representatives.** National and
17 Local office representatives certified by the Union in accordance with this Agreement
18 shall be recognized as employee representatives for bargaining unit employees and shall
19 be entitled to the use of official time under the provisions of this Agreement. No other
20 person shall be entitled to such use of official time except as specifically authorized in this
21 Agreement. Prior to the start of each quarter, the respective presidents shall certify to the
22 appropriate Department official at the National and Local levels, in writing via e-mail,
23 fax, hard copy, or other written means, the name, title, duty station, phone number, and
24 allocation of official time of the Union's representatives who are authorized to use official
25 time as provided under 47.03 of this Agreement. Any official or representative not
26 identified in this manner shall not be entitled to the use of official time.

27 **Section 47.03 - Representatives and Amounts of Official Time.**

28 (1) **Allocation of Official Time.** Both parties recognize that an organization's
29 effectiveness depends on its ability to assign work as it deems necessary and
30 appropriate among the members of the organization. Therefore, just as the Union
31 shall respect Management's right to assign work among its employees, Management
32 shall not in any way control how the Union allocates duties among its
33 representatives. Management recognizes that it is an internal Union function to
34 determine the number of representatives needed to carry out its responsibilities.

35
36 ~~(2) Official time is limited to 15,000 hours per fiscal year for the activities detailed in~~
37 ~~47.01 (1). The Parties agree that Union representatives will be authorized to use up~~
38 ~~to 25% (520 hours) each in a fiscal year for the activities listed in 47.01(1)-above~~

39 ~~(2)~~
40 ~~(a) Five (5) Union representatives will be authorized to use up to 32% hours~~
41 ~~each in a fiscal year, and~~
42 ~~All other Union representatives will be authorized to use up to 25% hours~~
43 ~~each in a fiscal year.~~

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1 (3) Quarterly Official Time Allocations. The number and types of Union
2 representatives and the amount of official time provided are as follows:

3
4 (a) National: 412 hours per quarter

5 (b) Regional Vice Presidents (RVP): 412 hours per quarter to be distributed by
6 each of the 10 Regional Vice Presidents,

7 (b) Local:

8 (c)

9 i. Headquarters, including the Washington, D.C. Field Office and the
10 Los Angeles Departmental Enforcement Center: 1,112

11 ii. Local – Each local shall be allocated at total of 1,814 hours per
12 quarter. Local president shall distribute their allocation of official
13 time among their local offices.

14
15 (3)(4) Time shall be allotted on a quarterly basis. Quarters shall begin on the first day of
16 October, January, April, and July, and October.

17
18 (4)(5) Two weeks prior to the beginning of the quarter, the Council President, Regional
19 Vice President or Local President shall provide in writing via e-mail, fax, hard copy, or
20 other written means to the appropriate designated Headquarters official Employee and
21 Labor Relation official any changes to the current pool allocations. Failure to provide a
22 timely quarterly allocation in writing to the designated Headquarters official Employee
23 and Labor Relations official designated by Management shall result in the use of the
24 designations and allocations from the previous quarter. Notifications of transfers from
25 one pool to another pool will be provided by the Council President or designee.

26 (5)(6) Management shall be responsible for notifying the relevant supervisors of
27 current allocations in a timely manner upon receipt of the National, Regional, or
28 Local president's allocation of time to designated Union representatives. The
29 Union shall not be responsible for such notification, nor shall any representative's
30 assumption of Union responsibilities be delayed due to the lack of timely notice
31 to a supervisor.

32 (6)(7) Nothing precludes the Union from requesting or the Department from granting
33 additional official time as reasonable, necessary and in the public interest.

34 (7)(8) Unused allocated hours may be rolled over from one quarter to another as long
35 as the limits in 47.03(2) above are not exceeded.

36 (8)(9) Allocations are expressed as a total number of hours per quarter.

37 (9)(10) The Union may request one change in distribution during the quarter, except that
38 the Council President, in unusual circumstances, may request one additional change.

39 (10)(11) If a substantial change in the number of bargaining unit employees, relative to the
40 size of the affected pool, through attrition, hiring, RIF, transfer of function, office
41 closure, or other condition, occurs in any of the pools for which official time is allocated,
42 the change in the amount of official time allocated to that pool shall be negotiated by the

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1 parties promptly upon either party's request. All negotiations under this section shall be in
2 accordance with Article 49.

3 **Section 47.064 - Procedure.**

- 4 (1) When it is necessary to use official time, the representative shall first obtain approval from
5 his/her immediate supervisor or designee who has supervisory authority in advance. If less
6 than 2 hours' notice is provided, the Union must provide justification for the lack of
7 notices; however, lack of providing 2 hours of notice shall not be used as a basis to deny
8 Official time. Supervisors must respond promptly to all requests for use of official time.
9 Lack of response by a supervisor within a timely manner shall be deemed denied and the
10 procedures listed in 47.064 (4) shall apply.
- 11 (2) The representative shall advise the supervisor of the following in his/her written request to
12 include:
- 13 (a) The estimated amount of official time needed;
- 14 (b) The date and time when the official time will be used;
- 15 (c) Where the representational activity will occur (if outside of the Union Representatives
16 worksite);
- 17 (d) The reason for which the official time is requested (per 47.01 of this Agreement);
- 18 (e) The total cumulative number of official time hours used in the current fiscal year
- 19 (3) The representative must, in addition, when entering a work area to meet with an employee,
20 obtain advance approval from the supervisor of the employee if meeting with the employee
21 for more than 10 minutes on duty time. Upon conclusion of the representational activity, the
22 representative should inform the representative's supervisor or designee that the activity has
23 been completed.
- 24 (4) Supervisors may deny the use of official time based only on Departmental mission-
25 critical necessities or ineligibility to use official time. If denied, the supervisor shall
26 give the reason in writing at the time of denial and the supervisor will discuss an
27 alternative time when official time can be utilized. Such denial may be appealed to the
28 representative's second line supervisor who shall promptly meet with the Union
29 representative to make a determination on the appeal. Denials of official time are
30 subject to the grievance procedure. The Union may immediately designate a new
31 representative to fulfill the affected representative's Union responsibilities. This type of
32 designation shall not be counted as the change in distribution detailed in 47.03 (910).
- 33 (5) All designated Union representatives who are entitled to official time under this Agreement
34 shall record the use of all representational time in WebTA or its successor system(s).
35

1 **Section 47.04 - Adjustments of Workload.** In order to facilitate release of Union
2 representatives on official time, individual workloads shall be adjusted up front, where
3 practical, to reflect time needed away from official duties. Up-front workload adjustments
4 may not be appropriate when small amounts of official time are allocated and used in
5 irregular patterns. In these circumstances, the adjustment may be made at the time of usage.
6 Such adjustments shall not diminish an employee's right to fair and equitable treatment with
7 regard to performance appraisals and promotions. If a dispute arises with respect to the
8 fairness of the workload adjustment, the parties are encouraged to resolve it informally prior
9 to any formal actions.

10 **Section 47.05 - Official Time for Union Representatives Outside of Immediate Offices.**
11 A representative who goes from his/her duty station to another office during duty hours in
12 order to represent the Union or a bargaining unit employee, is on official time for
13 representational purposes and when traveling. The official time used shall count against that
14 individual's allocation. There shall be no travel expenses and/or per diem for Union-
15 designated representatives except where expressly stated in this Agreement.

16 **Section 47.07 - Official Time for Union-Sponsored Training.** The Parties recognize that
17 Union sponsored training is an appropriate representational activity for which union time may be
18 used. When requesting ~~union official~~ time for ~~union-Union~~ sponsored training or conferences,
19 the Union will provide the appropriate management official with documentation, at the time of
20 the request, denoting the date, location, subject matter and provider or sponsor of the training or
21 conference. ~~Up to forty (40) hours per year of official time may be granted to designated~~
22 ~~representatives authorized under Section 47.03 to attend appropriate Union-sponsored~~
23 ~~instruction or briefing consistent with applicable decisions of the Comptroller General.~~
24 ~~Official time for such Union-sponsored training shall be in addition to the number of hours of~~
25 ~~official time allocated under Section 47.03 above. The number of hours may be increased~~
26 ~~when the instruction or briefing is mutually deemed to benefit both the Department and the~~
27 ~~Union.~~ Official time may be used for travel; however, Union representatives shall not be
28 eligible for, or entitled to, travel expenses and per diem. Requests, including an agenda
29 describing the training to be conducted, shall be submitted in writing via hard copy, email,
30 or fax, at least seven days in advance to the representative's immediate supervisor.

31 **Section 47.08 - Leave of Absence for Union Officials.**

32 (1) Consistent with the needs of the Department, the Department agrees to approve a leave of
33 absence, without pay, not to exceed three years for a bargaining unit employee who is elected
34 to a position of National officer of the American Federation of Government Employees,
35 AFL-CIO, for the purpose of serving full time in the elected position, or who is selected as an
36 AFG National Union representative. The Department shall be given not less than two (2)
37 weeks advance notice.

38 ~~(2)~~ The Union agrees that all of the leaves of absence granted or approved in accordance with
39 this Section are subject to appropriate Government-wide regulations or other outside
40 authority binding on the Department. The Department, to the extent of its authority, shall
41 place the employee, at the end of the leave of absence, in the position the employee left, or
42 one of like seniority, status, grade, and pay.

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Article 48: Union’s Use of Official Facilities and Equipment

Section 48.01 - Union Office.

The Agency will consider providing the Union office space in Headquarters or field locations. Where the Agency currently provides Union office space, the Agency may assess current Union office space and make the determination that such space may no longer be utilized by the Union based upon the availability of space, business needs, or applicable law, rule, or government-wide regulation. If the Agency decides that an office may no longer be utilized by the Union, it will notify the appropriate Union representative that such space may no longer be utilized by the Union and the Union shall vacate and remove all Union files from the office within 60 days. If the Union fails to vacate the office within 60 days, the Agency may assume control of the space and dispose of all Union files and any other items remaining in the space. The Agency will provide a Union office up to 120 sq. ft. in any new HUD space for relocating offices where the Union currently has a Union office, subject to the availability of space, business needs, and applicable law, rule, and government-wide regulation.

Where the Department does provide the Union with designated office space, the space shall have a lockable door. In addition, the space will be sufficient to allow the Union to conduct a private conversation with an employee and shall allow space for a table, ~~and~~ chair(s), and at least one file cabinet of reasonable size.

Union representatives ~~who are current HUD employees~~ shall be provided access to the Union and HUD office space commensurate to that provided to other employees. Access to facilities may be restricted based on reasonable funding issues, security, or other issues.

Section 48.02 - Meeting Space.

Upon request, the Department will provide the Union with the use of conference rooms during non-duty time (such as lunch periods), to the same extent other employees are permitted such use. However, the Department’s mission has priority and Management reserves the right to deny and cancel Union use of conference rooms and space. Such requests shall be made reasonably in advance to the designated Management representative at each location or through the same method used by other employees at that location.

Section 48.03 - Telephone and Video Teleconference (VTC) Usage.

- (1) Union representatives may use available telephones at their individual worksites or other HUD offices for domestic calls of reasonable duration while performing representational functions on approved, official time.
- (2) All telephone and VTC usage shall be in compliance with applicable laws, regulations, and Departmental policies.
- ~~(3) If Management determines that the Union may no longer use Agency telephones/VTC service, it will notify the appropriate Union representative and the Union shall cease using Agency telephones/VTC services immediately.~~

Section 48.04 - Display and Distribution of Union Material.

- 1 (1) The Department will allow the Union to use existing, designated bulletin boards for
2 Union representational purposes in each building having bargaining unit employees. The
3 number, size, appearance (glass enclosed, etc.), and location of bulletin boards shall be
4 determined locally by agreement between Management and Union officials.
5
- 6 (2) The Department will permit Union officials to distribute Union sponsored information
7 related to representational purposes in non-work areas to individual employees before
8 and after the regularly scheduled office hours (generally, 8:00-4:30), provided that the
9 Union representatives and the employee receiving the information are both in a non-duty
10 status and the activity occurs only in non-work areas to the extent access is otherwise
11 permitted.
12
- 13 (3) Notices placed on bulletin boards or distributed by the Union shall be clearly identified as
14 having been prepared by the Union and are not Departmental issuances. All material
15 placed on designated boards shall be clearly identified as belonging to the Union. Notices
16 and posters prepared and posted by the Union shall not indicate the Department has
17 sponsored or endorsed a position unless such action has been agreed to by an authorized
18 Management official. Notices and posters shall not contain material that is pornographic,
19 racist, bigoted, sexist, libelous, or in violation of the Hatch Act.
20
- 21 (4) Each Local should have a designated location provided by the Department for receipt of
22 mail. All Union mail addressed and received by HUD will be placed in the appropriate
23 location for the Union's retrieval. All Union mail should be delivered unopened unless
24 mail needs to be screened for security reasons (i.e., such as during an anthrax threat).
25

26 **Section 48.05 - Office Equipment, Supplies and Services.**

- 27 (1) The Department shall provide computer cables and connections, to assist employee
28 Union representatives engaged in representational functions, to the same extent available
29 to other employee groups engaged in non-Agency business. The Union is responsible for
30 procuring its own office equipment (including, without limitation, furniture), supplies,
31 and services including but not limited to access to laws, regulations, decisions of
32 authorities such as the Federal Labor Relations Authority, the Equal Employment
33 Opportunity Commission, the Merit Systems Protection Board, the Government
34 Accountability Office, and research services such as CyberFeds.
35
- 36 (2) For each office where the Department does not provide office space for exclusive use by
37 the Union, the Department shall provide space for the Union to store at least one file
38 cabinet of reasonable size at the location. The Union shall be responsible for procuring
39 the file cabinet, transporting, and securing its contents.
40
- 41 (3) Where the Agency has elected to provide Union office space at any location, the
42 Department shall make available cleaning services routinely available to the Department.
43 The Union is responsible for ensuring accessibility to its space during normal cleaning
44 and maintenance schedules.
45

1 (4) Photocopying equipment ~~may~~shall be made available to the Union only for
2 representational purposes and to the same extent offered to other employees. Where
3 appropriate, private Union multi-functional devices may be approved by Management in
4 accordance with government-wide rules on IT security. The Office of Chief Information
5 Officer (OCIO) Management approval is required when private equipment is connected
6 to the Local Area Network (LAN). The Department is not responsible for maintenance of
7 Union equipment.

8
9 (5) AFGE retired bargaining unit employees who are Union officials and were previously
10 provided PIV cards will be allowed to obtain new PIV cards to perform representational
11 duties, provided they meet all applicable security requirements. Access to the
12 Internet/intranet through HUDMobile or its successor system(s) ~~may~~shall be available to
13 the Union, subject to security requirements.

14
15 **Section 48.06 - Electronic Mail (email)/Local Area Network (LAN).**

16 ~~(1) — Employee organizations (i.e. affinity groups and HUD Common Interest Groups)~~
17 ~~utilizing the HUD email system to send information must do so utilizing HUD's~~
18 ~~communications policies, rules, and regulations.~~

19
20 (1) Union representatives ~~who are current HUD employees~~ will be allowed use of HUD's
21 email/LAN for representational purposes, consistent with subject to security requirements
22 and the limited personal use policy. Each Union Local will be provided an electronic
23 mailbox for representational functions.

24
25 (2) HUD email may not be used to communicate internal union business, including but not
26 limited to election campaigns, soliciting membership, and other unauthorized activities,
27 or those activities prohibited by the Hatch Act. Notification to Management and
28 bargaining unit employees of Union representative designations is permissible via email
29 after a Union election.

30
31 **Section 48.07 - Disciplinary and/or Adverse Actions for Failure to Comply with this Article.**

32 An employee's failure to follow the provisions set forth in this Article may result in disciplinary
33 and/or adverse action up to and including removal from federal service.

ARTICLE 48
UNION'S USE OF OFFICIAL FACILITIES

Section 48.01 - Union Office Space. The Department shall continue to provide the Union a private office in Headquarters for the Council President and Local President. The Department shall also continue to provide the Union a private office for each Local President and at those field locations that currently provide private office space for local representatives. The parties recognize the need for private space for employee representational duties. The Department and the Union may discuss, at the National or local office levels, the need for additional or decreasing office space for the purpose of providing the Union official(s) with adequate privacy or more meeting, storage, and file space. Any proposal to change Union office space is subject to Article 49 of this Agreement. Unless there is an office configuration change which affects the Union office, there is no intention of reducing the current Union office space.

- (1) The Department will provide the Union with designated office space that is of sufficient size to allow the Union to effectively perform its representational functions, including maintaining its files and conducting private conversations with employees. Space shall be sufficient to allow for a table and chairs.
 - (a) The designated office space will be conveniently located to allow employees easy access.
 - (b) The HUD Council of Locals 222 shall be granted sufficient designated space in the Headquarters building regardless of where their official duty station is located.
 - (c) Separate union offices may be provided for RVPs and local presidents at the same field location.
- (2) Location of the Union office space shall be negotiated locally or nationally. However, the office shall be private, and shall have floor to ceiling walls and a lockable door.
- (3) While the Union office is recognized as government space, it is clearly understood that the Union office space shall be treated as private space. Except for in the case of health, safety, or security needs, prior notice must be given to the Union representative before entry into a Union office unless prior arrangements have been made between the Parties.
- (4) Employees may need to make contact at a union representative's program office work station for representational purposes, provided it is not unduly disruptive to the workplace.
- (5) Union representatives shall be provided access to the Union and HUD office space commensurate to that provided to supervisors and employees. However, unless there is an unreasonable cost prohibition to the Department, the Union shall have access to their records and files at the designated office location for representational work, provided that the general space is otherwise accessible. Access to facilities may be restricted based on reasonable funding issues, security or other issues.

Section 48.02 - Meeting Space. Upon request and when available, the Department shall provide the Union with the use of suitable space for membership meetings and other such Union business during non-duty hours (such as lunch periods). This may include food being served in space where it is permitted. Such requests should be made reasonably in advance to the designated Management

representative at each location. However, where such notice is not given and space is available, such space shall be provided to the Union.

Section 48.03 - Telephone Usage.

- (1) Union representatives may use available telephones at their individual work sites or Union offices for calls while performing representational functions.
- (2) Phones with teleconference capability shall be provided to each National, Regional, and Local Union representative. Teleconference service shall be available in the same manner accessible to all HUD employees to conduct representational duties.
- (3) All telephone usage shall be in compliance with applicable laws, regulations and Departmental policies.
- (4) Should Management believe that the telephone services provided in this Article are not being utilized in accordance with the intent and procedures of this Article, the appropriate Union representative shall be notified and corrective action on the part of the Union shall be requested. If the matter cannot be resolved appropriately between Management and Union, it shall be referred to the grievance procedure for resolution.
- (5) The Department may consider providing communication devices to Council officials for representational purposes based on Departmental needs.

Section 48.04 - Display and Distribution of Union Material.

- (1) The Department shall provide lockable bulletin boards, if requested or Union space on designated bulletin boards for Union purposes in each building having bargaining unit employees. Bulletin boards shall be so located as to be accessible to employees. The number, size, appearance (glass enclosed, etc.), and location of bulletin boards shall be determined locally by agreement between Management and Union officials. The Union shall maintain its bulletin boards in an orderly manner at all times. The Department and the Union may negotiate Union information space on the Department's Intranet and/or social network.
- (2) The Department shall permit Union officials to distribute Union sponsored information in work areas to individual employees before and after the regularly scheduled office hours (generally, 8:00-4:30) and in non-work areas. Union representatives may distribute information off duty or while on official time.
- (3) Notices placed on bulletin boards or distributed by the Union shall be clearly identified as having been prepared by the Union and are not Departmental issuances. All material placed on the board shall be on its face clearly identified as belonging to the Union. Notices and posters prepared and posted by the Union shall not indicate the Department has sponsored or endorsed a position unless such action has been agreed to by an appropriate Management official. Notices and posters shall not contain material that is pornographic, racist, bigoted, sexist, libelous, or in violation of the Hatch Act.

- (4) No other organization or affinity group may be given more latitude to post information than the Union unless negotiated. The Department will make every effort to discourage the posting of notices outside of authorized locations (i.e., in hallways, bathrooms, elevators, and other public places).
- (5) Each local should have a designated location for receipt of mail provided by the Department. All Union mail addressed and received by HUD shall be placed in the appropriate location for the Union's retrieval. All Union mail should be delivered unopened.

Section 48.05 - Office Equipment and Services.

- (1) The Department shall provide one (1) computer per Union local office with the standard operating system and software per HUD standards and access to a printer with scanning and facsimile capabilities. Existing Union office computers will remain in place unless there is no further need. The Union will be provided with the ability for secure printing, faxing, and scanning options. Where multifunctional devices are not available, Union office printers, fax machines, and scanners shall be provided upon request, if Management has them available. Existing Union office stand-alone printers, fax machines and scanners machines will remain in place. The Union may submit justification to the servicing Employee and Labor Relations office if an additional computer is requested. Computers in the Union local offices will be refreshed on the same office schedule and be part of the Department's maintenance/service contract. New technology shall be made available to the Union as it becomes available to the Department. Union requests to move computers from a program office shall be submitted to the servicing Employee and Labor Relations office for consideration. Management and the Union recognize that use of and access to such equipment should not be disruptive to operations or the work flow of an office.
- (2) For each office the Department shall, upon request by the Local Union official, furnish the Union a lockable file cabinet and suitable space for placing a file cabinet in the Union office. An additional file cabinet shall be provided to the Council President, Vice President, Treasurer, and Secretary if they work from a local Union office in the field. Additional file cabinets may be requested by local union officials.
- (3) The Department shall make available to the Union, other office equipment and services, such as supplies and cleaning services routinely available to the Department. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules.
- (4) Photocopying equipment shall be made available to the Union only for representational purposes. Where appropriate, private Union multi-functional devices may be necessary and may be approved by Management in accordance with government-wide rules on IT security. The Office of Chief Information Officer (OCIO) management approval is required when private equipment is connected to the Local Area Network (LAN). The Department is not responsible for maintenance of private Union equipment.
- (5) Each space designated in 8.01 of this Agreement shall be equipped with, at a minimum work surface(s), chair(s), a lockable file cabinet, and a bookcase.

- (6) There will be no charge to the Union for space, furnishings, or equipment.
- (7) Access to the Internet/intranet through HUDMobile or its successor system(s) will be available to the Union. Security access will be provided, such as, passwords or security cards, as necessary for Union representatives.
- (8) Union representatives who are no longer HUD employees would need to request IT security clearance and obtain access approval in order to use the Department's computer system.
- (9) The Department will provide one encrypted thumb drive for the Council and one for each local. Additional thumb drives may be requested and provided, if available, up to a maximum of 85 thumb drives.

Section 48.06 - Access to Federal Personnel Guidance. The Department shall provide the Union with access to Office of Personnel Management, GSA, and EEOC regulations and GAO decisions. The Department agrees to pay for and provide the Union ten (10) user accounts for CyberFeds or the successor personnel case law research service subscribed to by HUD. If HUD increases its CyberFeds contract by at least 10 subscriptions, then the Union will be provided fourteen (14) CyberFeds accounts in total. The Union may request additional CyberFeds accounts from the Department. Unused CyberFeds accounts may be directed to the Union upon request. The Union and Management recognize that the use of or access to this service is of mutual benefit. As long as management has access to this or a successor service, a user account will be provided to the Union. The Union shall notify the Department when representatives are not eligible to use CyberFeds because they are no longer in representational positions. The union shall notify the Department of the newly elected representatives that should have access to CyberFeds.

Section 48.07 - Electronic Mail (E-Mail) Local Area Network (LAN).

- (1) Union representatives shall be allowed use of E-Mail/LAN for representational purposes and for routine Union business involving communication with the Department and other government agencies (such as but not limited to the Department of Labor and IRS).
- (2) E-mail may be used by union representatives to communicate directly with Management concerning representational matters; to communicate with other union representatives and shall have access to the LAN; and to communicate with bargaining unit employees concerning appropriate representational matters, as set out in Article 47 of this Agreement. The Union may notify employees of representational Union meetings.
- (3) E-mail may not be used to communicate concerning internal union business, including but not limited to election campaigns, soliciting membership, and other unauthorized activities, or those activities prohibited by the Hatch Act. Notification of Union election results is permissible via e-mail.

ARTICLE 48
UNION'S USE OF OFFICIAL FACILITIES

Section 48.01 - Union Office Space. The Department shall ~~maintain-continue to provide the status quo to provide~~ the Union with a private office space in Headquarters for the Council President and for ~~the Headquarters Local President.~~ The Parties agree that there will be one office for each Union local in current HUD space in the field, s in both Headquarters and field offices unless the Agency has a verifiable business need for space or a change in applicable law, government wide rule or regulation has occurred. The Union may consider releasing any current office space provided by the Department that has not been utilized in excess of one year. If the Agency has a verifiable business need for space or a change in applicable law, government-wide rule or regulation has occurred Management shall notify the Union on any proposed space changes. Any proposal to change Union office space by either party is subject to bargaining according to the provisions in Article 49 of this Agreement. This includes but is not limited to changes in office configuration. This space will be utilized for representational activities within the provisions of this Agreement and maintain PH required by DOL guidance. The Union agrees to exercise reasonable care in using such space and will leave it in a clean and orderly condition. The Agency shall first investigate any current bargaining unit space not being utilized before deciding on changes in Union designated office space.

The Agency will provide a Union office no less than 120 sq. ft. in any new HUD space for relocating offices where the Union currently has a Union office, subject to the availability of space, business needs, and applicable law, government-wide rule or regulation.

Any proposal to change Union office space by either Pparty is subject to bargaining according to the provisions in Article 49 of this Agreement. This includes but is not limited to changes in office configuration. In the event that a facility space provided to the Union must be changed, the Union shall be provided 30 days' advance notice of intended plans for ~~the new~~ office configuration. If the Union office must be reduced or moved, the Union will be given at least 60 days' notice to move to other HUD space, if available. The Parties will jointly identify adequate Union office space, if available. ~~Any proposal to change Union office space by either party is subject to bargaining according to the provisions in Article 49 of this Agreement. This includes but is not limited to changes in office configuration.~~

The Department and the Union will discuss at the National or local office level the need for additional office space for the purpose of providing the Union officials with adequate privacy for meetings, storage and file space. ~~The Parties will jointly identify adequate Union official space, if available. If the Union office must be reduced or moved, the Union will be given at least 60 days' notice to move to other available HUD space, if available.~~

Union #5
05/12/2020

1 (1) The Department will provide the Union with designated office space that is of sufficient size
2 to allow the Union to effectively perform its representational functions, including
3 maintaining its files and conducting private conversations with employees. Space shall be
4 sufficient to allow for a table and chairs. The space should have communication equipment
5 (e.g. telephone). The Parties recognize the need for private space for employee
6 representational duties.

7 (2) Location of the Union office space shall be negotiated locally or nationally. However,
8 the office shall be private and shall have floor to ceiling walls and a lockable door.

9 (3) While the Union office is recognized as government space, it is clearly understood that the
10 Union office space shall be treated as private space. Except for in the case of health, safety, or
11 security needs, prior notice must be given to the Union representative before entry into a Union
12 office unless prior arrangements have been made between the Parties.

13 (4) Employees may need to make contact at a Union representative's program office
14 workstation for representational purposes, provided it is not unduly disruptive to the
15 workplace.

16 (5) Union Representatives shall be provided access to the Union and HUD office space
17 commensurate to that provided to other employees. Access to facilities may be restricted
18 based on reasonable funding issues, security or other issues.

19 **Section 48.02 - Meeting Space.** Upon request, the Department will provide the Union with the
20 use of conference rooms during duty and non-duty time (such as lunch periods), to the same
21 extent other employees are permitted such use. However, the Department's mission has priority
22 and Management reserves the right to deny and cancel Union use of conference rooms and space.
23 Such requests shall be made reasonably in advance to the designated Management representative
24 at each location or through the same method used by other employees at that location.

25 **Section 48.03 – Telephone and Video Conferencing (VTC) Usage.**

26 (1) Union representatives may use available telephones at their individual worksites or
27 Union offices for calls while performing representational functions and conducting
28 labor-management relations (where Union offices are provided). Union representatives
29 may use the phones for domestic calls of reasonable duration while performing
30 representational function on approved official time. Visiting Union representative shall
31 be given access to use of a telephone in the HUD office.

32 (2) All telephone and VTC usage shall be in compliance with applicable laws, regulations
33 and Departmental policies.

34 **Section 48.04 - Display and Distribution of Union Material.**

35 (1) The Department will allow the Union to use existing, designated bulletin boards for Union
36 representational purposes in each building having bargaining unit employees. The number,

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- 1 size appearance (glass enclosed, etc.), and location of bulletin boards shall be determined
2 locally by agreement between Management and Union officials.
3
- 4 (2) The Department will permit Union officials to distribute Union sponsored information
5 related to representational purposes in non-work areas to individual employees before and
6 after the regularly scheduled office hours (generally, 8:00-4:30) , provided that the Union
7 representatives and the employee receiving the information are both in a non-duty status and
8 the activity occurs only in non-work areas to the extent access is otherwise permitted.
9
- 10 (3) Notices placed on bulletin boards or distributed by the Union shall be clearly identified as
11 having been prepared by the Union and are not Departmental issuances. All material placed
12 on the designated board shall be clearly identified as belonging to the Union. Notices and
13 posters prepared and posted by the Union shall not indicate the Department has sponsored or
14 endorsed a position unless such action has been agreed to by an authorized Management
15 official. Notices and posters shall not contain material that is pornographic, racist, bigoted,
16 sexist, libelous, or in violation of the Hatch Act.
17
- 18 (4) Each Local should have a designated location provided by the Department for receipt of
19 mail. All Union mail addressed and received by HUD will be placed in the appropriate
20 location for the Union's retrieval. All Union mail should be delivered unopened unless mail
21 needs to be screened for security reasons (i.e., such as during an anthrax threat).

22 **Section 48.05 - Office Equipment and Services.**

- 23 (1) The Department shall provide one computer per Union local office with the standard
24 operating system and software per HUD standards and access to a printer with scanning and
25 facsimile capabilities. Existing Union office computers will remain in place unless there is
26 no further need. The Union will be provided with the ability for secure printing, faxing, and
27 scanning options. The Union may submit justification to the servicing Employee and Labor
28 Relations office if an additional computer is requested. Computers in the Union local
29 offices will be refreshed on the same office schedule and be part of the Department's
30 maintenance/service contract. New technology shall be made available to the Union as it
31 becomes available to the Department. Management and the Union recognize that use of and
32 access to such equipment should not be disruptive to operations or the workflow of an
33 office.
- 34 (2) For each office the Department shall, upon request by the Local Union official, furnish the
35 Union a lockable file cabinet and suitable space for placing a file cabinet in the Union
36 office. An additional file cabinet shall be provided to the Council President, Vice President,
37 Treasurer, and Secretary if they work from a local Union office in the field. Additional file
38 cabinets may be requested by local union officials.

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- 1 (3) For each office where the Department does not provide office space for exclusive use by the
2 Union, the Department shall provide space for the Union to store at least one file cabinet of
3 reasonable size at the location.
- 4 (4) Where the Agency has elected to provide Union office space at any location, the
5 Department shall make available cleaning services routinely available to the Department.
6 The Union is responsible for ensuring accessibility to its space during normal cleaning and
7 maintenance schedules.
- 8 (4) Photocopying equipment shall be made available to the Union only for representational
9 purposes and to the same extent offered to other employees. Where appropriate, private
10 Union multi-functional devices may be necessary and may be approved by Management in
11 accordance with government-wide rules on IT security. The Office of Chief Information
12 Officer (OCIO) management approval is required when private equipment is connected to
13 the Local Area Network (LAN). The Department is not responsible for maintenance of
14 private Union equipment.
- 15 (5) There will be no charge to the Union for space, furnishings, or equipment. The Agency will
16 allow the Union to use existing furnishings and equipment that are currently in Union offices.
17 However, the Agency is not obligated to provide additional furnishings or equipment in new
18 Union office space referred to in 48.01.
- 19 (6) AFGC retired bargaining unit employees who are Union officials and were previously
20 provided PIV cards will be allowed to obtain new PIV cards to perform representational
21 duties, provided they meet all applicable security requirements. Access to the
22 Internet/intranet through HUD Mobile or its successor system(s) will be available to the
23 Union, subject to security requirements.

24 ~~Section 48.06 – Access to Federal Personnel Guidance. The Department shall provide the~~
25 ~~Union with access to Office of Personnel Management, GSA, and EEOC regulations and GAO~~
26 ~~decisions. The Department agrees to pay for and provide the Union five user accounts for~~
27 ~~CyberFeds or the successor personnel ease law research service subscribed to by HUD. The~~
28 ~~Union may request additional CyberFeds accounts from the Department. Unused CyberFeds~~
29 ~~accounts may be directed to the Union upon request. The Union and Management recognize that~~
30 ~~the use of or access to this service is of mutual benefit. As long as management has access to this~~
31 ~~or a successor service, a user account will be provided to the Union. The Union shall notify the~~
32 ~~Department when representatives are not eligible to use CyberFeds because they are no longer in~~
33 ~~representational positions. The union shall notify the Department of the newly elected~~
34 ~~representatives that should have access to CyberFeds.~~

35 **Section 48.067 - Electronic Mail (E-Mail) Local Area Network (LAN).**

- 36 (1) Union representatives will be allowed use of E-Mail/LAN for representational purposes,
37 ~~and for routine Union business involving communication with the Department and other~~
38 ~~government agencies (such as but not limited to the Department of Labor and IRS), subject to~~
39 ~~security requirements and the limited personal use policy.~~ Each Union Local will be provided

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- 1 an electronic mailbox for representational functions. AFGE retired Union officials who have
- 2 a PIV card will receive an email address, subject to security requirements.
- 3
- 4 (2) HUD email may not be used to communicate internal union business, including but not
- 5 limited to election campaigns, soliciting membership, and other unauthorized activities, or
- 6 those activities prohibited by the Hatch Act. Notification to Management and bargaining unit
- 7 employees of Union representative designations is permissible via email after a union
- 8 election.

Article 49: Mid-Term Bargaining

Section 49.01 - General.

The rights and obligations of the Parties regarding mid-term bargaining shall be in accordance with this Agreement and the Statute. The purpose of this Article is to prescribe the criteria and procedures by which the Union and the Department (the Parties) shall engage in negotiations during the term of the Agreement. The provisions of this Article apply to mid-term bargaining when required by law, in relation to changes initiated by Management. The Parties agree that it is in the interest of the government, the public, and the Parties to negotiate in good faith ~~in order to conclude negotiations as expeditiously as possible.~~

Section 49.02 - Mid-Term Changes.

To the extent required by the Statute, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. ~~The Parties agree that Management is not required to give the Union notice of or negotiate the following: (1) workload changes, (2) workload assignments, (3) employee requested changes, (4) individual workstation moves, and (5) reassignments.~~ The Parties agree there will be no local or regional bargaining of matters negotiated at the national level.

Section 49.03 - Information to the Union on Management-Initiated Mid-Term Changes.

- (1) Management will provide the Union with written notice not less than 15 days prior to the proposed implementation date of any change proposed in accordance with Section 49.02. Issuance of the proposed changes to the designated Union representative (i.e., Council President, Regional Vice-President, or Local President, or their designee) shall constitute the start date for calculating the deadline for demanding to bargain referred to in this Article. However, any notice sent after 4:30 p.m. by Management shall be deemed to be received on the next business day. Management may implement as soon as the bargaining obligations are satisfied, even if the 15-day timeframe has not been exhausted.
- (2) For proposed changes that affect headquarters and one or more regions, or more than one region, the notice of proposed changes shall be sent electronically to the Council President, or their designee, and to the extent feasible, all Regional Vice Presidents identified on the AFGE Council 222 website.
- (3) For proposed changes that do not affect every region but impact more than one Union local, the notice of proposed changes shall be sent to the Council President, their designee(s), and to the extent feasible, the Regional Vice Presidents in the affected regions, electronically.
- (4) If the proposed change only affects one local office, the notice will be sent to the applicable Local President or designee, electronically.
- ~~(3) For proposed changes that do not affect more than one region but impact more than one Union Local, the notice of proposed changes shall be sent to the Regional Vice President or designee in the affected region, electronically.~~

1 ~~(4)(5)~~ If the proposed change only affects one local office, the notice will be sent to the
2 applicable Local President or designee, electronically.
3

4 ~~(5)(6)~~ The following information, if available, shall be included in the notice of proposed
5 Management mid-term changes.

6 a. Change in a Policy or Past Practice.

- 7 i. The nature, scope, and rationale for the proposed change;
- 8 ii. A copy or statement of the proposed new policy or practice, if applicable
9 and available; and
- 10 iii. The proposed implementation date, if known.

11 b. Moves

- 12 i. Projected date of move and duration of stay in new location.
- 13 ii. Name, room numbers, grade, title, and series of all affected bargaining
14 unit employees.
- 15 iii. If applicable, new address, floor number, room number, and workstation
16 number for each affected bargaining unit employee.
- 17 iv. Current floor plan (with workspace assignments showing names, average
18 number of square feet per employee, and total number of square feet for
19 the office being moved).
- 20 v. New floor plan (with same information as above).
- 21 vi. Name and phone number of the move coordinator.
- 22 vii. Whether employees will be able to keep their current office furniture,
23 telephone extension, computer equipment and other equipment.
- 24 viii. If any construction or any physical improvement is planned, when the
25 activity will take place and how the employees will be affected and, what
26 arrangements will be made for affected employees, if necessary.
- 27 ix. If required by the nature of the refurbish~~ment~~ or move, information
28 concerning plans and arrangements for accessibility under Section 504 of
29 the Rehabilitation Act, the Americans with Disabilities Act, and local
30 standards-in addition to arrangements under reasonable accommodations.

31 c. Reorganizations.

- 32 i. Name, grade, title, and series of affected bargaining unit employees;
- 33 ii. Impact, if any, upon upward mobility and/or career ladder positions;
- 34 iii. Impact, if any, upon employee's receipt of performance ratings;
- 35 iv. The proposed implementation date, if known;
- 36 v. Copies of position descriptions for new positions if different from current
37 position;
- 38 vi. Any new positions created as a result of the reorganization;
- 39 vii. Names of any employees who will be downgraded or separated as a result
40 of the reorganization;
- 41 viii. Names of any employees who will be physically relocated to a new duty
42 station as a result of the reorganization; and
- 43 ix. Copy of current and proposed organizational charts.

44
45 ~~(6)(7)~~ In the notice of proposed changes, Management may provide a date, time, and place for a
46 meeting with the Union to discuss the proposed change. If Management does not provide

1 meeting details in the notice of proposed changes, the Union will have two days to
2 request in writing that the meeting occur. Any such meeting will be scheduled and occur
3 within five days of issuance of the notice. Should the fifth day fall on a Saturday, Sunday,
4 federal holiday, or during a government or agency shutdown, the meeting will be
5 scheduled on the next business day. The Union will be deemed to have waived this
6 meeting by failing to attend.
7

8 **Section 49.04 – Union Response to Management-Initiated Changes.**

- 9 (1) All Union responses to Management notices of mid-term changes, and all Union
10 communications relating to such mid-term changes shall be submitted to the person who
11 issued the notice, unless another Employee & Labor Relations Division (ELR) staff
12 member is designated by Management. The Union shall not deal with any non-bargaining
13 unit employee (other than ELR staff or the Management official who issued the notice)
14 regarding such mid-term changes except in accordance with applicable law.
15
- 16 (2) The Union may submit a demand to bargain over the change(s) within ten days of the
17 meeting with Management or within ten days of the issuance of Management’s notice of
18 proposed changes if the union fails to attend or no meeting is offered. Any demand to
19 bargain received after 4:30 p.m. by Management shall be deemed to be received on the
20 next business day. Should the tenth day fall on a Saturday, Sunday, federal holiday, or
21 during a government or agency shutdown, this deadline moves to the next business day.
22 The Union’s demand to bargain must include all of its proposals. No new proposals may
23 be submitted after the ten-day response period. All proposals shall be related to the
24 impact of the proposed change(s), negotiable, not covered by the Agreement, and within
25 the scope of bargaining. If no negotiable proposals are submitted within ten days as
26 outlined above, bargaining shall be deemed to have been waived, and Management may
27 immediately implement its proposed change(s). Regarding Union proposals, the Union
28 will be advised of their failure to submit negotiable proposals, submission of proposals
29 covered by the Agreement, and/or submission of proposals not within the duty or scope
30 of bargaining.
31
- 32 (3) Any requests for further information by the Union shall not delay the commencement of
33 negotiations or continuation of negotiations. Once negotiations begin, the Parties may
34 only submit counterproposals in response and related to the other Party’s proposals and
35 counterproposals.
36
- 37 (4) Upon timely request for negotiations from the Union, and if the Union submits written
38 negotiable proposals that are not covered by any Article in this Agreement and that meet
39 the duty and scope of bargaining, the negotiations shall begin within ten days from the
40 Union's submission of its bargaining proposals, unless changed by mutual consent. If the
41 Parties cannot mutually agree on a date to commence negotiations within the ten day
42 timeframe, then negotiations shall commence on the tenth day following submission of
43 the Union’s demand to bargain, unless that day falls on a weekend, federal holiday or day
44 the office is officially closed, and then negotiations will commence the next business day.
45 If the Union fails to come to the table within the prescribed timeframes, it shall be

1 deemed to have waived its right to bargain and Management may immediately implement
2 its proposed change(s).

3
4 **Section 49.05 - Venue; Number of Negotiators.**

- 5 (1) The Union shall be authorized to have on official time (as provided in the Article on
6 Union Representation and Official Time) at least the same number of negotiators as
7 Management at the table, but no fewer than the number authorized below.
8
9 (2) Where all negotiation team members are not co-located, each Party shall be responsible
10 for all of its negotiators' travel costs to attend in-person negotiations or either Party may
11 elect to participate in . The Parties may mutually agree to conduct negotiations by
12 telephone or other virtual means. National in-person negotiations shall be conducted in
13 headquarters absent mutual agreement on an alternate location; regional in-person
14 negotiations shall be conducted in the regional office absent mutual agreement on an
15 alternate location; and local in-person negotiations shall take place in the affected field
16 office or another geographic location is mutually agreed upon by the parties. When
17 designated representatives are co-located, negotiations will occur at their location.
18
19 (3) The Parties will identify their chief negotiators and may authorize up to four additional
20 negotiators for national negotiations and up to three additional negotiators for
21 regional/local negotiations, unless mutually agreed otherwise by the Parties, at least five
22 days prior to commencement of negotiations. Union negotiators that are not HUD
23 employees may be used as team members for the Union's negotiating team (e.g. retirees,
24 AFGE representatives, business agents). Any Union negotiator who is not a designated
25 Union representative under Article 47 may not be allowed the use of official time for
26 negotiations and may be required to use appropriate, approved leave or leave without pay
27 for negotiations.
28
29 (4) Pursuant to the terms of section 47.01(1)(b) of this Agreement, Union negotiators may
30 use official time for mid-term negotiations, within the prescribed limits of Article 47.
31

32 **Section 49.06 - Ground Rules for Mid-Term Negotiations.**

33 The following ground rules apply to all mid-term bargaining over Management-initiated
34 changes.
35

- 36 (1) Facilities for negotiations shall be provided in accordance with Article 48. Negotiations
37 shall be held in a suitable meeting room provided by the Department. The Union may
38 accept the negotiating room as a temporary caucus room and management's
39 representatives will excuse themselves during Union caucuses.
40
41 (2) Negotiations shall begin at 9:00 a.m. and last until 5:00 p.m. local time on business days.
42 This schedule may be altered by mutual consent. There shall be one 30-minute break for
43 lunch. Additional breaks may occur by mutual consent.
44

- 1 (3) Both Parties are responsible for designating representatives who are available to
2 participate in negotiations. No more than one week should elapse between weekly
3 sessions unless modified by mutual agreement.
4
- 5 (4) Once negotiation begins, the Parties shall continue negotiating consistent with (2) above
6 until they reach agreement or impasse, or as mutually agreed. If the Union fails to be
7 present at the table per these procedures, it shall be deemed to have waived its right to
8 bargain and Management may immediately implement its proposed change(s).
9
- 10 (5) Either party may request to caucus up to two times per day during negotiations unless
11 mutually agreed otherwise by the parties. No caucus shall last longer than one hour
12 unless mutually agreed otherwise by the parties. Time in caucus must be for the sole
13 purpose of working on counterproposals related to Management's proposed change(s).
14
- 15 (6) Each party shall be represented at the negotiations at all times by one duly authorized
16 representative who is prepared and authorized to reach agreement on all matters subject
17 to negotiations and to sign off on agreements for their respective party.
18
- 19 (7) Neither Party may substitute negotiating team members, except by mutual consent.
20
- 21 (8) Observers shall be permitted in negotiating sessions only by the mutual consent of the
22 Parties.
23
- 24 (9) As provided in section 49.04(2), no new proposals may be submitted after the ten-day
25 Union response period. Once negotiations begin, while a Party shall not submit new
26 proposals a Party may submit counterproposals in response and related to the other
27 party's proposals and counterproposals until agreement has been reached.
28
- 29 (10) Upon reaching agreement on each item, the Parties shall signify agreement by initialing
30 the agreed upon item. Upon completing the negotiations, the Parties shall review and edit
31 for consistency and may make mutually agreed upon changes.
32
- 33 (11) Changes that are negotiated or agreed to pursuant to this Article shall be duly executed by
34 the Parties. Supplements shall become an integral part of this Agreement and subject to
35 all of its terms and conditions.
36
- 37 (12) Either Party may take handwritten or typewritten notes of the bargaining sessions but
38 there shall be no audio or video recording, including by use of automated dictation
39 software, during the bargaining sessions.
40
- 41 (13) The time limits set forth in this Section may be extended by mutual consent of the
42 Parties.
43
- 44 (14) Nothing in this Section is intended to discourage the resolution of mid-term bargaining
45 issues through informal methods.
46

1 **Section 49.07 - Negotiability Disputes.**

2 Negotiability determinations may be requested by the Union if Management alleges non-
3 negotiability regarding a proposal(s), pursuant to the Federal Labor Relations Authority (FLRA)
4 regulations (i.e., requests for negotiability determination must be filed in accordance with the
5 regulatory timeframes and procedures). Where a matter is alleged to be inappropriate for
6 bargaining on the sole basis that it is covered by this Agreement, the matter may only be
7 referred to the FLRA for resolution. Matters involving allegations of non-negotiability may only
8 be referred to the FLRA for resolution.

- 9
- 10 (1) If there are negotiability disputes, the Agency may implement its proposed change(s),
11 however if it is later determined by the FLRA that the proposal(s) in question is
12 negotiable, management agrees to comply with 49.07(2) below.
- 13
- 14 (2) The Parties will resume negotiations on proposals determined to be negotiable within 15
15 days of the FLRA determination, or a period mutually agreed upon by the Parties.

16

17 **Section 49.08 - Bargaining Impasse Procedures.**

18 Impasse means that point in the negotiation of conditions of employment at which the Parties
19 are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and
20 by the use of mediation or other voluntary arrangements for settlement. If either Party
21 determines that they are at or near impasse on a proposal(s), that Party shall promptly request
22 mediation from the Federal Mediation Conciliation Service (FMCS).

- 23
- 24 (1) Either party may request consideration of the dispute by the Federal Service Impasses
25 Panel (FSIP). Proposed changes which have not been agreed to by the parties, and which
26 are the subject of impasse proceedings, may not be implemented until final agreement is
27 reached or FSIP issues their decision. Agreed upon proposals may be implemented before
28 final agreement is reached on all negotiable proposals. If the Union fails to request
29 consideration of an impasse by the FSIP in accordance with the procedures in 5 CFR
30 2470 within ten days of its receipt of Management's notice of intent to implement its last
31 offer, Management may immediately implement its last offer.
- 32
- 33 (2) Impasse resolutions shall be implemented expeditiously.

34

35 ~~**Section 49.09 — Failure to Follow Mid-Term Bargaining Procedures.**~~

36 ~~If the Union fails to follow any procedure or ground rule set forth in this Article, it shall be~~
37 ~~deemed to have waived its right to bargain and Management may implement its proposed~~
38 ~~changes immediately.~~

ARTICLE 49
MID-TERM BARGAINING

Section 49.01 - General. The rights and obligations of the parties regarding Mid-term Bargaining shall be in accordance with 5 USC Chapter 71 and this Agreement. The purpose of this Article is to prescribe the criteria and procedures by which the Union and the Department (the parties) shall engage in negotiations during the term of the Agreement. The parties agree that it is in the interest of the Government, the public, and the parties to negotiate in good faith in order to facilitate negotiations.

- (1) The parties are encouraged to engage in pre-decisional involvement prior to formal presentation of proposals for changes to personnel policies, practices, and/or working conditions under this Article.
- (2) Nothing in this Agreement shall be deemed to waive either party's statutory rights.

Section 49.02 - Mid-Term Changes. During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article. Any notice sent after 4:00 p.m. shall be deemed to be received on the next business day. If feasible, management will provide advance written notice at least 30 days prior to the proposed implementation date, of any change affecting conditions of employment. Management may implement as soon as the bargaining obligations are satisfied, even if the 30 day timeframe has not been exhausted.

Section 49.03 - Information to the Union on Mid-Term Changes. The following information, if available, shall be included in the notices of proposed Management mid-term changes. Any requests for further information by the Union shall not delay the commencement of negotiations. Once negotiations begin, the parties may modify their initial proposals and/or submit counter-proposals upon receipt of previously unavailable information related to the scope of the negotiations.

- (1) For proposed changes that affect headquarters and all regions, the notice of proposed changes shall be sent to the Council President, their designee(s) and all Regional Vice Presidents electronically. The Union shall annually notify Management of the names and email addresses of the current designees(s) and Regional Vice Presidents. Receipt of the proposed changes by the Council President, or by the Council President's designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.
- (2) For proposed changes that do not affect every region but impact more than one (1) Union local, the notice of proposed changes shall be sent to the Council President, their designee(s) and the Regional Vice Presidents in the affected regions. Receipt of the proposed changes by the Council President, or by the Council President's designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.
- (3) If the proposed change only affects one (1) local office, the notice will be sent to the

applicable Local President or designee. Receipt of the proposed changes by the applicable officer above shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.

(4) Change in a Policy or Past Practice.

- (a) Copy or statement of the current policy or past practice;
- (b) The nature, scope, and rationale for the proposed change;
- (c) A copy or statement of the proposed new policy or practice; and
- (d) The proposed implementation date.

(5) Moves.

- (a) Projected date of move and duration of stay in new location.
- (b) Name, room numbers, grade, title, and series of all affected bargaining unit employees.
- (c) If applicable, new address, floor number, room number, and work station number for each affected bargaining unit employee.
- (d) Current floor plan (with work space assignments showing names, average number of square feet per employee, and total number of square feet for the office being moved).
- (e) New floor plan (with same information as above).
- (f) Name and phone number of the move coordinator.
- (g) Whether employees will be able to keep their current office furniture, telephone extension, computer equipment and other equipment.
- (h) Description of any construction, repair or other physical improvement plans to include, but not limited to installing modular furniture, moving/installing filing cabinets, laying or shampooing carpet, installing partitions, painting walls, exterminating, installing network computer/printer cables, moving phone jacks or electrical outlets, or taking out or installing walls. If any such activity is planned, when the activity will take place and how the employees will be affected and, what arrangements will be made for affected employees, if necessary.
- (i) If required by the nature of the refurbish or move, plans and arrangements for accessibility under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and local standards-in addition to arrangements under reasonable accommodations.
- (j) Applicable emergency and safety plan(s), and modifications to such plans.
- (k) Estimated cost.

(6) Reorganizations.

- (a) Name, grade, title, and series of affected bargaining unit employees.
- (b) Impact, if any, upon upward mobility and/or career ladder positions.
- (c) Employees who will have a different first or second line supervisor as a result of the reorganization.
- (d) Impact, if any, upon employee's receipt of performance ratings.

- (e) Copies of position descriptions for new positions if different from current position.
- (f) Names of any employees detailed in connection with the reorganization.
- (g) Any new positions created as a result of the reorganization.
- (h) Names of any employees who will be downgraded or separated as a result of the reorganization.
- (i) Names of any employees who will be moved as a result of the reorganization.
- (j) Copy of before and after organization charts.

(7) Conversion to Contract Performance.

- (a) The invitation for bid (IFB) or request for proposal (RFP).
- (b) The abstract of bids or proposals after contract award.
- (c) All correspondence from higher authority directing the cost comparison study.
- (d) The official Department of Labor documentation supporting the wage rates applicable to the function being considered for contracting out.
- (e) The performance work statement.
- (f) The "Milestone" chart or similar document setting forth the estimated dates for the contracting out process.
- (g) All changes to the performance work statement.
- (h) All bidder questions and the Department's answers related to the performance of work statement.
- (i) Copy of the retention register.
- (j) Impact upon bargaining unit employees.

(8) Reduction-In-Force (RIF), Furloughs, or Transfer of Function.

The content of the notice will reflect the requirements in Articles 33 and 34.

Section 49.04 - Response to Proposed Changes.

- (1) Upon receipt of Management's notice of proposed change(s), the Union may submit a demand to bargain over the change(s) within fifteen (15) days by submitting preliminary proposals. All proposals shall be related to the impact of the proposed change(s). If no proposals are submitted within fifteen (15) days, bargaining shall be deemed to have been waived.
- (2) Upon timely request for negotiations from the Union, the negotiations shall begin within ten (10) days from the Union's submission of its bargaining proposals, unless changed by mutual consent.

Section 49.05 - Venue; Number of Negotiators; Travel Costs. The Union shall be authorized at least the same number of negotiators as Management at the table, but no fewer than the number authorized below.

- (1) National Negotiations shall be conducted in HQ or in one of the affected regions, and local negotiations should take place in the affected location or field office, unless another venue/geographic location is mutually agreed upon by the parties. Where all negotiation team

members are not co-located, the parties may mutually agree to conduct negotiations by telephone or telecast.

- (2) The parties will identify their chief negotiators and may authorize up to four (4) additional negotiators for national negotiations, and up to three (3) additional negotiators for local negotiations. All but one member of the Union negotiation team must be designated Union representatives under Article 47 of this Agreement. If there are fewer than two (2) Union representatives in an office where the negotiations are taking place, the Union may have up to two (2) Union negotiators who are not designated Union representatives under Article 47. Management shall pay travel and per diem in accordance with the Federal Travel Regulations for all four (4) Union negotiators for national negotiations and shall pay for one (1) Union negotiator for local negotiations in appropriate circumstances. The number of negotiators may be changed by mutual consent of the parties. Each party may have one technical expert at a time, for the limited purpose of discussing a particular subject. The parties agree to video/telephonic bargaining in some negotiations subject to mutual agreement.
- (3) Union negotiators shall receive official time for negotiations; however, this time does not count against the official time allocated under Article 47 of this Agreement. The Union negotiators will be on duty time for all time spent participating in negotiations, including participation in impasse proceedings, and for other related duties during negotiations, such as preparation time spent developing and drafting proposals.

Section 49.06 - Ground Rules for Mid-Term Negotiations. The following ground rules apply to all mid-term bargaining.

- (a) In order to expedite negotiations either party may request a briefing session to explore or explain the change and its impact on bargaining unit employees. This session may be scheduled in advance of the start of negotiations, or as a part of the time allotted for bargaining.
- (b) Facilities for negotiations shall be provided in accordance with Article 48. Negotiations shall be held in a suitable meeting room provided by the Department at a mutually agreed upon site. The Department will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room. Alternatively, by mutual agreement, the Union may accept the negotiating room as a caucus room provided that Management's representatives excuse themselves during Union caucuses.
- (c) The Department will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet and printing access, telephone(s), desks and/or table, chairs, office supplies and access to a secure photocopier.
- (d) Dates and times for negotiation sessions shall be mutually agreed to by the parties; however, once negotiations begin, the parties shall continue negotiating until agreement, impasse, or as mutually agreed. Negotiations shall normally begin at 9:00 a.m. and last at least until 4:00 p.m. This schedule may be altered by mutual consent. There shall be a one (1) hour break for lunch.

- (e) Either party may caucus at any time during negotiations. If a caucus shall last more than fifteen (15) minutes, the party not in caucus shall be advised at least once an hour of the estimated duration of the caucus.
- (f) Each party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
- (g) Neither party may substitute negotiating team members, except by mutual consent.
- (h) Observers shall be permitted in negotiating sessions only by the mutual consent of the parties.
- (i) Either party may submit new proposals on the first day of negotiations. Parties may submit new proposals based on new or modified information provided by the other party. Once negotiations begin, a party shall not submit new proposals but may modify its initial proposals and/or submit counter-proposals until agreement has been reached.

Parties may submit new proposals at any time by mutual agreement in the interest of reaching an agreement.

- (j) Upon reaching agreement on each item, the Chief Negotiators shall signify tentative agreement by initialing the agreed upon item. This shall not preclude the parties from reconsidering or revising the agreed upon items until final agreement is reached on all items. Upon completing the negotiations, the parties shall review and edit for consistency and make mutually agreed upon changes.
- (k) Changes that are negotiated or agreed to pursuant to this Section shall be duly executed by the parties. Supplements shall become an integral part of this Agreement and subject to all of its terms and conditions.
- (l) Either party may take written notes of the bargaining sessions but the parties agree that there will be no taping of negotiations.
- (m) The time limits set forth in this Section may be extended by mutual consent.
- (n) The product of mid-term bargaining is enforceable upon signature at the completion of negotiations.
- (o) Nothing in this Section is intended to discourage the resolution of mid-term bargaining issues through informal methods.
- (p) Further requests for information shall be responded to in accordance with the Labor Management Statute (5 USC 7114 (b)(4)).

Section 49.07 - Negotiability Disputes. Negotiability determinations may be requested by the Union if management alleges non-negotiability regarding a proposal. Where a matter is alleged to be inappropriate for bargaining on the sole basis that it is covered by the Master Agreement, the matter may be resolved under the arbitration provisions of this Agreement or referred to the Federal Labor Relations Authority (FLRA) for resolution. Matters involving allegations of non-negotiability shall be referred to the Federal Labor Relations Authority (FLRA) for resolution.

- (1) If there are negotiability disputes, only the agreed-upon terms may be implemented by management.
- (2) The parties will resume negotiations on proposals determined to be negotiable within 15 days of the determination, or a period mutually agreed upon by the parties.

Section 49.08 - Bargaining Impasse Procedures. Impasse means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement after making efforts to do so by direct negotiations. If either party determines that they are at impasse of a proposal(s), that party shall promptly request mediation from the Federal Mediation Conciliation Service (FMCS).

- (1) If impasse is reached and declared by the FMCS mediator, either party may request consideration of the impasse by the Federal Service Impasses Panel (FSIP). Proposed changes may not be implemented until final agreement is reached or FSIP issues their decision. If the Union fails to request consideration of an impasse by the FSIP in accordance with the procedures in 5 CFR 2470 within 10 days of its receipt of Management's notice of intent to implement its last offer, Management may implement its last offer.
- (2) If the parties reach impasse, only the agreed upon terms may be implemented by mutual consent. Impasse resolutions shall be implemented expeditiously.

ARTICLE 49

MID-TERM BARGAINING

Section 49.01 - General. The rights and obligations of the Parties regarding Mid-term Bargaining shall be in accordance with this Agreement and the Statute. The purpose of this Article is to prescribe the criteria and procedures by which the Union and the Department (the Parties) shall engage in negotiations during the term of the Agreement. The Parties agree that it is in the interest of the Government, the public, and the Parties to negotiate in good faith.

~~In accordance with Article 4 of this Agreement, n~~Nothing in this ~~Agreement Article~~ shall be deemed to waive either ~~P~~party's statutory rights.

Section 49.02 - Mid-Term Changes. ~~During the term of this Agreement,~~

~~(1) Management Initiated.~~ Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Management will provide the Union with reasonable advance written notice, not less than 25 days prior to the proposed implementation date, of any change affecting conditions of employment.

~~(a) If there are issues at the local or regional level that are not covered by this Article they shall be bargained at that level, as appropriate.~~

~~(2) Union Initiated.~~ The Union, in accordance with law, has the right to initiate mid-term bargaining. ~~The Union will provide Management with reasonable advance notice of its desire to engage in Union initiated bargaining with an explanation of the matter in question. The notice shall include an initial proposal.~~

~~(a) Union initiated Mid-term negotiations will only be conducted at the Council level.~~

~~(b) Union initiated Mid-Term bargaining can be invoked up to two times per year.~~

~~For purposes of this Article a year is defined as the effective date of this Agreement to the year anniversary of the Agreement.~~

~~(c) The ground rules for Union initiated Mid-Term bargaining shall be in accordance with 49.06 of this Agreement.~~

~~(d) Management shall have 10 days to respond to a Union initiated mid-term change~~

~~(e) Negotiations shall begin within 10 days from submission of the bargaining proposals, unless changed by mutual consent. Should the tenth day fall on a Saturday, Sunday, federal holiday or during a government or Agency shutdown, the deadline moves to the next business day.~~

~~(f) If Management does not respond to a Union initiated demand to bargain the Union may file a grievance or unfair labor practice charge with the FLRA.~~

~~Nothing shall preclude the Parties from bargaining the impact and implementation of a business need or changes in applicable law, government wide rule or regulation. In addition, nothing shall preclude the Agency and Union from negotiating appropriate arrangements for employees adversely affected by the exercise of Managements rights.~~

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1 ~~If there are issues at the local or regional level that are not covered by this Article they shall be~~
2 ~~bargained at that level.~~

3 **Section 49.03 - Information to the Union on Mid-Term Changes.** The following information,
4 if available, shall be included in the notices of proposed Management mid-term changes. Any
5 requests for further information by the Union shall not delay the commencement of negotiations.
6 Once negotiations begin, the Parties may modify their initial proposals and/or submit counter-
7 proposals upon receipt of previously unavailable information related to the scope of the
8 negotiations. Any notice sent after 4:30 p.m. by Management shall be deemed to be received on
9 the next business day. Management may implement as soon as the bargaining obligations are
10 satisfied, even if the 25-day timeframe has not been exhausted.

11 The Union shall notify Management of the names and email addresses of the current
12 designees(s), ~~and~~ Regional Vice Presidents and Local Presidents at least annually or as changes
13 occur. Issuance of the proposed changes by Management to the designated Union representative
14 (i.e. Council President, Regional Vice-President, Local Presidents or their designees) shall
15 constitute the start date for calculating the deadline for requesting negotiations referred to in this
16 Article.

17 (1) For proposed changes that affect headquarters and all regions, the notice of proposed
18 changes shall be sent to the Council President, their designee(s) and all Regional Vice
19 Presidents electronically.

20
21 (2) For proposed changes that do not affect every region but impact more than one Union
22 local, the notice of proposed changes shall be sent to the Council President, their
23 designee(s) and the Regional Vice Presidents in the affected regions.

24 (3) If the proposed change only affects one local office, the notice will be sent to the
25 applicable Local President or designee.

26
27 **(4) Change in a Policy or Past Practice.**

28 ~~(a) The nature, scope, and rationale for the proposed change;~~

29 ~~(b)~~ (b) Copy or statement of the current policy or past practice, if applicable;

30 ~~(b)(a) The nature, scope, and rationale for the proposed change;~~

31 (c) A copy or statement of the proposed new policy or practice if applicable; and

32 (d) The proposed implementation date, if known.

33
34 **(5) Moves.**

35 (a) Projected date of move and duration of stay in new location;

36 (b) Name, room numbers, grade, title, and series of all affected bargaining unit employees;

37 (c) If applicable, new address, floor number, room number, and workstation number for each
38 affected bargaining unit employee;

39 (d) Current floor plan (with workspace assignments showing names, average number of
40 square feet per employee, and total number of square feet for the office being moved);

41 (e) New floor plan (with same information as above);

- 1 (f) Name and phone number of the move coordinator;
- 2 (g) Whether employees will be able to keep their current office furniture, telephone
- 3 extension, computer equipment and other equipment;
- 4 (h) If any construction, physical improvement or maintenance items related to the move (e.g.
- 5 shampooing carpet, drywall repairs) is planned, when the activity will take place and how
- 6 the employees will be affected and what arrangements will be made for affected
- 7 employees, if necessary.;
- 8 (i) If required by the nature of the refurbishment or move, information concerning plans and
- 9 arrangements for accessibility under Section 504 of the Rehabilitation Act, the Americans
- 10 with Disabilities Act, and local standards-in addition to arrangements under reasonable
- 11 accommodations;
- 12 (j) Applicable emergency and safety plan(s), and modifications to such plans;
- 13 (k) Estimated cost.
- 14
- 15 **(6) Reorganizations.**
- 16 (a) Name, grade, title, and series of affected bargaining unit employees;
- 17 (b) Impact, if any, upon upward mobility and/or career ladder positions;
- 18 (c) Employees who will have a different first or second line supervisor as a result of the
- 19 reorganization, if known;
- 20 (d) Impact, if any, upon employee's receipt of performance ratings;
- 21 (e) The proposed implementation date, if known;
- 22 (f) Copies of position descriptions for new positions if different from current position;
- 23 (g) Names of any employees detailed in connection with the reorganization;
- 24 (h) Any new positions created as a result of the reorganization;
- 25 (i) Names of any employees who will be downgraded or separated as a result of the
- 26 reorganization;
- 27 (j) Names of any employees who will be moved as a result of the reorganization;
- 28 (k) Copy of current and proposed organizational charts.
- 29
- 30 **(7) Conversion to Contract Performance.**
- 31 (a) The invitation for bid (IFB) or request for proposal (RFP).
- 32 (b) The abstract of bids or proposals after contract award.
- 33 (c) All correspondence from higher authority directing the cost comparison study.
- 34 (d) The official Department of Labor documentation supporting the wage rates applicable to
- 35 the function being considered for contracting out.
- 36 (e) The performance work statement.
- 37 (f) The "Milestone" chart or similar document setting forth the estimated dates for the
- 38 contracting out process.
- 39 (g) All changes to the performance work statement.
- 40 (h) All bidder questions and the Department's answers related to the performance of work
- 41 statement.
- 42 (i) Copy of the retention register.
- 43 (j) Impact upon bargaining unit employees.

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- 2 (8) Administrative or Planned Furloughs for 30 Days or Less.
- 3 (a) Management's reason(s) for the furlough
- 4 (b) The Organizational segment(s) affected by the furlough(s)
- 5 (c) The name of each of the impacted employees to be furloughed
- 6 (d) Number of days of the furlough
- 7 (e) The beginning and end dates of the furlough
- 8

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9 **Section 49.04 - Response to Proposed Changes.**

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- 10 (1) Upon receipt of either Party's notice of proposed change(s), the Parties may submit a
- 11 demand to bargain over the change(s) within ~~15~~ 10 days by submitting preliminary
- 12 proposals. All proposals shall be related to the impact of the proposed change(s). If no
- 13 Union proposals are submitted within ~~15~~ 10 days, bargaining shall be deemed to have
- 14 been waived. ~~If Management does not respond to a Union initiated demand to bargain the~~
- 15 ~~Union may file a grievance or unfair labor practice charge with the FLRA.~~
- 16 (2) Upon timely request, the negotiations shall begin within 10 days from submission of the
- 17 bargaining proposals, unless changed by mutual consent. Should the tenth day fall on a
- 18 Saturday, Sunday, federal holiday or during a government or Agency shutdown, the
- 19 deadline moves to the next business day.
- 20 (3) The Union may make requests for information that are related to Management's proposed
- 21 changes. Management shall promptly respond to those requests for information.
- 22 ~~(2)~~(4) Once the Union submits a timely demand to bargain, Management shall not
- 23 implement proposed changes until it has fulfilled its bargaining obligations. The Union
- 24 shall provide preliminary proposals and/or a request for information with its demand to
- 25 bargain. Upon beginning negotiations, the Union will provide its written proposals
- 26 related to Management's proposed change. Management shall respond to the Union's
- 27 demand to bargain in writing and at a minimum by identifying its chief negotiator.

28 **Section 49.05 - Venue; Number of Negotiators; ~~Travel Costs~~.** The Union shall be authorized

29 to have on official time (as provided in the Article on Union Representation and Official Time)

30 at least the same number of negotiators as Management at the table, but no fewer than the

31 number authorized below.

- 32 (1) National Negotiations shall be conducted in HQ or in one of the affected regions, and
- 33 local negotiations should take place in the affected location or field office, unless another
- 34 venue/geographic location is mutually agreed upon by the Parties. When designated
- 35 representatives are co-located, negotiations will occur at their location. Where all
- 36 negotiation team members are not co-located, each Party shall be responsible for all of its
- 37 negotiators' travel costs to attend in-person negotiations or either Party may elect to
- 38 participate in the Parties may mutually agree to conduct negotiations by telephone or
- 39 teleconference or other virtual means.
- 40

1 (2) The Parties will identify their chief negotiators and may authorize up to four additional
2 negotiators for national negotiations, and up to three additional negotiators for local
3 negotiations. All but one member of the Union negotiation team must be a designated
4 Union representatives. If there are fewer than two Union representatives in an office
5 where the negotiations are taking place, the Union may have up to two Union negotiators
6 who are not designated Union representatives. At least five days prior to commencement
7 of negotiations, the Parties agree to identify their team members. ~~Management shall pay
8 travel and per diem in accordance with the Federal Travel Regulations for all four Union
9 negotiators for national negotiations (who want to attend face to face negotiations) and
10 shall pay for one Union negotiator for local negotiations in appropriate circumstances (if
11 he or she wants to attend face to face negotiations).~~ The number of negotiators may be
12 changed by mutual consent of the Parties. Each party may have one technical expert at a
13 time, for the limited purpose of discussing a particular subject. ~~Face to face negotiations
14 are the expectation of the Parties however, either may elect to participate in negotiations
15 by telephone or other virtual means.~~

16
17 (3) Union negotiators shall receive official time for negotiations; however, this time does not
18 count against the official time allocated under Article 47 of this Agreement. The Union
19 negotiators will be on official time for all time spent participating in negotiations.

20
21 (4) Union negotiators who are not HUD employees may be used as team members for the
22 Union's negotiation team (e.g. retirees, AFGE representatives, business agents).

23 **Section 49.06 - Ground Rules for Mid-Term Negotiations.** The following ground rules apply
24 to all mid-term bargaining.

25 (a) In order to expedite negotiations either Party may request a briefing session to explore or
26 explain the change and its impact on bargaining unit employees. This session may be
27 scheduled in advance of the start of negotiations, or as a part of the time allotted for
28 bargaining.

29
30 (b) Facilities for negotiations shall be provided in accordance with Article 48. Negotiations
31 shall be held in a suitable meeting room provided by the Department. The Union may
32 accept the negotiating room as a caucus room provided that Management's
33 representatives excuse themselves during Union caucuses.

34
35 (c) Dates and times for negotiation sessions shall be mutually agreed to by the Parties;
36 however, once negotiations begin, the Parties shall continue negotiating until agreement,
37 impasse, or as mutually agreed. Negotiations shall normally begin at 9:00 a.m. and last at
38 least until 4:00 p.m. This schedule may be altered by mutual consent. There shall be a
39 one (1) hour break for lunch.

40
41 (d) Either party may caucus at any time during negotiations. If a caucus shall last more than
42 15 minutes, the ~~P~~party not in caucus shall be advised at least once an hour of the

1 estimated duration of the caucus. Caucus time shall be no more than 4 hours per day of
2 negotiations. However, if new information is received by either Party during negotiations
3 this time may be extended.
4

5 (e) Each party shall be represented at the negotiations at all times by one duly authorized
6 Chief Negotiator who is prepared and authorized to reach agreement on all matters
7 subject to negotiations and to sign off on agreements for their respective Party.
8

9 (f) Neither party may substitute negotiating team members, except by mutual consent. If
10 negotiations are extending beyond a week either Party may substitute negotiating team
11 members in order to bring negotiations to a timely conclusion.
12

13 (g) By mutual agreement the Parties will draft a negotiating schedule to complete bargaining
14 expeditiously taking into account issues that may impact negotiations such as use-or-lose,
15 Federal Holidays, availability of team members; availability of space etc.
16

17 (h) Observers shall be permitted in negotiating sessions only by the mutual consent of the
18 Parties.
19

20 (i) Either party may submit new proposals on the first day of negotiations. Parties may
21 submit new proposals based on new or modified information provided by the other party.
22 Once negotiations begin, a party shall not submit new proposals but may modify its
23 initial proposals and/or submit counterproposals until agreement has been reached.
24 Parties may submit new proposals at any time by mutual agreement in the interest of
25 reaching an agreement.
26

27 (j) Upon reaching agreement on each item, the Chief Negotiators shall signify tentative
28 agreement by initialing the agreed upon item. Upon completing the negotiations, the
29 Parties shall review and edit for consistency and content and make mutually agreed upon
30 changes.
31

32 (k) Changes that are negotiated or agreed to pursuant to this Section shall be duly executed
33 by the Parties. Supplements shall become an integral part of this Agreement and subject
34 to all of its terms and conditions.
35

36 (l) Either party may take handwritten or typewritten notes of the bargaining sessions but
37 there shall be no audio or video recording, including by any use of dictation hardware or
38 software/applications- during the bargaining sessions.
39

40 (m)The time limits set forth in this Section may be extended by mutual consent.
41
42

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1 (n) The product of mid-term bargaining is enforceable upon signature at the completion of
2 negotiations.

3
4 (o) Nothing in this Section is intended to discourage the resolution of mid-term bargaining
5 issues through informal methods.
6

7 **Section 49.07 - Negotiability Disputes.** Negotiability determinations may be requested by the
8 Union if Management alleges non-negotiability regarding a proposal(s), pursuant to the Federal
9 Labor Relations Authority (FLRA) regulations (i.e. requests for negotiability determination must
10 be filed in accordance with the regulatory timeframes and procedures). Where a matter is alleged
11 to be inappropriate for bargaining on the sole basis that it is covered by the Master Agreement,
12 the matter may be resolved under the arbitration-grievance provisions of this Agreement or
13 referred to the FLRA for resolution. Matters involving allegations of non-negotiability shall be
14 referred to the FLRA for resolution.

15 (1) If there are negotiability disputes, only the agreed-upon proposals may be implemented
16 by Management by mutual agreement by the Parties in writing.
17

18 (2) The Parties will resume negotiations on proposals determined to be negotiable within 15
19 days of the determination, or a period mutually agreed upon by the Parties.

20 **Section 49.08 - Bargaining Impasse Procedures.** Impasse means that point in the negotiation
21 of conditions of employment at which the Parties are unable to reach agreement after making
22 efforts to do so by direct negotiations. If either party determines that they are at impasse of a
23 proposal(s), that party shall promptly request mediation from the Federal Mediation Conciliation
24 Service (FMCS).

25 (1) If impasse is reached and declared by the FMCS mediator, either Party may request
26 consideration of the impasse by the Federal Service Impasses Panel (FSIP). Proposed
27 changes which have not been agreed to by the Parties, and which are the subject of
28 impasse proceedings, may not be implemented until final agreement is reached or FSIP
29 issues their decision. If the Union fails to request consideration of an impasse by the FSIP
30 in accordance with the procedures in 5 CFR 2470 within 10 days of its receipt of
31 Management's notice of intent to implement its last offer, Management may implement
32 its last offer.
33

34 (2) ~~If the Parties reach impasse, only the agreed upon proposals may be implemented by~~
35 ~~mutual agreement by the Parties in writing.~~ Impasse resolutions shall be implemented
36 expeditiously.
37
38

Article 51: Grievance Procedures

Section 51.01 - Definition and Scope. The purpose of this Article is to provide a mutually acceptable method for the prompt resolution of grievances filed by bargaining unit employee(s), the Union or the Agency. These procedures replace Management's administrative grievance procedure (HUD Handbook 771.02 – Rev. 3, or successor) for employees in the bargaining unit only to the extent those matters are grievable and arbitrable under this Article.

A grievance means any complaint by:

- (1) Any employee concerning any matter relating to his/her employment; or
- (2) The Union concerning any matter relating to the employment of any employee; or
- (3) Any employee, the Union, or Management concerning:
 - (a) The effect or interpretation, or a claim of breach of this collective bargaining agreement; or
 - (b) Any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.
- (4) Except complaints excluded under Section 51.03, below.

Section 51.02 - Choosing an Appeals Procedure.

An employee is prohibited from grieving a matter under the negotiated grievance procedure and a statutory procedure.

Any employee shall have exercised their choice to raise a matter under an applicable statutory procedure or the negotiated procedure when the employee:

- (1) Timely files a notice of appeal under the applicable statutory procedure or elects to use the statutory complaint process, e.g. Equal Employment Opportunity, Unfair Labor Practice, etc.; or
- (2) Timely files a grievance in writing (or the Union invokes arbitration), whichever occurs first.

An employee shall have exercised their option concerning EEO discrimination matters at such time as the employee or Union timely files a grievance in writing or files a formal written complaint under the statutory EEO complaint procedure, whichever occurs first. Discussions with an EEO counselor do not preclude the filing of a grievance that is otherwise timely.

Section 51.03 - Exclusions.

Excepted from these negotiated procedures are the following:

- (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
- (2) Retirement, life insurance, or health insurance;
- (3) Where there is no allegation of a violation of this Agreement, law, or regulation, a student loan repayment, or hardship transfer;
- (4) A suspension or removal under Section 7532 of Title 5 (relating to national security matters);
- (5) Any examination, certification, or appointment;

- 1 (6) The classification of any position;
- 2 (7) Where there is no allegation of a violation of this Agreement, law, or regulation, the non-
- 3 selection for a promotion from a group of properly ranked and certified candidates;
- 4 (8) The separation of a probationary employee as defined by applicable law;
- 5 (9) Where there is no allegation of a violation of this Agreement, law, or regulation, the
- 6 termination of a temporary promotion;
- 7 (10) The termination of a temporary appointment;
- 8 (11) Complaints by employees with temporary appointments not to exceed one year;
- 9 (12) Verbal counseling, written counseling, Official Reprimand, ~~and~~ any adverse action, and
- 10 any performance-based action;
- 11 (13) Progress reports or interim appraisals of employee performance, including an
- 12 Opportunity to Demonstrate Acceptable Performance;
- 13 (14) The temporary or permanent filling of any position outside the bargaining unit;
- 14 (15) The filing of a parties' grievance which involves the same individual and factual situation
- 15 ~~or issue~~ as contained in an individual grievance, ~~statutory complaint or appeal, or unfair~~
- 16 ~~labor practice charge~~;
- 17 (16) Financial disclosure;
- 18 (17) Annual performance rating;
- 19 (18) Retention/relocation/recruitment payment(s) or the failure to grant such payment(s);
- 20 (19) Performance standards;
- 21 (20) Failure to grant or timely process a within-grade increase;
- 22 (21) Where there is no allegation of a violation of this Agreement, law, or regulation, the
- 23 denial of a career ladder promotion;
- 24 (22) Changes to the Union's use of agency space and equipment;
- 25 ~~(23)~~ Bargaining obligation disputes;
- 26 ~~(24)~~(23) Negotiability disputes;
- 27 ~~(25)~~(24) Attorney fee disputes in excess of \$10,000; and
- 28 ~~(26)~~(25) The granting of, failure to grant, or failure to timely process any award;
- 29 and
- 30 ~~(27)~~

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Section 51.04 - Time Limits.

The time limit for the filing of a grievance under this procedure is 30 ~~calendar~~ days. The time period for filing a grievance shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. The date of expiration of a time limit shall be 11:59 p.m. Eastern Time the last day of the stated period, unless that day falls on a Saturday, Sunday, or non-workday, in which case the following full workday shall be considered the last day. Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last response. Where the receiving party of a grievance fails to meet a time limit, the grieving party may advance the grievance to the next step within ~~seven~~ 30 days following the expiration of the time limit, unless extended by mutual consent. All extensions must be approved in writing by both parties.

- (1) For purposes of timeliness, the grievance shall be considered filed when:
 - a. A grievance filed against Management is delivered to the appropriate Employee & Labor Relations representative office or assigned grievance control officer; or

1 b. A grievance filed against the Union is delivered to the appropriate Union
2 representative.

3
4 Electronically submitted documents shall be accepted by both Parties.

- 5
6 (2) To be considered filed, the grievance must include the information in the format
7 identified in Sections 51.08 or 51.09, as applicable. Minor errors, such as typographical
8 errors, shall not be used as a basis to consider the grievance not filed.
9

10
11 **Section 51.05 - Self-Representation.**

12 Nothing shall preclude an employee from presenting a grievance to management without
13 representation by the Union; however, such an employee may not receive any better or worse
14 treatment than other employees who elect union representation, and any resolution must be
15 consistent with the terms of this Agreement. Only the Union can invoke arbitration. If any
16 employee is self-represented in a grievance filed under the grievance procedure contained in this
17 Agreement, the Union shall be notified no less than two days in advance, absent extenuating
18 circumstances, of any meetings between Management and the grievant concerning the grievance.
19 The Union may attend any such meetings as an observer.
20

21 **Section 51.06 - Right to Representation.**

- 22 (1) The Union shall have the right to represent employees at any stage of this procedure.
23
24 (2) Once an employee has designated the Union as representative, management shall not
25 discuss the grievance with the grievant directly unless the Union is given an opportunity
26 to attend.
27
28 (3) Only the Union's designated representative, or a person designated in writing by the
29 Union, may represent an employee under this negotiated procedure. Only one individual
30 representative of the employee may attend a grievance meeting and communicate on
31 behalf of the grievant. Multiple union representatives are not permitted.
32
33 (4) Once either party has identified its representative in a grievance, neither party shall
34 discuss the grievance in the absence of such representative, unless the representative
35 provides written consent for such communication.
36
37 (5) No Union representative shall use any duty time to prepare or present a grievance or
38 appeal against management, including group grievances and arbitration. An employee
39 may use a reasonable amount of duty time for presenting the grievance if they are
40 otherwise in an active duty status. Presentation of the grievance means meeting with the
41 Deciding Official. Duty time for preparation of a grievance is not allowed. Employees
42 must use personal leave or non-duty time for preparation of grievances.
43

44 **Section 51.07 - Informal Resolution.**

45 Many grievances arise from misunderstandings or disputes which can be settled promptly and
46 satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort

1 shall be made by the parties to settle disputes at the lowest possible level. For example, the
2 Parties may mutually agree to use any of the methods described in the Article on Collaborative
3 Conflict Resolution.

4
5 **Section 51.08 - Employee Grievances.**

6 Step 1

7 If the dispute is not resolved informally, on or before 30 days from the date when the employee
8 became aware of or should have become aware of the matter being grieved, the employee or
9 Union shall submit the grievance on an Employee Grievance Form (provided in Appendix) to the
10 appropriate ELR representative. Any issue, remedy, or specific provision violated, which is not
11 identified in the original grievance, shall be precluded from being raised later in the grievance or
12 arbitration process. The facts submitted on or with the Employee Grievance Form must include
13 sufficient detail to identify and clarify the issues of the grievance, including the date, time, and
14 place of the alleged incident and the Management officials involved. Management will designate
15 the Deciding Official, ~~without limitation~~, who will have the authority to resolve the grievance.

16
17 Within 20 days after the Deciding Official's receipt of the grievance, the Deciding Official shall
18 meet with the grievant and representative, if any, for ~~the purpose of grievant's~~ presentation of the
19 grievance. Deciding officials outside of the area where the grievant is located may conduct the
20 meeting in person, by telephone or video conferencing. Management shall send the employee(s)
21 and designated Union representative a written response within 15 days of the meeting, if held, or
22 within 30 days from the date the grievance was received. The response shall include the
23 grievance findings and action(s) taken, if any, to settle the matter.

24
25 If the matter is not satisfactorily settled following the Deciding Official's response, the employee
26 and representative (if any) may, within seven days of the response, advance the grievance to the
27 appropriate ELR representative. If a timely response is not received, the grieving party may
28 advance the grievance to Step 2 within ~~seven~~ 30 days following expiration of the Step 1 response
29 due date.

30
31 Step 2

32 The Step 2 Deciding Official shall be a different official than the Step 1 Deciding Official,
33 designated by Management ~~without limitation~~, and have the authority to resolve the grievance.

34 Within 15 days after the Deciding Official's receipt of the Step 2 grievance, the Deciding
35 Official shall meet with the grievant and representative, if any, for ~~the purpose of grievant's~~
36 presentation of the grievance. Deciding officials outside of the area where the grievant is located
37 may conduct the meeting in person, by telephone or video conferencing. Management shall send
38 the employee(s) and designated Union representative a written response within 15 days of the
39 meeting, if held, or within 25 days from the date the grievance was received.

40
41 The Step 2 Deciding Official shall designate the management representative to be notified for the
42 purpose of invoking arbitration and participation in the selection of an arbitrator.

43
44 All grievance responses shall be delivered to the designated representative's email address.
45
46

1 **Section 51.09 - Grievance of the Parties.**

- 2 (1) Should either party have a grievance over any matter covered by this procedure that is not
3 specific to any one individual employee, it shall inform the designated representative of
4 the other party (i.e., either the designated Union representative for the Union, or the
5 appropriate Employee & Labor Relations division staff member for management) of the
6 specific nature of the complaint in writing within 3021 days of the date when the party
7 became aware or should have become aware of the matter being grieved. Management
8 shall determine who will issue the decision on behalf of Management. The grievance
9 must include, at a minimum:
10 (a) Date of alleged violation and date submitted;
11 (b) The name of the grieving party's representative;
12 (c) Issue(s)/subject(s);
13 (d) Statement of facts and description of dispute;
14 (e) Alleged contractual provision(s) violated;
15 (f) Names of all employees affected, unless the Union is unable to identify all
16 employees; in that case, an accurate description of the class of employees
17 affected; and
18 (g) Remedy sought.
- 19
- 20 (2) Upon request, the parties shall meet for the grieving party's presentation of the grievance
21 within 20 days of receipt of the grievance.
22
- 23 (3) Within 30 days after receipt of the written grievance, the receiving party shall send a
24 written response stating its position regarding the grievance. If the response is not
25 satisfactory, the grieving party may refer the matter to arbitration.
26

27 **Section 51.10 - Group Grievances.**

28 Either party may propose to the other party the combining of grievances which are before the
29 same deciding official and which concern issues so similar that they can be efficiently and
30 effectively treated as a group grievance. If the representatives handling the grievances do not
31 agree as to whether the grievances should be combined, the grievances shall be treated
32 individually through the grievance procedure to arbitration. If arbitration is invoked and either
33 party seeks to combine the grievances, the arbitrator shall be asked to determine, as a threshold
34 issue, whether they can be efficiently and effectively treated as a group grievance.
35

36 **Section 51.11 - Questions of Grievability or Arbitrability.**

37 Either Party may raise questions of arbitrability at any step of the grievance procedure, including
38 the arbitration stage (e.g. by denying the grievance because it is procedurally or substantively
39 non-grievable or non-arbitrable). Any unresolved question shall be considered as a threshold
40 issue should the grievance go to arbitration. Questions of arbitrability shall be submitted to the
41 arbitrator in writing and shall be decided prior to any hearing on the merits unless mutually
42 agreed otherwise. Arbitration fees and costs associated with questions of arbitrability shall be
43 resolved according to Article 52. The moving party bears the burden of demonstrating that the
44 matter is not grievable.

Employee Grievance

U.S. Department of Housing and Urban Development

Employees must use this form to file grievances at steps 1 and 2 of the grievance procedure.

Check one of the boxes: Step 1 Step 2

Name of Grievant:

Program Area

Duty Phone:

Name of Union Representative (if any):

Program Area

Duty Phone:

Briefly describe the incident-causing grievance. Include date, time, and place, management officials involved, if any:

Identify the article(s) or section(s) of the master agreement / local supplement, law or regulation alleged to have been violated:

Identify the remedy you seek:

- Questions and/or further correspondence in this matter should be sent to the union representative and the grievant.
- The employee bears the responsibility for meeting all time limits for the filing and appeal of this grievance.
- Attach a copy of the record of the grievance discussion, if any.

Signature of Grievant & Date:

X

If your grievance is not resolved to your satisfaction, you may submit the grievance to the next step of the grievance procedure by signing and dating this form (at right) and attaching a copy of management's reply. Any additional information you believe is pertinent should also be attached.

Acknowledgement of receipt by Management (if personally delivered)
Signature & Date:

X

Signature of Grievant & Date:

X

ARTICLE 51 GRIEVANCE PROCEDURES

Section 51.01- Definition and Scope. This Article constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining unit and between the parties. These procedures replace Management's administrative procedure for employees in the bargaining unit only to the extent of those matters which are grievable and arbitrable under this negotiated Agreement. A grievance means any complaint by:

- (1) Any employee concerning any matter relating to his/her employment; or
- (2) The Union concerning any matter relating to the employment of any employee; or
- (3) Any employee, the Union, or Management concerning:
 - (a) The effect or interpretation, or a claim of breach of this collective bargaining agreement; or
 - (b) Any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 51.02 - Statutory Appeals. Adverse Actions consist of:

- (1) Reduction in grade or removal for unacceptable performance;
- (2) Removals for misconduct;
- (3) Suspensions for more than fourteen (14) days; and
- (4) Furloughs for thirty (30) days or less.

Adverse actions may, in the discretion of the aggrieved employee, be raised under either:

- The appropriate statutory procedures; or
- Under the negotiated grievance procedure, but not both.

Specific procedures for grieving adverse actions are found in Article 12, Discipline, and Article 13, Unacceptable Performance.

Section 51.03 - Discriminatory Prohibited Personnel Practice. Prohibited personnel practices include the discrimination for or against any employee on the basis of: Race; Color; Sex; Religion; Age; National Origin; Disability; Sexual Orientation; and Genetic Information.

Section 51.04 - Choosing an Appeals Procedure. Nothing in this procedure shall prejudice the right of the employee to appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission pursuant to Section 7121 of the Statute, or file an unfair labor practice or other appeal under the rules of the Federal Labor Relations Authority.

Any employee shall have exercised his/her choice to raise a matter under an applicable statutory procedure or the negotiated procedure when the employee:

- (1) Timely files a notice of appeal under the applicable statutory procedure or elects to use the statutory Equal Employment Opportunity complaint process.
- (2) Timely files a grievance in writing, whichever occurs first.

An employee shall have exercised his/her option concerning EEO discrimination matters at such time as he/she timely files a grievance in writing or files a formal written complaint under the statutory EEO complaint procedure, whichever occurs first. Discussions with an EEO counselor in no way precludes the filing of a grievance that is otherwise timely.

Section 51.05 - Exclusions. Excepted from these negotiated procedures coverage are the following:

- (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
- (2) Retirement, life insurance, or health insurance;
- (3) A suspension or removal under Section 7532 of Title 5 (relating to national security matters);
- (4) Any examination, certification, or appointment;
- (5) The classification of any position which does not result in the reduction in grade or pay of an employee;
- (6) Where there is no allegation of a violation of this Agreement, law, or regulation, the non-selection for a promotion from a group of properly ranked and certified candidates;
- (7) The separation of a probationary employee as defined by applicable law;
- (8) Where there is no allegation of a violation of this Agreement, law, or regulation, the termination of a temporary promotion;
- (9) The termination of a temporary appointment where the Standard Form-50 states that the termination was based on a lack of work or lack of funds;
- (10) Complaints by employees with temporary appointments not to exceed one (1) year;
- (11) Verbal counseling;
- (12) Progress reports on employee performance including opportunity to improve notices/performance improvement plans;
- (13) The filling of any position outside the bargaining unit;

- (14) The removal, suspension of more than fourteen (14) days, reduction in grade or furlough of non-preference eligible employee in the excepted service, who has not completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less;
- (15) The filing of a parties grievance which involves the same individual and factual situation as contained in an individual grievance;
- (16) Financial disclosure; and
- (17) The granting of or failure to grant a spot award.

Section 51.06 - Time Limits.

- (1) Time limits for the filing of a grievance under this procedure, is, at a minimum, forty-five (45) calendar days, unless extended. The time period shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. A continuing violation may be grieved at any time. The date of expiration of a time limit shall be close of business hours the last day of the stated period, unless that day falls on a Saturday, Sunday, or non-workday, in which case the following full workday shall be considered the last day. Either party may grieve a continuing condition at any time. Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last response.

Where the receiving party of a grievance fails to meet a time limit, the grievance shall be advanced to the next step of the grievance procedure. Management shall serve all grievance responses, and all other communications concerning the grievance, upon the Union representative. No time limit for responding or appealing shall begin to run until the union representative has received the Management response or communication.

- (2) Management shall send all grievance responses to the appropriate Union representative. The grievance response shall be delivered to the Union office. If there is no Union office, the grievance response shall be delivered to the designated Union e-mail address. Where the response is e-mailed, receipt shall be confirmed by using return receipt requested.
- (3) In the case of non-personal delivery, if Management disputes the date of actual receipt by the employee or the representative, Management shall bear the burden of proving the date of actual receipt. The burden of proof shall be deemed to have been met by production of a signed receipt, a witnessed statement indicating the date and time of delivery or deposit or any other evidence indicating delivery.
- (4) For purposes of timeliness, the grievance shall be considered filed when it is delivered to the appropriate Labor Relations office, an assigned grievance control officer, or the grievance deciding official HUD will accept electronically submitted documents.
- (5) Each grievance should propose a remedy. Minor errors or omissions in completing the grievance form shall not be used as a basis to reject any grievance.

Section 51.07 - Self-Representation. Nothing shall preclude an employee from presenting a grievance to Management without representation by the Union; however, such an employee may not receive any better or worse treatment than other employees who elect Union representation, and any resolution must be consistent with the terms of this Agreement. Employees who elect to represent themselves shall receive a reasonable amount of duty time to prepare and present their grievances. Only the Union can invoke arbitration. If any employee represents himself/herself in a grievance filed under the grievance procedure contained in this Agreement, the Union shall be notified no less than twenty four (24) hours in advance of any meetings between Management and the grievant concerning the grievance. The Union may attend any such meetings as an observer. The Union shall be provided a copy of any grievance decisions that are issued.

Section 51.08 - Right to Representation.

- (1) The Union shall have the right to represent employees at any stage of this procedure and will make every effort to ensure that the time limits of this Article are met. If other forms of communication are not available or appropriate, the Department will pay reasonable travel expenses for the employee or Union to ensure Union representation.
- (2) Once an employee has designated the Union as representative, Management shall not discuss the grievance with the grievant unless the Union is given an opportunity to attend.
- (3) Only the Union, or a person designated in writing by the Union, may represent an employee under this negotiated procedure.

Section 51.09 - Protection of Grievants. The filing of a grievance shall not reflect unfavorably on an employee's good standing, performance, loyalty, or desirability to the Department. All Grievants will be protected from reprisal.

Section 51.10 - Duty Time for Grievants. Management shall grant reasonable duty time for an employee to prepare and present a grievance or appeal, including group grievances and arbitration.

Section 51.11 - Informal Resolution. Many grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort shall be made by the parties to settle disputes at the lowest possible level.

Section 51.12 – Mediation.

In an interest-based attempt to resolve grievances, a mediation process shall be available. Should either party invoke mediation after the last step of the grievance procedure, participation of the parties becomes mandatory. The parties agree to make every effort to reach agreement, however, neither party is obligated to reach Settlement. (see Article 10 for mediation process) Time frames for filing arbitration shall be held in abeyance until the mediation is completed.

Section 51.13 - Employee Grievances.

Step 1

If the dispute is not resolved informally, on or before forty-five (45) days from the date when the employee became aware of or should have become aware of the matter being grieved, the employee or Union shall submit the grievance on an Employee Grievance Form. Management will designate the Deciding Official who will have the full authority to resolve the grievance. A Deciding Official shall be at the same level or higher than the initiating official.

The Deciding Official shall meet with the grievant and representative, if any, within twenty (20) days after receipt of the grievance. Deciding officials outside of the area where the grievant is located may conduct the meeting in person, by telephone or video conferencing. Management shall send the employee(s) and Union representative a written reply within fifteen (15) days of the meeting. The reply shall include the grievance findings, and action(s) taken, if any, to settle the matter.

If the matter is not satisfactorily settled following the deciding official's response, the employee and representative (if any) may, within seven (7) days of the response, advance the grievance to the designated grievance officer.

Step 2

In the Field, the Step 2 Deciding Official shall be the highest level local official in the office, or their designee. In Headquarters, the Step 2 Deciding Official shall be the highest level official in the grievants' Program Area, or their designee. The Deciding Official shall review and take appropriate action to attempt to settle the grievance and issue a final written decision within twenty-five (25) days after receipt of the matter from Step 1. By mutual agreement of the parties, a meeting may be held at Step 2.

The Step 2 Deciding Official shall designate the Management Representative to be notified for the purpose of invoking arbitration and participation in the selection of an arbitrator.

Section 51.14 - Questions of Grievability or Arbitrability. Questions of arbitrability may be raised at any step of the grievance procedure, including the arbitration stage. If the issue of arbitrability is raised at the arbitration stage, then the party raising the issue (if successful) will pay all arbitration costs including travel for all parties, arbitrator fees, etc. Any unresolved question shall be considered as a threshold issue should the grievance go to arbitration. Questions of arbitrability shall be submitted to the arbitrator in writing and be decided prior to any hearing unless mutually agreed otherwise. The moving party bears the burden of demonstrating that the matter is not grievable.

Section 51.15 - Grievance of the Parties.

- (1) Should either party have a grievance over any matter covered by this procedure, it shall inform the designated representative of the other party of the specific nature of

the complaint in writing within forty-five (45) of the date or when the party became aware or should have become aware of the matter being grieved.

- (2) Upon request, the parties shall meet within twenty (20) days to discuss informal resolution of the grievance after notice is given.
- (3) Within thirty (30) days after receipt of the written grievance, the receiving party shall send a written response stating its position regarding the grievance. If the response is not satisfactory, the grieving party may refer the matter to arbitration.

Section 51.16 - Group Grievances. Either party may propose to the other party the combining of grievances which are before the same deciding official and which concern issues so similar that they can be efficiently and effectively treated as a group grievance. If the representatives handling the grievances do not agree as to whether the grievances should be combined, the grievances shall be treated individually through the grievance procedure to arbitration. If arbitration is invoked and either party seeks to combine the grievances, the arbitrator shall be asked to determine, as a threshold issue, whether they can be efficiently and effectively treated as a group grievance.

1
2
ARTICLE 51
GRIEVANCE PROCEDURES

3 **Section 51.01- Definition and Scope.** The purpose of this Article is to provide a mutually
4 acceptable method for the prompt resolution of grievances filed by bargaining unit employee(s),
5 the Union or the Agency. These procedures replace Management's administrative grievance
6 procedure (HUD Handbook 771.02 – Rev. 3, or successor) for employees in the bargaining unit
7 only to the extent those matters are grievable and arbitrable under this Article.

8 A grievance means any complaint by:

9 (1) Any employee concerning any matter relating to his/her employment; or

10 (2) The Union concerning any matter relating to the employment of any employee; or

11 (3) Any employee, the Union, or Management concerning:

12 (a) The effect or interpretation, or a claim of breach of this collective bargaining
13 agreement; or

14 (b) Any claimed violation, misinterpretation or misapplication of any law, rule, or
15 regulation affecting conditions of employment.

16
17 (4) Except complaints excluded under Section 51.03.

18 **Section 51.02 - Choosing an Appeals Procedure.** Nothing in this procedure shall prejudice the
19 right of the employee to appeal to the Merit Systems Protection Board or the Equal Employment
20 Opportunity Commission pursuant to Section 7121 of the Statute, or file an Unfair Labor
21 Practice or other appeal under the rules of the Federal Labor Relations Authority.

22 Any employee shall have exercised their choice to raise a matter under an applicable
23 statutory procedure or the negotiated procedure when the employee:

24 (1) Timely files a notice of appeal under the applicable statutory procedure or elects to use
25 the statutory Equal Employment Opportunity complaint process or

26 (2) Timely files a grievance in writing (or the Union invokes arbitration), whichever occurs
27 first.

28 An employee shall have exercised their option concerning EEO discrimination matters at such
29 time as the employee or the Union timely files a grievance in writing or files a formal written
30 complaint under the statutory EEO complaint procedure, whichever occurs first. Discussions
31 with an EEO counselor do not preclude the filing of a grievance that is otherwise timely.

32 **Section 51.03 - Exclusions.** Excepted from these negotiated procedures coverage are the
33 following:

34 (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to
35 prohibited political activities);

- 1 (2) Retirement, life insurance, or health insurance;
- 2 (3) Where there is no allegation of a violation of this Agreement, law or regulation, a student loan
3 repayment or hardship transfer;
- 4 (4) A suspension or removal under Section 7532 of Title 5 (relating to national security
5 matters);
- 6 (5) Any examination, certification, or appointment;
- 7 (6) The classification of any position which does not result in the reduction in grade or pay of
8 an employee;
- 9 (7) Where there is no allegation of a violation of this Agreement, law, or regulation the non-
10 selection for a promotion from a group of properly ranked and certified candidates;
- 11 (8) The separation of a probationary employee as defined by applicable law;
- 12 (9) Where there is no allegation of a violation of this Agreement, law, or regulation the
13 termination of a temporary promotion;
- 14 (10) The termination of a temporary appointment where the Standard Form-50 states that
15 the termination was based on a lack of work or lack of funds;
- 16 (11) Complaints by employees with temporary appointments not to exceed one (1) year;
- 17 (12) Verbal counseling;
- 18 (13) Written counseling;
- 19 (14) Progress reports on employee performance including Opportunity to Demonstrate
20 Acceptable Performance (ODAP);
21
- 22 (15) The temporary or permanent filling of any position outside the bargaining unit;
- 23 (16) The removal, suspension of more than 14 days, reduction in grade or furlough of non-
24 preference eligible employee in the excepted service, who has not completed two years of
25 current continuous service in the same or similar positions in an Executive agency under
26 other than a temporary appointment limited to two years or less;
- 27 (17) The filing of a parties grievance which involves the same individual and factual situation
28 as contained in an individual grievance;
- 29 (18) Where there is no allegation of a violation of this Agreement, law, or regulation
30 regarding the denial of a career ladder promotion;

- 1 (19) Financial disclosure; and
- 2 (20) The granting of or failure to grant a spot award.

3 **Section 51.04 - Time Limits.**

4 (1) The time limit for the filing of a grievance under this procedure is 30 days. The time period
5 for filing a grievance shall begin to run from the next workday after the grievant became
6 aware or should have become aware of the matter being grieved. A continuing violation may
7 be grieved at any time. The date of expiration of a time limit shall be 11:59 p.m. Eastern
8 Time the last day of the stated period, unless that day falls on a Saturday, Sunday, or non-
9 workday, in which case the following full workday shall be considered the last day. Either
10 party may grieve a continuing condition at any time. Where a receiving party of a grievance
11 fails to meet a time limit, the grieving party may advance the grievance to the next step
12 within 30 days following the expiration of the time limit, unless extended by mutual
13 consent. All extensions must be approved in writing by both Parties.

14
15 Management shall serve all grievance responses, and all other communications concerning
16 the grievance, upon the Union representative.

17
18 (2) For purposes of timeliness, the grievance shall be considered filed when it is delivered to the
19 appropriate Employee & Labor Relations office, an assigned grievance control officer, or
20 the grievance deciding official. Electronically submitted documents shall be accepted by
21 both Parties.

22
23 Minor errors (e.g. typographical errors) or omissions in completing the grievance form
24 shall not be used as a basis to reject any grievance.

25
26 **Section 51.05 - Self-Representation.** Nothing shall preclude an employee from
27 presenting a grievance to Management without representation by the Union; however,
28 such an employee may not receive any better or worse treatment than other employees
29 who elect Union representation, and any resolution must be consistent with the terms of
30 this Agreement. Employees who elect to represent themselves shall receive a reasonable
31 amount of duty time to prepare and present their grievances. Only the Union can invoke
32 arbitration. If any employee is self-represented in a grievance filed under the grievance
33 procedure contained in this Agreement, the Union shall be notified no less than two days
34 in advance, absent extenuating circumstances, of any meetings between Management and
35 the grievant concerning the grievance. The Union may attend any such meetings as an
36 observer. The Union shall be provided a copy of any grievance decisions that are issued.

37 **Section 51.06 - Right to Representation.**

38 (1) The Union shall have the right to represent employees at any stage of this procedure.

39 (2) Once an employee has designated the Union as representative, Management shall not
40 discuss the grievance with the grievant unless the Union is given an opportunity to
41 attend.

1 (3) Only the Union's designated representative, or a person(s) designated in writing by the
2 Union, may represent an employee under this negotiated procedure. The number of
3 representatives that an employee may have shall be equal to the number of Management
4 officials in attendance at the grievance meeting. ~~An employee may have more than one~~
5 ~~representative attend meetings regarding grievances.~~

6 (4) The Union has the right to be present during any proceeding under the negotiated grievance
7 procedure. If the Union is not the designated representative, a redacted copy of the grievance
8 will be provided to the Union within five days of the filing date. A copy of each grievance
9 decision will be provided to the Union at the same time that it is provided to the employee.
10 An employee can provide written permission to Management that the Union can receive an
11 un-redacted copy of the grievance and subsequent decisions.

12 **Section 51.07 - Duty Time for Grievants.** Management shall grant reasonable duty time for
13 an employee to prepare and present a grievance or appeal, including group grievances and
14 arbitration.

15 **Section 51.08 - Informal Resolution.** Many grievances arise from misunderstandings or
16 disputes which can be settled promptly and satisfactorily on an informal basis at the immediate
17 supervisory level. Every appropriate effort shall be made by the Parties to settle disputes at the
18 lowest possible level. For example, the Parties may mutually agree to use any of the methods
19 described in the Article on Collaborative Conflict Resolution. ~~All time frames may be extended~~
20 ~~by written mutual agreement.~~

21 **Section 51.09 - Employee Grievances.**

22 **Step 1**

23 If the dispute is not resolved informally, on or before 30 days from the date when the
24 employee became aware of or should have become aware of the matter being grieved, the
25 employee or Union shall submit the grievance on an Employee Grievance Form (provided
26 in Appendix) to the ~~Employee and Labor Relations office~~ appropriate ELR representative.
27 The facts submitted on or with the Employee Grievance Form must include sufficient
28 detail to identify and clarify the issues of the grievance, including the date, time and place
29 (if applicable) of the alleged incident and the Management official(s) involved.
30 Management will designate the Deciding Official who will have the authority to resolve
31 the grievance.

32 Within 20 days after the Deciding Official's receipt of the grievance, the Deciding
33 Official shall meet with the grievant and representative, if any, for presentation of the
34 grievance. Deciding officials outside of the area where the grievant is located may
35 conduct the meeting in person, by telephone or video conferencing. Management shall
36 send the employee(s) and Union representative a written reply within 15 days of the
37 meeting, if held or within 30 days from the date the grievance was received. The reply
38 shall include the grievance findings, and action(s) taken, if any, to settle the matter.

1 If the matter is not satisfactorily settled following the Deciding Official's response, the
2 employee and representative (if any) may, within seven days of the response, advance the
3 grievance to the designated management official. If a timely response is not received, the
4 grieving party may advance the grievance to Step 2 within 30 days following expiration of
5 the Step 1 response due date.

6 **Step 2**

7 The Step 2 Deciding Official shall be a different official than the Step 1 Deciding Official,
8 designated by Management and have the authority to resolve the grievance. Within 15 days
9 after the Deciding Official's receipt of the Step 2 grievance, the Deciding Official shall meet
10 with the grievant and representative, if any, for presentation of the grievance. Deciding
11 Officials outside of the area where the grievant is located may conduct the meeting in
12 person, by telephone or video conferencing. Management shall send the employee(s) and
13 designated Union representative a written response within 15 days of the meeting, if held, or
14 within 25 days from the date the grievance was received. The Deciding Official shall review
15 and take appropriate action to attempt to settle the grievance. Failure to issue a decision will
16 not in and of itself terminate a grievance.

17 The Step 2 Deciding Official shall designate the management representative to be
18 notified for the purpose of invoking arbitration and participation in the selection of an
19 arbitrator.

20 All grievance responses shall be delivered to the designated representatives email
21 address.

22 **Section 51.10 - Grievance of the Parties.**

23 (1) Should either party have a grievance over any matter covered by this procedure that is
24 not specific to any one individual employee, it shall inform the designated
25 representative of the other party (i.e. either the designated Union representative for the
26 Union or the appropriate Employee & Labor Relations division staff member for
27 management) of the specific nature of the complaint in writing within 30 days of the
28 date when the party became aware or should have become aware of the matter being
29 grieved. Management shall determine who will issue the decision on behalf of
30 Management. The grievance must include, at a minimum:

- 31 (a) Date of alleged violation and date submitted;
 - 32 (b) The name of the grieving party's representative;
 - 33 (c) Issue(s)/subject(s);
 - 34 (d) Statement of facts and description of dispute;
 - 35 (e) Alleged contractual provisions(s) violated;
 - 36 (f) Names of all employee affected, unless the Union is unable to
37 identify all employee in that case an accurate description of the
38 class of employees affected; and
 - 39 (g) Remedy sought.
- 40

1 (2) Upon request, the parties shall meet within 20 days to discuss informal resolution of the
2 grievance after notice is given.

3
4 (3) Within 30 days after receipt of the written grievance, the receiving party shall send a
5 written response stating its position regarding the grievance. If the response is not
6 satisfactory, the grieving party may refer the matter to arbitration.

7 **Section 51.11 - Group Grievances.** Either party may propose to the other party the combining
8 of grievances which are before the same deciding official and which concern issues so similar
9 that they can be efficiently and effectively treated as a group grievance. If the representatives
10 handling the grievances do not agree as to whether the grievances should be combined, the
11 grievances shall be treated individually through the grievance procedure to arbitration. If
12 arbitration is invoked and either party seeks to combine the grievances, the arbitrator shall be
13 asked to determine, as a threshold issue, whether they can be efficiently and effectively treated
14 as a group grievance.

15 **Section 51.12 - Questions of Grievability or Arbitrability.** Either Party may raise
16 questions of arbitrability at any step of the grievance procedure, including the arbitration
17 stage (e.g. by denying the grievance because it is procedurally or substantively non-
18 grievable or non-arbitrable). Any unresolved question shall be considered as a threshold
19 issue should the grievance go to arbitration. Questions of arbitrability shall be submitted to
20 the arbitrator in writing and be decided prior to any hearing unless mutually agreed
21 otherwise. Arbitration fees and costs associated with questions of arbitrability shall be
22 resolved according to Article 52. The moving party bears the burden of demonstrating that
23 the matter is not grievable.

24

Article 52: Arbitration

Section 52.01 - General.

- (1) If a grievance remains unresolved despite efforts to resolve the matter under the negotiated grievance procedure, arbitration may be invoked by the Union or Management.
- (2) Nothing in this article shall be construed to discourage the settlement of the issue prior to the opening of the arbitration hearing or during the arbitration hearing.
- (3) The Union may serve as representative and/or co-representative for a grievant in an arbitration.
- (4) The date of expiration of any time limits shall be 11:59 p.m. ET on the last day of the stated period, unless that day falls on a Saturday, Sunday, or non-workday, in which case the following workday shall be considered the last day.

~~(4)(5)~~ A suspension of 14 days or less may be referred directly to arbitration.

Section 52.02 - Notice.

- (1) Either the Union or Management shall notify the other party of its submission of a matter to arbitration by giving written notice within 20 days of a final rejection at the last step of the grievance procedure, or Management's final notice of decision in a suspension of 14 days or less. Such notice shall identify:
 - (a) The specific grievance;
 - (b) Name of the grievant;
 - (c) The designated representative(s) who shall handle the case;
 - (d) Date grievance submitted;
 - ~~(e) Issues(s)/subject(s) to be arbitrated;~~
 - ~~(f) Statement of facts and description of dispute;~~
 - ~~(g)(e)~~ Alleged contractual provision(s), law, rule, or regulation violated;
 - ~~(h)(f)~~ Remedy sought; and
 - ~~(i)(g)~~ Whether the invoking party will submit a request for arbitrators to a mutually agreed upon source of arbitrators or request to use a panel under 52.03(2) below.

- (2) The party invoking arbitration shall submit the request for arbitrators to FMCS or another mutually agreed upon source of arbitrators no later than seven days after issuing notification in accordance with 52.02(1) above.

~~(3) If the party invoking arbitration fails to invoke arbitration within the required timeframe or if the notice does not include all of the information specified above, the party shall be considered to have waived its right to an arbitration hearing and the grievance shall be deemed withdrawn.~~

Section 52.03 - Selection.

- 1 (1) Any arbitrator selected must have a Dun and Bradstreet number, or successor identifier,
2 and be enrolled in the contractor database utilized by HUD prior to setting a date for the
3 hearing.
4
- 5 (2) The Department and the National Council of HUD Locals 222 and any AFGE HUD local
6 may select an arbitrator from a FMCS listing or may create a panel of arbitrators, and use
7 this panel from which to choose arbitrators. When an established panel is used as the
8 source of arbitrators, the parties shall meet to select an arbitrator within seven days from
9 service of the notice of invocation of arbitration in Section 52.02(1) above. ~~If the
10 invoking party fails to meet the deadline established in this section, then the party waives
11 its right to an arbitration hearing and the grievance shall be deemed withdrawn.~~
12
- 13 (3) When an established panel is not utilized, the invoking party shall submit a request for a
14 list of at least seven or other odd number of impartial arbitrators to the FMCS or another
15 mutually agreed upon source of arbitrators no later than seven days following the notice
16 of invocation of arbitration in Section 52.02(1) above. The source of arbitrators shall be
17 the FMCS unless the parties mutually agree to use a comparable alternate source, which
18 will provide a detailed resume and fee schedule for each arbitrator. ~~If the invoking party
19 does not submit the request for arbitrators to the FMCS or agreed upon source within
20 seven days of invoking arbitration, the party waives its right to an arbitration hearing and
21 the grievance shall be deemed withdrawn.~~ Within 15 days of receipt of the list, the parties
22 shall meet and select an arbitrator. If the parties cannot mutually agree upon one of the
23 listed arbitrators, Management and the Union shall each strike one arbitrator's name from
24 the list, and then repeat this procedure until one person remains who shall be the duly
25 selected arbitrator. The party making the first strike shall be determined by the flip of a
26 coin. ~~If the invoking party fails to meet with the other party and select an arbitrator within
27 15 days of receipt of the FMCS list, or when a panel is used within seven days from
28 service of the Notice of Invocation of Arbitration, the party waives its right to an
29 arbitration hearing and the grievance shall be deemed withdrawn.~~
30
- 31 (4) The hearing will be scheduled within 120 days; however, if the parties are engaged in
32 settlement discussions, the timeframe may be extended by mutual agreement.
33

34 **Section 52.04 - Arbitration Fees and Expenses.**

- 35 (1) The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate
36 which party is the losing party. If, in the arbitrator's judgment, neither party is the clear
37 losing party, costs shall be shared equally. The party or parties responsible for the
38 payment of any associated fees or other expenses shall promptly pay the costs.
39
- 40 (2) The invoking and responding party shall be responsible for their own expenses prior to
41 the decision or settlement. All witnesses and/or representatives must appear in person,
42 unless mutually agreed upon by both parties or ordered by the arbitrator. Each party will
43 pay the travel and per diem costs for its witnesses and/or representatives.
44
- 45 (3) If fees are assessed by the arbitrator due to cancellation or postponement, the party
46 responsible for the postponement or cancellation shall pay all attendant costs, unless

1 ~~settlement or other mutual arrangements are made. If arbitration is postponed or canceled~~
2 ~~any fees associated with the postponement or cancellation of arbitration shall be the~~
3 ~~responsibility of the postponing or canceling party.~~ If arbitration is postponed or
4 cancelled by settlement or other mutual arrangements, any arbitration expenses shall be
5 paid according to the terms of the mutual agreement.
6

- 7 (4) The Department will make arrangements for a court reporting service for the hearing at
8 its or the Union's request, and the parties shall split the costs. Copies of transcripts will be
9 available to both parties at their own expense. A copy shall be provided to the arbitrator,
10 the cost of which will be shared equally by the parties. Transcripts for the arbitrator shall
11 be requested at the most reasonable rate available.
12

13 **Section 52.05 - Arrangements.**

14 Upon selection of an arbitrator in a particular case, the respective representatives shall
15 communicate with the arbitrator and each other in order to finalize arrangements. No ex parte
16 communications with the arbitrator shall be permitted on the merits of the case. Any disputes on
17 procedures shall be settled by the arbitrator consistent with this Agreement.
18

19 **Section 52.06 - Direct Designation.**

20 Upon request of the grieving party (i.e., Management or the Union), the FMCS or other service
21 shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- 22 (1) The other party refuses to participate in the selection of an arbitrator; or
23 (2) Upon inaction or undue delay on the part of the other party.
24

25 **Section 52.07 - Location.**

26 Normally, the arbitration hearings shall be held at Management's premises at the grievant's duty
27 station; however, an alternate, mutually acceptable site may be used. National level hearings
28 shall normally be held in Washington, D.C. The space for arbitration shall be sufficient to meet
29 the needs of the hearing, sequestration of witnesses, consultation between parties and their
30 representatives, and any other mutually agreeable needs.
31

32 **Section 52.08 - Prehearing Submissions and Conferences.**

33 ~~(1) The parties are encouraged to develop factual stipulations, joint exhibits, and a joint~~
34 ~~statement of the issue or issues to submit to the arbitrator as far in advance as possible~~
35 ~~prior to the hearing. A party may submit to the other party proposed factual stipulations,~~
36 ~~joint exhibits, and a joint statement of the issue or issues at least 60 days prior to the~~
37 ~~scheduled hearing date.~~ The parties shall confer and attempt to develop factual
38 stipulations, joint exhibits, and a joint statement of the issue or issues at least ~~45-21~~ days
39 prior to the scheduled hearing date.
40

41 ~~(2) At the request of either party, a pre-hearing conference shall be held at least 14 days prior~~
42 ~~to the hearing. The pre-hearing conference shall be held among the parties and/or their~~
43 ~~attorneys or other representatives and the arbitrator to discuss matters which may include,~~
44 ~~without limitation, substantive or procedural issues, witnesses, etc.~~
45

1 (3) No later than 14 days prior to the scheduled hearing date, the parties shall provide to
2 each other and the arbitrator:

- 3 a. Any the agreed upon factual stipulations, joint exhibits, and joint statement of the
4 issue or issues ~~to the arbitrator at least 14 days prior to the scheduled hearing~~
5 ~~date.;~~
6 b. If the parties fail to agree on a joint submission of the issue or issues for
7 arbitration, each shall submit to the arbitrator and opposing party Any separate
8 issue statements and supporting arguments for the issue statement submitted along
9 with the grievance package and current CBA ~~at least 21 days prior to the~~
10 ~~scheduled hearing date. If either party fails to submit its own issue statement, that~~
11 ~~party waives its right to object to the issue statement decided by the arbitrator.~~
12 ~~The arbitrator shall determine the issue(s) to be heard and factual matters deemed~~
13 ~~to be stipulated at least ten days before the scheduled hearing date.;~~
14 c. A list of witnesses to be called to testify with a brief synopsis of each witness's
15 expected testimony; and
16 d. Exhibits, with an index, proposed to be entered into evidence.

17
18 ~~(+)(4) The parties shall submit the following to the arbitrator and a copy to the other party at~~
19 ~~least 21 days prior to the hearing date: a statement of the material facts; a list of witnesses~~
20 ~~to be called to testify with a detailed summary of each witness's expected testimony; and~~
21 ~~a copy of all exhibits (marked in the bottom right hand corner) that will be relied upon at~~
22 ~~the hearing. Each party may submit a response to the other party's prehearing~~
23 ~~submissions at least 14 days prior to the hearing date. If either party fails to submit its~~
24 ~~own statement of the material facts, that party waives its right to object to any material~~
25 ~~facts decided by the arbitrator. Witnesses not identified in a party's prehearing~~
26 ~~submissions, with the exception of rebuttal witnesses, shall not be permitted to testify or~~
27 ~~participate in the arbitration. Exhibits not identified in a party's prehearing submissions~~
28 ~~shall be excluded from the hearing. If either party fails to submit its own issue statement~~
29 ~~with its pre-hearing submissions, that party will be precluded from submitting its own~~
30 ~~issue statement at the hearing or any later time. The arbitrator shall decide which~~
31 ~~witnesses are approved to testify and which exhibits will be permitted at least ten days~~
32 ~~prior to the scheduled hearing date.~~

33
34 **Section 52.09 - Witnesses.**

- 35 (1) All employees who are called as witnesses are considered to be on duty time to
36 participate in the arbitration process and hearing.
37
38 (2) At the request of either party the arbitrator may order the sequestration of any witness or
39 witnesses during the testimony of other witnesses.
40
41 (3) Witnesses that are part of either party's representational team shall not be sequestered;
42 however, they must provide testimony before any other witness is called for their party.
43 In the event both parties have representatives who are witnesses, the invoking party's
44 representative witness(es) shall testify first.
45

- 1 (4) Witnesses not identified in a party's prehearing submissions, with the exception of
2 rebuttal witnesses, shall not be permitted to testify or participate in the arbitration. Parties
3 shall not intimidate or coerce the testimony of witnesses subject to penalty. An opposing
4 party will not contact witnesses representing the other party without first providing a
5 minimum two-day notice to the opposing party.
6

7 **Section 52.10 - Authority of the Arbitrator.**

- 8 (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to
9 the issue(s) presented in the grievance. Arbitrability and grievability determinations shall
10 be made by the arbitrator prior to addressing the merits of the grievance, ~~i.e., a threshold~~
11 ~~determination of the issues to be heard based on the stipulations submitted by the Parties.~~
12 Questions of arbitrability shall be submitted to the arbitrator in writing and the arbitrator
13 shall issue a ruling on the merits of any such motion prior to the scheduled hearing on the
14 merits unless mutually agreed otherwise. If a party files a motion based on jurisdiction
15 and authority of the arbitrator, or otherwise concerning arbitrability or grievability, a
16 response to the motion may be filed. The party asserting that the matter is not
17 grievable/arbitrable bears the burden of demonstrating that assertion.
18
- 19 (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms
20 of this Agreement, or any supplement thereto.
21
- 22 (3) An arbitrator shall lack authority to determine the appropriateness of a Management
23 decision to exercise any of the rights set forth in Article 4 (Rights and Obligations of the
24 Parties), Section 4.06, which do not amount to a violation of applicable law, regulation,
25 or this Agreement.
26
- 27 (4) An arbitrator shall lack authority to determine the legality or regulatory correctness of
28 any Management decision not impacting personnel policies, practices or matters affecting
29 general conditions of employment.
30
- 31 (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
32
- 33 (6) The arbitrator's award shall be binding on the parties. An award must be consistent with
34 current law and regulation.
35
- 36 (7) In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in
37 accordance with an appropriate waiver of sovereign immunity, including in accordance
38 with standards contained in the Back Pay Act as amended by the Civil Service Reform
39 Act of 1978. If the Union petitions for attorney's fees, the Union's attorney must submit
40 an original, dated, retainer agreement and a verified fee statement. The parties agree that
41 the Union's attorney is not entitled to a higher hourly attorney-fee rate, including the
42 *Laffey* Matrix rate, and the arbitrator has no authority to award a rate higher than what is
43 reflected on the lower of the hourly rate contained in retainer agreement and verified fee
44 statement. ~~Should the original retainer agreement and verified fee statement not be~~
45 ~~provided to the Agency, no attorney fee award can be made by the arbitrator.~~ The process
46 for requesting attorney fees must comply with the Back Pay Act or other applicable legal

1 authority. Any attorney fee rate awarded will be capped at the General Schedule (GS)
2 Grade 153/Step 10 level for the locality where the hearing is held.

- 3
4 (8) Payments to the arbitrator shall be paid regardless of whether any exception(s) are filed.
5 Exceptions may include requests for reimbursement of arbitrators' fees.
6

7 **Section 52.11 - Exceptions.**

8 Where exception is taken to an arbitration award and the Federal Labor Relations Authority
9 (FLRA) sets aside a portion of the award, the arbitrator shall modify the original award
10 consistent with the requirements of the FLRA decision. Where the FLRA vacates an award, no
11 further action is required by the arbitrator.
12

13 **Section 52.12 - Refusal to Participate.**

14 Should either party refuse to participate in an arbitration, the arbitrator shall continue to hear the
15 case and base their decision solely on the record. Once arbitration has begun, the non-
16 participating party shall be limited to evidence in the record that it put forward prior to the
17 arbitration hearing.
18

19 **Section 52.13 - 120-Day Requirement.**

20 Where, due to circumstances beyond the control of the arbitrator and the parties, an arbitrator
21 cannot hear a case within 120 days of invoking arbitration, the parties may mutually agree to
22 select another arbitrator.
23

24 **Section 52.14 - Expedited Arbitration Procedures.**

25 The parties may mutually agree that certain arbitrations are properly handled more expeditiously.
26 Procedures contained in this Section supplement the arbitration procedures covered elsewhere in
27 this Agreement, and, when in conflict with other procedures, supersede them:
28

- 29 (1) The arbitrator selected for an expedited arbitration will be requested to convene a hearing
30 within 30 days after selection, or as soon after that as possible. In any case, the arbitration
31 should be completed within 90 days.
32
33 (2) If the parties mutually conclude at the hearing that the issues are of such complexity or
34 significance as to warrant further consideration, the hearing may be conducted in
35 accordance with regular arbitration procedures. However, the parties may mutually agree
36 to have the same arbitrator hear the grievance and continue the hearing by use of regular
37 procedures.
38
39 (3) Unless requested by the arbitrator, there shall be no post-hearing briefs. It is understood
40 that the parties may make closing arguments at the hearing. All documents to be
41 considered by this arbitrator shall be filed at the hearing.
42
43 (4) The parties will endeavor to complete the hearing in one day. Each party shall be
44 allocated a fair amount of time to present their case at the hearing. The arbitrator shall
45 have full authority to limit the parties in the presentation of evidence or witnesses given
46 the time limitation on the hearing.

1
2 (5) The arbitrator will make every effort to render their decision orally (a bench decision) at
3 the hearing. Alternatively, the arbitrator will endeavor to render a written decision within
4 ten days after the date of the hearing.

5
6 (6) The Arbitrator's decision shall be final and binding, unless it is timely appealed to a
7 Federal court or an exception is filed with the Federal Labor Relations Authority under 5
8 USC Section 7122, whichever is appropriate.

9
10 **Section 52.15 - Implementation of Decision.**

11 Implementation of an arbitration decision should be accomplished as soon as practicable once
12 the award is final and binding. Unless exceptions are filed, implementation should normally
13 begin within four pay periods of the date of the award.

14
15 **Section 52.165 - Extension of Time Limits.**

16 Time limits in this Article may be modified by mutual written consent of the parties.

17
18 **Section 52.17 – Procedural Compliance**

19 If the party invoking arbitration fails to follow any procedure in this Article, the grievance shall
20 be deemed to procedurally invalid.

21

ARTICLE 52 ARBITRATION

Section 52.01 - General. If a grievance remains unresolved despite efforts to resolve the matter under the negotiated grievance procedure, arbitration may be invoked by the Union or Management. In accordance with applicable provisions of this Agreement, a suspension of 14 days or less, adverse action or unacceptable performance action may be referred directly to arbitration.

Nothing in this article shall be construed to discourage the settlement of the issue prior to the opening of the arbitration hearing or during the arbitration hearing.

The Union may serve as Representative and/or Co-Representative for a grievant in an arbitration.

Section 52.02 - Notice. Either the Union or Management shall notify the other party of its submission of a matter to arbitration by giving written notice within twenty-five (25) days of a final rejection at the last step of the grievance procedure, or Management's final notice of decision in a suspension of 14 days or less, adverse action or unacceptable performance based action. Such notice shall identify the specific grievance, suspension of 14 days or less, adverse action or unacceptable performance action involved and the designated representative(s) who shall handle the case. The party(s) invoking arbitration shall submit the request for arbitrators to FMCS or another mutually agreed upon source of arbitrators with the Notice of Invocation of Arbitration. The hearing will be scheduled within 120 days; however, if the parties are engaged in settlement discussions, the timeframe may be extended by mutual agreement.

Section 52.03 - Selection. Any arbitrator selected must have a Dun and Bradstreet number and either be enrolled in the contractor database utilized by HUD or agree to enroll in the contractor database prior to the completion of the hearing.

The Department and the National Council of HUD Locals 222 and any AFGE HUD local may select an arbitrator from a FMCS listing or may create a panel of arbitrators, and use this panel from which to choose arbitrators. When an established panel is used as the source of arbitrators, the parties shall meet to select an arbitrator within seven (7) days from service of the notice of arbitration.

When an established panel is not utilized, the party requesting arbitration shall request a list of at least seven (7) or other odd number of impartial arbitrators from the FMCS. The source of arbitrators shall be the FMCS unless the parties mutually agree to use a comparable alternate source, which will provide a detailed resume and fee schedule for each arbitrator. Within fifteen (15) days of receipt of the list, the parties will meet and select an arbitrator. If the parties cannot mutually agree upon one (1) of the listed arbitrators, Management and the Union shall each strike one (1) arbitrator's name from the list, and then repeat this procedure until one (1) person remains who shall be the duly selected arbitrator. The party making the first strike shall be determined by the flip of a coin.

Section 52.04 - Arbitration Fees and Expenses. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is the losing party. If, in the arbitrator's judgment, neither party is the clear losing party, costs shall be shared equally. If fees are assessed by the

arbitrator due to cancellation or postponement, the party responsible for the postponement or cancellation shall pay all attendant costs, unless settlement or other mutual arrangements are made.

The invoking and responding party shall be responsible for their own expenses prior to the decision or settlement, except that the Department will pay the travel and per diem costs, if necessary, for up to three (3) union witnesses duty stationed within the same region as the hearing is held or for national arbitrations. Such witnesses shall not serve as representatives at the hearing. The parties shall endeavor to have off-site witnesses testify via teleconference, videoconference, or other means acceptable to the Arbitrator.

If arbitration is cancelled by mutual agreement, any fees associated with the arbitration shall be split by the parties. If arbitration is cancelled by settlement or other mutual arrangements, any arbitration expenses shall be paid according to the terms of the agreement.

The party or parties responsible for the payment of any associated fees or other expenses shall promptly pay the costs.

The Department will make arrangements for a court reporting service for the hearing or deposition at it's or the Union's request, and the parties shall split the costs. A copy shall be provided to the arbitrator and both parties. Transcripts will be requested at the most reasonable rate available. If either party purchases transcripts it will provide the other party a free copy of the transcripts.

Section 52.05 - Arrangements. Upon selection of an arbitrator in a particular case, the respective representatives shall communicate with the arbitrator and each other in order to finalize arrangements. No ex parte communications with the arbitrator shall be permitted on the merits of the case, but both parties may discuss procedural arrangements as necessary. Any disputes on procedures shall be settled by the arbitrator consistent with this Agreement.

Section 52.06 - Direct Designation. Upon request of the grieving party (i.e., Management or the Union), the Federal Mediation Conciliation Service (FMCS) or other service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- (1) Either party refuses to participate in the selection of an arbitrator; or
- (2) Upon inaction or undue delay on the part of either party.

Section 52.07 - Location. Normally, the arbitration hearings shall be held at Management's premises at the grievant's duty station; however, an alternate, mutually acceptable site may be used. National level hearings shall normally be held in Washington, D.C. Management shall pay reasonable travel and per diem for one (1) Union representative and one (1) technical representative for National level hearings. The space for arbitration shall be sufficient to meet the needs of the hearing, sequestration of witnesses, consultation between parties and their representatives, and any other needs.

Section 52.08 - Prehearing Submissions and Conferences. The parties will attempt to develop stipulations and a joint statement of the issue or issues to submit to the arbitrator prior to the

hearing. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit separate statements and the arbitrator shall determine the issue(s) to be heard and factual matters deemed to be stipulated.

The parties shall exchange and discuss stipulations, proposed exhibits, and proposed settlement no later than seven (7) days prior to the hearing.

At the request of either party, a pre-hearing conference may be held no later than seven (7) days prior to the hearing. The pre-hearing conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator to discuss administrative matters which may include availability of witnesses. Unless the parties agree otherwise, the pre-hearing conference shall be conducted by telephone conference call.

Section 52.09 - Witnesses.

- (1) The parties shall exchange witness lists and also provide them, to the Arbitrator no less than seven (7) days in advance of the hearing, and shall include a brief summary statement of the expected testimony of each witness. Disputes as to the relevancy of a witness or redundant testimony will be resolved by the Arbitrator. These requirements do not pertain to rebuttal witnesses. Parties shall not intimidate or coerce the testimony of witnesses subject to penalty. An opposing party will not contact the other party's witnesses without first providing a minimum two (2) day notice to the opposing party.
- (2) The parties shall exchange witness lists, if known, no less than seven (7) days in advance of the hearing, which includes a summary statement of the expected testimony of each witness. Witnesses not identified in the witness list seven (7) days in advance, shall be permitted to testify or participate in the arbitration, unless excluded by order of the Arbitrator.
- (3) All employees who are called as witnesses are considered to be on duty time to participate in the arbitration process and hearing.
- (4) At the request of either party the arbitrator may order the sequestration of any witness or witnesses during the testimony of other witnesses.
- (5) Witnesses that are part of either party's representational team shall not be sequestered; however, they must provide testimony before any other witnesses are called.

Section 52.10 - Authority of the Arbitrator.

- (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the issue(s) presented in the grievance.
- (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in accordance with any legal remedy allowed by law, including in

accordance with standards contained in the Back Pay Act as amended by the Civil Service Reform Act of 1978.

- (3) Except for decisions to discipline, an arbitrator shall lack authority to determine the appropriateness of a Management decision to exercise any of the rights set forth in Article 4, Section 4.06, which do not amount to a violation of applicable law, regulation, or this Agreement.
- (4) An arbitrator shall lack authority to determine the legality or regulatory correctness of any Management decision not impacting personnel policies, practices or matters affecting general conditions of employment.
- (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- (6) The arbitrator's award shall be binding on the parties. An award must be consistent with current law and regulation.
- (7) Payments to the arbitrator shall be immediately paid regardless of whether any exception(s) are filed. Exceptions may include requests for reimbursement of arbitrators' fees.

Section 52.11 - Exceptions. Where exception is taken to an arbitration award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the arbitrator shall modify the original award consistent with the requirements of the FLRA decision.

Section 52.12 - Refusal to Participate. Should either party refuse to participate in an arbitration, the arbitrator shall continue to hear the case and base their decision solely on the record. Once arbitration has begun, the non-participating party shall be limited to evidence in the record that it put forward prior to the arbitration hearing.

Section 52.13 - Merit. Where a grievance is taken to arbitration and is found to be patently without merit and/or frivolous, and without any reasonable basis, the arbitrator, notwithstanding any other provision of this Agreement, shall charge all arbitrator's fees and representation fees to the losing party. In all other cases, fees shall be assessed in accordance with Section 52.04.

Section 52.14 - Ninety (90) Day Requirement. Where, due to circumstances beyond the control of the arbitrator and the parties, an arbitrator cannot hear a case within 90 days, the parties may mutually agree to select another arbitrator.

Section 52.15 - Expedited Arbitration Procedures. The parties may mutually agree that certain arbitrations are properly handled more expeditiously. Procedures contained in this Section supplement the arbitration procedures covered elsewhere in this Agreement, and, when in conflict with other procedures, supersede them:

- (1) The Arbitrator selected for an expedited arbitration will be requested to convene a hearing within thirty (30) days after selection, or as soon after that as possible. In any case, the arbitration should be completed within 90 days.
- (2) If the parties mutually conclude at the hearing that the issues are of such complexity or significance as to warrant further consideration, the hearing may be conducted in accordance with regular arbitration procedures. However, the parties may mutually agree to have the same arbitrator hear the grievance and continue the hearing by use of regular procedures.
- (3) Unless requested by the Arbitrator, there shall be no post-hearing briefs. It is understood that the parties may make closing arguments at the hearing. All documents to be considered by this arbitrator shall be filed at the hearing.
- (4) There will be no court reporter or transcripts.
- (5) The parties will endeavor to complete the hearing in one day. Each party shall be allocated a fair amount of time to present their case at the hearing. The arbitrator shall have full authority to limit the parties in the presentation of evidence or witnesses given the time limitation on the hearing.
- (6) The arbitrator will make every effort to render their decision orally (a bench decision) at the hearing. Alternatively, the arbitrator will endeavor to render a written decision within ten (10) days after the date of the hearing.
- (7) The Arbitrator's decision shall be final and binding, unless it is timely appealed to a Federal court or an exception is filed with the Federal Labor Relations Authority under 5 USC Section 7122, whichever is appropriate.

Arbitration costs shall be apportioned as otherwise provided in this Article.

Section 52.16 - Implementation of Decision or Settlement.

Implementation of an arbitration decision or settlement that involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and should be completed in no later than four (4) pay periods, unless exceptions are filed. Implementation of other arbitration decisions or settlements that do not involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and will be completed in a reasonable timeframe agreed to by the parties, unless exceptions are filed.

Section 52.17 - Appeal. Arbitration decision reversals should be discussed with the affected parties and their representative(s) prior to implementation. Implementation of appealed decisions or settlements shall be processed in accordance with Section 52.16.

Section 52.18 - Extension of Time Limits. Time limits in this Article may be modified by mutual written consent of the parties.

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- 1 (1) Any arbitrator selected must have a Dun and Bradstreet number, or successor
2 identifier, and be enrolled in the contractor database utilized by HUD prior to setting a
3 date for the hearing.
4
- 5 (2) The Department and the National Council of HUD Locals 222 and any AFGE HUD
6 local may select an arbitrator from a FMCS listing or may create a panel of arbitrators
7 and use this panel from which to choose arbitrators. When an established panel is used
8 as the source of arbitrators, the parties shall meet to select an arbitrator within seven
9 days from service of the notice of arbitration in Section 52.02(1) above.
10
- 11 (3) When an established panel is not utilized, the invoking party shall submit a request a
12 list of at least seven or other odd number of impartial arbitrators to the FMCS or
13 another mutually agreed upon source of arbitrators no later than seven days following
14 the invocation of arbitration in Section 52.02 (1) above. The source of arbitrators shall
15 be the FMCS unless the parties mutually agree to use a comparable alternate source,
16 which will provide a detailed resume and fee schedule for each arbitrator. Within 15
17 days of receipt of the list, the parties will meet and select an arbitrator. If the parties
18 cannot mutually agree upon one of the listed arbitrators, Management and the Union
19 shall each strike one arbitrator's name from the list, and then repeat this procedure
20 until one person remains who shall be the duly selected arbitrator. The party making
21 the first strike shall be determined by the flip of a coin.
22
- 23 (4) The hearing will be scheduled within 120 days; however, if the parties are engaged in
24 settlement discussions, the timeframe may be extended by mutual agreement.

25 **Section 52.04 - Arbitration Fees and Expenses.**

- 26 (1) The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall
27 indicate which party is the losing party. If, in the arbitrator's judgment, neither party is
28 the clear losing party, costs shall be shared equally. The party or parties responsible
29 for the payment of any associated fees or other expenses shall promptly pay the costs.
30
- 31 (2) The invoking and responding party shall be responsible for their own expenses prior
32 to the decision or settlement, ~~except that the Department will pay the travel and per~~
33 ~~diem costs, if necessary, for up to three Union witnesses duty stationed within the~~
34 ~~same region as the hearing is held or for national arbitrations. Such witnesses shall~~
35 ~~not serve as representatives at the hearing.~~ The parties shall endeavor to have off-site
36 witnesses testify in person however via teleconference, videoconference, or other
37 virtual means acceptable to the Arbitrator shall be allowed.
- 38 (3) If fees are assessed by the arbitrator due to cancellation or postponement, the Pparty
39 responsible for the postponement or cancellation shall pay all attendant costs, unless
40 settlement or other mutual arrangements are made. If arbitration is postponed or
41 cancelled by settlement or other mutual arrangements, any arbitration expenses shall
42 be paid according to the terms of the mutual agreement.
43

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1 (4) The Department will make arrangements for a court reporting service for the hearing
2 at its or the Union's request, and the parties shall split the costs. Copies of transcripts
3 will be available to both parties at their own expense. A copy shall be provided to the
4 arbitrator the cost of which will be shared equally by the parties. Transcripts for the
5 arbitrator will be requested at the most reasonable rate available.

6 **Section 52.05 - Arrangements.**

7 Upon selection of an arbitrator in a particular case, the respective representatives shall
8 communicate with the arbitrator and each other in order to finalize arrangements. No ex parte
9 communications with the arbitrator shall be permitted on the merits of the case. Any disputes
10 on procedures shall be settled by the arbitrator consistent with this Agreement.

11 **Section 52.06 - Direct Designation.**

12 Upon request of the grieving party (i.e., Management or the Union), FMCS or other service
13 shall be empowered to make a direct designation of an arbitrator to hear the case in the
14 event:

- 15 (1) The other party refuses to participate in the selection of an arbitrator; or
16 (2) Upon inaction or undue delay on the part of either party.

17 **Section 52.07 - Location.**

18 Normally, the arbitration hearings shall be held at Management's premises at the grievant's
19 duty station; however, an alternate, mutually acceptable site may be used. National level
20 hearings shall normally be held in Washington, D.C. ~~Management shall pay reasonable
21 travel and per diem for one Union representative and one technical representative for
22 National level hearings.~~ The space for arbitration shall be sufficient to meet the needs of the
23 hearing, sequestration of witnesses, consultation between Pparties and their representatives,
24 and any other needs.

25 **Section 52.08 - Prehearing Submissions and Conferences.**

26 (1) The Parties are encouraged to develop factual stipulations, joint exhibits, and a joint
27 statement of the issue or issues to submit to the arbitrator as far in advance as possible
28 prior to the hearing. The parties shall confer and attempt to develop factual stipulations,
29 joint exhibits and a joint statement of the issues to submit to the arbitrator as far in
30 advance but no later than 21 days prior to the scheduled hearing.

31
32 (2) At the request of either party, a pre-hearing conference shall be held no later than 14 days
33 prior to the hearing. The pre-hearing conference shall be held among the parties and/or
34 their attorneys or other representatives and the arbitrator to discuss matters which may
35 include, without limitation, substantive or procedural issues, witnesses, etc.

36 (3) No later than 14 days prior to the scheduled hearing date, the parties shall provide to
37 each other and the arbitrator:

38 a. Any agreed upon factual stipulations, joint exhibits, and joint statement of the
39 issue or issues;

- 1 b. Any separate issue statements and supporting arguments for the issue statement
- 2 submitted along with the grievance package and current CBA.
- 3 c. A list of witnesses to be called to testify with a brief synopsis of each witness's
- 4 expected testimony; and
- 5 d. Exhibits, with an index, proposed to be entered into evidence.

6 **Section 52.09 - Witnesses.**

7 (1) All employees who are called as witnesses are considered to be on duty
8 time to participate in the arbitration process and hearing.

9 (2) At the request of either party the arbitrator may order the sequestration of any
10 witness or witnesses during the testimony of other witnesses.

11 (3) Witnesses that are part of either party's representational team shall not be
12 sequestered; however, they must provide testimony before any other witnesses for their
13 party. In the event both parties have representatives who are witnesses, the invoking
14 party's representative witness(es) shall testify first.

15 (4) Witnesses not identified in the witness list in advance, shall be permitted to
16 testify or participate in the arbitration, unless excluded by order of the Arbitrator.
17 Disputes as to the relevancy of a witness or redundant testimony will be resolved by the
18 Arbitrator. Parties shall not intimidate or coerce the testimony of witnesses subject to
19 penalty. An opposing party will not contact the other party's witnesses without first
20 providing a minimum two-day notice to the opposing party.

21 **Section 52.10 - Authority of the Arbitrator.**

22 (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the
23 issue(s) presented in the grievance. Arbitrability and grievability determinations shall be made
24 by the arbitrator prior to addressing the merits of the grievance. Questions of arbitrability shall
25 be submitted to the arbitrator in writing and the arbitrator shall issue a ruling on the merits of
26 any such motion prior to the scheduled hearing on the merits unless mutually agreed
27 otherwise. If a party files a motion based on jurisdiction and authority of the arbitrator, or
28 otherwise concerning arbitrability or grievability (e.g. a threshold issue such as whether the
29 grievance is procedurally invalid), a response to the motion may be filed. The party asserting
30 the matter is not grievable/arbitrable bears the burden of demonstrating that assertion.

31
32 (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of
33 this Agreement, or any supplement thereto.

34 (3) Except for decisions on discipline, an arbitrator shall lack authority to determine the
35 appropriateness of a Management decision to exercise any of the rights set forth in

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- 1 Article 4 (Rights and Obligations of the Parties), Section 4.06, which do not amount
2 to a violation of applicable law, regulation, or this Agreement.
- 3 (4) An arbitrator shall lack authority to determine the legality or regulatory correctness of any
4 Management decision not impacting personnel policies, practices or matters affecting
5 general conditions of employment.
- 6 (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- 7 (6) The arbitrator's award shall be binding on the parties. An award must be consistent with
8 current law and regulation.
- 9 (7) The arbitrator may authorize reasonable attorney's fees in accordance with any legal
10 remedy allowed by law, including in accordance with standards contained in the Back Pay
11 Act as amended by the Civil Service Reform Act of 1978.
- 12 (8) Payments to the arbitrator shall be immediately paid regardless of whether any
13 exception(s) are filed. Exceptions may include requests for reimbursement of
14 arbitrators' fees.
- 15 **Section 52.11 - Exceptions.** Where exception is taken to an arbitration award and the
16 Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the
17 arbitrator shall modify the original award consistent with the requirements of the FLRA
18 decision. Where the FLRA vacates an award, no further action is required by the arbitrator.
- 19 **Section 52.12 - Refusal to Participate.** Should either party refuse to participate in an
20 arbitration, the arbitrator shall continue to hear the case and base their decision solely on the
21 record. Once arbitration has begun, the non-participating party shall be limited to evidence
22 in the record that it put forward prior to the arbitration hearing.
- 23 **Section 52.13 - 120-Day Requirement.** Where, due to circumstances beyond the
24 control of the arbitrator and the parties, an arbitrator cannot hear a case within 120 days,
25 the parties may mutually agree to select another arbitrator.
- 26 **Section 52.14 - Expedited Arbitration Procedures.** The parties may mutually agree
27 that certain arbitrations are properly handled more expeditiously. Procedures contained
28 in this Section supplement the arbitration procedures covered elsewhere in this
29 Agreement, and, when in conflict with other procedures, supersede them:
- 30 (1) The arbitrator selected for an expedited arbitration will be requested to convene a
31 hearing within 30 days after selection, or as soon after that as possible. In any case, the
32 arbitration should be completed within 90 days.
- 33 (2) If the parties mutually conclude at the hearing that the issues are of such complexity or
34 significance as to warrant further consideration, the hearing may be conducted in
35 accordance with regular arbitration procedures. However, the parties may mutually agree

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1 to have the same arbitrator hear the grievance and continue the hearing by use of regular
2 procedures.

3 (3) Unless requested by the arbitrator, there shall be no post-hearing briefs. It is understood
4 that the parties may make closing arguments at the hearing. All documents to be
5 considered by this arbitrator shall be filed at the hearing.

6 (4) The parties will endeavor to complete the hearing in one day. Each party shall be
7 allocated a fair amount of time to present their case at the hearing. The arbitrator shall
8 have full authority to limit the parties in the presentation of evidence or witnesses given
9 the time limitation on the hearing.

10 (5) The arbitrator will make every effort to render their decision orally (a bench decision) at
11 the hearing. Alternatively, the arbitrator will endeavor to render a written decision within
12 10 days after the date of the hearing.

13 (6) The Arbitrator's decision shall be final and binding, unless it is timely appealed to a
14 Federal court or an exception is filed with the Federal Labor Relations Authority under 5
15 USC Section 7122, whichever is appropriate.

16 **Section 52.15 - Implementation of Decision or Settlement.**

17 Implementation of an arbitration decision should be accomplished as soon as practicable
18 once the award is final and binding. Unless exceptions are filed, implementation shall begin
19 within four pay periods of the date of the award.

20
21 **Section 52.16 - Extension of Time Limits.** Time limits in this Article may be modified by
22 mutual written consent of the parties.

23
24 **52.17 – Procedural Compliance**

25 If the party invoking arbitration fails to follow any procedure in this Article, the grievance
26 shall be deemed to be procedurally invalid.

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Article 53: Duration

Section 53.01 - Duration.

The terms of this Agreement shall remain in effect for seven years from the effective date. The Parties agree that the following national supplements to the 2015 collective bargaining agreement will be retained as supplements to this Agreement.

Supplement #	Supplement Name
5B	Implementation of Phased Retirement Program (PRP)
6	Affinity Groups
7	Implementation of Handbook 750.1, Details, Interagency Agreement Assignments, and Intergovernmental Personnel Act Assignments
10	Place-Based Operational Model
20	Implementation of Personnel Security and Suitability Handbook 755.1
129	Implementation of National HUD Nepotism Policy, Handbook 730.1
134	Career Transition Programs Policy
141	National Pathways Program
146	Implementation of National HUD Workplace and Domestic Violence Prevention and Response Policy Handbook of 2015

This Agreement supersedes the 2015 collective bargaining agreement and upon the effective date of this Agreement, all supplements not identified above, memoranda of agreement, memoranda of understanding, past practices, and other oral or written agreements whether formal or informal, shall have no force or effect and shall not be binding on the Parties in any respect. The foregoing applies at the local, regional, and national levels.

Section 53.02 - Severability.

If any provision of this Agreement is invalidated by existing or future laws, existing or future Government-wide regulations, and existing or future decisions of outside authorities binding on the Department, such provision shall be stricken from the Agreement. All other provisions of the Agreement shall remain in full force and effect during the initial term of the Agreement.

Section 53.03 - Renegotiations.

- (1) If either Party desires to renegotiate this Agreement, it shall furnish written notice to the other Party not less than one day but not more than 180 days prior to the expiration date of this Agreement.
- (2) In the event notice is given by either party, the parties shall begin ground rules negotiations within 30 days from receipt of that notice. This time frame may be extended by mutual agreement. No later than 10 days before ground rules negotiations commence, the Parties must:
 - a) Identify all bargaining team members; and
 - b) Exchange ground rules proposals, which must include a schedule for expeditiously concluding the term negotiations.

]

1 **Section 53.04 - Renewal.**

2 If neither Party requests to renegotiate this Agreement within the time frames described in
3 Section 53.03, the Agreement shall be renewed for one year periods, subject to approval by the
4 head of the agency in accordance with 5 U.S.C. 7114(c).

5
6 **Section 53.05 - Reopening Clause.**

7 During the term of this agreement, either Party may propose negotiations to re-open, amend, or
8 modify this Agreement. Such negotiations may only be conducted by mutual agreement of the
9 Parties, and in accordance with Article 49 Midterm Bargaining provisions.

10
11 **Section 53.06 - Amendments.**

12 Any written amendments to this Agreement shall become a part of this Agreement and subject to
13 expiration on the same date as this Agreement.

14
15 **Section 53.07 - Distribution.**

- 16 (1) Management shall distribute an electronic copy of this Agreement to each bargaining unit
17 employee by the effective date, along with a statement of where to locate the Agreement
18 on the internal HUD website.
19
20 (2) Within 15 days of the execution date, the Union shall be provided with a copy of the
21 Agreement using the latest Departmental standard technology and software.
22
23 (3) Management shall make available up to 250 printed and bound copies of the Agreement
24 for use by employees.
25

ARTICLE 53
DURATION AND DISTRIBUTION OF THE AGREEMENT

Section 53.01 - Duration. The terms of this Agreement shall remain in effect for three (3) years from the effective date. The provisions of this Agreement shall continue in full force and effect until a new Agreement goes into effect. This Agreement supersedes the previous Agreement (1998) and all Supplements to it (National, Regional, and Local), and all other written Agreements or memoranda of understanding and conflicting past practices, between the parties.

Section 53.02 - Severability. If any provision of this Agreement is invalidated by existing or subsequent laws, decisions of the FLRA, the Comptroller General or Courts of competent jurisdiction, such provision shall be renegotiated for the purpose of an adequate replacement. All other provisions of the Agreement shall remain in full force and effect.

Section 53.03 - Renegotiations.

(1) If either party desires to renegotiate this Agreement, it shall furnish written notice to the other party not less than sixty (60) days but not more than ninety (90) days prior to the expiration date of this Agreement.

(2) In the event notice is given by either party, the parties shall begin ground rules negotiations within thirty (30) days from receipt of that notice. This time frame may be extended by mutual agreement.

Section 53.04 - Renewal. If neither party requests to renegotiate this Agreement within the time frames ascribed in Section 53.03, the Agreement shall be renewed for #one (1) year periods.

Section 53.05 - Reopening Clause. During the term of this agreement, either party may propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only be conducted by mutual agreement of the parties, and in accordance with Article 49 Midterm Bargaining provisions.

Section 53.06 - Amendments. Any amendments to this Agreement shall become a part of this Agreement and subject to expiration on the same date as this Agreement.

Section 53.07 - Distribution.

(1) **Employees.** Management shall distribute an electronic copy of this Agreement and all supplements to each employee by the effective date, along with a statement of where to locate the Agreement and Supplements on the HUD website. New Employees shall be provided a copy within ten (10) days of employment.

(2) **Union.** Management shall provide the Union with five-hundred (500) printed and bound copies of the Agreement and all supplements, to meet its needs, e.g., orientation. Management agrees to provide additional copies upon request.

Section 53.08 - Publication. The expenses for publishing and distributing this Agreement shall be paid by the Department. The Parties shall edit and format the document. Within fifteen (15) days of the conclusion of negotiations, the Union shall be provided with a copy of the Agreement using the latest Departmental standard technology and software.

Section 53.09 - Effective Date. This Agreement shall take effect in accordance with the Labor-Management Relations Statute, Section 7114.

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ARTICLE 53
DURATION AND DISTRIBUTION OF THE AGREEMENT

Section 53.01 - Duration. The terms of this Agreement shall remain in effect for three years from the effective date. The provisions of this Agreement shall continue in full force and effect until a new agreement goes into effect. This Agreement supersedes the previous Agreement (2015). The Parties agree that National supplements listed below will be retained in the new agreement and prior benefits and past practices that were in effect on the effective date of this Agreement at any level (national and/or local), shall remain in effect unless the language conflicts with this new Agreement or in accordance with 5 U.S.C. Chapter 71. All local and regional agreements, supplements and memoranda regarding space moves and transit negotiated during the time these term negotiations took place will be retained in the new collective bargaining agreement.

Supplement Number	Supplement Name
1	Workload Sharing
4	AMPs
5B	Implementation of Phased Retirement Program (PRP)
6	Affinity Groups
7	Implementation of Handbook 750.1, Details, Interagency Agreement Assignments, and Intergovernmental Personnel Act Assignments
9	Standard Operating Protocols
10	Place Based Operational Model
11	Implementation of Loan Review System in Single Family
13	Quality Improvement Programs
16	Realignment for the Office of Labor Standards and Enforcement
18	Implementation of Anti-Harassment Policy
20	Implementation of Personnel Security and Suitability Handbook 755.1
21	Reasonable Accommodation Portal
84	Homeland Security Presidential Directive 12
100	New Federal ID Credential
122	Establishment of the Office of Housing Counseling
129	Implementation of National HUD Nepotism Policy, Handbook 730.1
133	Hudmobile/Citrix Upgrade
134	Career Transition Programs Policy
135	Multifamily Reorganization/Transformation
137	Implementation of the Rotational Assignment Program

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138	Implementation of Concur Travel and Relocation System
141	National Pathways Program
142	Implementation of the Standing Desk Pilot
146	Implementation of National HUD Workplace and Domestic Violence Prevention and Response Policy Handbook of 2015.
149	PIH Enrichment Pilot Program
150	PIV Implementation
MOU	Office of Housing Multifamily Asset Management Implementation of New Business Processes and Procedures

1 **Section 53.02 - Severability.** If any provision of this Agreement is invalidated by law or
2 Government-wide regulation, such provision shall be stricken from the Agreement~~existing or future~~
3 ~~laws, existing or future Government wide regulations they shall be stricken from the Agreement~~
4 and impact and implementation negotiations shall take place. The Union may waive its rights to
5 these negotiations. All other provisions of the Agreement shall remain in full force and effect.

6 **Section 53.03 - Renegotiations.**

- 7 (1) If either Party desires to renegotiate this Agreement, it shall furnish written notice to
8 the other Party not less than one day but no more than 180 days prior to the expiration
9 date of this Agreement.
- 10 (2) In the event notice is given by either Party, the Parties shall begin ground rules
11 negotiations within 30 days from receipt of that notice. This time frame may be extended
12 by mutual agreement. No later than 10 days before ground rules negotiations commence,
13 the Parties must:
14 a) Identify all bargaining team members: and
15 ~~(2)b) Exchange ground rules proposals, which must include a schedule for~~
16 ~~expeditiously concluding the term negotiations.~~
17 (3) ~~The Parties shall identify ground rule team members and inform the other Party before~~
18 ~~commencement of negotiations.~~
19 (4) ~~The Parties shall exchange ground rules proposals no less than 10 days before ground~~
20 ~~rules negotiations commence.~~

21 **Section 53.04 - Renewal.** If neither Party requests to renegotiate this Agreement within the time
22 frames adescribed in Section 53.03, the Agreement shall be renewed for one year periods.

23 **Section 53.05 - Reopening Clause.** During the term of this agreement, either Party may
24 propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only
25 be conducted by mutual agreement of the Parties, and in accordance with Article 49 Midterm
26 Bargaining provisions.

27 **Section 53.06 - Amendments.** Any written amendments to this Agreement shall become a part
28 of this Agreement and subject to expiration on the same date as this Agreement.

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Section 53.07 - ~~Distribution~~Publication.

~~(1) (1) Employees.~~ Management shall distribute an electronic copy of this Agreement to each employee and all supplements to each employee by the effective date, along with a statement of where to locate the Agreement and Supplements on the HUD website. ~~New employees shall be provided a copy within 10 days of employment.~~

~~(2) (2) Union.~~ Management shall provide the Union with 500 printed and bound copies of the Agreement and all supplements, to meet its needs, e.g., orientation. Management agrees to provide additional copies upon request. ~~Within 15 days of the execution date, the Union shall be provided with a copy of the Agreement using the latest Departmental standard technology and software.~~

~~(3) Management shall provide up to 250 printed and bound copies of the Agreement and all supplements to the Local Union representatives for distribution.~~

~~**Section 53.08 - Publication.** The expenses for publishing and distributing this Agreement shall be paid by the Department. The Parties shall edit and format the document. Within 15 days of the conclusion of negotiations, the Union shall be provided with a copy of the Agreement using the latest Departmental standard technology and software.~~

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