

**UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY**

\_\_\_\_\_) )  
American Federation of Government, ) )  
Employees (AFGE), Council of HUD ) )  
Locals 222, ) )  
 ) ) Case No. \_\_\_\_\_  
UNION, ) )  
 ) ) Date: November 4, 2013  
vs. ) )  
 ) )  
U.S. Department of Housing & Urban ) )  
Development, ) )  
 ) )  
AGENCY. ) )  
\_\_\_\_\_)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of November, 2013, the Union's Petition for Review with Exhibits was sent to:

Case Intake and Publication  
Federal Labor Relations Authority  
Docket Room; Suite 201  
1400 K Street, N.W.  
Washington, D.C. 20424-0001  
*(5 copies plus one original via Federal Express)*

and  
Jacqueline Mercer-Hollie  
Director, Labor and Employee Relations  
U.S. Department of HUD  
Five Points Plaza Building  
40 Marietta Street  
Atlanta, Georgia 30303  
*(one copy via Certified Mail)*

and  
Mark Zaltman  
Chief, Labor and Employee Relations  
U.S. Department of HUD  
Metcalfe Federal Building  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
*(one copy via Certified Mail)*

and  
Karen Newton-Cole  
Deputy Chief Human Capital Officer  
U.S. Department of HUD  
451 7th Street S.W.,  
Washington, D.C. 20410  
*(one copy via Certified Mail)*



\_\_\_\_\_  
Jacob Y. Statman, Esq.  
Snider & Associates, LLC

**UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY**

_____	)	
American Federation of Government,	)	
Employees (AFGE), Council of HUD	)	
Locals 222,	)	
	)	Case No. _____
UNION,	)	
	)	Date: November 4, 2013
vs.	)	
	)	
U.S. Department of Housing & Urban	)	
Development,	)	
	)	
AGENCY.	)	
_____	)	

**UNION'S PETITION FOR REVIEW**

AFGE Council of Locals 222 (the "Union"), by and through their undersigned counsel, Snider & Associates, LLC, and pursuant to 5 U.S.C. Sections 7106 and 7117, 5 CFR Part 2424, and Federal Labor Relations Authority (FLRA) guidance, hereby timely file this Petition for Review of the United States Department of Housing and Urban Development's (the "Agency" or "HUD") claim that the bargaining proposals listed below are non-negotiable. In support, thereof, the Union states as follows:

**Part I - Background Information**

The Union herein provides a background explanation of the bargaining process and has included copies of the disputed proposals, copies of the Notice to the Union to bargain, the Union's response, updated proposals, the Agency's response to the changed Proposals, and the Union's Request for a declaration of non-negotiability. The Union also has addressed some of the case law that is pertinent to this Petition for Review.

In accordance with the Parties' Collective Bargaining Agreement ("CBA"), the Union received a Notification of Reorganization ("Notification") of the Office of Multifamily Housing

("MFH") dated April 26, 2013. **Exhibit 1.** The Notification outlined the Multifamily Housing Reorganization /Transformation ("MFRT"), which proposed to consolidate over 50 offices of Multifamily Housing located throughout the continental United States, Hawaii, Alaska, and Puerto Rico into five (5) Regional Offices (New York, NY; Chicago, IL; Fort Worth, TX; San Francisco, CA; and Atlanta, GA) and five (5) Satellite Offices (Boston, MA; Detroit, MI; Kansas City, KS; Denver, CO; and Jacksonville, FL). HUD's Multifamily Housing Division programs provide mortgage insurance to HUD-approved lenders to facilitate the construction, substantial rehabilitation, purchase and refinancing of multifamily housing projects. Multifamily Housing offices support the development of housing for the poorest and neediest in our country. The reorganization reduces the number of Multifamily Housing Division offices from 6 headquarters business offices, 17 Hubs and 34 program offices throughout the country to 4 headquarters business offices, 5 Hub offices and 5 satellite offices reporting to the Hubs. *Id.*

Of critical importance, however, is the fact that the Agency will not be closing the more than 50 field offices throughout the United States where employees currently work in Offices of Multifamily. The Agency will keep open and maintain other program offices and divisions in these 50-plus field offices. In other words, only one program office, Multifamily Housing, is being consolidated per the Reorganization. The Agency has stated that it will still maintain a physical office presence in all 50 States and other territories, despite this consolidation and reorganization of the Office of Multifamily Housing.

The effect of the proposed Reorganization is that bargaining-unit employees in Multifamily Housing offices throughout the country will be required to relocate into one of the five (5) Regional Offices or five (5) Satellite Offices. The Agency expects to relocate

approximately 900 employees, out of an approximate Agency workforce of 9,000, through this proposed Reorganization.

According to the Agency, the purpose of the consolidation is to be more efficient and effective in its operation of the Office of Multifamily Housing. HUD has informed the Union that the nature of the work of the Office of Multifamily Housing is location neutral and can be performed anywhere in the United States. It is expected that employee's duties will be exactly the same regardless of physical office location.

Per Article 5 of the CBA, the Union responded in a timely manner to the Notification of the Reorganization with a Demand to Bargain on May 3, 2013. **Exhibit 2.** By mutual agreement, negotiation dates were scheduled and the parties conducted bargaining for the better part of five weeks, which resulted in the National Supplement, which addressed most of the proposals. **Exhibit 3.** To date, the National Supplement has not been executed as there are disputes remaining over six (6) Proposals, as discussed further below.

A mediator from Federal Mediation and Conciliation Service ("FMCS"), Larry B. Passwaters, was brought into the process by the Agency, and during the last two days of the negotiation process, the mediator met with the Agency and then the Union. Mr. Passwaters indicated to the Union that he believed that the parties were too far apart and that Management would not be moved from its position that the Proposals were contrary to law and not subject to negotiation. Mr. Passwaters indicated he would report back to FMCS and wished for the parties to wait for any formal response until the following week. The following week, prior to receiving a formal response from FMCS, the Agency sent the Union an unsolicited e-mail notice that the Union's then remaining eight (8) Proposals, which were still outstanding, were non-negotiable. The Union, in accordance with 5 CFR § 2424.11(c) considered this unsolicited e-mail to be an

*unrequested agency allegation*. Per the Regulation, “[I]f an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary.” *Id.*

The Union, now faced with the option of filing a petition for review or continuing to bargain, responded by issuing to the Agency the newly submitted Proposals on August 29, 2013. These revised Proposals are contained in the Agency’s Response Memo. **Exhibit 4**. Instead of filing a Petition for Review at that time, and as a demonstration of the Union’s continued good-faith bargaining, the Union agreed to withdraw two of the original Proposals (Proposals 146 and 148) when it submitted the revised six (6) Proposals on August 29, 2013. Furthermore, the subject of Agency’s Memo in response - *Response to Revised Union Counterproposals for the Multifamily Housing Reorganization /Transformation (MFRT)* – evinces the Agency’s view that the Union’s new proposals were revised counterproposals and part of the Union’s continuing good faith negotiations.

Per the Response Memo, the Agency apparently accepted the Union’s agreement to withdraw two of the original Proposals. In its response to the Union, the Agency further declared each of the remaining six (6) Proposals as non-negotiable because, according to HUD, each interfered “excessively” with a Management right. **Exhibit 4**. The response was merely a restatement of the Agency’s position that the proposals are outside of its duty to bargain.

The Union replied on September 13, 2013, with a timely filed official Union written request for an Agency allegation of non-negotiability. **Exhibit 5**. The Agency’s time frame for responding to the Union’s written request has come and gone with no formal response by the

Agency as of September 23, 2013. Accordingly, the Union submits this negotiability appeal in accordance with the FLRA's guidelines and regulations at 5 CFR § 2424.21(b) which provides that "[I]f the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then the petition may be filed at any time." The Union hereby timely files this formal Petition for Review.

The Union has not filed a ULP, grievance and/or pursued any proceedings before FSIP on the same contract language discussed herein. The Union believes that a hearing or other fact-finding procedure is required; however, the Union reserves the right to alter its assessment after receipt and review of the Agency's response.

## **Part II – Alternative Dispute Resolution**

The Union is willing to participate in alternative dispute resolution with the assistance of CADRO.

### **Applicable Legal Standard**

Per Authority regulations, a union may file a negotiability appeal when: (1) an agency has claimed that the union's bargaining proposal is outside the statutory duty to bargain; or (2) an agency head has disapproved, as allegedly contrary to law, a contract that either an agency and a union have agreed to, or the Federal Service Impasses Panel (FSIP) has imposed. *See* 5 C.F.R. §§ 2424.2(d) and 2424.20-22. The instant Petition for Review is being filed pursuant to 5 C.F.R. §§ 2424.2(d) and 2424.20-22, in response to the decision by the Agency head to disapprove several negotiable provisions as contrary to law and non-negotiable.

In accordance with 5 C.F.R. § 2424.22(b)(3) the instant proposal or provisions are not involved in an unfair labor practice charge under part 2423 of the subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of the subchapter. There has not been any other petition for review filed concerning a proposal or provision arising from the same bargaining or the same agency head review involved herein. *Id.*

### **Request for Expedited Review**

The Union requests an expedited review due to the nature of the issues, which will lead to the relocation and movement of employees causing irreparable harm if the Agency has in fact failed to bargain negotiable proposals that impact this reorganization. In addition, and based on the aforementioned irreparable harm to employees, Union would like a *status quo ante* remedy until the Authority makes a decision regarding the negotiability of the proposals in question. In *Federal Correctional Institution*, 8 FLRA 604 (1982) (*FCI*), the Authority set forth the factors for evaluating the appropriateness of a status quo ante remedy. The *FCI* factors are: (1) whether and when notice was given to the union by the agency concerning the change; (2) whether and when the union requested bargaining; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligation; (4) the nature and extent of the adverse impact on unit employees; and (5) whether and to what degree a *status quo ante* remedy would disrupt the efficiency and effectiveness of the agency's operations. In this case, employees will be irreparably harmed by selling real property, having spouses resign from long-term employment, uprooting school age children in the middle of the school year, relocating employees and their families to another state, and forcing employees to make retirement or buyout decisions prior to the conclusion of bargaining in lieu of accepting directed reassignments or being terminated.

Conversely, there will be little impact or disruption on the efficiency and effectiveness of the Agency's operations, as employees will continue to perform as they have for years prior until resolution of this matter.

### **Part III – The Proposals**

As discussed *supra*, the Union submitted the following Proposals to HUD for continued bargaining. HUD responded via e-mail on September 13, 2013, that the Proposals were rejected and not subject to negotiations. For the following reasons, the Union believes that the Proposals are negotiable and that the Agency's failure to bargain is a violation of law, rule and regulation.

According to the Statement of the Reason for Change in HUD's original Notification dated April 26, 2013, "The Multifamily operating model needs updating and HUD must do more to deal with ongoing challenges. The current organizational structure is outdated; impedes optimal efficiency and effectiveness in the delivery of its programs; and is cumbersome to staff, our industry partners, and stakeholders." The Union, however, notes that HUD has not demonstrated that it has an outdated structure that impedes efficiency and effectiveness. The Multifamily Program Division of HUD sets goals as part of the mission accomplishments that employees are required to meet each year. Employee performance requirements are tied to these Multifamily Housing program goals and mission requirements, and are tracked in each office and for the program area as a whole. Each year, these goals are reported and updated for all employees to view and for supervisors to use to rate employee performance. These goals and mission requirements are reported to Congress and posted on both internal and external HUD web-based applications for public review. HUD has not reported any failures. On the contrary, the Multifamily Housing program has been widely successful in meeting its goals and HUD has reported that success.



HUD has not shown any evidence to suggest that the MFRT will work effectively. Because HUD has offered affected employees buyouts and retirements, the reduced number of employees remaining will be insufficient to meet existing work commitments, which will not change under this reorganization. HUD has never suggested that its current workforce is overstaffed, nor does the reorganization show any reduction in work processes. Furthermore, the Union notes that funding is not the reason for the MFRT.

As part of the Union's on-going negotiations, it offered the following revised Proposals, which the Agency summarily rejected:

**Union Proposal 75:**

**To minimize the adverse effects on employees who may be separated from service because of inability to relocate due to personal hardships and total costs to the American taxpayer as an appropriate arrangement under 5 U.S.C. § 7106(b)(3), Management agrees to seriously consider to the maximum extent feasible the establishment of additional satellite offices such as offices with large numbers of multifamily housing projects, units, and employees (for example, Houston, Minneapolis, Baltimore, Nashville, etc.), as well as offices outside of the continental United States in Hawaii, Alaska and Puerto Rico given the potential cost savings for travel and per diem.**

**Agency's Rejection:**

This proposal restricts management's discretion regarding how the agency will be structured to accomplish its mission and the geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management right to determine the agency's organization under 7106(a)(1)."

**Union's Response to Agency's Rejection:**

With regard to whether Union Proposal 75 restricts management's discretion, the Union notes that it has not proposed any language that restricts HUD from any decision-making process with regards to organizational structure. The Union's proposal only requires that HUD **"seriously consider to the maximum extent feasible"** opening additional satellite offices given workload and potential cost savings. This language does not affect the overall organizational

structure, lines of authority, or reporting structure, and leaves the discretion and decision-making authority with the Agency.

As part of the proposal, the Union has suggested factors, such as the number of housing projects, employees or units in a given geographic area, and/or cost savings associated with long-distance travel that would make opening additional satellite offices beneficial. The explicit geographic areas – Houston, Minneapolis, Baltimore, and Nashville - were identified based on discussions between the Union’s Council President and upper HUD management as possible additional locations, but were not inclusive or restrictive. Each of the suggested satellite offices, however, is a current HUD multifamily housing program location that is staffed and that can provide a large market perspective while still offering additional local coverage to industry partners. For example, the employees in the Minneapolis office have demonstrated that they are in the very top echelons of productivity on a per employee basis. The Union’s proposal and suggestion of additional geographic office locations does not impede the Agency’s plan, will not change the overall consolidation, and can be potentially more successful based on the current mission and accomplishment of Agency’s goals. The additional satellite offices will also resolve many of the fears raised by the Agency’s clients and industry partners.

With regard to whether Union Proposal 75 excessively interferes with management’s right to determine the agency’s organization under 7106(a)(1), the Union highlights the plain meaning and unambiguous language of the proposal, which only requires Management to consider opening alternative satellite offices. The Agency has already accepted similar language in a proposal agreed to by the Agency in this same bargaining process; the jointly agreed upon language of Proposal 36 reads in part, “The program manager must make a good faith effort and

is strongly encouraged to select an MFH employee who is being required to relocate under the MFRT.” **Exhibit 3.**

Furthermore, case law surrounding Section 7106 supports negotiations. The statute provides at 5 U.S.C. § 7106 (b) that “Nothing in this section shall preclude any labor organization from negotiating ... (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.” In *NAGE, Local R5-184 v. Department of Veterans Affairs*, 51 FLRA 386 (1995), the Authority developed a new standard to use in resolving conflicts when a proposal seems to implicate both 5 U.S.C. § 7106(a) and (b). The FLRA determined that if a proposal falls within the scope of § 7106(b)(1) the FLRA had to go no further in their review of negotiability to find the proposal negotiable. However, in *AFGE Council of Local 222 v. HUD*, 54 FLRA 171 (1998), the FLRA expanded *NAGE*, when the Authority described the analysis it will follow in resolving negotiability disputes where management claims that a proposal falls under § 7106(a) and the Union claims the proposal is within the duty to bargain under § 7106(b)(2) and/or (3), as well as being electively negotiable under § 7106(b)(1). The FLRA explained that the Authority will first resolve those claims to determine if the proposal is within the duty to bargain and then determine if the proposal is electively negotiable. This is consistent with the *NAGE*, case analysis process.

While an agency retains its management rights under 5 U.S.C. § 7106, appropriate arrangement proposals that address and minimize the adverse effects of the exercise of management rights are mandatory subjects of bargaining under the Federal Service Labor-Management at 5 U.S.C. § 7106(b)(3). *See NTEU v. and Dept. of Homeland Security*, 62 FLRA 267 (2007); *NAGE Local R14-87 v. Kansas Army National Guard*, 21 FLRA 24 (1986). The Agency has not given any explanation whatsoever about how the Union’s proposal of giving

serious consideration to the establishment of additional satellite offices to the maximum extent feasible excessively interferes with management's rights. The proposal is limited to the employees affected by the reorganization, does not absolutely require the establishment of additional satellite offices, and addresses the adverse effects of involuntary directed reassignments and involuntary retirements by allowing some employees to remain at their current duty stations. The Agency has the authority to make the final determination whether or not to establish additional satellite offices. This proposal, therefore, does not excessively interfere with management's rights.

**Union Proposal 94:**

**Management agrees that affected MFH employees shall be offered an application period to swap jobs with other HUD employees. Employees shall be permitted to volunteer for a reassignment into MFRT positions which qualify for buyouts. Both job swap candidates must meet the minimum qualifications for the position as determined by management. If management determines that the employee does not meet the minimum qualifications, the employee shall be provided a detailed explanation as to why he/she did not meet the minimum qualifications. If employees transferring into MFH refuse to separate by the dates certain, the job swap agreement terminates. Upon termination of the job swap, employees return to their original position.**

**Agency's Rejection:**

This proposal excessively interferes with Management's right to hire and assign employees under 5 U.S.C. 7106(a)(1), and to select employees under 7106(a)(2)(c)."

**Union's Response to Agency's Rejection:**

The Union's proposal does not interfere with a management right, let alone excessively interfere with such right. The proposal only requires that job swaps be *considered* for employees who meet the minimum qualifications for the positions. Management retains the right to determine the qualifications of all of the employees. The FLRA has previously held that a union proposal of job swaps for directed reassignments in which management retains the right to determine employee qualifications for the job swaps is negotiable and does not affect

management's right to hire. *See NAGE Local R4-45 v. U.S. Department of Defense*, 54 FLRA 218 (May 29, 1998).

Here, the Union has simplified the process by proposing that the process depend on employee volunteers; the agency is freed from any responsibility by requiring employees to initiate any action by volunteering. Management needs only establish or verify minimum qualifications in the same way that is required to fill a position through merit staffing. In most cases, minimum qualifications may already be set by management. The Agency's right to hire is not affected because no new positions are being proposed and no change to numbers or locations of employees is being proposed. In the one instance where new positions become available and are funded, the Agency has already accepted a Union proposal (Proposal 36 referenced above) to allow current multifamily employees the ability to apply for and be hired into new positions. The instant proposal, however, does not deal with new positions, but rather volunteering for job swaps for current positions. It is unclear why the Agency would now argue that their right to hire is affected in this proposal when they previously agreed to related Union language under the hiring process per the same bargaining process. This proposal is less intrusive to the asserted management right to hire than the agreed upon language in Proposal 36.

As noted above, appropriate arrangement proposals that address and minimize the adverse effects of the exercise of management rights are mandatory subjects of bargaining under the Federal Service Labor-Management at 5 U.S.C. § 7106(b)(3). *See NTEU v. Dept. of Homeland Security*, 62 FLRA 267 (2007); *NAGE Local R14-87*, 21 FLRA 24 (1986). The Agency has not given any explanation whatsoever how the Union's proposal of allowing for job swaps excessively interferes with management's rights. The proposal is limited to the employees affected by the reorganization, allows management to retain full discretion to determine the

qualifications of the job swap candidates, and addresses the adverse effects of involuntary directed reassignments and involuntary retirements by allowing some employees to take buyouts and retire, thereby saving agency relocation costs and allowing other employees to remain at their current duty stations. This proposal does not excessively interfere with management's rights.

**Union Proposal 102:**

**For all vacancies arising during implementation of the MFRT which are not filled through reassignment under this agreement, Management agrees to merit staff vacancies to the maximum extent feasible.**

**Agency's Rejection:**

This proposal appears to restrict both Management's discretion to refrain from filling certain vacancies at all, and the manner in which Management may fill those vacancies (i.e. only through merit staffing)."

**Union's Response to Agency's Rejection:**

The Union's proposal does not interfere with a management right, let alone excessively interfere with such right. The Union would and did discuss options other than Merit staffing to fill vacancies, but the Agency refused to engage in negotiations citing the non-negotiability of such a proposal. In fact, when discussing merit staffing proposals, such as Proposal 36 referenced above, the Agency was adamant that the hiring process must be under its control and subject to merit staffing, which seems directly contradictory its rejection to this proposal cited, in part, above. Moreover, this proposal does not interfere with or require any specific hiring process; it only requests to the maximum extent feasible that management use merit staffing to fill vacancies arising as a result of voluntary separations by employees subject to the Reorganization. Management's protest, therefore, that the proposal appears to restrict the

manner in which Management may fill vacancies (i.e. only through merit staffing) is not accurate.

With regard to whether the proposal restricts Management's discretion to refrain from filling certain vacancies at all, the plain reading and unambiguous language of the proposal does no such thing. Per merit staffing policies, the Agency has the right to select or not select any candidate. The Union's proposal does not require selection of a candidate for every single vacancy announcement and only requires merit staffing "to the maximum extent feasible."

Furthermore, the proposal only addresses vacancies that have already been determined to be filled by management. The first sentence specifically reads: "For all vacancies arising during implementation of the MFRT which are not filled through reassignment under this agreement...." In the accepted proposal #36, which is being implemented by the Agency, only vacancies that are agreed to be filled and budgeted are part of the reassignment process. Management, therefore, will have already made their determination and exercised their right by determining the vacancy should be filled, and only then will the Agency "to the maximum extent feasible" have to use merit staffing guidelines.

The Agency's rejection which alleges that the Union's proposal excessively interferes with management rights because it limits the manner in which the Agency can fill vacancies and/or requires the Agency to make selections is not accurate. As explained above, the proposal does not require the Agency to only use merit staffing, nor does it prohibit the Agency from refraining from filling vacancies. The proposal merely requires that the Agency to the maximum extent feasible use merit staffing to fill vacancies that are not already filled through reassignment and in accordance with the parties' prior agreements (*see* Proposal 36). The proposal is limited to the employees' positions affected by the reorganization, allows management to retain full

discretion to hire or not hire candidates through merit staffing procedures or other procedures, and addresses the adverse effects of substantial increases in workload due to retirement of staff who take buyouts. This proposal, therefore, does not excessively interfere with management's rights.

**Union Proposal 147:**

**Any affected MF employee who does not apply for VERA/VSIP and cannot relocate for personal hardship reasons, will be permitted to be outstationed to their current duty location from their directed reassignment location as an appropriate arrangement.**

**Any affected MF employee who does not apply for VERA/VSIP and cannot relocate for personal hardship reasons, will be permitted to work at an alternative worksite within his/her current local commuting area 5 days per week as an appropriate arrangement under 5 U.S.C. § 7106(b)(3).**

**Agency's Rejection:**

This proposal restricts management's discretion regarding how the agency will be structured to accomplish its mission and geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management's right to determine the agency's organization under 7106(a)(1).

This proposal also excessively interferes with Management's right to direct employees and assign work under § 7106(a)(2)(A) and (B), respectively. This is because the proposal would eviscerate Management's ability to: (1) provide any in-person supervision of or engagement with an affected employee; and (2) assign an affected employee any work that requires her presence at her designated duty station.

**Union's Response to Agency's Rejection:**

The Union's proposal does not interfere with a management right, let alone excessively interfere with such right. It should be noted that the second paragraph of this Proposal is already a process allowed by HUD either by Telework agreements or by HUD management approval. HUD has not considered this interference to date. No cases or charges of excessive interference have come about with employees working outstationed. More importantly, outstationing of



employees in the remaining programs of HUD is not affected, and HUD continues to recognize this process as a good business practice.

Second, the first paragraph of the Proposal does not excessively interfere with management's rights because it is limited to affected employees who do not take a buyout, early retirement, and cannot move because of personal hardship reasons. If an employee does not fall into these categories, then this proposal would not apply. HUD recognizes hardships now and has actually provided hardship transfers to Multifamily Housing employees in the midst of this reorganization, e.g. a transfer from Boston to Philadelphia. This is a process for maintaining an employee's work location in limited cases of hardship and constitutes an appropriate arrangement. It is designed to address the adverse effects of this reorganization on affected employees given directed reassignments, involuntarily being relocated or left with no choice but to involuntarily retire or resign.

While an agency retains its management rights under 5 U.S.C. § 7106, appropriate arrangement proposals that address and minimize the adverse effects of the exercise of management rights are mandatory subjects of bargaining under the Federal Service Labor-Management at 5 U.S.C. § 7106(b)(3). *See NTEU*, 62 FLRA 267 (2007); *NAGE Local R14-87*, 21 FLRA 24 (1986). The Agency has not explained how this proposal excessively interferes with management's rights. The Agency is not closing all of the field offices where the Offices of Multifamily Housing are currently located. HUD has many employees throughout the Agency currently outstationed in which their supervisory chain of command is located in other offices, hundreds or even thousands of miles away, and yet those work relationships prosper.

Finally, telework and alternative work sites have been authorized by law under the Section 359 of Public Law No. 106-346 of the Department of Transportation and Related

Agencies Appropriations Act of 2000 and Telework Enhancement Act of 2010 (5 U.S.C. § 6501) and are clearly negotiable. "Telecommuting" is defined in the legislative history of § 359 of Public Law No. 106-346 as "any arrangement in which an employee regularly performs officially assigned duties at home **or other work sites geographically convenient to the residence of the employee.**" (Emphasis added) *AFGE Council 222 v. HUD*, 60 FLRA 311, 313 (2004); and H.R. Conf. Rep. No. 106-940, § 359, at 151 (2000). It would be appropriate, therefore, that an employee who lives near one of the offices that is being closed for MFH but remaining open for other HUD program offices, to be allowed to continue to report to work at that duty station. As such, this proposal does not excessively interfere with management's rights and is negotiable.

**Union Proposal 149:**

**To the maximum extent feasible, approximately half of all MF employees affected by the reorganization will be required to relocate to a new duty station to facilitate redistribution of work. The remaining approximately half of affected MF employees will be out stationed at their current duty location. Using technology such as SKYPE, Virtual Meeting or other electronic means may be used to meet management's objective of team interaction and coordinated project management. Approximately half of affected employees who will be chosen to relocate shall be chosen in the following manner:**

**A. volunteers will be solicited for relocation**

**B. seniority will be the basis for the remaining selection, with the most senior employees having the right to remain in place.**

**If more than half of all MF employees affected by the reorganization shall be required to relocate, management shall provide a detailed analysis and report to the Union and each employee providing legitimate business operating reasons why the Agency could not operate with any fewer amounts of employees being relocated to the hubs and satellite offices. The analysis and report will provide the specific criteria and empirical evidence of how management's business model could not efficiently and effectively operate without relocating the specific number of affected employees.**

**Agency's Rejection:**

This proposal, which limits Management's discretion to determine employees' duty stations, excessively interferes with Management's right to determine the agency's organization under § 7106(a)(1). This proposal also excessively interferes with Management's right to direct employees and assign work under § 7106(a)(2)(A) and (B), respectively. This is because the proposal would eviscerate Management's ability to: (1) provide any in-person supervision of or engagement with an outstationed employee; and (2) assign an outstationed employee any work that requires her presence at her designated duty station.

**Union's Response to Agency's Rejection:**

As noted above with regard to Proposal 149, the Union's proposal does not interfere with a management right, let alone excessively interfere with such right. The Agency can still direct employees and assign work, but in some cases it will be to employees who physically work in an outstationed site. The Agency already utilizes such arrangements. Furthermore, as noted in the Proposal, with the advent of technology, such as Skype, Virtual meeting, or other electronic means, including e-mail, employees can meet management's objective of team interaction and coordinated project management. The Proposal, too, provides the Agency an avenue to increase the number of reorganized MF employees by conducted a detailed analysis and reporting the legitimate business operating reasons why the agency could not operate with any fewer amounts of employees being relocated to the hubs and satellite offices.

This proposal is an appropriate proposal that is a part of mandatory subjects of bargaining per 5 U.S.C. § 7106(b)(2) and (3). This proposal, therefore, does not excessively interfere with management's rights and is negotiable.

**Union Proposal 150:**

**To the maximum extent feasible, an affected MF employee who is retirement eligible will be not be involuntarily relocated until the last phase MFRT is completed. In the event that the retirement-age eligible employee will be required to relocate prior to the last phase of MFRT being completed, management shall provide a detailed analysis and report to the Union and the affected employee identifying legitimate**

**business operating reasons why the agency could not operate without relocating the specific employee to the hub or satellite office. The analysis and report will provide the specific criteria and empirical evidence of how management's business model could not efficiently and effectively operate without relocating the specific affected employee.**

**Agency's Rejection:**

This proposal restricts Management's discretion regarding how the agency will be structured to accomplish its mission and the geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management's right to determine the agency's organization under § 7106(a)(1)."

**Union's Response to Agency's Rejection:**

The Union's proposal does not interfere with a management right, let alone excessively interfere with such right. The Agency has full discretion to decide who and where to reassign MF employees. The Union's proposal merely seeks to allow decisions on relocation as to retirement eligible employees to be made at the end of the phased relocations. Furthermore, the proposal provides the Agency an avenue to relocate a retirement eligible employee before the last phase by conducted a detailed analysis and reporting the legitimate business operating reasons why the agency could not efficiently and effectively operate without relocating the specific affected employee.

This proposal is an appropriate proposal that is a part of mandatory subjects of bargaining per 5 U.S.C. § 7106(b)(2) and (3). This proposal, therefore, does not excessively interfere with management's rights and is negotiable.

**Conclusion**

Based on the foregoing, the Union requests an Order that Union Proposals 75, 94, 102, 147, 149 and 150 do not interfere with management's rights and are fully negotiable.

Respectfully Submitted,



Jacob Y. Statman, Esq.  
Jason I. Weisbrot, Esq.  
Snider & Associates, LLC  
600 Reisterstown Rd., 7<sup>th</sup> Floor  
Baltimore, Maryland 21208  
Phone: (410) 653-9060  
Fax: (410) 653-9061  
Email: [jstatman@sniderlaw.com](mailto:jstatman@sniderlaw.com)  
[jason@sniderlaw.com](mailto:jason@sniderlaw.com)

- Exhibit 1** Notification of Reorganization Memo, April 26, 2013
- Exhibit 2** Union's Demand to Bargain, May 3, 2013
- Exhibit 3** National Supplement re: Multifamily Reorganization and Transformation
- Exhibit 4** Response to Revised Union Counterproposals, September 5, 2013
- Exhibit 5** Union Written Request for Formal Declaration of Non-Negotiation for the Remaining Proposals on the Multifamily Reorganization Negotiations

# EXHIBIT

1



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

CHIEF HUMAN CAPITAL OFFICER

April 26, 2013

MEMORANDUM FOR: Eddie Eitches, President, AFGE Council 222  
FROM: *Karen Newton Cole*  
Karen Newton Cole, Deputy Chief Human Capital Officer  
SUBJECT: Notification of Reorganization of the Office of Multifamily Housing

In accordance with Article 5 HUD/AFGE Agreement, this memorandum notifies the union that the Office of Multifamily Housing (MFH or Multifamily) is reorganizing its headquarters and field offices. The reorganization outlined in this document will require a headquarters and field level restructuring which also includes changes to the operating model. MFH anticipates implementation to commence beginning in calendar year (CY) 2013 concluding with full implementation by the end of CY 2016.

Statement of the Current Structure and Practice

Under the current Multifamily Housing structure there are 6 headquarters business offices, 17 Hubs, and 34 Program Centers. In addition, there are 2 property disposition centers responsible for the delivery of Multifamily services in headquarters and the field. Currently, each office adheres to space requirements in the Administrative Services Policy Handbook (2200.1), CHAPTER 13: SPACE MANAGEMENT and Supplement 69 for determining employee workstation size (in most cases the standard is 8x8; however, the supplement allows for a reduction to 7x8 if necessary).

Statement of the Reason for Change

Multifamily has made significant strides in responding to the financial crisis through Breaking Ground and Sustaining our Investments; however, more changes are necessary. The Multifamily operating model needs updating and HUD must do more to deal with ongoing challenges. The current organizational structure is outdated; impedes optimal efficiency and effectiveness in the delivery of its programs; and is cumbersome to staff, our industry partners and stakeholders. A complete restructuring of the operating model is necessary due to increases in FHA loan volumes and a need for enhanced focus on risk-based management across the platform. This transformation will help us meet these challenges and better equip us to work with customers to fulfill our mission.

Statement of the Proposed New Structure and Practice

Under the proposed structure, Multifamily will have 4 headquarters business offices, 5 Hub offices and 5 satellite offices reporting to the Hubs. There will be one property disposition center.

The Seattle, WA Hub will become a field office for the Office of Healthcare Programs (OHP) reporting to the Associate Deputy Assistant Secretary for the Office of Healthcare Programs. The agency will be using a standard of 175 square foot space utilization rate in determining size of workstations.

### Reorganization

- (a) See attachment 1 for a list of the names, grades, titles, and positions of affected AFGE bargaining unit employees.
- (b) There is no impact upon upward mobility and/or career ladder positions.
- (c) See attachment 1 for the list of affected employees that may have different first and second line supervisors as a result of the reorganization.
- (d) There will be no impact upon employees' receipt of performance ratings. All ratings will be completed in accordance with the Performance Management Handbook in effect at the time of the reorganization.
- (e) Copies of available position descriptions for new positions can be found at attachment 2. Further information will be provided when available in accordance with section 5.04.
- (f) There are no employees detailed in connection with the reorganization.
- (g) The new positions created as a result of the reorganization can be found in attachment 2.
- (h) There will be no employees downgraded as a result of the reorganization. Everyone in Multifamily Housing will have the opportunity to continue their service with Multifamily Housing.
- (i) All employees listed in attachment 1 will potentially be moved as the result of the reorganization. This information will be provided when available in accordance with Section 5.04.
- (j) See attachment 3 for a copy of the before and after organization charts.

To assist you in determining the impact on affected AFGE employees, we have provided you with additional information (Mission and Functional Statements and the Proposed Implementation Plan for the Field) on the restructuring of the Office of Multifamily Housing at attachment 4. All affected employees will be given directed reassignments. HUD is seeking Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payment (VSIP) to provide affected employees with other options.

In accordance with section 5.02 of the HUD/AFGE Agreement, the union may request negotiations over the proposed reorganization by submitting preliminary primary proposals within 10 calendar days to Karen Newton Cole, Deputy Chief Human Capital Officer. All proposals shall be related to the proposed reorganization.

Attachments (4):

- List of Affected AFGE Employees
- Position Descriptions for New Positions
- Organization Charts (before and after)
- Additional Restructuring Information



# EXHIBIT

2



# National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
AFFILIATED WITH AFL-CIO

## Council 222

May 3, 2013

MEMORANDUM FOR: Karen Newton-Cole, Deputy Chief Human Capital Officer

FROM: Deborah Slakes, Chief Negotiator  
AFGE National Council of HUD Locals #222

SUBJECT: Demand to Bargain: Reorganization of the Office of Multifamily

Pursuant to Article 5, Section 5.02 of the HUD /AFGE Collective bargaining Agreement (the Agreement) this memorandum serves as HUD Council of AFGE Locals (the Council) demand to bargain the impact and implementation the Department's planned reorganization of the Office of Multifamily (MFH). Status quo shall remain and no planned action shall take place until statutory and contractual bargaining is completed.

The Council is offering the following preliminary proposals for consideration and negotiation:

- 1) This Supplement shall not diminish or waive any rights that MFH bargaining unit employees have under the AFGE Agreement, law, rule or regulation to address any adverse impact. Management shall immediately provide all the information specified under Article 5, paragraphs 5.04(2) and (3). Nothing in this Agreement will prevent the Parties from negotiating over procedures and appropriate arrangements for adversely affected employees pursuant to 5 U.S.C. § 7106(b) (3).
- 2) Internal reorganizations, transfers of function, realignments, voluntary/ involuntary relocations, Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive program (VSIP) as a result of the Departments implementation of the reorganization of MFH shall be conducted in accordance with law, rule, regulation and the terms of the Agreement.
- 3) The Department agrees to minimize adverse actions, involuntary relocations and reduce separations of affected MFH bargaining unit employees. The Department shall seek voluntary transfers/relocations prior to implementation of the reorganization of MFH.
- 4) The Department shall seek Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) authority from the Office of Personnel

Management. The VERA/VSIP authority, if approved, shall be concurrent with other methods used to draw down the workforce and/or facilitate other Department opportunities for the affected employees.

- 5) Status Quo will remain and the Department shall delay the implementation of the reorganization of MFH until voluntary transfers/relocations and VERA /VSIP are fully exhausted.
- 6) The Department shall provide bi-weekly conference call meetings with the Union to discuss progress, problems, ideas and concerns on the current progress made through voluntary transfers/relocations and VERA /VSIP until full implementation of the reorganization of MFH.
- 7) No MFH bargaining unit employee will be involuntarily separated or downgraded as result of the Department's implementation of the reorganization of MFH.
- 8) No position will be removed from the bargaining unit as a result of implementation of the reorganization of MFH.
- 9) There shall be no adverse impact on upward mobility and /or career ladder promotions as result of implementation of the reorganization of MFH.
- 10) Upon implementation of this Supplement, on an on-going basis, the Department shall provide AFGE Council 222 and all AFGE Locals at HUD a list of all Departmental vacancies in other program offices and divisions for which the affected MFH bargaining unit employees who are involuntarily relocated may be qualified.
- 11) In the directed reassignment of MFH bargaining-unit employees to different duty stations for the same positions or equivalent positions with the same duties currently being performed by the employees for which they are qualified, HUD will first ask for volunteers from among the qualified employees at the affected duty station. If there are too many volunteers, the employees with the greatest seniority based on the Federal computation date for leave purposes shall be given the reassignment.
- 12) MFH bargaining-unit employees who do not retire, take a buyout, and cannot relocate for personal hardship reasons to another duty station and would otherwise be separated from Federal service shall be provided to the maximum extent feasible reassignments to vacant positions that they are qualified for in other program areas and divisions within their current duty station minimize the hardship and impact on their families and finances as an appropriate arrangement.

- 13) MFH bargaining unit requests for retirement information or separation information initiated through the Bureau of Public Debt Human Resource services will not be shared with the employee's managers.
- 14) Affected MFH bargaining unit employees shall continue to have access to the Department's Pay, Benefits and Retirement Division. Regional points of contacts regarding benefits questions and problems shall be provided to affected employees.
- 15) The Department shall allow the affected MFH employees who do not apply for VERA/VSIP and cannot relocate for personal hardship reasons to work 5-days per week in a 21st-Century virtual office (i.e., telework at home or alternative worksite such as a GSA telework center), or out-stationed from their current duty station to minimize the hardship and impact on the families and finances of affected bargaining-unit employees as an appropriate arrangement. Affected employees shall not be required to live within the "normal commuting area" of any reassigned duty station for the purposes of teleworking.
- 16) All settlement agreements, grievance awards or mutually agreed solutions and/or negotiated agreements between the union and employees with the Department shall remain in place.
- 17) In accordance with the terms of Article 5 of the Agreement, midterm bargaining will be conducted at the local level concerning local issues related to the Department's implementation of the reorganization of MFH.
- 18) The floor plans in new HUD space for affected MFH employees shall be in accordance with Administrative Handbook. 2200.01, Chapter 13 guidelines and Supplement 69 regarding work stations for full time bargaining unit, temporary, part time and out stationed employees.
- 19) The Department shall release affected MFH employees' obligation for the repayment of student loan subsidy, training, other programs due to dislocation.
- 20) Annual leave and/or sick leave previously approved will not be rescinded as result of implementation of the Department's implementation of the reorganization of MFH.
- 21) There shall be no adverse impact on to employees' alternative work schedules as result of the Department's implementation of the reorganization of MFH.

- 22) There shall be no adverse impact to existing employee telework agreements as result of the Department's implementation of reorganization of MFH.
- 23) . The relocations of MFH bargaining unit employees with disabilities who currently have reasonable accommodations or disabilities shall be in compliance with the Americans with Disabilities Act and the Rehabilitation Act of 1973. The Department shall provide reasonable accommodations to disabled employees affected by office closures. The Department shall inform affected employees with disabilities of their right to request reasonable accommodations and obtain Union representation in pursuit of reasonable accommodations, and shall provide the name and contact information for a reasonable accommodations counselor.
- 24) The Department's implementation of the reorganization of MFH shall not alter reasonable accommodations currently in effect. There shall be no adverse impact to existing reasonable accommodations. If the Department believes that a reasonable accommodation must be altered, it will inform the employee and provide Article 5 notice to the Union in a confidential manner.
- 25) Affected MFH bargaining unit employees shall be provided position descriptions for newly assigned positions and/or duties. The Department shall provide the Council evidence of OPM approval of new position descriptions' classifications prior to implementation of MFH's reorganization.
- 26) To the extent possible, work as a result of the MFH reorganization will be distributed equitably among affected bargaining unit employees. The phrase " other related duties as assigned" as used in position descriptions means duties related to the basic job. This phrase will not be used to regularly assign work to an employee which is not reasonably related to their basic position description.
- 27) The MFH's reorganization shall be deemed as a factor beyond an employee's control and will not negatively impact an employee's performance evaluation. In the application of performance elements and standards to affected MFH bargaining unit employees, management shall take into account factors beyond employees' control including, but not limited to: availability of resources, lack of or inadequate training, frequent or authorized interruptions of normal work duties, additional work assignments, processing delays by others, understaffing of positions, leave, and other duties as assigned as described in Proposal 26. In applying performance elements and standards, affected MFH bargaining-unit employees' performance appraisals shall take into account all of the job functions they are expected to perform and the actual amount of time available (or not available) to perform those functions.

28) Affected MFH employees who have no previous or recent experience with newly assigned duties shall or with no prior background, experience and training in new or complex work assignment shall be given no less than 90 days to train so as to satisfactorily perform the duties as an appropriate arrangement. Training for newly assigned duties shall be in accordance with the terms of the Agreement.

These are preliminary proposals for the purpose of negotiating the changes under the subject line above and additional proposals may be added prior to the start of any necessary negotiations. I can be reached at (414) 935-6693.

Thank you.

# EXHIBIT

3

**NATIONAL SUPPLEMENT**  
**BETWEEN**  
**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**AND**  
**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**  
**NATIONAL COUNCIL OF HUD LOCALS 222**

Subject: Multifamily Reorganization and Transformation

Scope: The scope of this Supplement encompasses the impact and implementation of the Office of Multifamily Housing reorganization of its headquarters and field offices. Under the current Multifamily Housing structure there are 6 headquarters business offices, 17 HUBs, and 34 Program Centers. In addition, there are two property disposition centers. Under the proposed structure, the subject of this Supplement, Multifamily Housing will have 4 headquarters business offices, 5 HUB offices ( New York, Atlanta, Chicago, Fort Worth and San Francisco) and 5 satellite offices (Boston, Jacksonville, Detroit, Kansas City and Denver) reporting to the HUBs. There will be one property disposition center. The Seattle, Washington HUB will become a field office for the Office of Healthcare Programs. The Multifamily Reorganization and Transformation (MFRT) will be implemented in waves beginning in FY2014.

(1) This Supplement shall not diminish or waive any rights that Multifamily Housing (MFH) bargaining unit employees have under the current collective bargaining agreement, law, rule or regulation to address any adverse impact unless expressly provided otherwise in this Supplement. Internal reorganizations, transfers of function, realignments, voluntary/ involuntary relocations, Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Program (VSIP) as a result of Management's implementation of the Multifamily Reorganization and Transformation (MFRT) of MFH shall be conducted in accordance with law, rule, regulation, the current collective bargaining agreement and the terms of this Supplement.

(2) Management shall meet with the Union in each implementation wave no less than once per month to brief and discuss recommendations to resolve problems, concerns or issues throughout the MFRT. Either party shall be granted additional meetings upon request. If nothing changes between meetings, Management shall notify the Union. Management shall provide a MFH program representative with decision making authority to these meetings. Local issues shall be addressed with local MFH management.

(3) Management agrees to evaluate the challenges and successes of each phase of the MFRT. Management agrees to notify the Union in accordance with the mid-term bargaining provisions



of the current collective bargaining agreement of any new proposed changes in personnel policies, practices and working conditions resulting from the evaluation.

(4) During the duration of each MFRT wave implementation, including any negotiated training requirements or other negotiated changes, all AFGE Locals will be provided official time as necessary to address all local and National implementation issues or grievances and administrative actions arising out of the MFRT.

(5) This MFRT Supplement shall be provided to employees. The local union representatives shall be allowed to brief bargaining unit members on this Supplement at a meeting. Regular work time shall be allowed for this meeting.

### **Buyout, Retirement and Separation**

(6) The Department has VERA/VSIP authority to offer buyouts to employees in the consolidating offices. The Department has requested VERA/VSIP Authority for select positions in Headquarters Multifamily, the five (5) Multifamily HUBs and the five (5) Satellite offices that are to receive reassigned employees. The Department agrees to offer these buyouts to the receiving offices in waves. In addition, subject to the availability of funding, at the beginning of Wave I, The Department agrees that all of the offices in Wave II and Headquarters MFH also will be offered buyouts at that time. Also subject to the availability of funding, at the beginning of Wave III, the The Department agrees that all of the offices in Wave IV also will be offered buyouts at that time. The Department will, subject to the availability of funds, offer buyouts in Wave V at an earlier time. Pursuant to OPM regulations, buyouts in the receiving offices and Headquarters MFH will be targeted to specific positions.

(7) The Department shall make available buyout windows in each of the following years, FY2014, FY2015, and FY 2016 for employees under the MFRT process. The buyout amount shall be a lump sum equivalent to the lesser of an employee's severance pay entitlement or a maximum of \$25,000.

(8) The VERA/VSIP application window for each MFRT wave will be open for 14 days. Employees shall have five (5) business days once the Department delivers the buyout offer to accept or decline it. Once an employee accepts a buyout, the employee shall separate no later than the mandatory separation date which will be 90-94 days from the acceptance date. The employee may provide alternate contact information (such as a proxy, private electronic mail address or telephone number) on the buyout application to aid employees who are on extended leave, detail, etc.

(9) The Department agrees that if an employee is eligible for retirement within 90 days of their reassignment/report to duty date, they may agree to retire and remain in place until retirement eligibility. If they elect not to retire at the time of their eligibility, the employee will receive an immediate notice of reassignment to the previously communicated location.

(10) The Department agrees that FERS covered employees eligible to retire at the time of the Wave I buyout may delay their retirement until January 1, 2014 so that these employees may receive the benefit of the change in the law regarding the crediting of sick leave.

(11) MFH bargaining unit requests for retirement or separation information will not be shared with the employees' managers.

(12) Each employee requesting pay or benefits information shall be assigned a specialist who will assist them through all steps of the pay and benefits process. Such assistance shall include, but not be limited to, one on one telephone counseling, individual step by step instructions through the pay and benefits process, interactive video conference and when requested by the employee, on-site training shall be provided.

(13) Prior to separation, the Department will provide post-employment ethics counseling pursuant to the government-wide Standards of Conduct. The Department shall provide all possible ethics waiver considerations and reemployment options allowed by law or discretion of the Department.

### **Relocation**

(14) In the reassignment of MFH employees to different duty stations for the same or equivalent position, Management will solicit preferences from employees in the consolidating offices. Management shall make a onetime solicitation of preferences from all employees required to relocate prior to implementation of the MFRT and will not accept statements of preference after the solicitation. The solicitation period shall be no less than 10 days. Preferences may be chosen from their respective HUB and satellite in their geographic MFH region and two (2) additional preferences from the eight remaining HUB and satellite offices. After the buyout window closes, Management will reconsider the preferences of those who did not receive their first choice. An employee will only be able to move to their destination office if one or both of the following two conditions apply: a. the employee is moving from a consolidating office in the wave currently being implemented; or b. the employee is moving to a receiving office in the wave currently being implemented. Example for a: An employee in Indianapolis, IN [Wave II office] may move to New York, NY [Wave IV office] during the implementation of Wave II. Example for b: An employee located in Manchester, NH [Wave IV office] may move to Ft. Worth, TX [Wave I office] during the implementation of Wave I.

The Department shall reassign the employee to one of the employee's choices in descending order subject to availability of positions in the receiving offices. If there is a tie, seniority will determine the placement using the Service Computation Date. If there is a tie in Service Computation, the Entrance on Duty Date to HUD will be used. If HUD determines it cannot grant one of the employee's alternate choices it shall document the reason why. Regardless of the location determined by Management, employees will receive relocation benefits as agreed to in this Supplement and in accordance to Federal Travel Regulation (FTR).

An employee may receive relocation assistance for only one move associated with MFRT.

(15) Multifamily employees subject to the Small Office Closure Memorandum of Understanding who choose to remain with the Department will be offered their preference of a directed reassignment in accordance with this MFRT Supplement at the time of the implementation of the Small Office Closure with relocation benefits or VERA/VSIP if eligible in accordance with this MFRT Supplement.

(16) All employees must be provided relocation information if requested. Each employee being relocated will be assigned a specialist who will assist them through all steps of the relocation process. Based on their needs, each employee will be assigned a Human Resources specialist to assist with questions regarding retirement, buyouts or other benefit issues. Assistance may include one on one telephone counseling, individual step by step instructions through the relocation process, interactive video conference, and where warranted on-site training. Employees will be responded to within two business days.

(17) HUD bargaining unit employees affected by the MFRT shall have a reasonable amount of duty time as needed, but no less than eight (8) hours, to access paper and electronic information about federal relocation procedures and benefits including, but not limited to the [hudatwork.hud.gov](http://hudatwork.hud.gov) website, OPM websites and AFGC websites, or other sources.

(18) The Department will use the HUD Interpretation Line to assist employees with inquiries related to buyouts, retirement, and travel-related allowances during the MFRT.

(19) The Department shall provide additional administrative leave during the house hunting trip up to three (3) days to impacted MFH employees only when it is necessary to locate local service providers for daycare or elder care for immediate family members with unique needs prior to relocation. There shall be no additional per diem, lodging or other travel related expenses paid to the employee for the three days.

(20) No MFH employee affected by the MFRT will be required to report to a new duty station during the period of November 15 through January 15.

(21) The Department will comply with the Federal Travel Regulation (FTR), and all other applicable regulations and Department policies in regards to relocation benefits. HUD will approve the below entitlements up to the maximum shown unless the employee utilizes less:

A) Additional 60, days of temporary quarters for a total of 120 days if requested/needed (only if actual cost is selected);

B) Additional year to complete all aspects of relocation for a total of 2 years.

C) Additional 90 days of temporary storage of household goods for a total of 150 days;

D) An additional year to complete real estate sale and purchase for a total of 2 years. This will also extend the other entitlements for one year;

E) Transportation of employee and immediate family member(s);

F) Shipment of privately owned vehicles (POV), maximum of 2 vehicles when it is cost effective to the Government;

G) Per Diem for the affected employee and the employee's immediate family;

H) Temporary quarters subsistence expense;

I) Transportation of household goods;

J) House hunting per diem & transportation;

K) Miscellaneous moving expenses:

1. Losses on private institutional contracts (such as that provided for handicapped or invalid dependents only) that cannot be recovered by transfer or refund and are incurred due to early termination of a contract, as allowed by law.

2. Transportation of pets including service and companion animals.

3. New public or private contract care initial fees, deposits and expenses (including but not limited to child, elder or dependent care), as allowed by law;

L) Sale and purchase of residence expenses or lease termination expenses including a residence titled in a trust; and

M) Relocation income tax allowance.

HUD will not provide the following discretionary relocation expenses unless there is a change in the AFGE Collective Bargaining Agreement or Departmental policy:

1) Home Marketing Incentive Program

2) Property management services

3) Use of a relocation service company

4) Childcare services during a house hunting/relocation

5) Home sale program (a program offered by the agency through a contractual arrangement with a relocation services company to independently market and sell a residence.)

(22) Employees shall be provided a time limit no more than two years from the date of reporting to duty to incur relocation expenses for all aspects of their relocation.

(23) Travel service agreements provided to employees shall not exceed 12 months from the date the employee reports to new duty station. If the affected employee leaves Government service prior to the expiration of the service agreement without a break in service for reasons of retirement or for issues beyond an employee's control and are acceptable to the Department, the employee will be released from the travel service agreement and travel indebtedness will be waived. This MFRT Supplement shall govern this provision for Multifamily employees affected by the Small Office Closure Memorandum of Understanding.

(24) Immediate family includes any of the following named members of the affected employee's household at the time he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members:

A) Spouse;

B) Domestic partner if allowed by law:

C) Children of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The term "children" shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee, of the employee's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the employee's effective date of transfer.);

D) Dependent parents (including step and legally adoptive parents) of the employee, of the employee's spouse, or of the employee's domestic partner; and

E) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the employee, of the employee's spouse, or of the employee's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

(25) House hold goods (HHG) regarding relocation expenses include the affected employee's property, unless specifically excluded, associated with the home and all personal effects belonging to the employee and immediate family members on the effective date of the employee's change of official station orders that legally may be accepted and transported by a commercial HHG carrier:

A) Professional Books, papers and equipment;

B) Spare parts of a POV (see definition of POV) and a pickup truck tailgate when removed; (this applies to drivable vehicles used for transportation by employee or family member.)

C) Integral or attached vehicle parts that must be removed due to high vulnerability to pilferage or damage, (e.g., seats, tops, wench, spare tire, portable auxiliary gasoline can(s) and miscellaneous associated hardware);

D) Removed as not applicable to the Multifamily Relocation (refers to overseas relocations);

E) Vehicles other than POVs (such as motorcycles, mopeds, jet skis, snowmobiles, golf carts, boats (e.g., boat, sailboat, canoe, skiff, rowboat, dinghies, sculls and kayak, mounted or unmounted on trailers)) of reasonable size.

F) Ultra-light Vehicles (defined in 14 CFR part 103) as being single occupant, for recreation or sport purposes, weighing less than 155 pounds if unpowered or less than 254 pounds if powered, having a fuel capacity NTE 5 gallons, airspeed NTE 55 knots, and power-off stall speed NTE 24 knots.

G) Unaccompanied Air Baggage (UAB)—Unaccompanied air baggage includes personal items and equipment (e.g., pots, pans, light housekeeping items, collapsible items such as cribs, playpens, and baby carriages, and other articles required for the care of the family) that may be shipped by air in accordance with Chapter 302 of the FTR. Household items (i.e., refrigerators, washing machines, and other major appliances or furniture) are not eligible as UAB. This applies to employees relocating from an OCONUS location to a CONUS location.

(26) The Department agrees to authorize one house hunting trip to help the affected employee locate housing at the new duty station. What is considered “one” house hunting trip is either a trip with both spouses or domestic partner, as allowed by law, simultaneously traveling to the new duty station or each spouse separately traveling once to the new duty station. The Department agrees to authorize travel and per diem for the affected employee and the employee’s spouse or domestic partner, as allowed by law, for house hunting trips. The Department agrees that the house hunting trip will be authorized as regular duty hours.

(27) The Department will authorize temporary quarters for the employee to the extent allowed by the Federal Travel Regulation.

(28) Affected employees shall be allowed to receive an allowance for expenses incurred in connection with their residence transactions (i.e. selling current home/buying new home) within the expenses allowed in accordance with the Federal Travel Regulation. This includes no *more* than ten (10) percent of the actual sales price for the sale of the current home and no more than five percent of the actual purchase price for the new home located near the new duty station. Reimbursement for loan origination fees may be approved upon the employee providing evidence that the higher rate does not include prepaid interest, points or a mortgage discount, and

loan origination fees or other similar fees are customarily charged in the locality where the residence is located.

(29) The Department recognizes under the current housing market that there may be employees that are “under water” on their mortgages. Management agrees that employees shall suffer no adverse employment impact, including but not limited to systems access, official travel access, or ethics/conduct for activities outside of the workplace for failure to meet their mortgage obligation.

(30) The parties agree that the Department will maintain records of all relocation travel orders according to applicable records retention policy. It is further agreed that the Department will provide Union officials with such records upon request to the extent permitted by law.

### **Reassignment**

(31) Employees who receive reassignments shall remain at their current duty location for 90 days before relocating unless otherwise stated in this Supplement, the Small Office Closure Memorandum of Understanding and any other agreement.

(32) With the exception of those employees covered by the Small Office Closure Memorandum of Understanding, employees will continue to work in their currently assigned field offices until the date of their reassignment reporting date.

(33) Management agrees to provide employees affected by the MFRT information on how they can use the Career Transition Assistance Program (CTAP) and the Interagency Career Transition Assistance Program (ICTAP) to retain and/or secure Federal government employment. This information shall be provided to employees who are displaced because they have declined a directed reassignment outside of the commuting area and meet the other CTAP-specific requirements. CTAP eligible employees would be afforded a selection priority for the Department’s competitively recruited vacancies via CTAP. Employees applying for positions outside of the Department may use the ICTAP selection priority program and are bound by the procedures of that agency. The Department will afford a selection priority to CTAP-eligible candidates who apply for Department positions within their local commuting area and are determined to be well-qualified for the specific vacancy before placing another candidate in the position unless the placement is under one of the CTAP exceptions.

(34) Affected AFGE employees’ hardship reassignment requests shall be processed in accordance with the Hardship Reassignment Article negotiated but not yet ratified between the Department and AFGE Council 222 in 2013. The Department shall provide web-based training on Hardship Reassignment requests to the affected employees within 30 days of the complete signing of this Supplement. Hardship Requests will be prioritized for a response by the Department within 30 days of submission. All hardship processing shall be completed prior to any employee being relocated.

(35) For out-stationed employees, Management and the Union agree that Supplements 39 (Operating Protocols) and 86 (New FPM Operating Protocols) between the parties shall be observed, including provisions regarding notification to employees of their chains of command for work assignments and disciplinary matters within 5 days of the affected employees reporting to their new duty station. Such employees will not be denied a preferred location solely because their immediate supervisor is not co-located at that location unless changed in this Supplement.

(36) For consolidating offices, program offices will identify positions to be filled prior to each wave. The approved quarterly hiring plan will be provided to the local unions, and a list of available positions will be provided to MFH employees as soon as practicable after budget approval. MFH employees in consolidating offices who wish to be reassigned to other program areas within their consolidating office may request reassignment to a position at the same or lower grade. Such a request is made by submitting a statement of interest, a resume and the most recent performance appraisal to the servicing Human Resources office. Minimum qualifications determinations will be made by the servicing Human Resources office. The information of qualified employees who have a summary rating of at least a "Fully Successful" will be forwarded to the program manager. The program manager must make a good faith effort and is strongly encouraged to select an MFH employee who is being required to relocate under the MFRT. This provision becomes effective 30 days from the effective date of this Supplement. The employee's eligibility for this provision ends when the employee accepts a directed reassignment. Reassignment notification through the selection process must be completed within 14 days. A report to the Union shall be provided for each wave that lists each applicant that was considered qualified.

**EXCEPTION for 1<sup>st</sup> Wave Employees:** Eligibility for this provision for these employees expires the day they begin their physical relocation. If employees in the first wave are selected after relocation expenses are incurred but prior to the physical relocation, employees will be released from their service agreement and a waiver of indebtedness will be granted. Once a selection is known MFH will delay any physical relocation.

(37) Management agrees that prior to issuing a directed reassignment in each respective MFRT wave, the Union will receive a copy of an organizational chart showing the actual employees relocation including but not limited to team assignment current position title, new position title, current position pay grade, new position pay grade, team, and location of the office.

(38) Management agrees that errors in duty stations and locality pay are beyond an employee's control. Management agrees to review all MFRT reassignment actions for accuracy within six months of relocation. If there are errors related to duty stations and locality pay, Management will effect corrections and reimburse the employees for any underpayments. Employees should also review their Notifications of Personnel Actions and earning and leave statements for accuracy and report any errors. If errors result in an overpayment, the employee may request that repayment of the overpayment be waived in accordance with applicable regulations.



### **Career Status**

(39) No MFH bargaining unit employee will be involuntarily downgraded as result of the Management's implementation of the MFRT.

(40) Management will not remove any bargaining unit employee from the bargaining unit as a result of directed reassignments resulting from the MFRT.

(41) There shall be no adverse impact on existing upward mobility and /or career ladder promotions as a result of implementation of the reorganization of MFRT.

(42) The Department will abide by all current settlement agreements (EEO) and grievance awards affected by the MFRT. If there are circumstances caused by MFRT that prevent the Department from abiding by any such agreement or award, it will notify the Union as soon as possible. Employees may avail themselves of any applicable enforcement procedures if they believe an agreement has been breached.

### **Leave, Alternative Work Schedules, Telework and Reasonable Accommodations**

(43) Annual leave and/or sick leave previously approved will not be rescinded as result of implementation of the Department's implementation of the MFRT.

(44) Management agrees that employees reporting to their new location will keep their previous alternative work schedules until a work related need to change the schedule is established. Any changes to an affected employee's alternative work schedule shall be in accordance with the current collective bargaining agreement.

(45) The Department agrees that employees reporting to their new location shall keep their existing telework agreements. Any change in a telework agreement shall be in accordance with the current collective bargaining agreement.

(46) The Department shall allow the affected employees to maintain their current telework schedules for a period of 90 days following the report date for each wave of the MFRT. Thereafter employees' request for telework shall be processed in accordance with the collective bargaining agreement. This telework is in addition to the telework permitted under the Small Office Closure Memorandum of Understanding.

(47) All employees teleworking from their new duty stations shall receive appropriate equipment and supplies in a timely manner. Affected employees shall not be required to live within the "normal commuting area" of any reassigned duty station.

(48) Approved reasonable accommodations will remain in effect if employees relocate to a new office location. If a modification is requested by the employee as a result of the relocation, the proposed modification will be processed in accordance with the Departmental Reasonable Accommodation Policy.

### **Performance Management and Training**

(49) Management agrees to retain employees at current grade levels.

(50) Management agrees that all Multifamily positions will be properly classified based on their duties and responsibilities and will reflect grade parity for those employees with the same duties and responsibilities.

(51) Prior to providing a directed reassignment, each employee will receive a position description classified in accordance with OPM standards.

(52) All affected bargaining unit employees will be assigned to positions with approved classified position descriptions. Employees shall receive copies of their new Position Descriptions that accurately define, identify and describe the tasks and duties for which employees will be responsible. Management agrees that employees reassigned as a result of the MFRT meet qualifications for the positions to which they are being reassigned.

(53) Prior to or concurrent with the directed reassignment, all affected Field and Headquarters MFH bargaining unit employees shall be provided a copy of their classified position descriptions for their newly assigned positions and/or duties.

(54) To the extent possible, work as a result of the MFRT reorganization will be distributed equitably among affected bargaining unit employees. The phrase "other related duties as assigned" as used in position descriptions means duties related to the basic job and is not to be used as the basis for the assignment to employees of duties unrelated to the principal duties of their position, except on an infrequent basis and only under circumstances in which such assignments can be justified as reasonable.

(55) Multifamily employees affected by the MFRT shall be provided any and all work and training opportunities including work options that are provided to Multifamily employees currently working in the selected Multifamily HUB and satellite Offices.

(56) The Multifamily employees currently working in the selected Multifamily HUB and satellite offices, shall be provided any and all work and training opportunities including work options that are provided to Multifamily employees relocated as a result the MFRT.

(57) Management agrees that the implementation of the MFRT shall be deemed as a factor beyond an employee's control and will not negatively impact an employee's performance evaluation. In the application of the performance elements and standards to affected bargaining unit employee, management shall take into account mitigating factors.

(58) In the event the employee receives a different position description due to the MFRT, Management will provide the employee with a position description, new performance standards and elements and appropriate training. MFH employees shall receive no less than a 90 day period of training.

(59) Upon accepting a directed reassignment, MFH employees who are subject to a skills assessment will not be adversely affected as a result of the assessment (i.e. grades, promotions, potential access to training.)

(60) The Department agrees not to require certification as a precondition for holding any position if certification was not required prior to the MFRT.

(61) Any new performance standards/ EPPEs provided to employees shall be addressed under the current collective bargaining agreement requirements.

(62) Once the proposed training plan is finalized, pre-decisional discussions with the Union will be scheduled and the proposed training plan will be discussed.

(63) Prior to employees having to report to their new assignment, Management will provide a training plan. The training plan will include an outline of learning objectives, live classroom instruction and other appropriate training. Employees shall be allowed to adjust their Individual Development Plans accordingly. Management agrees to provide retraining and cross training to support and maintain Departmental programs which may include communication (i.e. language, oral and written communication) skills.

(64) With the exception of volunteers, there will be no expectation that MFH employees will be required to train higher graded employees.

(65) MFH employees who currently do not complete forms related to construction, inspection, environmental review, and plan approval, shall be provided training that equips them with the knowledge and skills required to perform the job duties should the completion of these forms become required.

(66) Performance appraisals will take into account an employee's training status. Employees' training status shall have no adverse impact on employees' performance appraisals.

(67) Management agrees that team leads are bargaining unit employees and are not supervisors. Team leaders will not have a role in rating other bargaining unit MFH employees at any point during or after the MFRT.

(68) Management agrees that irrespective of position title, it is the Department's intention to assign a MFH employee with a workload that is series and grade controlling, and in compliance with performance standards under the provisions of the current collective bargaining agreement.

(69) There shall be no adverse impact on the performance appraisals of Multifamily employees whose primary language is not English if they are meeting the requirements of the performance standards.

### **Space and Office Relocation**

(70) Management agrees to provide workstations in accordance with Supplement 69 dated March 17, 2006 (Space Management), which provides for workstations of 64 square feet but no less than 56 square feet, unless there is a current local agreement dated after March 17, 2006, that provides for a larger workstation in the MFH consolidated HUBs and satellites. This includes workstations for communal work, architects, construction analysts and appraisers. This workstation provision will be effective until a new National Supplement related to space management or a new negotiated collective bargaining agreement goes into effect.

(71) The development of space in the MFRT shall include high quality furniture and will be in conformance with the current collective bargaining agreement.

(72) In accordance with the midterm bargaining provision of the current collective bargaining agreement, midterm bargaining will be conducted at the local level concerning local space issues not negotiated at the national level related to the Department's implementation of the MFRT.

(73) For each wave of the MFRT, Management agrees to develop a move schedule. The schedules will include, at a minimum, time-frames for the delivery of files, records and data, and will provide a briefing for the Union and a meeting among staff.

(74) Prior to implementing a move schedule, Management will hold discussions with the involved Union locals. Any schedule changes will be discussed with the involved Union locals.

(75) All affected employees shall be provided packing materials and granted up to 16 hours to box their office work station belongings on the designated moving date, and up to 12 hours to unpack their belongings upon arriving to the new duty station. Employees shall not be required to pack or unpack outside of duty hours unless Management approves compensatory time, overtime or credit hours. Employee shall not be required to lift, move or carry boxes outside of their immediate work space. Where appropriate, Management will provide assistance to employees.

(76) All Multifamily Housing employees relocated to a new office will be provided the same full consideration for fair selection of office space as any employee currently in the receiving office. All new and current employees in a receiving office will be provided the same consideration for space.

(77) Management agrees to provide equipment in accordance with all health and safety requirements. Any reused equipment will be sanitized (including but not limited to phones,

headphones, computers chairs and workstations). Management will take additional steps to address employees' health concerns which may include replacement of equipment.

(78) Relocated employees shall have space and essential equipment in place prior to reporting to duty in the receiving office. Any delay in providing space and equipment shall not delay pay and benefits.

(79) Information packets will be provided to all employees identifying the amenities available at or nearby the new duty location. This includes but is not limited to Federal Credit Union, Fitness Center, transportation /parking options, Federal Protective Service and food. Information should include at a minimum the hours, location, fee schedule and direct contact information for these services.

(80) Affected employees relocating to the new Multifamily HUB or Satellite offices shall receive transit subsidies or other subsidies provided by HUD and other amenities available in their new location.

(81) Affected employees relocation under the MFRT shall receive a security briefing upon reporting to the new office on the following topics:

- A) Fire drills/ evacuation routes and procedures,
- B) Security briefing by the Federal Protective Service, and
- C) Parking, public transportation and shuttle logistics.

(82) Work assignments shall be adjusted to accommodate the physical office moves of employees affected by the MFRT.

### **Miscellaneous**

(83) Pursuant to 5 CFR 537.107 and the terms and provisions of HUD's Service Agreement for Receipt of Repayment of Students Loan(s), The Department agrees to waive Student Loan Repayment Service Agreements for employees separated by the MFRT. There shall be no adverse impact on the employees' alternative work schedules as result of the Department's implementation of the MFRT.

(84) Management will adhere to the terms of the current collective bargaining agreement regarding any decisions it may make in deciding to contract out work.

(85) The Department shall provide a current to/from list concurrent with each wave to include job titles in the office being reorganized. The list shall be provided to the Union and each Union local affected in the wave.

**(86) Management agrees to provide a list of any new positions created as a result of the MFRT at any point during the reorganization/transformation period.**

(87) Merit staffing principles and requirements shall be followed for staffing all new positions in higher graded job title positions that are created, designed for or listed as part of the MFRT.

(88) Management agrees that merit staffing will be done in accordance with the current collective bargaining agreement and applicable law, rule and regulations.

(89) In accordance with the current collective bargaining agreement, mid-term bargaining will be conducted at the local level for any local issues not covered in this Supplement.

(90) The Department agrees that affected employees will retain their bargaining unit affiliation with AFGE until the actual physical report date in a non-AFGE affiliated office (i.e. Detroit and San Francisco).

(91) The Department agrees to discontinue deduction of union dues from employee paychecks on the date the employee is reassigned to another office including employees who are members for less than one year in accordance with Article 33 of the HUD/AFGE Agreement (Dues Withholding).

(92) Management agrees that travel outside the local commuting area will be approved for overnight travel where appropriate.

(93) The AFGE/HUD Memorandum of Understanding titled "Workload Sharing Pilot in Multifamily Housing" signed January 10, 2013 has ended. Concurrent with each wave of the MFRT, Management shall provide a workload analysis for each affected office in the wave including but not limited to any work transferred between offices.

(94) Prior to the implementation and relocation of employees in Wave I, all best practices identified in the Workload Sharing Pilot in Multifamily Housing analysis shall be implemented within the Fort Worth HUB and Kansas City satellite offices.

(95) The MFRT to 5 Multifamily HUBs and 5 Multifamily Satellite offices is not intended to implement a Reduction in Force (RIF).

(96) This Supplement shall become effective 14 days from the date this Supplement is signed.

FOR MANAGEMENT:

FOR THE UNION:

\_\_\_\_\_  
Mark Zaltman

\_\_\_\_\_  
Perry Casper

\_\_\_\_\_  
Chief Negotiator

\_\_\_\_\_  
Chief Negotiator

\_\_\_\_\_  
Beverly E. Bishop

\_\_\_\_\_  
William L. Biggs

\_\_\_\_\_  
Jennifer Leigh Drescher

\_\_\_\_\_  
Marinella G. Murillo

\_\_\_\_\_  
Joseph DuBose

\_\_\_\_\_  
Holly Salamido

\_\_\_\_\_  
Courtney B. Minor

\_\_\_\_\_  
Deborah Slakes

\_\_\_\_\_  
Lisa Surplus

\_\_\_\_\_  
Salvatore T. Viola

# EXHIBIT

4





U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
77 West Jackson Boulevard  
Chicago, IL 60604

Human Resources Division  
Chicago Regional Office

September 5, 2013

MEMORANDUM TO: Perry Casper, Chief Negotiator, AFGE MFRT  
Negotiation Team

FROM: Mark Zaltman, Chief Negotiator, Management MFRT Team

SUBJECT: Response to Revised Union Counterproposals for the  
Multifamily Housing Reorganization /Transformation (MFRT)

After a review of the Union's updated counterproposals 75, 94, 102, 147, 149 and 150, Management has determined that the proposals remain non-negotiable. The rationale for the non-negotiability determination for each provision is highlighted in the comments below:

75) To minimize the adverse effects on employees who may be separated from service because of inability to relocate due to personal hardships and total costs to the American taxpayer as an appropriate arrangement under 5 U.S.C. § 7106(b)(3), Management agrees to seriously consider to the maximum extent feasible the establishment of additional satellite offices such as offices with large numbers of multifamily housing projects, units, and employees (for example, Houston, Minneapolis, Baltimore, Nashville, etc.), as well as offices outside of the continental United States in Hawaii, Alaska and Puerto Rico given the potential cost savings for travel and per diem.

**Comment [PU1]:** This proposal restricts Management's discretion regarding how the agency will be structured to accomplish its mission and the geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management's right to determine the agency's organization under § 7106(a) (1).

94) Management agrees that affected MFH employees shall be offered an application period to swap jobs with other HUD employees. Employees shall be permitted to volunteer for a reassignment into MFRT positions which qualify for buyouts. Both job swap candidates must meet the minimum qualifications for the position as determined by management. If management determines that the employee does not meet the minimum qualifications, the employee shall be provided a detailed explanation as to why he/she did not meet the minimum qualifications.

**Comment [PU2]:** This proposal excessively interferes with Management's right to hire and assign employees under § 7106(a) (1), and to select employees under § 7106(a) (2) (C).

If employees transferring into MFH refuse to separate by the dates certain, the job swap agreement terminates. Upon termination of the job swap, employees return to their original position.

**102)** For all vacancies arising during implementation of the MFRT which are not filled through reassignment under this agreement, Management agrees to merit staff vacancies to the maximum extent feasible.

**147)** Any affected MF employee who does not apply for VERA/VSIP and cannot relocate for personal hardship reasons, will be permitted to be outstationed to their current duty location from their directed reassignment location as an appropriate arrangement.

Any affected MF employee who does not apply for VERA/VSIP and cannot relocate for personal hardship reasons, will be permitted to work at an alternative worksite within his/her current local commuting area 5 days per week as an appropriate arrangement under 5 U.S.C. § 7106(b)(3).

**149)** To the maximum extent feasible, approximately half of all MF employees affected by the reorganization will be required to relocate to a new duty station to facilitate redistribution of work. The remaining approximately half of affected MF employees will be out stationed at their current duty location. Using technology such as SKYPE, Virtual Meeting or other electronic means may be used to meet management's objective of team interaction and coordinated project management. Approximately half of affected employees who will be chosen to relocate shall be chosen in the following manner:

- A. volunteers will be solicited for relocation
- B. seniority will be the basis for the remaining selection, with the most senior employees having the right to remain in place.

If more than half of all MF employees affected by the reorganization shall be required to relocate, management shall provide a detailed analysis and report to the Union and each employee providing legitimate business operating reasons why the agency could not operate with any fewer amounts of employees being relocated to the hubs and satellite offices. The analysis and report will provide the specific criteria and empirical evidence of how management's business model could not efficiently and effectively operate without relocating the specific number of affected employees.

**150)** To the maximum extent feasible, an affected MF employee who is retirement eligible will be not be involuntarily relocated until the last phase MFRT

**Comment [PU3]:** This proposal appears to restrict both Management's discretion to refrain from filling certain vacancies at all, and the manner in which Management may fill those vacancies (i.e., only through merit staffing). As such, the proposal excessively interferes with Management's right to hire employees under § 7106(a)(2)(A) and select employees from any appropriate source under § 7106(a)(2)(C)(ii).

**Comment [PU4]:** This proposal restricts Management's discretion regarding how the agency will be structured to accomplish its mission and the geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management's right to determine the agency's organization under § 7106(a)(1).

This proposal also excessively interferes with Management's right to direct employees and assign work under § 7106(a)(2)(A) and (B), respectively. This is because the proposal would eviscerate Management's ability to: (1) provide any in-person supervision of or engagement with an affected employee; and (2) assign an affected employee any work that requires her presence at her designated duty station.

**Comment [PU5]:** This proposal, which limits Management's discretion to determine employees' duty stations, excessively interferes with Management's right to determine the agency's organization under § 7106(a)(1).

This proposal also excessively interferes with Management's right to direct employees and assign work under § 7106(a)(2)(A) and (B), respectively. This is because the proposal would eviscerate Management's ability to: (1) provide any in-person supervision of or engagement with an outstationed employee; and (2) assign an outstationed employee any work that requires her presence at her designated duty station.

**Comment [PU6]:** This proposal restricts Management's discretion regarding how the agency will be structured to accomplish its mission and the geographic locations in which it will conduct operations. Therefore, the proposal excessively interferes with Management's right to determine the agency's organization under § 7106(a)(1).


is completed. In the event that the retirement-age eligible employee will be required to relocate prior to the last phase of MFRT being completed, management shall provide a detailed analysis and report to the Union and the affected employee identifying legitimate business operating reasons why the agency could not operate without relocating the specific employee to the hub or satellite office. The analysis and report will provide the specific criteria and empirical evidence of how management's business model could not efficiently and effectively operate without relocating the specific affected employee.

If you have any further questions regarding this memo, please contact Jackie Mercer-Hollie in my absence at 678-732-2526.

# EXHIBIT

5

MEMORANDUM FOR: Mark Zaltman, Chief Negotiator, US Dept. Of Housing and Urban  
Development (HUD) on the Multifamily Reorganization

 9/13-2013  
FROM: Perry Casper, Chief Negotiator, AFGE HUD Council of Locals #222, on the  
Multifamily Reorganization

Subject: Union Written Request for Formal Declaration of Non-Negotiation for the Remaining  
Proposals on the Multifamily Reorganization Negotiations

In accordance with 5 CFR 2424.11 (a) and the FLRA regulations and guidance, on behalf of AFGE HUD Council of Locals #222 (Union), I am formally requesting written allegation of non-negotiability for all of the remaining proposals for the Multifamily Housing Reorganization Negotiations from the United States Department of Housing and Urban development (HUD/Agency) specifically for proposals #75, #94, #102, #147, #149, and #150.

The union has submitted counter proposals to attempt to find negotiable grounds acceptable to the Agency but has been informed via e-mail, by ELR Supervisor Ginger Richardson, acting for the management Chief Negotiator Mark Zaltman, that the resubmitted proposals are in the opinion of the agency, non-negotiable. While the union is perplexed to the reaction and of the belief that the resubmitted proposals were not even re-reviewed for their new language and negotiability the union is left with little option but to request this formal notice from the Agency.

This message will be transmitted via HUD e-mail and a hard copy will be mailed through the US Postal Service to Agency Chief Negotiator Mark Zaltman. Certification of mailing by the postal service will be obtained.

If you have any questions or concerns please contact both Perry Casper, Chief Negotiator for the Union or Sal Viola, Alternate Chief Negotiator for the Union. Both may be contacted at their HUD e-mail or HUD phone numbers. Thank you for your quick attention to this matter and the Union will expect your formal declaration at your soonest opportunity however, in accordance with 5 CFR 2424.11 a written response should be made available within 10 days.

