



# American Federation of Government Employees National Council of HUD Locals 222

*Affiliated with AFL-CIO*

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May 26, 2016

MEMORANDUM FOR: Anita O. Crews, Human Resources Specialist, Employee & Labor Relations Division

FROM: Jerry Gross, Steward, AEGE Council 222 of HUD Locals

SUBJECT: Demand to Bargain and Request for Information – Draft Personnel Security and Suitability Policy and Procedures Handbook 755.1

This is in response to the Department's Article 49 Notice of May 17, 2016, regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook.

Council 222 provides the following request for information and preliminary demands to bargain over the proposed implementation of the Personnel Security and Suitability Policy and Procedures Handbook.

1. Written Responses: Management shall provide written responses regarding the Union's proposals provided below within five business days of receipt of this memo.
2. Meeting Time: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating once all requested information has been provided. Negotiations shall not begin until all requested information has been supplied to the Union.
3. Status Quo: The status quo will remain and the Department will not implement any of the changes associated with the new handbook until all bargaining is completed in accordance with the Agreement.
4. Notice to Union: The Department shall notify Council 222 when actions affect more than one Local or members of the bargaining unit in general, and shall notify each individual Local when actions affect one or more of that Local's bargaining unit. Notice shall be provided as soon as determinations are made that will affect one or more bargaining unit employees, and no later than the time the employees or their supervisors or managers are notified of any current, pending, or proposed actions.
5. Accountability and Identification: All correspondence sent by the Department, including the Personnel Security Division, related to personnel security and suitability matters shall include the name of the responsible official.
6. Employee Rights: All correspondence sent by the Department related to an individual's personnel security and/or suitability shall include information about the employee's rights, include their rights to seek help and representation from the Union.

7. Position Designation Requirements: The Department shall notify the Union any time a sensitivity designation or security clearance level for an existing bargaining unit position is changed if that change may affect an incumbent's ability to continue serving in that position or that change requires the employee to be subject to a new investigation.
8. Investigations: The Department shall notify the Union any time a bargaining unit employee is required to undergo a new or post-appointment investigation.
9. Suitability Determinations: The Department shall notify the Union any time a bargaining unit employee's suitability is investigated or referred to OPM or another agency or contractor for investigation.
10. Information Status: The Department shall keep the Union and affected employees informed of the status of any ongoing investigations. The Department shall provide written updates no less than monthly and shall immediately notify the Union and affected employees of the final determination when an investigation is completed. The Department shall provide a complete copy of all investigative reports and their conclusions and recommendations, whether prepared by the Department, OPM, or another agency or contractor to the employee and the Union immediately upon receipt or completion of the report.
11. Accuracy of Information: The Department shall ensure that all information used in an investigation or referred to OPM or another agency or contractor is complete and accurate.
12. Treatment of Employees: The Department shall ensure that all actions taken, including investigations, referrals to OPM, adverse actions, and placement on administrative leave are appropriate and applicable to the employee's position and alleged actions. The Department shall not place employees on administrative leave without specific evidence that the employee poses a threat to other employees, themselves, government property, or government data. Barring those situations, all employees shall be treated as "innocent until found guilty;" i.e., until an investigation is concluded by the Department, OPM, or another agency or contractor and a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will be permitted to continue in the present position and will be treated with respect and courtesy.
13. No Discrimination or Retaliation: The Department shall not in any way discriminate against or retaliate against any employee who is or has undergone a security investigation or suitability determination. Until a finding that the employee poses a security risk or is unsuitable for federal employment is issued, the employee will continue to have all the usual benefits of any other employee, including but not limited to within-grade increases, training opportunities, performance bonuses. The Department shall not apply different performance standards to any affected employee than it does to other employees with similar position descriptions.
14. Handbook Applicability: The parties agree that Handbook 755.1, dated \_\_\_\_, provides the responsibilities and processes for the Department and employees to follow regarding

personnel security and suitability matters. Where there is a conflict between this Agreement and the Departmental policies, this Agreement will prevail, provided that there is no conflict between this Agreement and requirements under law, statute, or government-wide regulations. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of the Handbook or Department procedures and policies.

The following is a Union request for information under U.S. Code § 7114 (b)(4):

Please provide the following information to Jerry Gross, Steward, AFGE Council 222, jerry.gross@hud.gov. I may be reached at 703-280-9063 or 202-402-5199, mailing address: 451 7th Street, S.W., Room 3142, Washington, DC 20410.

**INFORMATION REQUESTED:**

1. Current Practice: The Department has stated that there is no current policy in effect on this matter. Please provide a description of how the proposed handbook changes the handling of security and suitability matters within the Agency. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
2. Government Mandate: Please provide a copy of any and all materials, documents, directions, and/or Executive Orders from OMB, OPM, the White House, or any other agency mandating, directing, or proposing the issuance of this handbook. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
3. Sensitivity and Security Level Designations: By geographic location and office, the current number of bargaining unit positions, the position description numbers, and the names of incumbents for each sensitivity designation or security clearance level. **PARTICULARIZED NEED**: The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit.
4. Investigations: For each bargaining unit employee who has been investigated for security and/or suitability concerns during the past four years, please provide:
  - a. The geographic location and office of the employee.

- b. The position title, position description number, and grade of the employee.
- c. The beginning and ending dates of each investigation, or, if the investigation is still open, information to that effect.
- d. The agency conducting the investigation; e.g., HUD, OPM, contractor (by name).
- e. The reason for the investigation; e.g., tax liens, false statements on hiring documents, arrests.
- f. The results of the investigation.
- g. Action taken during the course of the investigation, if any; e.g., reassignment, administrative leave, including start and end or effective dates of such action.
- h. The sex, race, and ethnic identification of the employee.

**PARTICULARIZED NEED:** The Union has a particularized need for this information in order to determine the likely impact of the new handbook on bargaining unit employees. This information is needed in order to develop bargaining proposals, determine appropriate responses to the Department's reply to the proposals presented above, evaluate Departmental positions on Union proposals, and effectively represent the bargaining unit. The Union also requires the information to understand how investigations and suitability determinations currently affect bargaining unit personnel, in order to both formulate proposals and responses and also to determine if employees are treated fairly and equitably. The Union requests information for the past four years in order to include both the current two years of the Department's present administration and the two years before that, to provide a comprehensive picture of how security matters are handled by the Agency.

**PRIVACY ACT:** As no personally identifiable information is requested, the Privacy Act does not apply to this information request.

**PUBLIC INTEREST:** Disclosure of the requested information would provide both employees and the public with a better understanding of how the Department handles security and suitability matters. In addition to using the information in the context of this negotiation, the Union is considering preparing a report for the bargaining unit and other interested parties.

These are preliminary proposals only, and the Union reserves the right to bargain or amend or add proposals, including information requests, in accordance with Article 49 of the collective bargaining agreement. I will serve as the chief negotiator and contact for this matter.