



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

*Affiliated with AFL-CIO*

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August 2, 2018

MEMORANDUM FOR: Kimberly W. Elston, Employee and Labor Relations Specialist,  
Employee & Labor Relations Division

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

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

This is in response to the Department's Article 49 Notice of July 20, 2018, regarding HUD's proposal to implement a new Personnel Security and Suitability Policy and Procedures Handbook 755.1. Council 222 provides the following preliminary demands to bargain over the proposed implementation of the Handbook 755.1.

1. Written Responses: Management shall provide written responses to the Union's proposals provided below.
2. Meeting Time: Management shall work with the Union to set a mutually agreeable meeting time to begin negotiating.
3. Status Quo: The status quo will remain, and the Department will not implement any of the changes associated with the new draft handbook until all bargaining is completed in accordance with the Agreement.
4. No Contradiction of Contract Requirements: Management will not issue any directions or handbooks or other guidance that contradicts the terms of the contract, including all applicable supplements. Where different policies may apply to members of the AFGE bargaining unit than to other personnel, the Handbook 755.1 will clearly identify those policies and to which category of employee they apply.
5. Notice to Union:
  - a. The Department shall notify each individual Local when actions taken under the Personnel Security and Suitability Policy and Procedures Handbook 755.1 affect one or more members of that Local's bargaining unit and shall notify Council 222 when actions taken under Handbook 755.1 affect more than one Local or affect members of the bargaining unit in general. 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.

- b. The Department shall immediately notify the Union any time that changes in law, statute, or government-wide regulations require a modification of Handbook 755.1 or Department procedures and policies.
  - c. All proposed changes to Handbook 755.1 must be negotiated, as any agreement between the parties is based only on the policies set forth in Handbook 755.1 dated \_\_\_\_.
6. 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 and contact person to ensure accountability and transparency in all Departmental actions.
7. Employee Rights: All correspondence sent by the Department to a bargaining unit employee related to that individual's personnel security and/or suitability shall include information about the employee's rights, including the right to seek help and representation from the Union.
8. Appropriate Risk Designations: Management shall ensure that all background checks, reviews, and investigations are appropriate for an employee's designated risk level; that use of SF 85 and 85P corresponds to employees' risk designations and sensitivity levels; that employees are notified in advance of their risk designations and sensitivity levels (such as on position descriptions).
9. Position Designation Requirements: The Department shall notify the Union any time a risk or 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. The Department shall ensure that all sensitivity designations and security clearances are appropriate and necessary for the duties of the position.
10. Authorities: In all communications related to individual suitability investigations, and/or related to proposed or actual disciplinary or adverse actions against an employee, HUD shall identify to the affected bargaining unit employee and to Union the authorities under which it is taking any action, the limits of HUD's authority, whether HUD is required to refer the matter to an outside authority, including but not limited to OPM.
11. Application of Statutory Standards: The Department shall apply all statutory standards strictly as written and without expanding the minimum standards required by statute, law, or federal regulation, unless HUD provides written justification showing a real and present security need as the basis for applying additional or higher-level requirements. When such additional requirements are applied, they will be applied in a fair and equitable manner to all personnel, and the justification will be provided to the Union upon request.
12. Employee Rights under Privacy Laws, Title VII, and Rehabilitation Act: Management shall not establish any policies that may infringe on employees' rights to privacy and to

freedom from discrimination, including those rights related to disabilities established by the Rehabilitation Act, unless specifically and clearly required by government-wide security directives.

13. Notice of Reporting Requirements: The Department shall notify all affected bargaining unit employees of the applicability of reporting requirements within 30 days of implementing Handbook 755.1 and shall remind affected personnel annually of the requirements. The Department shall not hold any employee responsible for any noncompliance that occurred before the employee was so notified.
14. Appointees and Employees: In all communications related to individual suitability investigations, HUD shall clearly identify to affected bargaining unit employees and to the Union whether such action is taken against the person as an *appointee* or as an *employee*, as defined in 5 CFR § 731.101(b).
15. Investigations: The Department shall notify all bargaining unit employees within 30 days of the implementation of an agreement related to the implementation of Handbook 755.1, or at the time they are hired if it is after the date the agreement is signed, of the type and frequency of any investigations that will be required of them. The Department shall notify the Union whenever a bargaining unit employee is required to undergo a new or post-appointment investigation other than the routine and shall provide the reason for the non-routine investigation.
16. 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.
17. Basis for Investigation: In all written or oral communications by any means with any bargaining unit personnel and/or the Union, the Department shall clearly state at the beginning of any communication the basis for initiating the investigation, providing both the reason and the supporting evidence.
18. Information Status: The Department shall keep the Union and affected bargaining unit 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.
19. 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.
20. 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 bargaining unit employee's position and alleged

actions. The Department shall not place bargaining unit employees on administrative leave without specific evidence that the bargaining unit employee poses a threat to other employees, themselves, government property, or government data. Barring those situations, all bargaining unit 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 bargaining unit employee will be permitted to continue in the present position and will be treated with respect and courtesy.

21. No Discrimination or Retaliation: The Department shall not in any way discriminate against or retaliate against any bargaining unit employee who is or has undergone a security investigation or suitability determination. Until a finding that the bargaining unit 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.
22. 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.
23. Retained Rights. Any bargaining unit employee who is under investigation for a security or suitability determination shall retain the PIV card, keys, documents, government-issued computers and supplies, and shall be permitted to perform all normally assigned tasks in the usual manner until or unless there is a final finding that the employee is unsuitable. The only exception shall be if the employee presents a clear and present danger to other personnel or to the government’s property, systems, or operations. In those cases of clear and present danger, HUD shall document the reasons for considering the employee to be a danger and shall provide a written copy of such documentation, along with a written statement of the proposed actions that will be taken pending the conclusion of a security or suitability investigation to both the affected bargaining unit employee and to the Union.
24. Timely Completion of Reviews. HUD shall complete all suitability investigations within 60 days of initiating an investigation. The Department shall make suitability determinations and take suitability actions for appointees within 60 days and shall refer to OPM cases that fall under OPM’s jurisdiction (e.g., for employees, as defined in 5 CFR § 731.101(b)) within 60 days.

Like the previous version, the version of the Personnel Security and Suitability Policy and Procedures Handbook 755.1 delivered on July 20 contains language that conflicts with the AFGE-HUD collective bargaining agreement. We have advised management several times that unless the language is changed or clarified to show that it does not apply to AFGE bargaining

unit employees, the Union will consider the wording of the handbook to be a repudiation of the contract and will respond accordingly. The note at the bottom of the table of contents is insufficient because it is not specific to the relevant provisions and does not provide accurate guidance about what policies or procedures should be applied to AFGE BUEs. Please note that HUD, and in particular OCHCO, has issued other handbooks that identify different procedures for BUEs and non-BUEs, and the Union recommends doing so in this case.

These are preliminary proposals only, and the Union reserves the right to add to or modify these proposals. I will be the chief negotiator.