



National Council of HUD Locals

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFFILIATED WITH AFL-CIO

Council 222

November 24, 2021

MEMORANDUM FOR: D'Andra Hankinson, HUD Deputy Director, Employee and Labor Relations Division, AHEDB

FROM: Ricardo Miranda, Chief Negotiator, COVID-19 & Related Issues
AFGE National Council of HUD Locals No. 222

SUBJECT: 5 U.S.C. § 7114(b)(4) Request for Information #1 for COVID-19
& Related Issues Mid-Term Bargaining

The American Federation of Government Employees (AFGE) National Council of HUD Locals No. 222 (referred to herein as "AFGE Council 222" or "the Union") is submitting this information request to the U.S. Department of Housing and Urban Development (referred to herein as "HUD", "the Department," "management" or "the Agency") pursuant to 5 U.S.C. § 7114(b)(4).

Standards for Provision of Information Requested under 5 U.S.C. § 7114(b)(4)

In accordance with U.S.C. § 7114(b)(4)(B), the Agency is required to furnish to the Union data, which is reasonably available and necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. The duty to provide information to a union applies not only to information needed to negotiate an agreement, but also to data relevant to its administration and the full range of a union's representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute) including bargaining, contract administration, processing a grievance, representing an employee in proposed discipline, and determining whether to file a grievance or Unfair Labor Practice (ULP). See *Department of Health and Human Services (HHS), Social Security Administration (SSA) and AFGE Local 3302*, 36 FLRA 943 (1990); *Federal Aviation Administration (FAA), National Air Traffic Controllers Association (NATC) et al.*, 55 FLRA 254, 259-60 (1999); and *Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and National Weather Service Employees Organization, MEBA*, 30 FLRA 127, 141 (1987).

The standard adopted by the U.S. Federal Labor Relations Authority (FLRA) requires a union requesting information under 5 U.S.C. § 7114(b)(4) to establish a particularized need for the information by articulating with specificity why it needs the requested information including the uses to which the union will put the information, and the connection between those uses and the

union's representational responsibilities under the Federal Service Labor-Management Relations Statute (Statute). See *Internal Revenue Service, Washington, DC, and Internal Revenue Service, Kansas City Service Center, Kansas City, MO and NTEU and NTEU, Chapter 66*, 50 FLRA 661 (1995); *VA and AFGE Local 3314*, 28 FLRA 260, 265 (1987); and *Dept. of Navy, Portsmouth Naval Shipyard and Portsmouth FEMTC*, 4 FLRA 619, 624 (1980). In *Internal Revenue Service, Washington, D.C. and Kansas City, MO*, 50 FLRA 661 (1995), Footnote 13, regarding a union's particularized need, the FLRA stated:

However, **a request need not be so specific as, for example, to require a union to reveal its strategies or compromise the identity of potential grievants who wish anonymity.** See, for example, *NLRB v. FLRA*, 952 F.2d at 530 ("Necessarily, the bargainers are not obliged to reveal their strategies[.]"); *American Federation of Government Employees, AFL-CIO v. FLRA*, 811 F.2d 769, 774 (2d Cir. 1987) (court acknowledged that protecting the identity of potential grievants is a justifiable union consideration). Moreover, **the degree of specificity required of a union must take into account the fact that, in many cases, including the one now before us, a union will not be aware of the contents of a requested document.** [emphasis added]

For a Section 7114(b)(4) information request, a union is not required in its Particularized Need to describe the exact nature of any alleged misapplication or violation of policy, procedure, law or regulation by the agency. See *Health Care Financing Administration and AFGE Local 1923*, 56 FLRA 156 (March 17, 2000).

Under 5 U.S.C. § 7114(b)(4), HUD is required to furnish to the Union "data which is normally maintained by the Agency in the regular course of business" and "reasonably available." In *Department of Justice, U.S. Immigration and Naturalization Service (INS), U.S. Border Patrol El Paso, Texas and AFGE National Border Patrol Council*, 40 FLRA 792, 804-05 (1991), the FLRA found that information was reasonably available even when the agency had to give the union 10,000 documents. The FLRA has ruled that an agency may be required to produce information that does not exist in the precise format requested, but which can be extracted from records within an agency's control. See *Department of Air Force, Sacramento Air Logistics Center, and AFGE, Local 1857*, 37 FLRA 987 (October 15, 1990).

Information Requested

1. The COVID-19 vaccination rate [i.e., percentage (%)] of HUD bargaining-unit employees at the national level and for each HUD Office (i.e., Headquarters in Washington, D.C, Regional Offices, Field Offices, and Satellite Offices not by Program Offices).¹
2. The number of reasonable accommodation exception requests for compliance the COVID-19 vaccine mandate submitted by HUD bargaining-unit employees for 1) disabilities, 2) medical

¹ The Union is not requesting any individual employee names to be disclosed; therefore, the Privacy Act does not prohibit the provision of these data.

contraindication, and 3) religious beliefs, observances, and practices at the national level and for each HUD Office (i.e., Headquarters in Washington, D.C, Regional Offices, Field Offices, and Satellite Offices not by Program Offices).²

3. Any and all documents in whatever written format (including, but not limited to: studies, reports, complaints, emails, memoranda, letters, counseling memos, hand-written notes, etc.) that the Department utilized to determine that any particular HUD bargaining-unit position or employees are not suitable to full-time telework/remote work (i.e., work at home 5 days per week) due to operational/customer-service problems encountered during the COVID-19 pandemic emergency mandatory telework and maximum telework statuses. The Department may sanitize any document that discloses individual employee identifiers to comply with the Privacy Act. However, please code the records for each employee by HUD Office (i.e., Headquarters in Washington, D.C, Regional Offices, Field Offices, and Satellite Offices not by Program Offices) so that the Union can assess the volume and extent of the operational/customer-service problems.

4. Any and all documents in whatever written format (including, but not limited to: policies and procedures, handbook(s), initial employee requests, HUD 1000 reasonable accommodation forms, any other application forms, memoranda, emails, letters, documented verbal requests, etc.) concerning the procedures utilized in the past three years (November 2018 through November 2021) by any HUD bargaining-unit employee to submit and the Department to process the reasonable accommodation requests on the basis of the protected class of religion under Title VII of the Civil Rights Act of 1964 excluding religious compensatory time requests for religious holidays. The Department may sanitize any document that discloses individual employee identifiers to comply with the Privacy Act.

Particularized Need

HUD Management and the Union began mid-term negotiations on the Coronavirus (COVID-19) vaccine mandate, HUD safe workplace plan dated October 2021, and the permanent reopening/return to HUD offices negotiations on November 1, 2021. This mid-term negotiation was in response to the Union's September 14, 2021 demand to bargain and preliminary bargaining proposals for the COVID-19 vaccine mandate, attestation, and testing requirements, which the Union updated on September 20, 2021 to incorporate COVID-19 vaccine mandate guidance of the Safer Federal Workforce Task Force issued after the Union's September 14, 2021 demand to bargain. On October 22, 2021, Management subsequently provided AFGE Council 222 a collective bargaining agreement (CBA) Article 49 mid-term bargaining notice for its proposed changes in conditions of employment concerning the COVID-19 vaccine mandate, updates to its safe workplace plan dated October 2021, and the permanent reopening/return to HUD offices. On November 1, 2021, the Union thereafter revised and submitted additional preliminary bargaining proposals to respond to the CBA Article 49 mid-term bargaining notice regarding HUD's updates to its safe workplace plan, and the permanent reopening/return to HUD offices.

² Again, the Union is not requesting the individual employee names, nor any documentation related to the reasonable accommodation exception requests just the aggregate number of requests for each category of requests at the national level and by each HUD Office. Therefore, the Privacy Act does not prohibit the release of these data.

The Union needs Information Requested #1 in order to formulate counterproposals and determine if it has more or less room for movement concerning safety protocols as employees' COVID-19 vaccination rate implicate whether higher or lower safety standards are needed (e.g., types and extent of masking, social distancing, occupancy limits, level of supplies for Personal Protect Equipment, etc.) for bargaining-unit employees. Management is proposing lower thresholds for safety standards at the HUD Offices than AFGE Council 222 during the mid-term negotiations. Information Requested #2 is necessary for the Union to also draft counterproposals and determine how much room for movement it has given the volume of reasonable accommodation requests of unvaccinated employees who may be required in some instance to be physically present in each HUD Office and that implicates the extent of safety protocols (e.g., types and extent of masking, social distancing, occupancy limits, level of supplies for Personal Protect Equipment, etc.) for each HUD Office and potential safety hazards of contracting COVID-19 for vaccinated employees who will be working in the offices with unvaccinated employees approved reasonable accommodation exceptions. For both Information Requested #1 and #2, the data are needed in order for the Union to advise employees and employees to assess for themselves the level or risk of contracting COVID-19 at each HUD Office to make informed decisions on for example how many days per week of telework they will request or if they want to request reasonable accommodations for full-time five days per week telework due to the risk of contracting COVID-19 at HUD Offices especially if they have unvaccinated small children under 5 years old or elderly immunocompromised relatives living in their households.

AFGE Council 222 needs Information Requested #3 to determine how much room for movement it has in its next counterproposal for the Union's Term # 9 in its latest Counterproposal regarding the Parties (HUD and AFGE Council 222) transitioning to full-time situational telework (5 days per week) under Article 18 of the CBA while the Parties negotiate the Department's plans for Flexiplace Policies for expanded telework (up to 4 days per week), remote work (full-time work at home 5 days per week), and mobile work (work in the field not reporting to any HUD Office) as part of the permanent reopening/return to HUD Offices should the Agency lose its government-wide authority to maintain the maximum telework status. During the current mid-term negotiations, the Department has argued that not all positions and employees are suitable to telework and remote work and that it has evidence of operational/customer-service problems for some positions and employees during the COVID-19 pandemic mandatory telework and maximum telework statuses. The Union wants to see such evidence that in fact not all positions are eligible for telework or remote work given that the current CBA at Article 18, Section 18.02(1) says that "all employees in positions with duties that are conducive to telework are eligible to telework." Moreover, in 2020, the HUD Office of Inspector General conducted an audit of the Agency's workforce productivity during the COVID-19 pandemic mandatory telework status and found that productivity actually increased. The Union believes that this productivity increase and the Department's interest in expanding telework and remote work as recruitment and retention tools in its Flexiplace Policies makes the Union's Counterproposal #9 to transition to situational telework feasible without disruption or loss of productivity to the Agency's operations.

Information Requested #4 is necessary for the Union to possibly formulate additional counterproposals and determine if it has more or less room for movement concerning its assertion of the second prong of inseparably bound of the covered-by doctrine for the sole existing reasonable accommodation request process in HUD Handbook 7855.1 and Article 45 of the CBA. AFGE Council needs to examine what process HUD bargaining-unit employees have

used in the past three years to request and the Agency to process reasonable accommodation requests for the protected class of religion under Title VII of the Civil Rights Act of 1964 in the past three years. In sum, all of the information requested above are needed in order for AFGE Council 222 to represent the interests of HUD bargaining-unit employees in mid-term negotiations with the Department on the COVID-19 vaccine mandate, updates to its safe workplace plan, and the permanent reopening/return to HUD offices.

Deadline to Furnish the Information Requested

Please provide the information requested above by December 3, 2021 so that the Union has the information timely to be able to work on its next Union Counterproposal 4 for the current mid-term negotiations on the COVID-19 vaccine mandate, updates to its safe workplace plan, and the permanent reopening/return to HUD offices. The Union notes that it is an Unfair Labor Practice in violation of 5 U.S.C. § 7116(a)(1), (5) and (8) not to timely furnish documentation in response to an information request under 5 U.S.C. § 7114(b)(4), which the FLRA defines as timely to meet the Union’s representational responsibilities. See *Bureau of Prisons, Lewisburg Penitentiary and AFGE Local 148*, 11 FLRA 639 (1983); *Department of Defense Dependent Schools and North Germany Area Council, Overseas Education Association*, 19 FLRA 790 (1985); and *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001). Please be advised that in *Department of Transportation, Federal Aviation Administration and National Air Traffic Controllers Association Local 171*, 57 FLRA 604 (2001), the FLRA found that the agency committed an Unfair Labor Practice even though the union submitted the information request under 5 U.S.C. § 7114(b)(4) only five days prior to the arbitration hearing and the agency provided the information on the day of the arbitration hearing as it was untimely for the union to meet its representational responsibilities. [emphasis added]

Please do not attempt to interpret any part of this request that you may not understand. If you have any questions concerning this request, or if you do not understand any part of this request, please contact me at ##### or via email at Ricardo.Miranda@hud.gov.

I appreciate your cooperation in timely processing and furnishing the information requested. Thank you in advance.