

EXHIBIT 1

**LABOR GRIEVANCE ARBITRATION
BEFORE ARBITRATOR MICHAEL T. LOCONTO**

In the Matter of the Arbitration between

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 222, AFL-CIO**

and

**UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT.**

Issue: 2025 Return to In-
Office Work Order
(Class Action).

Federal Mediation and Conciliation Service, No. 250409-05235.

SUMMARY AWARD OF THE ARBITRATOR

The Employer violated the Agreement and the Statute when it unilaterally terminated regular and routine telework agreements for Agency employees on or around January 24, 2025.

The parties shall return to the *status quo ante*. Affected employees shall have the regular and routine telework agreements in effect on or around January 20, 2025 reinstated no later than the start of the next pay period following the date of this Award. The Employer shall also post a Notice and issue compensation to affected bargaining unit members as described herein.

The Employer is the losing party in this dispute and shall promptly pay the Arbitrator's fees and expenses. The Arbitrator will retain jurisdiction for a limited period of ninety (90) days and for the sole purpose of resolving any disputes regarding the implementation of the remedy described herein.



Michael T. Loconto, Esq.
Arbitrator

Dated: February 18, 2026

In the Matter of the Arbitration between

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 222, AFL-CIO**

and

**UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT.**

**OPINION
AND
AWARD**

FMCS No. 250409-05235 (2025 return to in-office work order – class action).

The parties submitted this matter to arbitration pursuant to Article 52 of the current collective bargaining agreement (“CBA” or the “Agreement”), which is effective through July 23, 2029, between the American Federation of Government Employees, Council 222, AFL-CIO (“AFGE” or the “Union”) and the United States Department of Housing and Urban Development (the “Employer;” also referred to as “HUD,” the “Agency” or the “Department”). The grievance alleged that the Employer committed an unfair labor practice (ULP) and violated Articles 18 and 49 of the CBA when it unilaterally eliminated telework assignments and ordered employees to return to work in a government office location. An arbitration hearing was held at HUD headquarters in Washington, D.C. on September 23, 2025.

Javes Myung, Esq. appeared on behalf of the Employer and was assisted by co-counsel Anju Mathew, Esq. and Julius Halstead, Esq. Mark Vinson, Esq., Assistant General Counsel, appeared on behalf of the Union; Veronica Bobbitt of AFGE Local 911 in Chicago, Illinois served as the Union’s technical advisor. The deadline for the parties to submit post-hearing briefs was unilaterally extended by the Arbitrator due to the federal government shutdown in late 2025. The parties submitted post-hearing briefs on January 9, 2026, and the Arbitrator declared the record closed.

ISSUES

The Arbitrator formulated the following issues for resolution based upon proposed submissions¹ from each party:

Whether the Employer violated Articles 18 or 49 of the Agreement or committed an unfair labor practice by ordering employees to report to work at assigned duty stations on a full-time basis pursuant to its January 24, 2025 order?

If so, what shall be the remedy?

RELEVANT PROVISIONS OF THE AGREEMENT

ARTICLE 18 - TELEWORK

...

Section 18.02 – Eligibility.

- (1) With the exception of summer or seasonal employees, all employees in positions with duties that are conducive to telework are eligible to telework.
- (2) if the employee is considered “eligible” by HUD policy or this agreement, denial and termination decisions must be based on business needs or performance, not arbitrary or capricious reasons. When provisions of the Departmental policy are inconsistent with or contradict this Article, the Article will prevail.

...

Section 18.03 – Roles and Responsibilities.

- (1) The approving official shall:

...

¹ The Union proposed the following statement of the issues:

Did the Agency violate the parties’ master agreement, law, established practice or governing policy when on or about February 24, 2025, it began to unilaterally implement the Return To In-Person Work Presidential Memorandum by requiring bargaining unit employees to report to their duty station on a full-time basis? If so, what is the appropriate remedy?

The Employer proposed the following statement of the issues:

Did the Agency violate the Parties’ CBA, supplements, and other statutes or regulations when it notified bargaining unit employees (“BUE”) on January 24, 2025 that they would need to begin reporting to the office on a full-time basis and modify their Flexiplace agreement to reflect their new schedules?

- (d) Notify the Union when the agreement is terminated, suspended or modified by the Supervisor for one pay period or more.

...

ARTICLE 49 - MID-TERM BARGAINING

Section 49.01 – General. The rights and obligations of the parties regarding Mid-term Bargaining shall be in accordance with 5 USC Chapter 71 and this Agreement. The purpose of this article is to prescribe the criteria and procedures by which the Union and the Department (the parties) shall engage in negotiations during the term of the Agreement. The parties agree that it is in the interest of the Government, the public, and the parties to negotiate in good faith in order to facilitate negotiations.

- (1) The parties are encouraged to engage in pre-decisional involvement prior to formal presentation of proposals for changes to personnel policies, practices, and/or working conditions under this Article.
- (2) Nothing in this Agreement shall be deemed to waive either party's statutory rights.

Section 49.02 – Mid-Term Changes.

During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article. Any notice sent after 4:00 p.m. shall be deemed to be received on the next business day. If feasible, management will provide advance written notice at least 30 days prior to the proposed implementation date, of any change affecting conditions of employment. Management may implement as soon as the bargaining obligations are satisfied, even if the 30 day time frame has not been exhausted.

ARTICLE 52 - ARBITRATION

...

Section 52.04 – Arbitration Fees and Expenses. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is the losing party. If, in the arbitrator's

judgment, neither party is the clear losing party, costs shall be shared equally. ...

...

The party or parties responsible for the payment of any associated fees or other expenses shall promptly pay the costs.

...

Section 52.08 – Prehearing Submissions and Conferences. ... If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit separate statements and the arbitrator shall determine the issue(s) to be heard and factual matters deemed to be stipulated.

...

Section 52.10 – Authority of the Arbitrator.

- (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the issue(s) presented in the grievance.
- (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplements thereto. In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in accordance with any legal remedy allowed by law, including in accordance with standards contained in the Back Pay Act as amended by the Civil Service Reform Act of 1978.

...

- (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- (6) The arbitrator's award shall be binding on the parties. An award must be consistent with current law and regulation.
- (7) Payments to the arbitrator shall be immediately paid regardless of whether any exception(s) are filed. Exceptions may include requests for reimbursements of arbitrators' fees.

...

NATIONAL SUPPLEMENT 34

...

SCOPE: This Supplemental Agreement modifies the current Telework Article due to the Department's implementation of a broader Flexiplace policy, which includes remote work and mobile work. The Department and Council 222 reached agreement on Supplement 33, Flexiplace Policy. This Supplement does not waive any rights of the Parties and modifies only those specific provisions of Article 18 mentioned below.

1. Limitations. The Parties agree that no provision of Article 18 other than those specifically identified below are modified by this Supplement.
2. Precedence. The Parties agree that HUD's new Flexiplace Policy does not supersede any provisions of the HUD-AFGE Collective Bargaining Agreement (CBA) unless explicitly stated in this Supplemental Agreement. If there is any conflict between the new proposed Flexiplace Policy and the provisions of this Supplemental Agreement, the terms of this Supplement will govern. If there is any conflict between the new proposed Flexiplace Policy and provisions of the CBA that are not modified under this Supplement, the terms of the CBA will govern.
3. Section 18.01, General. The Parties agree to replace Section 18.01 in its entirety with the following language:
Section 18.01, General.
 - (1) Definitions. For the purpose of this article, telework shall be defined as in 5 U.S.C. § 6501: "a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee's position ... from an approved worksite other than the location from which the employee would otherwise work." Telework is simply a way of getting work done from a different location.
 - a. Regular and recurring shall mean a schedule in which at least two specified days each pay period are planned to be at a stated worksite (e.g., a HUD office, home, or other approved alternative worksite" as a matter of routine.
 - b. Routine telework is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework agreement between the employee and employee's supervisor.
 - c. Situational telework is telework that is approved on a case-by-case basis and the hours or days teleworked are not part of an ongoing, and regular telework schedule. Permission for an

employee to participate in situational telework must be specified in an existing written telework agreement between the employee and employee's supervisor unless an agreement is already in place for regular and routine telework.

- (2) Departmental Policy. In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for the Department of Housing and Urban Development. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligations with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

...

5. Section 18.04, Application Requirements and Process. The Parties agree to replace Section 18.04 in its entirety with the following language:

Section 18.04, Application Requirements and Process.

- (1) Employees on a five (5) day per week schedule may telework up to four (4) days per week. Employees on compressed work schedules may telework up to three (3) days per week during a compressed week. Teleworking employees are required to report to the office at least twice a pay period.
- (2) Once an agreement is approved, employees may begin teleworking upon mutual agreement between the employee and their immediate supervisor.
- (3) Employees who are denied telework or whose request is modified by the supervisor may select either the appeal process in HUD Flexiplace Policy dated January 10, 2022, -or- the grievance procedures

outlined in Article 51 of the Collective Bargaining Agreement.

- (4) Telework agreements are not required to be renewed once they have been approved. They remain in place until either party decides to modify or terminate the agreement. The telework agreement in place at the time of the implementation of this agreement will remain an effect unless the employee is no longer eligible for telework. ...

...

- (6) Employees may apply for telework at anytime.

...

- (9) Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking. The communication requirements of the manager will be discussed with employee and identified in the telework application and agreement. Teleworkers will provide a telephone number where they may be reached by the supervisor and or, other management officials.

...

- 6. Section 18.06, Modification of Telework Agreements. The Parties agree to replace Section 18.06(2) with the following language:

(2) The Parties recognize that an employee's telework schedule constitutes an agreement between employee and supervisor, and the changes to the schedule may affect the method, timing, and cost of commuting as well as the scheduling and cost of dependent care. If a supervisor requires a temporary modification to the telework arrangement based on the needs of the office, the supervisor shall give the employee reasonable advance notice and shall provide as much notice as possible; under normal circumstances such as when information is available in advance (e.g., when scheduling training), this shall be no less than one full pay period. The employee may engage in discussions with the supervisor to achieve a mutually agreeable resolution if there is any conflict about the proposed temporary modification.

...

RELEVANT LAWS AND REGULATIONS

Title 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

CHAPTER 65-TELEWORK

5 U.S.C. §6501. Definitions

...

(3) Telework.—The term “telework” or “teleworking” refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee’s position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

...

5 U.S.C. §7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency---

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

...

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

...

BACKGROUND

This matter arose from a presidential directive for federal workers to return to work in government offices in early 2025.

On January 20, 2025,² Donald J. Trump was inaugurated as the 47th President of the United States. President Trump issued a number of directives on Inauguration Day, including a memorandum (hereinafter “Presidential Memorandum”) entitled “Return to In-Person Work:”

² All relevant events in this dispute took place during calendar year 2025, unless otherwise specified herein.

Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.

This memorandum shall be implemented consistent with applicable law.

90 Fed. Reg. 8251 (Jan. 28, 2025).

The Parties. The United States Department of Housing and Urban Development, the Employer, is an agency of the executive branch of the United States Government. The President of the United States is the head of the executive branch of government and, from time to time, issues orders and directives to the heads of executive branch agencies. The Agency's leader, Secretary Scott Turner, was appointed by the President and confirmed by the United States Senate on February 5.

The American Federation of Government Employees, the Union, is the largest collective bargaining agent representing workers in the federal government. AFGE Council 222 represents workers assigned to HUD. Dr. Ashaki Robinson, a social science analyst in policy development and research at HUD, is the president of AFGE Local 476 and a regional vice-president for Council 222.

Stipulated Facts. At the outset of the arbitration hearing, the parties submitted the following undisputed facts for consideration by the Arbitrator:

1. On July 23, 2015, the Department of Housing and Urban Development (HUD) and AFGE National Council 222 ("Union") executed the parties' Collective Bargaining Agreement ("CBA").
2. From January 2022 until April 2022, the parties negotiated and bargained over the CBA Supplements 33 and 34 and HUD's

Flexiplace Policy, which outlined HUD's expanded workplace flexibilities.

3. On April 11, 2022, HUD and the Union executed Supplement 33 to the CBA which implemented HUD's Flexiplace Policy as it relates to remote and mobile work.
4. On April 11, 2022, HUD and the Union executed Supplement 34 to the CBA which made amendments to Article 18, Telework, in the 2015 CBA.
5. In May 2022, HUD issued its May 2022 Flexiplace Policy, Handbook 625.1 Rev. 1, which is now HUD's operative telework policy and supersedes any other references to telework in any other Agency policies or guidance dated prior to this policy.
6. On or about December 18, 2024, the parties agreed to extend the CBA through July 23, 2029.
7. On January 24, 2025, HUD Chief of Staff Andrew Hughes sent an email stating that all employees would be expected to begin reporting to a HUD office full time, unless approved for an exemption.
8. On January 24, 2025, the Office of the Chief Human Capital Officer sent an email to staff stating 18 that BUEs³ who are not on a remote work agreement are expected to begin reporting to their official HUD office on a full time basis beginning the week of February 24, 2025, and directed BUEs to submit modified Flexiplace Agreements.

Many of the additional facts that are relevant to the resolution of this matter are not in dispute.

The Evolution of Telework at HUD. Sal Viola, the Council 222 chief steward, asserted that the Employer has permitted some forms of telework since he first joined the agency in 1987. Article 18 of the Agreement defines telework and was adopted in 2015. All employees, with the exception of summer or other seasonal employees, are eligible for telework. During the COVID-19 pandemic, telework was rapidly introduced as a new norm for office workers in the

³ BUE is an abbreviated reference to “bargaining unit employees.”

Department, the government and in society generally. Specifically, Department employees were assigned to perform maximum mandatory telework on a full-time basis, which for most employees involved remote work on a five-day per week schedule. As vaccines were introduced and pandemic public health restrictions were eased, the Department sought to implement a hybrid schedule for employees. The hybrid schedules were intended maintain remote work assignments with a minimum amount of time required for employees to report to work in a government office location.

The Department developed a policy on telework called the Flexiplace Policy (the “Policy”). The Policy was implemented on January 10, 2022, subject to bargaining with the Union over matters covered by the Agreement. As the parties stipulated, the parties negotiated over the implementation of the Policy and adopted Supplements 33 and 34. Supplement 34 increased the number of days allowed per week for employees to perform telework. Specifically, Article 18 permitted employees to telework up to 3 days per week. Supplement 34 increased maximum telework to 4 days per week.

Collectively, these Supplements were adopted in April 2022 and modified Article 18 of the Agreement. The Department subsequently amended and adopted a revised Flexiplace Policy, in May 2022, which reflected the parties’ supplemental agreements.

The Policy. Handbook 625.1 Rev. 1 defines types of telework available to bargaining unit members:

CHAPTER 3. TELEWORK.

3-1 Types of Telework:

1. Telework is a voluntary arrangement where the employee is expected to report to work at an agency worksite on a regular and recurring basis at least twice each pay period and also works from an alternative worksite on a regular and recurring or situational basis. *Note: Any arrangement that requires employees to report to*

the agency worksite less than twice a pay period, including “full-time telework,” is defined as remote work under this policy.

...

3. There are two types of telework, listed below. The telework program is designed to be beneficial to both the Department and the employee. Employees are encouraged to apply for Situational telework even if they do not plan on working a Regular/Routine telework schedule. ...

a. **Regular/Routine Telework** is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework Flexiplace agreement between the employee and the employee's supervisor. In order to be considered regular telework, an employee must be regularly scheduled to work at an alternative worksite for a minimum of one day per pay period. Managers and supervisors should use their discretion to determine not only the amount of time an employee can work outside the office, but the type and amount of communication necessary to ensure the work of the office is completed. Employees **MUST** report to the office a minimum of 2 days per pay period under this type of telework, regardless of their work schedule type. Employees who report to the HUD office on fewer than six days per pay period may be subject to space sharing agreements such as hoteling or hot desking.

b. **Situational Telework** is telework that is approved on a case-by-case basis where the hours or days teleworked are not part of an ongoing, and regular work schedule. Supervisors may approve instances of non-recurring work away from the agency when the employee has an approved Situational or Regular Telework arrangement.

(emphasis in original).

On October 4, 2024, the Department’s Office of the Inspector General (OIG) issued a report on the use and oversight of telework and remote work. The report was a requirement of the Telework Enhancement Act of 2010, Pub. L. No. 111-292, tit. V, 124 Stat. 3165 (2010) (the “Act”). Among other provisions, the Act required that the report provide

An explanation of ... what actions are being taken to identify and eliminate barriers to maximizing telework opportunities....

Id. at §6506(b)(2)(E). The report noted that

As of January 2024, 85 percent of HUD employees had approved telework agreements, and 9 percent had approved remote work arrangements. HUD estimated that 31 percent of remote employees were remote as a reasonable accommodation.

Based on the OIG report, Robinson estimated that 6,856 of the Department's 8,097 employees were performing regular and routine telework work pursuant to a telework agreement. Another 107 employees were approved for situational telework at the time of the report's issuance.

HUD Implements the Presidential Memorandum. Robinson explained that routine and recurring telework had benefits for the Department and affected employees. Specifically, the Department reduced in-office energy consumption and employees reduced transit costs. Robinson also asserted that most Department employees utilized telework to perform at least one day of work per week prior to the issuance of the Presidential Memorandum. The January 24 email from the Department's Chief of Staff stated that the Presidential Memorandum was intended to

increase the efficiency and accountability of the federal workforce because virtually unrestricted telework has led to poorer government services and made it more difficult to supervise and train government workers, as stated in the Government-wide guidance issued by the U.S. Office of Personnel Management. This requirement will be implemented in a phased approach.

...

Beginning the week of February 24: All bargaining unit employees who are not on a remote work agreement must report to their HUD office duty station full-time starting on their first scheduled workday in accordance with the Return to In-Office Work Presidential Memorandum.

Employees may be excused from this requirement if they have an approved reasonable accommodation based on a disability or a qualifying medical condition. Additionally, mobile workers and employees on approved Domestic Employees Teleworking Overseas (DETO) agreements are exempt from this requirement.

Over the next few days, guidance will be provided for employees on remote work agreements.

You will receive additional information on administrative requirements from the Office of the Chief Human Capital Officer shortly.

(emphasis in original). The Office of the Chief Human Capital Officer (CHRO) also issued an email on January 24. The message described the Department's planned phased approach to implementing the return to in-office work directive:

Phase 2, beginning the week of February 24, 2025: Bargaining Unit Employees who are not on a Remote Work Agreement

- Bargaining unit employees who are not on a remote work agreement are expected to begin reporting to their official HUD office full-time beginning the week of February 24, in accordance with the Return to In-Office Work Presidential Memorandum, starting on their first scheduled workday.
 - Your current Flexiplace Agreement must be modified effective February 24 to reflect your new in-office schedule due to the change in work requirements ordered by the President. Therefore, you must submit a new Flexiplace Agreement to modify your existing telework agreement and reflect your new in-office schedule and your desire to continue to participate in situational telework, if you choose to do so on an ad-hoc basis, with supervisory approval.
 - Failure to comply with these instructions may result in disciplinary action.

Phase 3: Remote Workers

- Additional instructions will be forthcoming for employees on remote work agreements.

(emphasis in original). The email described the process for employees with reasonable accommodations or DETO agreements to seek exclusions from the directive and also temporarily exempted workers assigned to the Javits Building in New York City and the Headquarters building in Washington, D.C. from the directive while construction and repair work was completed at each facility.

The Department Provides Notice of A Change. Robinson asserted that the

Department's implementation of the Presidential Memorandum effectively eliminated regular and routine telework. On February 13, the Department issued an email to a number of Union representatives, including Robinson:

Dear AFGE Officials:

Please consider this an official notification in accordance with Section 18.03(1)(d) of the CBA that management intends to modify the Flexiplace agreements of AFGE bargaining unit employees. Please see the message below for a timeline and details on this modification.

The email included a copy of the January 24 message from the Chief of Staff.

The Union considered the Department's notice to be *a fait accompli*. Robinson asserted that the provision cited by the Department was intended for modification of individual Flexiplace agreements. By comparison, Robinson asserted that the Department's intended change required mid-term bargaining pursuant to Article 49 of the Agreement. The Union did not demand to bargain over the change; Robinson asserted that the Union considered Article 18 to remain in effect.

Antonio Gaines, the Union's Council 222 president who also received the February 13 notice, viewed the Department's actions as a repudiation of Article 18. Gaines added that the Department never proposed a change to the underlying policy nor did it articulate a rationale to support the allegation that telework had led to a deterioration of government services or had created issues for supervising or training employees. By comparison, Robinson noted that the Department provided substantive notice of changes to telework agreements on two occasions during 2024. In one instance, the Department intended to modify Flexiplace agreements for

employees in the Multifamily Housing unit at the Department's headquarters building. The February 27, 2024 email notice stated that

The business-based reason related to the employee for this schedule change is as follows:

The added in-office days will facilitate more effective training, mentoring, knowledge transfer, collaboration, networking, and team-building, enhancing productivity to further enhance the Multifamily community. Furthermore, as a large, dynamic public facing business with over 1,200 employees (roughly 65% of which are either new to HUD or new to their position since 2021), a national platform with over 30,000 assets, a massive number of stakeholders, business partners and residents that depend on us, consistent in-person interaction through consolidated in-office days, will continue to be a critical component of our success. Though TEAMS has proven to be a capable tool for some virtual interaction, it falls short of the high-quality collaboration and enhanced relationship building that happens when we're physically together.

In another instance, the Department intended to modify Flexiplace agreements for employees in the Community Planning and Development (CPD) unit at the Department's headquarters. The April 24, 2024 email notice included a detailed justification for the change, focused on five areas: policy development; program execution; risk mitigation; new employees, retention, and succession issues; and stakeholder engagement.

The Union filed a grievance on May 9, 2024, asserting that the Department committed unfair labor practices (ULPs) by failing to bargain over the changes to Flexiplace agreements in the Multifamily Housing and CPD units at the headquarters building. The Union withdrew the grievances after the parties agreed to an extension of the current collective bargaining agreement in December 2024.

The Grievance. The Union filed a grievance alleging a violation of the Agreement on March 11. Specifically, the Grievance alleged that the Department

repudiat[ed] Article 18 of the CBA when it issued a “Return to In-Office Work” (“RTO”) directive and for failing to bargain in good faith with the Union concerning its unilateral termination of telework and remote work arrangements.

The Employer denied the Grievance on April 8. Lori Michalski,⁴ the CHRO at the time, asserted that the Department did not fail to bargain over the implementation of the RTO directive because the Department had already bargained over Supplements 33 and 34, which modified the telework provisions in Article 18 of the Agreement and established additional standards for mobile and remote work. The grievance denial asserted that the

procedures to change and/or terminate these flexibilities were negotiated in these National Supplements. The Agency has followed and abided by these requirements. The Agency is not required to renegotiate or give notice regarding procedures it has already negotiated with the Union.

Michalski also denied that the Department violated the law, engaged in an unfair labor practice or repudiated the Agreement. Following the implementation of the RTO directive, Michalski asserted that about 600 Department employees have routine telework agreements in place – representing approximately 10% of the workforce. Michalski asserted that some of those employees with current routine telework agreements have reasonable accommodations, while others are military spouses working on DETO agreements. Others, such as those assigned to the regional office in Atlanta, Georgia, are subject to temporary telework assignments due to space restrictions.

On April 8, the Union notified the Employer that it was invoking arbitration pursuant to Article 52 of the Agreement by filing a demand with the Federal Mediation and Conciliation

⁴ Michalski was promoted to Acting Deputy Assistant Secretary for Administration in the Department at the time of the arbitration hearing in this dispute.

Service (FMCS). On June 12, the parties notified the FMCS that Arbitrator Michael Loconto was mutually selected to resolve this dispute.

POSITION OF THE UNION

The Union argued that the Employer violated Articles 18 and 49 of the parties' Agreement, past practice and applicable law when it unilaterally implemented the Return to In-Person Work Presidential Memorandum ("PM") by requiring bargaining unit employees with valid regular/routine telework agreements to report to their duty stations on a full-time basis. Moreover, the Union asserted that the Employer's actions constituted unfair labor practices within the meaning of 5 U.S.C. §7116(a)(1) and (5). The Union asserted that by establishing this new policy, the Employer has effectively barred most eligible employees from participating in regular/routine telework. Telework has been a feature of the Agreement since the adoption of Article 18 in 2015. Previously, 6,856 employees participated in regular/routine telework – up to four days per week pursuant to the Agreement. After the implementation of the PM, only about 600 employees remain participating in regular/routine telework – all of whom do so pursuant to reasonable accommodations or DETO agreements.

The Union further asserted that the Employer failed to establish an operational need for this change. Specifically, the Employer failed to produce any evidence that regular/routine telework has diminished service quality, hindered supervision or training, or created inefficiencies. The Union also asserted that the Employer impermissibly relied on the PM for unfettered discretion to modify employee telework agreements. Executive branch directives cannot unilaterally nullify statutes passed by Congress or override binding contractual obligations negotiated pursuant to federal labor law. *See, e.g., United States Dep't of Veterans Affairs*, 72 FLRA 287, 289-290 (2021) ("Unlike rules and regulations, statutes are not subject to

5 U.S.C. §7116(a)(7)'s enforcement prohibition. But the executive order is not a statute, and §7116(a)(7) prohibits the enforcement of any rules or regulations, including executive orders, that conflict with preexisting collective-bargaining agreements.”⁵ To the contrary, the PM stated that it should be “implemented consistent with applicable law.” Moreover, the Union asserted that the Employer knew how to provide substantive reasons for changing telework assignments and had done so on at least two occasions – yet failed to do so in this case. The Employer failed to provide any testimony or other evidence of substantive justifications for the elimination of regular/routine telework.

The Union further asserted that the Employer's rationale was immaterial because it failed to provide the Union with an opportunity to bargain over the change in policy. The Agreement and the Statute mandate bargaining over changes, and the Employer failed to comply. Telework is a condition of employment, and the Employer is obligated to bargain over changes to the terms and conditions of employment. The unilateral implementation of a change in the conditions of employment is an unfair labor practice. *See* 5 U.S.C. §7116(a)(1) and (5). The Federal Labor Relations Authority (FLRA) has upheld several arbitration awards that found an agency failed to bargain over a change in telework because the changes modified conditions of employment. *Environmental Protection Agency v. AFGE Council 238*, 63 FLRA 30 (2008); *AFGE Council 222 v. HUD*, 66 FLRA 106 (2011); *see also NAGE R-144 v. Dep't of the Navy*, 65 FLRA 552 (2011) (finding proposal on telework negotiable). An unfair labor practice ruling by an arbitrator has the same force of law as a determination made by an administrative law judge in a FLRA proceeding. *See AFGE Council 236 and Gen. Servs. Admin.*, 63 FLRA 651, 652 (2009).

⁵ The Union did not concede that the presidential memorandum at issue is an executive order nor that it was issued pursuant to any apparent statutory authority.

In this case, the Union asserted that the Employer failed to provide sufficient notice of the change to telework and an opportunity to bargain prior to implementation. The Employer presented the change as a decision rather than a proposal. The Union asserted that the Employer presented the change as *a fait accompli* and, therefore, a request to bargain would have been futile. See *United States Dep't of Homeland Security, U.S. Customs and Border Protection*, 64 FLRA No. 179, ¶9 (2010) (a union does not waive its right to bargain when notice coincides with issuance of guidance implementing the change); see also *U.S. Dep't of the Navy, Naval Avionics Ctr.*, 36 FLRA 567, 572 (1990). By filing a grievance, the Union preserved its right to bargain over the implementation of the change. See *POPA v. FLRA*, 872 F.2d 451, 455-56 (D.C. Cir. 1989).

The Union also rejected the Employer's assertion that the Agreement permitted it to make changes to telework agreements without bargaining. Article 18.01(2) contemplates that employees are permitted to telework up to 4 days per week, and the Employer has established a long-standing practice of permitting employees to do so. A condition of employment may also be established by practice. *United States Dep't of the Air Force v. AFGE Local 1867*, 65 FLRA 756, 758 (2011). A binding past practice must be consistently exercised over a significant period and be implicitly or explicitly accepted by the parties. Although the Employer asserted that telework is not an entitlement for Agency employees, in practice the Employer permitted 85% of eligible employees to engage in regular/routine telework, up to 4 days per week, in accordance with the Agreement until February 24, 2025.

Moreover, the Union asserted that the Employer's implemented change was not "covered by" the Agreement. Specifically, the Employer did not satisfy its bargaining obligations prior to implementing the change. A party may only refuse to bargain about matters (1) expressly addressed in the agreement or (2) "inseparably bound up with" a subject "covered by the

agreement.” *See Soc. Sec. Admin.*, 64 FLRA 199, 202 (2009). Here, Article 18 does not contemplate the wholesale elimination of regular/routine telework. To the contrary, Article 18 explicitly states that if “Management makes any changes to Flexiplace policy handbook 625.1...those changes shall be subject to notice and bargaining obligations under the CBA.” Article 18.01(2). It is clear that regular and routine telework is a feature of the Agreement, *see* Article 18.01(1)(b), and the Employer’s elimination of the benefit required bargaining.

Although the Employer may point to a recent decision, *AFGE Local 3972 v. HUD*, 74 FLRA No. 44 (2025), the Union asserted that the facts are distinguishable from this dispute. In *AFGE Local 3972*, the Employer required employees in one unit to adjust their telework agreements to reflect one additional day of work per week in the office. The arbitrator denied the grievance, which asserted that the Agreement was violated and the Employer committed an unfair labor practice by failing to bargain over the changes. In this case, the Employer has relied on the PM to effectively eliminate regular/routine telework across the Agency. The Agreement allows eligible employees to participate in regular/routine telework “to the maximum extent possible.” Article 18.01(2). The affected BUEs in *AFGE Local 3972* retained the ability to participate in regular/routine telework, although they were required to increase the number of in-office workdays. In this dispute, no employee is permitted to engage in regular/routine telework unless they fall within limited exceptions.

The Union further asserted that the Employer’s unilateral changes to telework agreements across the bargaining unit disregarded the established criteria for amending such agreements pursuant to Article 18. A telework agreement is an agreement between the employee and his or her supervisor and does not require renewal. *See* Article 18.04(2), (4). Article 18 provides criteria for employees to qualify as eligible to perform telework and also provides individual factors for the supervisor to consider for declining an individual employee’s request for telework

or to withdraw a previous grant of telework. By unilaterally withdrawing approval for telework across the Agency *en masse*, the Employer has rendered this language meaningless.

Moreover, the Union asserted that the Employer's elimination of regular/routine telework constituted a repudiation of Articles 18 and 49 of the Agreement. These provisions are at the heart of the parties' Agreement, and the Employer has clearly and patently breached its obligations. *See Dep't of Justice v. AFGE Local 3935*, 68 FLRA 786, 788 (2015). The Employer's actions on January 24, 2025 effectively cancelled regular/routine telework for most BUEs, which amends the Flexiplace policy without bargaining as it is required to do by Article 18.01(2). Moreover, Article 49 requires a mid-term bargaining process for changes to policies or past practices. Telework was a clear condition of employment and the Employer's changes were made without providing the Union with an opportunity to bargain. These provisions go to the heart of the parties' Agreement and are intended to presser the Union's statutory right to bargain over changes to working conditions.

In summary, the Union respectfully requested that the Arbitrator sustain the grievance and award three remedies for the Employer's violations. An arbitrator is "empowered to fashion the same remedies in the arbitration of a grievance alleging the commission of an unfair labor practice as those authorized under [§] 7118 of the Statute." *Nat'l Treasury Employees Union v. FDIC*, 48 FLRA 566, 570 (1993). First, the Union requested that the Arbitrator order a return to the *status quo ante*. Here, the Union asserted that the Employer notified the Union of the change as *a fait accompli*, making any request to bargain futile; the Union filed a timely grievance alleging the Employer failed to bargain; the Employer disavowed its duty to bargain; the change has had a substantial impact on working conditions; and there would be no disruption from a return to the *status quo ante*. As such, the Union asserted that a return to the *status quo* until the completion of bargaining is appropriate. *Accord U.S. Dep't of Energy & AFGE Local 3824*, 56

FLRA 9, 13 (2000) (*internal citation omitted*). Second, the Union requested an order for the posting of a notice that the Employer violated the Agreement and the Statute by failing to meet its bargaining obligations. Finally, the Union requested the imposition of a monetary remedy for employees harmed by the Employer's violations. The Back Pay Act permits compensation for a monetary loss due to the violation of a collective bargaining agreement, which is an unjustified or unwarranted personnel action. *See U.S. Customs and Border Protection v. Nat. Border Patrol Council*, 66 FLRA 198, 204 (2011). BUEs affected by the Employer's action have incurred additional commuting costs due to the change in policy. The Union requested that the Arbitrator retain jurisdiction for the purposes of resolving any question of remedy, and any attorney's fees to which the Union may be entitled based upon the Arbitrator's findings.

POSITION OF THE EMPLOYER

The Employer asserted that it did not violate the parties' Agreement, supplements, and other statutes and regulations when it notified affected BUEs on January 24, 2025 that they would need to begin reporting to the office on a full-time basis and modify their Flexiplace agreements to reflect their new schedules. The Employer further asserted that it had no obligation to bargain over this change since it did not change the underlying policy or eliminate telework; modifications to employee Flexiplace agreements were made consistent with the requirements of the Agreement.

The Employer specifically asserted that the Agreement contains a bargained-for process for modifying telework agreements. "If a collective bargaining agreement 'covers' a particular subject, then the parties to that agreement 'are absolved of any further duty to bargain about that matter during the term of the agreement.'" *BOP v. FLRA*, 654 F.3d 91, 94 (D.C. Cir. 2011) (*citing Navy v. FLRA*, 962 F.2d 48, 53 (D.C. Cir. 1992)). The parties negotiated amendments to

Article 18 in 2022, which addressed remote work and mobile work provisions in the Employer's Flexiplace policy. When the Employer sought to initiate a change to employee Flexiplace agreements, the Employer followed the Agreement by notifying BUEs of the change, providing business reasons for the change, and requiring the development of new telework agreements. As such, no further bargaining was required. The Employer noted that another arbitrator determined that the Employer did not breach the Agreement and was not required to bargain when it changed telework agreements for Multifamily Housing unit employees in the Denver, Colorado regional office. *See U.S. Dep't of Housing and Urban Development and AFGE Local 3972*, FMCS Case No. 241002-02347 (Lundberg, 2024).

The Employer also rejected the claims that telework has been eliminated or that the Employer's policy has been changed. The Policy permits employee participation in management's discretion, and the Flexiplace agreements make clear that employees are not entitled to telework. Moreover, employees may continue to perform situational telework, as provided by the parties, and 10% of the Employer's workforce maintains a routine telework agreement.

The Employer further asserted that it followed the provisions of the Agreement when it notified BUEs of the change. Specifically, the Employer notified employees and the Union at least one pay period before the change took effect, provided reasons for the modification, and directed employees to complete a new telework agreement, in accordance with Article 18.03(1)(d) and 18.06(1), (3). In fact, the Employer provided four weeks' notice, and on January 24, 2025 identified three reasons for the modification: (1) increase the efficiency and accountability of the federal workforce, (2) increase the quality of services, and (3) improve the supervision and training of Agency employees. The Policy also permits the Employer to

permanently modify or terminate an employee's telework arrangement, at any time, for business reasons. Article 18.04 also obligated employees to report to the office "at least twice per pay period," which suggest that the number of days of in-office reporting may be increased pursuant to a valid modification.

For the foregoing reasons, the Employer respectfully requested that the grievance be denied in its entirety and the matter be dismissed. The Employer further requested that the Arbitrator identify the Union as the losing party with liability for the arbitrator's fees and expenses pursuant to Article 52.04.

OPINION

The Employer violated the Agreement.

This dispute is focused on the predominant type of telework that HUD employees performed prior to the issuance of the Presidential Memorandum: regular and routine telework. Prior to January 20, 2025, 85% of the Department's 8,097 employees participated in regular and routine telework. By comparison, only 107 employees were engaged in situational telework at the time and the remainder of the workforce did not have a telework agreement.

Unequivocally, the Agreement did not permit the Employer to unilaterally terminate telework agreements for nearly 7,000 employees. The plain language of the Agreement is replete with references to the parties' mutual understanding of the benefits that telework provides to the Employer and employees. Indeed, the parties intended to implement telework to the maximum extent possible and in accordance with applicable law. As the Employer noted, the Department's Flexiplace Policy remained unchanged and the Employer did not seek to bargain over changes to the telework provisions of the Agreement or the Policy.

By terminating telework agreements for thousands of bargaining unit members without a valid basis, the Employer repudiated the Agreement. In doing so, the Employer committed an unfair labor practice by restraining those employees from accessing a term and condition of employment.

For these and other reasons described herein, the grievance is sustained.

Article 18 Restricts the Employer's Ability to Terminate Telework Agreements. As the Employer has asserted, Department employees are not entitled to telework without qualification. All full-time, non-seasonal employees are eligible for telework pursuant to the Agreement. However, an employee must first complete an agreement, with authorization from his or supervisor, in order to perform telework on a scheduled or intermittent basis. Once an employee is approved for telework, the agreement is not subject to review and may only be terminated for certain business or performance-related reasons. *See* Article 18.02(2); Supplement 34, sec. IV, para. 34.

Business Reasons. The Employer has previously asserted valid business reasons for modifying telework agreements on a unit-wide basis. *See U.S. Dep't of Housing and Urban Development and AFGE Local 3972*, FMCS Case No. 241002-02347 (Lundberg, 2024); *aff'd*, 74 FLRA No. 44 (2025). In that case, the Employer reduced the number of telework days for employees working in a regional office unit. The arbitrator in that dispute rejected the Union's claim that the Employer was required to engage in mid-term bargaining, pursuant to Article 49 of the Agreement, prior to modifying telework agreements for the affected unit employees. This case is different. As an initial matter, the Employer only sought to modify telework agreements in one regional office unit in the previous dispute, rather than fully terminate the vast majority of regular and routine telework agreements across the entire Agency. The affected employees in the previous dispute retained the ability to perform regular and routine telework, as permitted

within the scope of the Agreement and the Policy. Here, it is established in the next section of this Opinion that the Agreement did not permit the Employer to eliminate employee telework privileges without meeting certain standards.

In addition, the Employer's decision in the previous arbitration affected a discrete group of individuals and contemplated specific business reasons. In this case, as established below, the Employer made generalized, conclusory statements to support a blanket change affecting the entirety of the bargaining unit. This distinction is relevant to the sufficiency of the Employer's rationale for terminating regular and routine telework agreements across the Agency.

The Employer's Reasons for Terminating Telework Agreements Were Arbitrary and Capricious. The Agreement makes clear that telework agreements may not be terminated for arbitrary or capricious reasons. *See* Agreement, Article 18.02(2); Supplement 34, sec. II, para. 14 and sec. IV, para. 34. Specifically, "Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or *managerial personal preference*." Supplement 34, sec. II, para. 34 (*emphasis added*).

The Employer's memorandum announcing the changes specifically cited the January 20, 2025 Presidential Memorandum as the reason for ending regular and routine telework for most employees in the Department. The Agreement does not permit the Employer to rely solely upon subjective preferences when terminating telework. Although the Employer subsequently stated limited reasons for its decision to end telework, the Employer's reasons were conclusory and were not supported by any objective measure. Moreover, the Employer's rationale for ending telework was categorically opposed to the Agreement, which detailed the parties' mutual understanding about the benefits of telework and incorporated the goals of the Telework Enhancement Act of 2010. *See* Pub. L. No. 111-292, tit. V, 124 Stat. 3165 (2010).

The Employer asserted that it was ending regular and routine telework to “increase the efficiency and accountability of the federal workforce,” and further asserted that telework “led to poorer government services and made it more difficult to supervise and train government workers.” To the contrary, the Employer and the Union extended the parties’ collective bargaining agreement roughly one month prior to the issuance of the Presidential Memorandum. The Agreement details the parties’ mutual understanding about the telework. Principally, the parties regard telework as “simply a way of getting work done from a different location.” Article 18.01(1). To this end, the parties agreed that the “[c]ommunication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking.” Article 18.04(9). For these reasons, the parties agreed to implement telework “to the maximum extent possible.” Article 18.01(2); *see also* Flexiplace Policy, Handbook 625.1 Rev. 1.

The Employer offered no substantive evidence to support the assertion that the telework has had a negative effect on Department operations. The Employer’s witness did not testify about why the Employer reached its conclusion about the effect of telework on the Department and did not offer any other documentary materials to substantiate its claims. In this regard, it is also clear that the Employer knew how to substantiate business reasons for modifying telework agreements. In 2024, the Employer announced modifications to telework for two units at the headquarters building in Washington. In each announcement, the Employer offered detailed reasons to support the proposed changes. The Union initially challenged the implementation of each change yet evidently accepted the Employer’s rationale by withdrawing the grievances upon reaching agreement to extend the terms of the collective bargaining agreement.

By Repudiating Article 18, the Employer Committed an Unfair Labor Practice. The Agreement and the Flexiplace Policy remain unchanged and, by extension, a small subset of

Agency employees with disability-based accommodations or DETO agreements continue to perform regular and routine telework. Therefore, it is unnecessary to determine whether a violation of Article 49 occurred when the Agency took action on January 24, 2025.

Nevertheless, by unilaterally cancelling telework agreements for thousands of Agency employees, the Employer repudiated the terms of Article 18. The telework provisions are an essential component of the parties' collective bargaining agreement. As discussed above, the Agreement provides for regular and routine telework benefits for employees, a method for approving telework, and limited options for the Employer to modify or terminate telework. The Employer circumvented these restrictions when it unilaterally cancelled regular and routine telework agreements for thousands of BUEs.

The Presidential Memorandum that was relied upon by the Employer in taking this action advised that its terms "shall be implemented consistent with applicable law." By violating the Agreement, the Employer committed a prohibited personnel practice in violation of the Statute. *See* 5. U.S.C. §7116(a)(1).

REMEDIES

The Union's requested remedies are reasonable and appropriate to address to the Employer's violations of the Agreement and the Statute. Accordingly, the parties shall reinstate the *status quo ante*. Specifically, affected bargaining unit members with active telework agreements permitting regular and routine telework prior to January 20, 2025 shall be permitted to resume telework pursuant to the terms of their previously applicable telework agreement. For the avoidance of doubt, the resumption of regular and routine telework shall begin in the next pay period following the date of issuance of this Award.

Second, the Employer shall post a Notice that it violated the Agreement and the Statute by unilaterally cancelling regular and routine telework agreements for Agency employees on or around January 24, 2025. The posting shall be made (1) by electronic mail message to the Agency's workforce, (2) by posting in a prominent location on the Agency's website, and (3) in physical locations within Agency workplaces traditionally used for employee announcements, e.g., bulletin boards in break rooms and other locations where human resources policy and regulatory posters currently exist. The Employer shall draft the Notice accordance with the terms of this Award and provide the draft notice to the Union for review and approval prior to taking the steps listed above. If the parties are unable to reach agreement on an appropriate Notice within thirty (30) days of the date of this Award, the parties shall inform the Arbitrator and the Arbitrator will issue an appropriate Notice for posting by the Employer according to the methods described herein.

Third, the economic effects of the Employer's actions were foreseeable. Article 18.06(2) specifically recognizes that changes to telework agreements affect the "cost of commuting as well as the scheduling and cost of dependent care," and Local 476 President Robinson testified that affected members have incurred increased commuting costs since the Presidential Memorandum was implemented. The Back Pay Act permits compensation for employee losses incurred due to the violation of a collective bargaining agreement. *See U.S. Customs and Border Protection*, 66 FLRA at 204. Therefore, affected employees who have incurred costs for commuting or elder care since February 24, 2025 through the date of reinstatement of their previously approved regular and routine telework agreements shall be compensated for such losses. The parties are hereby ordered to bargain over an appropriate calculation of this remedy and reach agreement on compensation for affected employees. The parties shall report back to the Arbitrator on the status of bargaining and any agreement within ninety (90) days from the

date of this Award, during which period the Arbitrator shall retain limited jurisdiction for the sole purpose of resolving any disputes that may arise regarding the implementation of the remedies described herein. Reasonable requests to extend the Arbitrator's retained remedial jurisdiction shall not be unreasonably denied.

Finally, and pursuant to Article 52.10(2), the Union is entitled to petition the Arbitrator for the award of reasonable attorney's fees in accordance with the provisions of the Back Pay Act. The Union may take such action during the period of the Arbitrator's retained remedial jurisdiction.

AWARD

The Employer violated the Agreement and the Statute when it unilaterally terminated regular and routine telework agreements for Agency employees on or around January 24, 2025.

Accordingly, the parties shall return to the *status quo ante*. For the avoidance of doubt, affected BUEs shall have their previously approved regular and routine telework agreements reinstated no later than the next pay period following the date of this Award. The Employer shall also post a Notice and issue compensation to affected bargaining unit members in accordance with the remedy described herein. The Union may also request the award of reasonable attorney's fees in accordance with Article 51.10(2) of the Agreement.

In accordance with Article 52.04 of the Agreement, the Arbitrator has determined that the Employer is the losing party in this dispute. Accordingly, the Employer shall promptly pay the Arbitrator's fees and expenses in this dispute.

The Arbitrator will retain jurisdiction for a limited period of ninety (90) days and for the sole purpose of resolving any disputes regarding the implementation of this remedy. Reasonable requests to extend the Arbitrator's retained remedial jurisdiction shall not be unreasonably denied.

A handwritten signature in black ink, appearing to read 'M. Loconto', with a large, sweeping flourish extending to the right.

Michael T. Loconto, Esq.
Arbitrator
Dated: February 18, 2026

EXHIBIT 2

**NATIONAL SUPPLEMENT 33
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222**

SUBJECT: Implementation of the Department of Housing and Urban Development's (HUD's) proposed Flexiplace Policy, dated January 10, 2022.

SCOPE: This Supplemental Agreement addresses the implementation of those portions of HUD's proposed Flexiplace Policy, dated January 10, 2022, that apply to remote and mobile work. Any part of the Flexiplace Policy that addresses telework is covered by Article 18. Separate Supplemental Agreements address modifications to Article 18, Telework, and Article 57, Space Management, that relate to the expansion of telework and adoption of remote work. Although this agreement mentions demonstration of a new Electronic Flexiplace System (EFS) for processing Flexiplace requests, including for telework, the implementation of the EFS system is not covered by this Supplemental Agreement and will be addressed in a separate agreement except where otherwise stipulated in this agreement.

I. Introduction

1. Flexiplace Advantages. The Parties recognize that many HUD employees have worked successfully since March 2020 under maximum telework arrangements due to the COVID-19 pandemic. The Parties agree that establishing policies that offer greater latitude may provide for expanded flexibility for employees and offer both HUD and employees an opportunity to reduce expenses.
2. CBA Precedence. The Parties agree that HUD's new Flexiplace Policy does not supersede any provisions of the HUD-AFGE Collective Bargaining Agreement (CBA) unless explicitly stated in this Supplemental Agreement. The Parties have agreed in separate Supplements to expand specific provisions of CBA Articles 18 and 57 that would otherwise be covered by the current CBA. The Union is not waiving its statutory rights under the Federal Service Labor-Management Relations Statute (Statute). If there is any conflict between the new proposed Flexiplace Policy and the provisions of this Supplemental Agreement, the terms of this Supplemental Agreement will govern.
3. Rights. The Parties agree that the implementation of this Supplemental Agreement shall not diminish or waive any rights that the Parties have under the CBA, law, government-wide rule or regulation, or agency policies that exist as of the date of this agreement.
4. Continuation of Terms. If this Supplemental Agreement is extinguished by issuance of a new collective bargaining agreement, the Parties agree the terms of this agreement that are mandatory subjects of bargaining will continue, subject to the new collective bargaining agreement, to the extent necessary until lawfully changed.

5. Existing CBA Provisions. The covered-by provisions of the 2015 HUD-AFGE CBA related to time and attendance, overtime, leave, and alternative work schedules are unchanged for any employee participating in a Flexiplace arrangement, including remote work and mobile work as well as telework unless otherwise agreed upon in this supplement. Performance standards and performance management policies and procedures for bargaining unit employees participating in the Flexiplace Policy shall comply with Article 30 of the HUD-AFGE Agreement.
6. Definitions. The terms used in this Agreement shall have the definitions provided by the January 10, 2022, Flexiplace Policy, unless a different definition is given below.
 - a. Mobile Work: Work characterized by routine and regular travel to conduct work at customer or other varying worksites as opposed to a single authorized alternative worksite.
 - b. Official worksite shall have the definition in Office of Personnel Management (OPM) regulations at 5 CFR § 531.602 and 5 CFR § 531.605. Official duty station is synonymous and interchangeable with official worksite.
 - c. Remote work is a type of alternative work arrangement by which an employee, under a written remote work agreement, is scheduled to perform work at an alternative worksite within or outside the local commuting area (as defined below) and is not expected to regularly report to an agency worksite at least twice a pay period on a regular and recurring basis. There are two (2) types of remote work:
 - i. Remote work – Near HUD Office: Work performed at an alternative worksite within a 50-mile radius of a HUD office.
 - ii. Remote work – Outside Commuting Area: Work performed at an alternative worksite outside of a 50-mile radius of a HUD office. New positions that are advertised as remote positions could be duty stationed either anywhere within a specified geographic area or anywhere in the United States, outside the local commuting area of a HUD office, as determined by Management. Existing employees may also qualify for Remote Work outside of the local commuting area of a HUD office.
 - d. Management Official: For purposes of implementation of the Flexiplace Policy, wherever a Management official is referenced the intent is that the Management official or their designee shall serve in the specific capacity described.
 - e. Outstationed Workers: Employees who are assigned to an agency office in one location but who physically report to an agency office in a different locality. Outstationed employees may be approved for telework or remote work.

7. Dependent Care Schedule Flexibility. Employees must ensure that appropriate dependent care (i.e., children, elders, and/or loved ones) is obtained and utilized during work hours while participating in the Remote Work program. While the presence of dependents in the household is not an absolute bar for employees working at an alternate worksite, employees must not engage in dependent care activities when performing official duties. While an occasional, brief interruption may occur when a dependent is present in the home, employees must be careful to keep interruptions to a minimum to avoid disruptions in performing and accomplishing work. In lieu of requesting leave for interruptions that are not brief, the employee may request to extend their workday to make up for the missed duty time by the corresponding amount of time used with notification to the supervisor, as long as extending the workday does not incur any overtime liabilities for the Department. The employee is responsible for notifying the supervisor when such an interruption exists which briefly extends their workday. In the event the level of care needed for a dependent prevents or significantly disrupts the performance or accomplishment of work for an extended period of time, employees shall notify their supervisors as soon as possible about the work interruption and request approval for appropriate leave or use of earned compensatory time or credit hours while performing dependent care responsibilities.

II. Policy Implementation

8. Policy Compliance with Negotiated Agreements. Management will notify AFGE Bargaining Unit Employees and their supervisors of the existence of this Supplemental Agreement and provide them with a copy of this Agreement attached to the online Departmental Flexiplace Policy. Management shall include a notice next to or below any links to the online Departmental Flexiplace Policy and in any emails circulating copies of the Flexiplace Policy stating that, for AFGE bargaining unit employees, this Supplement governs if there is any conflict between the Flexiplace Policy and this Supplement.
9. Policy Compliance with OPM Guidance. The Department's Flexiplace Policy shall comply with U.S. Office of Personnel Management's (OPM) weather and safety leave regulations at 5 CFR § 630, Subpart P. Weather and safety leave may be granted for emergency weather situations, such as storm preparation when there are severe storms approaching (e.g., hurricanes and tropical storms).
10. Flexiplace Participants Treated Same as Other Employees. Similar to 5 U.S.C. § 6503(a)(3), Management shall ensure that all participants in Flexiplace programs shall be treated the same as non-participating (in-office) employees for purposes of periodic appraisals of job performance, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees, work requirements or other acts involving managerial discretion.
11. Notice to Employees. The Department will notify all bargaining unit employees by email of both the new Departmental Flexiplace Policy and this Supplement within 30 days of signing this Supplement. Management will post both the Flexiplace Policy and the Supplement on the Department's intranet (HUD@Work) at the time of issuance.

12. Electronic Flexiplace System (EFS). Management shall provide the Union with appropriate Article 49 notices and fulfill all bargaining obligations under the CBA before implementation of the new Electronic Flexiplace System (EFS) and DocuSign. Notice and bargaining shall include any new forms or systems that were not previously used and that Management plans to implement as part of its new Flexiplace Policy and/or the EFS, such as the proposed Flexiplace Application, Flexiplace Agreement, Self-Certification, and DocuSign. Management shall provide the Union with training on use of the EFS before negotiations commence. The Parties agree to the use of electronic signatures for all current telework forms and electronic storage of those forms. The Flexiplace options (telework, remote, mobile work) will be added to current telework forms. The Parties agree that employees will enter their approved Flexiplace agreements in the electronic systems once the Parties fulfill their required bargaining obligations on the new systems. The employees' Flexiplace agreements will not be subject to reapproval before entry.
13. Prompt Implementation of Flexiplace. Management shall not delay implementation of the Flexiplace program due to any lack of functionality of the EFS. If the EFS is not functional at the time this agreement is signed or upon termination of the current Maximum Telework status, whichever is later, Management shall make all necessary forms available to employees in paper/digital copies and shall accept submission of and process paper/emailed requests to participate in remote work until the EFS is functional.
14. Eligibility. All HUD positions and employees should normally be eligible to participate in a Flexiplace arrangement in accordance with Agency Policy, applicable regulations, and the CBA. HUD shall include eligibility information in all position vacancy announcements. The Parties agree that Flexiplace eligibility is based on objective, equitable guidelines, function-based criteria, and shall not be arbitrary and capricious. HUD shall notify current employees of their eligibility status upon their application for a Flexiplace arrangement. If an employee is determined to be ineligible, Management shall, at the time the determination is made, provide the employee in writing with the reason(s) for ineligibility.
15. Determination of Remote and Mobile Work Positions. Remote and mobile work determinations for a position may be made at the time of position classification, and/or posted in a vacancy announcement. Additionally, remote work may be requested by an employee.
16. Adjustment of Duties. Management may consider adjustment of employee duties to allow for participation in remote work.
17. Designation of Official Duty Station for Locality Pay.
 - a. In accordance with 5 CFR § 531.605(d)(1), employees who are scheduled to report to the agency worksite at least twice per pay period shall have the agency worksite designated as their official duty station.
 - b. Remote workers who do not regularly report to an agency worksite at least twice a pay period shall have their alternative worksite (e.g., home) as their official duty station.

18. Withholding of State and Local Taxes. It is the responsibility of the employee to make state designations for employment taxes. Management will process the employee's elections in accordance with Department of Treasury requirements.
19. Training. Management shall provide reasonable accommodation(s) to allow employees with disabilities to participate in Flexiplace training. Employees who have previously taken the required telework training on hud.gov or telework.gov and who have a copy of their completion certificates will not be required to retake the training. Employees who have taken the training and have been teleworking prior to the execution of this Supplement but do not have a training certificate will be asked to attest that they have previously taken the training and will not be required to retake the training barring extenuating circumstances.
20. No Recurring Assessments. Once an employee has been approved to participate in a Flexiplace program, the supervisor shall not subject the employee to repeated reviews of the employee's home or telework/remote work environment, absent extenuating circumstances.

III. Remote Work Requests

21. Initiation of Remote Work Arrangement. Remote work arrangements may be initiated by an employee requesting to work remotely or by the agency posting a position announcement as one that will be performed remotely.
22. Remote Arrangements Not Required for Current Employees. No current employees shall be required to agree to a remote work arrangement if they were not explicitly hired as remote workers.
23. Submission of Flexiplace Applications. Employees may submit Flexiplace applications at any time and may request modification of any Flexiplace arrangement at any time.
24. No Recurring Applications. Once a bargaining unit employee has been approved to participate in a Flexiplace arrangement, Management shall not require an employee to reapply or to sign a new agreement in order to continue with the same approved arrangement. Existing Flexiplace participants will be required to enter their approved agreement information in the EFS system once implemented.
25. Requests Made Through Supervisor. Employees shall make requests for remote work through their immediate supervisor (or designee or other Management official). Requests made through the EFS shall be directed to the employee's immediate supervisor (or designee or other Management official). The approving official for remote work arrangements (approval, modification, or termination) is the lowest level Management official designated by the Assistant Secretary (or equivalent) for the program office, following coordination with the program office Funds Control/Budget Officer.

26. Incomplete Applications. Management shall notify employees of an incomplete Flexiplace application within two business days, barring extenuating circumstances.
27. Supervisory Approval. A bargaining unit employee's approved Flexiplace application shall be submitted by the supervisor or Management to the Program Office's Flexiplace Coordinator within two workdays of approval.
28. Approval/Denial Responses. Management shall approve or disapprove the employee's participation in the Flexiplace program in writing, within fifteen (15) business days upon receipt of a complete application, unless extenuating circumstances preclude processing within this time period.
29. Telework Pending Approval of Remote Work Request. Management shall consider permitting an employee who requests a remote work arrangement and is not currently teleworking to telework pending the final decision on the remote work application.
30. Handling of PII. Employees handling personally identifiable information (PII) or other sensitive information, barring national security classified information, are eligible to participate in remote work arrangements subject to Management approval. When addressing disclosure of PII, Management will take into consideration any factors beyond the employee's control.
31. Office Coverage. The Parties agree that when office coverage becomes a consideration in determining employees' eligibility to participate in remote work or telework, to the maximum extent practicable, Management will consider using existing technology, such as call forwarding or recorded messages with alternative contact information, to provide telephone coverage when employees telework or work remotely. Management may approve face-to-face video meetings instead of in-person interactions for situations other than supporting walk-in external customers or internal or external customers who require in-person support.
32. Locality Pay Information. The Department shall inform employees of the locality pay implications and effects (i.e., possible significant pay cuts) if they do not report to a HUD office at least two days per pay period and do not reside in a county within the HUD office's established locality pay area as determined in 5 CFR § 531.603. Upon request, information regarding the employee's individual circumstance will be provided to the employee. Employees shall have the option of withdrawing their remote work request.
33. Expenses. To the extent practicable, HUD shall consider certain costs to the agency, such as occasional local travel or occasional shipping of required equipment or files, to be de minimis for Flexiplace workers and not a reason to deny/terminate a Flexiplace arrangement. The Parties agree that bargaining unit employees must comply with the Federal Records Act, the Freedom of Information Act (FOIA), the terms of litigation holds, discovery in litigation, and any requests for records by the Office of Inspector General.

IV. Denials of Flexiplace Requests, Termination or Modification of Flexiplace Arrangements, and Appeals

34. Basis for Denial, Modification, or Termination of Remote Work Arrangement. Any decision by Management to deny, modify, or terminate a remote work arrangement must be based on business needs, misconduct, or performance, not arbitrary or capricious reasons. Management shall provide the denial/modification/termination and the reason for the action in writing. Management shall not terminate, modify, or deny a remote work arrangement as a form of punishment or managerial personal preference.
35. Initial Appeal of Denial. An employee whose remote work request is disapproved initially has the right to appeal the decision within fifteen (15) calendar days to the next higher Management official above the deciding official within the employee's chain of command. If the appeal for remote or telework is denied, Management must notify the employee of their decision and provide the employee written justification for the denial within twenty-one (21) calendar days of receipt of the appeal.
36. Prior Notice. Barring extenuating circumstances, employees who are initially hired under remote work arrangements shall not be subject to having those remote work arrangements terminated unless the employee was informed, prior to accepting the job offer, that the remote work arrangement is subject to termination by the agency due to performance or business needs.
37. Termination or Modification of Remote Work Arrangements due to Performance. Supervisors may terminate remote work for performance-related reasons. Supervisors are strongly encouraged to consider warnings, modifications, and temporary suspensions of remote work before terminating an agreement. If an employee is terminated from remote work, they may reapply at any time.
38. Election of Grievance Process, EEO Complaint, or Appeal. Employees have the right to choose to grieve the denial or termination of their Flexiplace arrangement through any one of the following processes: the negotiated grievance process (within 45 days), file an EEO complaint, or appeal the action through the Employee Flexiplace System or directly to the supervisor (within 15 days). An employee is not required to appeal through the Employee Flexiplace System or directly to the supervisor prior to filing a grievance, EEO complaint or other statutory appeals procedure complaint.
39. Discussion with Union. By mutual agreement of the supervisor and the employee, an employee may discuss the denial or termination notice with the supervisor and have a union representative attend and participate in this discussion.
40. Notice of Termination of Remote Work Arrangement. If an employee's remote work is being terminated, supervisors will give written notification of at least two weeks to the affected employee before the termination date, unless emergency conditions exist, which may necessitate expedited termination. However, nothing in this provision overrides the provisions of Article 28 of the HUD-AFGE Agreement. A remote worker given a directed reassignment to a HUD office

official duty station beyond 50 miles from their residence or alternative worksite shall be given at least 60 days to relocate, if required, unless renegotiated with the Union in accordance with Article 28, Section 28.05 of the HUD-AFGE Agreement.

41. Notice to Union. Any Management-initiated decision to terminate or modify a remote work arrangement for longer than one pay period requires notice to the Union.
42. Relocation Costs. When a remote work arrangement was initiated at the employee's request or Management terminates the remote work arrangement due to a decline in the employee's performance or an occurrence of misconduct, the employee will be responsible for covering their own costs to relocate to an agency duty station and will not seek relocation costs from HUD. Any employee relocation costs arising from supervisor-initiated remote work changes or terminations that result in a change to a different geographic area (e.g., changing from one HUD regional office to another) for reasons other than performance or misconduct will be paid by HUD in accordance with the GSA Federal Travel Regulations. Such arrangements must be coordinated with the Program Office's funds control/budget officer in advance of a determination that may create an entitlement to relocation costs.
43. Employee Decision to Terminate Flexiplace Arrangement. Employees may terminate participation in the Flexiplace program at any time, for any reason. Employees shall provide the termination notice to their supervisor in writing and state the effective date of the termination. Employees do not need to provide a reason. Employees who choose to terminate their participation in remote work may need to participate in desk sharing, hot desking, or hoteling temporarily until such time as sufficient workspace becomes available.

V. Implementation of a Remote Work or other Flexiplace Arrangement

44. Impact on Work Group. To the extent possible, bargaining unit employees should avoid any negative impact of Flexiplace arrangements on other members of the work group (e.g., normally, others in the office should not have to perform the duties assigned to someone else working remotely).
45. Perceived Performance. Employees' performance working remotely, teleworking or in the office shall be addressed in accordance with the provisions of Article 30.
46. Self-Certification of Time Worked. Employees who work remotely or telework, like employees who report to agency worksites, will self-validate their time using the current Departmental automated time-keeping system in accordance with the provisions in the Parties' Collective Bargaining Agreement.
 - a. In accordance with the Office of Personnel Management (OPM) guidance, remote working employees continue to be eligible for all Alternative Work Schedules, subject to Management approval. Remote workers will be treated the same as all other employees with regard to work reporting requirements. There will be no sign in or out.

- b. Microsoft Teams or its successor will not be used for time-keeping purposes.
- 47. Telephone Numbers. Remote workers will provide a telephone number where they may be reached by the supervisor and or, other Management officials. Management shall not require employees with a Flexiplace arrangement to provide a personal telephone number to HUD clients, or the public, in accordance with the Privacy Act.
 - a. Management shall not disseminate or publish employees' personal phone numbers or other personal information.
 - b. If an employee does not choose to share a personal telephone number, then HUD clients, and the public shall communicate with the employee by Microsoft Teams or other successor communications equipment/software, HUD-furnished cell phone, call-forwarding from a HUD telephone number if available and the employee chooses, voicemail retrieval and/or email.
 - c. If an employee uses a personal telephone to make outgoing work calls, the employee is permitted to block the personal phone number from appearing in Caller ID.
- 48. Supervisors' Contact Information. Supervisors will establish methods of communicating with their employees and ensure that all employees participating in the remote work program have alternative means of contacting the supervisor in the event that email is not available (due to HUD system failures, weather, or other conditions).
- 49. Video Conferencing. Management may request that bargaining unit employees turn on the video camera in Microsoft Teams or successor communications equipment/software to support interaction in training, collaboration, and customer engagement. Management will provide training to employees on applying background effects to maximize employee privacy. All HUD workers will be treated the same for these requirements.
- 50. Contact Outside Duty Hours. Supervisors and managers shall not contact employees by phone (text or voice call) outside of known duty hours barring emergency situations. Emergency, as defined in Article 2 of the Parties' Collective Bargaining Agreement, includes situations that cause substantial disruption, damage and destruction to properties and services; it is distinct from an urgent situation that can be resolved promptly during business hours. Employees on Flexiplace arrangements are not obligated to respond to emails received outside of duty hours until the employee's next business day at the earliest barring known emergency situations. Written Flexiplace agreements may not require employees to respond outside of duty hours to emails, text messages, voicemail, or other means of contact.
- 51. Use of Microsoft Teams. Employees may be required to use business communications platform software, such as Microsoft Teams, or a successor system(s), to attend meetings with supervisors, co-workers, or HUD customers.

Although bargaining-unit employees should remain logged-in to Microsoft Teams throughout the workday, they are not required to show their Teams status.

52. Loss of and Damage to Privately Owned Property. A bargaining unit employee has the right to file a claim against the government for loss, theft, or damage of privately owned property officially approved by Management in accordance with HUD Administrative Services Policy Handbook 2200.01, Chapter 9: Personal Property Management, Section 1, No. 6.C., the Federal Tort Claims Act (24 CFR Part 17, Subpart A), and the Military Personnel and Civilian Employees Claims Act of 1964 (24 CFR, Part 17, Subpart B).
53. Early Dismissal for Goodwill. Early dismissals at the employee's official HUD worksite when the Agency announces early release for holidays and special events, shall be granted to Flexiplace workers to the same extent as granted to those employees reporting in person to the official HUD worksite.

VI. Temporary Modifications to Flexiplace Arrangements

54. Employee-Requested Modifications. Employees may request temporary modifications of their remote work locations, including both working at an agency office or working in a different geographic location. If the request involves a change not to exceed two pay periods, the request must be submitted in writing to the supervisor and approved or denied in writing by the supervisor. Any change that extends beyond two pay periods requires a written request to the supervisor, written approval from the Assistant Secretary or designee and may require a change in the duty station. HUD employees are not authorized to perform work outside of the United States under the Flexiplace program. The only exception is on the rare occasion that an employee is approved by both HUD and the Department of State as a sponsored Domestic Employee Teleworking Overseas (DETO) or subsequent Department of State policy regarding sponsored DETOs.
 - a. Employees approved for remote work may request a temporary change in their Flexiplace arrangement (e.g., reporting to the office on a regular basis) to temporarily support an assignment that can be performed more effectively at the agency worksite. Upon completion of this status or project, the employee will return to their remote work status.
 - b. The temporary changes outlined above shall not affect the employee's bargaining unit status. Employees may report to the HUD office nearest to where they are located, providing there is space available. Locality pay will be determined in accordance with 5 CFR Part 531.
 - c. Requests that increase an employee's presence at an agency's worksite will be subject to space availability, and may require the employee to hot desk, share a desk, or hotel (reserve space).
55. Return to Permanent Arrangement. Employees whose requests for temporary changes to their Flexiplace arrangements are approved shall not be required to reapply for their permanent arrangement at the conclusion of the temporary change.

- 56. Limits on Change Requests. An employee may request modifications to their work location at any time. If an employee is requesting to report to a HUD office location, employees may need to participate in shared space arrangements (e.g., hoteling and/or hotdesking) temporarily until sufficient workspace becomes available.
- 57. Travel to Agency Worksite. When remote or mobile workers need to go to an agency worksite either due to management direction, failure of provided equipment (e.g., a laptop), or to obtain or deliver required materials, Management shall provide the employees with travel orders arrangements, in accordance with the requirements of the most current federal travel regulations (e.g., if the official duty station is outside the 50-miles radius). All travel, including local travel, requires advance supervisory approval in writing.
- 58. Hold Harmless. Because remote workers are employed with the understanding that they are not required to report to the agency worksite on a regular and recurring basis, they shall not be subject to disciplinary action when they are not able to comply with requests to report to the agency or other designated worksite within one (1) day notice for factors beyond their control; this includes not being subject to termination of the remote work arrangement based on that reason.

VII. Reimbursements

- 59. Supplies. Management agrees that the Department will provide supplies e.g., paper, pens, staples and/or file folders, to remote workers that are routinely provided to employees in the office.
- 60. Shipping. Remote or mobile workers shall not be responsible for Agency shipping supplies, shipping and handling costs, and safe delivery of any equipment or materials shipped through a third party.

VIII. Reasonable Accommodations

- 61. Employees with previously approved reasonable accommodations for full-time telework/work-at-home are not required to reapply for the Flexiplace Policy nor submit new Flexiplace applications/agreements.

Effective Date: This supplement shall become effective upon signature of the Parties.

FOR MANAGEMENT:

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EXHIBIT 3

**NATIONAL SUPPLEMENT 34
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL COUNCIL OF HUD LOCALS 222**

SUBJECT: Amendments to Article 18, Telework, in the 2015 AFGE-HUD Collective Bargaining Agreement

SCOPE: This Supplemental Agreement modifies the current Telework Article due to the Department's implementation of a broader Flexiplace policy, which includes remote work and mobile work. The Department and Council 222 reached agreement on Supplement 33, Flexiplace Policy. This Supplement does not waive any rights of the Parties and modifies only those specific provisions of Article 18 mentioned below.

1. Limitations. The Parties agree that no provision of Article 18 other than those specifically identified below are modified by this Supplement.
2. Precedence. The Parties agree that HUD's new Flexiplace Policy does not supersede any provisions of the HUD-AFGE Collective Bargaining Agreement (CBA) unless explicitly stated in this Supplemental Agreement. If there is any conflict between the new proposed Flexiplace Policy and the provisions of this Supplemental Agreement, the terms of this Supplement will govern. If there is any conflict between the new proposed Flexiplace Policy and provisions of the CBA that are not modified under this Supplement, the terms of the CBA will govern.
3. Section 18.01, General. The Parties agree to replace Section 18.01 in its entirety with the following language:

Section 18.01, General.

- (1) Definitions. For the purpose of this article, telework shall be defined as in 5 U.S.C. § 6501: "a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee's position . . . from an approved worksite other than the location from which the employee would otherwise work." Telework is simply a way of getting work done from a different location.
 - a. Regular and recurring shall mean a schedule in which at least two specified days each pay period are planned to be at a stated worksite (e.g., a HUD office, home, or other approved alternative worksite) as a matter of routine.
 - b. Routine telework is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework agreement between the employee and employee's supervisor.
 - c. Situational telework is telework that is approved on a case-by-case basis and the hours or days teleworked are not part of an ongoing, and

regular telework schedule. Permission for an employee to participate in situational telework must be specified in an existing written telework agreement between the employee and employee's supervisor unless an agreement is already in place for regular and routine telework.

- (2) Departmental Policy. In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for the Department of Housing and Urban Development. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace Policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligations with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace Policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

4. Section 18.03, Roles and Responsibilities. The Parties agree to add the following as Section 18.03(2)(d):

- (d) Employees must ensure that appropriate dependent care (i.e., children, elders, and/or loved ones) is obtained and utilized during work hours while participating in the telework program. While the presence of dependents in the household is not an absolute bar for employees working at an alternate worksite, employees must not engage in dependent care activities when performing official duties. While an occasional, brief interruption may occur when a dependent is present in the home, employees must be careful to keep interruptions to a minimum to avoid disruptions in performing and accomplishing work. In lieu of requesting leave for interruptions that are not brief, the employee may request to extend their workday to make up for the missed duty time by the corresponding amount of time used with notification to the supervisor, as long as extending the workday does not incur any overtime liabilities for the Department. The employee is responsible for notifying the supervisor when such an interruption exists which briefly extends their workday. In the event the level of care needed for a dependent prevents or significantly disrupts performing or accomplishing work, employees shall notify their supervisors as soon as possible about the situation preventing the teleworker from continuing work. Employees shall then request approval for appropriate leave or use of earned compensatory time or credit hours while performing dependent care responsibilities.

5. Section 18.04, Application Requirements and Process. The Parties agree to replace Section 18.04 in its entirety with the following language:

Section 18.04, Application Requirements and Process.

- (1) Employees on a five (5) day per week schedule may telework up to four (4) days per week. Employees on compressed work schedules may telework up to three (3) days per week during a compressed week. Teleworking employees are required to report to the office at least twice a pay period.

- (2) Once an agreement is approved, employees may begin teleworking upon mutual agreement between the employee and their immediate supervisor.
 - (3) Employees who are denied telework or whose request is modified by the supervisor may select either the appeal process in HUD Flexiplace Policy dated January 10, 2022, -or- the grievance procedures outlined in Article 51 of the Collective Bargaining Agreement.
 - (4) Telework agreements are not required to be renewed once they have been approved. They remain in place until either party decides to modify or terminate the agreement. The telework agreement in place at the time of the implementation of this agreement will remain in effect unless the employee is no longer eligible for telework. If the employee requests a change based on the provisions of this supplement, a new agreement will be prepared. The self-certification safety checklist and IT approval form are not required to be resubmitted unless there are substantial changes in the teleworking situation.
 - (5) Employees will be required to enter current agreements and new applications in the Electronic Flexiplace System (EFS) once it is available for use.
 - (6) Employees may apply for telework at any time.
 - (7) Employees who chose not to participate in the program will not be penalized.
 - (8) Modifications to the telework agreement do not require a new Rules of Behavior for Remote Access User Agreement (HUD-22018); Telework Self-Certification Safety Checklist (HUD-25229) or IDT/HQOTC concurrence.
 - (9) Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking. The communication requirements of the manager will be discussed with employee and identified in the telework application and agreement. Teleworkers will provide a telephone number where they may be reached by the supervisor and or, other Management officials.
 - (10) Management agrees not to disseminate or require an employee to publish personal information such as home or cell phone numbers.
 - (11) Management agrees that the remote work site is not a governmental facility and that employees have the freedom to safeguard, insure and maintain the privacy of their home work place.
6. Section 18.06, Modification of Telework Agreements. The Parties agree to replace Section 18.06(2) with the following language:
- (2) The Parties recognize that an employee's telework schedule constitutes an agreement between employee and supervisor, and that changes to the schedule may affect the method, timing, and cost of commuting as well as the scheduling and cost of dependent care. If a supervisor requires a temporary modification to the telework arrangement based on the needs of the office,

the supervisor shall give the employee reasonable advance notice and shall provide as much notice as possible; under normal circumstances such as when information is available in advance (e.g., when scheduling training), this shall be no less than one full pay period. The employee may engage in discussions with the supervisor to achieve a mutually agreeable resolution if there is any conflict about the proposed temporary modification.

Effective Date: This supplement shall become effective upon signature of the Parties.

FOR MANAGEMENT:

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D'andra Hankinson, Chief Negotiator

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EXHIBIT 4

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER**

FLEXIPLACE POLICY

HANDBOOK 625.1 Rev. 1

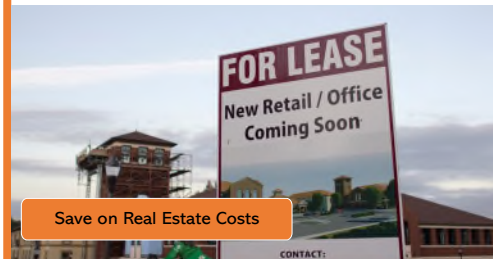
May 2022



Recruit and Retain Talent



Continuity of Work



Save on Real Estate Costs



Reduce Commutes

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Form required by this policy:

HUD-25228 Flexiplace Application and Agreement

CHAPTER 1. GENERAL PROVISIONS

1-1 Introduction:

In recent years, Flexiplace arrangements governing where employees work, including telework, remote work, and mobile work, have become increasingly widespread and formalized, with legislative mandates as well as programmatic and policy supports and structures. Tools, such as e-mail, easy access to information via the internet, teleconferencing, paperless work processes, and other innovations, are now readily available to implement a transparent program that lends itself to performing duties in alternate locations.

Flexiplace arrangements can serve multiple purposes and can have multiple benefits for both the Department and employees when implemented effectively. Flexiplace arrangements are of particular interest for their benefits in the following areas:

- Recruiting and retaining the best possible workforce – particularly workers who have high expectations of a technologically forward-thinking workplace and any worker who values work/life balance;
- Helping employees manage long commutes and other work/life issues that, if not addressed, can have a negative impact on their effectiveness or lead to employees leaving the Department;
- Reducing traffic congestion, emissions, and infrastructure impact, thereby improving the environment;
- Ensuring continuity of essential functions in the event of national or local emergencies; and
- Helping the Department achieve cost savings with real estate footprint reductions.

Flexiplace arrangements are not an employee entitlement, and how work is accomplished in an office is always a management decision. However, the Department encourages and fully supports the use of Flexiplace arrangements and management's efforts to utilize this flexibility tool in a way that enhances the work of the Department and the work/life of its employees. Additionally, as with any policy, not every provision or situation can be addressed in this document. Managers and supervisors, as well as employees, will have to exercise good judgment in applying this policy.

1-2 Purpose:

This policy implements the requirements of Public Law 106-346 and Public Law 111-292, codified in 5 U.S.C. Chapter 65, which require each Executive Agency to establish a policy under which eligible employees of the agency may participate in teleworking.

This policy sets forth the authority, policy, and responsibilities for the administration of the Flexiplace Program, to include telework, remote work, and mobile work, within the U.S. Department of Housing and Urban Development (HUD) for most full- and part-time employees. Additionally, this policy supersedes any other references to telework in any other Agency policies or guidance *dated prior* to this policy.

1-3 Coverage:

This policy applies to all HUD employees, except Office of Inspector General employees.

HUD employees are not authorized to perform work under the Flexiplace Program outside of the United States. The only exception is on the rare occasion that an employee is approved both by HUD and then the Department of State as a sponsored Domestic Employee Teleworking Overseas (DETO) approved to accompany a spouse assigned to work in an overseas location on behalf of the U.S. government. Sponsored HUD DETOs must adhere to the requirements of this policy as well as HUD's DETO policy.

1-4 Definitions:

Agency Worksite: The official agency location (HUD office) where work activities are based, generally considered a centralized location of an employee's assigned organization. The term regular worksite is also used to describe the agency worksite.

Alternative Worksite: An approved worksite other than the agency worksite, at which the employee performs their official duties. For teleworkers, this is the employee's approved telework site, and for remote workers, this is the approved remote site. Alternative worksites may include the employee's residence and/or another location where there is secure, reliable internet access, and there is an office setting conducive to accomplishing work requirements in a safe and secure manner.

Approving Official: For remote work arrangements, the approving official is the lowest level delegated by the Assistant Secretary (or equivalent) for the program office. The Assistant Secretary may retain approval authority for remote work, or delegate it. Each office's approving official may be different based on the level of delegated authority. However, all requests must be submitted to the immediate supervisor. For telework arrangements, the approving official is normally the immediate supervisor.

Continuity: An uninterrupted ability to provide services and support, while maintaining organizational viability, before, during and after an event, including but not limited to the Continuity of Operations Program.

Continuity of Operations Program: An effort within the Executive Office of the President and individual Departments and Agencies to ensure that essential functions continue to be performed during disruption of normal operations.

Continuity Personnel: Those personnel who have been designated by the Assistant Secretary for each office as necessary to continue essential functions under HUD's Continuity of Operations Program. *NOTE: Continuity Personnel should review Chapter 9-8 for specific information.*

Flexiplace Program: HUD program governing where employees work. Flexiplace arrangement types include telework, remote work, and mobile work.

Hot Desking: An alternative workspace arrangement in which employees use non-dedicated, non-permanent workspaces assigned on a first-come, first-served basis. Also known as free address or touchdown workstations.

Hoteling: An alternative workspace arrangement in which employees reserve workspaces on an as-needed basis. Rather than each employee having their own desk, workstations are shared throughout the agency and reserved by employees when necessary.

Internet Access: A secure, reliable internet connection via cable, fiber optics, DSL, wireless technology, or satellite.

Mobile Work: Work characterized by routine and regular travel to conduct work in customer or other varying worksites as opposed to a single authorized agency or alternative worksite.

Official Worksite: The “duty station” of an employee’s position of record for pay purposes, as documented on the SF-50, “Notification of Personnel Action,” where the employee regularly performs his or her duties. *See Chapter 7-6 for more information on the official worksite for each type of flexiplace arrangement.*

Outstationed Workers: Employees who are assigned to an agency office in one location but who are approved to physically report to an agency office in a different locality. Outstationed employees who are approved for telework must physically report to the approved HUD office at least twice per pay period.

Remote Access: The ability to work at a location other than the official duty station to perform work or emergency duties.

Remote Work: Remote work is a type of alternative work arrangement by which an employee, under a written Flexiplace agreement, is scheduled to perform work at an alternative worksite within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite at least twice a pay period on a regular and recurring basis.

Remote work – Near HUD Office: Work performed at an alternative worksite within a 50-mile radius of a HUD office.

Remote work – Outside Commuting Area: Work performed at an alternative worksite outside of a 50-mile radius of a HUD office.

Personally Identifiable Information: “Personally Identifiable Information” (PII) means any information about an individual maintained by an agency, including but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, date of birth, mother’s maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual.

Sensitive Information: Information required to be protected on the basis of its need for protection against loss, disclosure, or alteration because of the risk and magnitude of harm that could result.

Telework: Refers to a voluntary arrangement where the employee, under a written Flexiplace agreement, is expected to report to work at an agency worksite on a regular and recurring basis each pay period and also works from an alternative worksite on a regular and recurring or situational basis for an agreed upon period of time.

Routine telework is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written Flexiplace agreement between the employee and employee's supervisor. In order to be considered regular telework, an employee must be regularly scheduled to work at an alternative worksite for a minimum of one day per pay period. Employees **MUST** report to the office a minimum of 2 days per pay period.

Situational telework is telework that is approved on a case-by-case basis where the hours or days teleworked are not part of an ongoing, and regular telework schedule.

CHAPTER 2. ROLES AND RESPONSIBILITIES

2-1 Assistant Secretary for Administration (ASA):

The Assistant Secretary for Administration or equivalent or their designee is responsible for the administration of this policy. Approval to deviate from this policy must be obtained from the Assistant Secretary for Administration or their designee.

2-2 Approving Official:

The approving official for remote work arrangements (approval or termination) is the lowest level designated by the Assistant Secretary (or equivalent) for the program office. Each office's approving official may be different based on the level of delegated authority. However, all requests must be submitted to immediate supervisors. The approving official for telework arrangements is normally the immediate supervisor.

The approving official will:

1. Review each Flexiplace application, on a case-by-case basis, to determine if the employee and the employee's position are "Flexiplace eligible," based on the eligibility criteria outlined in Chapters 3 and 4, within that position's eligibility for participation in Flexiplace arrangements, normally determined during the position classification process.
2. For remote work requests (approval or termination), consult with the Program Office's funds control/budget officer on the potential budget implications prior to approving or disapproving the

request in order to conduct an assessment of benefits and cost to determine if the arrangement is workable and cost effective for the Government and the organization.

3. For remote work arrangements, review the employee's position description to ensure that the duties are conducive to remote work before approving the arrangement.

4. Approve or disapprove the employee's participation in the program in writing, normally within 15 business days upon receipt of a complete application for telework requests and 20 business days for remote work requests¹, unless extenuating circumstances preclude processing within this time period. An employee will be notified in writing of any delay in processing because of extenuating circumstances. An example of an extenuating circumstance is when a supervisor is on leave, travel, and/or higher management level approval of the request is required.

5. Provide written explanation to the employee if the request to participate is denied.

6. Ensure that a personnel action is processed to document any change in duty station arising from an approved or terminated Flexiplace arrangement, normally within one pay period of the start date of the arrangement and ensure that a pen-and-ink change is submitted to update the duty station and bargaining unit status code, if applicable, on the OF-8 Position Description coversheet.

7. Enforce the terms of the Flexiplace policy and application, and, for bargaining unit employees, the terms of applicable collective bargaining agreements and supplements, and take appropriate corrective action to ensure conformance.

8. Ensure supervisors monitor timesheets such that they appropriately reflect employee Flexiplace participation.

9. Provide written notice to the employee of termination of telework or remote work and justification.

10. Complete all lessons of the required Telework Fundamentals for Managers training and ensure subordinate personnel, serving as immediate supervisors, complete the training found at the <https://www.telework.gov/training-resources/telework-training/virtual-telework-fundamentals-training-courses/> and maintain copy of certificate of completion. (At the time of this policy's issuance, the training consists of five lessons, all of which must be completed.)

11. Refrain from creating a repository of completed Flexiplace applications at the local level, as OCHCO is the only authorized entity to retain a central collection of completed Flexiplace Applications.

2-3 Employee:

¹ Response timeframes for requests from AFGE employees are 10 business days for telework requests and 15 business days for remote work requests.

The employee will:

1. Complete all lessons of the required Telework Fundamentals training and attach a copy of the completion certificate to their electronic Flexiplace application. (At the time of this policy's issuance, the training consists of five lessons, all of which must be completed.)
2. Complete the electronic Flexiplace application and submit it for automatic routing to the supervisor for approval and to the Program Office Flexiplace Coordinator.
3. Ensure protection of sensitive data by:
 - a. Properly safeguarding and disposing of media (both hardcopy and electronic) using approved means of destruction in accordance with applicable records management regulations and policies;
 - b. Receiving permission, from the employee's supervisor and the designated management official(s) within the employee's program office, to use or access sensitive data outside of HUD facilities;
 - c. Utilizing and storing sensitive data only on HUD-approved systems or devices;
 - d. Abiding by the most current HUD Information Technology Security Policy (version at the time of this policy's issuance is HUD Handbook 2400.25 Rev. 5.0);
 - e. Physically securing laptops and sensitive hard copy documents at all times;
 - f. Immediately reporting incidents in which sensitive information has been potentially lost or compromised to the HUD HITS Help Desk. (At the time of this policy's issuance, for items involving phishing, contact Phishing@hud.gov; for IT security incidents, contact CIRT@hud.gov). For example, if a teleworker loses a cell phone, laptop, removable or external hard drive, flash drive, or hardcopy documentation, that contains HUD information, it should be reported without delay. Refer to the HUD IT Security Policy for additional guidance on protecting sensitive data.
4. Adhere to the Government-wide Standards of Conduct regarding the use and misuse of government services, resources, and equipment (5 C.F.R. § 2635.101(B)(9)).
5. Demonstrate the ability to work independently and ensure the quality and quantity of work does not suffer while participating in the Flexiplace program.
6. Ensure that appropriate dependent care (i.e., children, elders, and/or loved ones) is obtained and utilized during work hours while participating in the Flexiplace program. While the presence of dependents in the household is not an absolute bar to working at the alternative worksite, employees must not engage in dependent care activities when performing official duties. While an occasional, brief interruption may occur when a dependent is present in the home, employees must be careful to keep interruptions to a minimum to avoid disruptions in work

accomplishment. In lieu of requesting leave for interruptions that are not brief, the employee may request to extend their workday to make up for the missed duty time by the corresponding amount of time used with notification to the supervisor, as long as extending the workday does not incur any overtime liabilities for the Department. The employee is responsible for notifying the supervisor when such an interruption exists which briefly extends their workday. In the event the level of care needed for a dependent prevents or significantly disrupts the performance or accomplishment of work for an extended period of time, employees shall notify their supervisors as soon as possible about the work interruption and request approval for appropriate leave or use of earned compensatory time or credit hours while performing dependent care responsibilities.

7. Adhere to terms and conditions of the approved Flexiplace application including any reporting requirements as outlined in the application form (i.e., time and attendance, etc.).

8. Protect personally identifiable information to ensure that it is not disclosed to unauthorized persons, either intentionally or unintentionally.

9. Provide a phone number (home, cell, etc.) where they may be reached by the supervisor and/or other management official, and HUD staff as appropriate.

10. Avoid any negative impact from Flexiplace arrangements on the work of the other members of the work group (e.g., normally, others in the office should not have to perform duties assigned to someone else who would otherwise do them simply because the employee is working from an alternative worksite).

2-4 Program Office Flexiplace Coordinator:

The Program Office Flexiplace Coordinator will:

1. Review approved Flexiplace applications for completeness and notify employees and supervisors of any deficiencies.
2. Refrain from creating a repository of completed Flexiplace agreements at the local level, as OCHCO is the only authorized entity to retain a central collection of completed Flexiplace Applications.

2-5 Flexiplace Managing Officer (FMO):

The FMO, in OCHCO, will oversee the Flexiplace program for the Department. In this capacity, the FMO will serve as an advisor for the Department leadership including the Chief Human Capital Officer and serve as the statutorily required Telework Managing Officer for HUD. Additionally, the FMO will provide guidance and supervision to ensure the Department's Flexiplace Program is administered in accordance with applicable public laws, guidelines, and this policy. In addition, the FMO:

1. Facilitates agency compliance with the requirements of the Telework Enhancement Act of 2010, 5 U.S.C. Chapter 65.

2. Leads the agency in creating a vision of the Flexiplace Program as a strategic management tool that supports and aligns with the agency's operational goals and mission.
3. Gains leadership buy-in and emphasizes the importance of leaders leading by example.
4. Helps managers and employees understand the purpose for implementing a Flexiplace Program and the benefits to the organization.
5. Provides key stakeholders a clear understanding of what the agency is trying to achieve in order to obtain acceptance of and compliance with flexiplace policies and practices.
6. Oversees the collection of completed Flexiplace agreements enabling accurate Flexiplace reporting. Works collaboratively with OPM to satisfy mandatory annual data collection and reporting requirements and ensures that supervisors and employees understand accurate data reporting requirements.
7. Develops clear and specific requirements for evaluation of the Flexiplace Program, both for the individual participants and for the agency in general.
8. Answers workforce questions on Flexiplace policies and procedures and provides Flexiplace data on an as needed basis.

CHAPTER 3. TELEWORK

3-1 Types of Telework:

1. Telework is a voluntary arrangement where the employee is expected to report to work at an agency worksite on a regular and recurring basis at least twice each pay period and also works from an alternative worksite on a regular and recurring or situational basis. *Note: Any arrangement that requires employees to report to the agency worksite less than twice a pay period, including "full-time telework," is defined as remote work under this policy.*
2. Once an employee enters into a Flexiplace agreement, there may be times when the employee will be obligated to work from home beyond the employee's normal telework schedule. *See Chapter 7-1 for more information.*
3. There are two types of telework, listed below. The telework program is designed to be beneficial to both the Department and the employee. Employees are encouraged to apply for Situational telework even if they do not plan on working a Regular/Routine telework schedule. If the forms and clearances are obtained in advance, the ability to utilize Situational telework is simplified when it is needed. While it is not a requirement to apply to participate in the telework program, employees may not work from an alternative worksite, including during inclement weather, without an approved Flexiplace agreement in place.

a. **Regular/Routine Telework** is telework that occurs as part of an ongoing regular and recurring schedule with the telework day or days specified in a written telework Flexiplace agreement between the employee and employee's supervisor. In order to be considered regular telework, an employee must be regularly scheduled to work at an alternative worksite for a minimum of one day per pay period. Managers and supervisors should use their discretion to determine not only the amount of time an employee can work outside of the office, but the type and amount of communication necessary to ensure the work of the office is completed. Employees **MUST** report to the office a minimum of 2 days per pay period under this type of telework, regardless of their work schedule type. Employees who report to the HUD office on fewer than six days per pay period may be subject to space sharing arrangements such as hoteling or hot desking.

b. **Situational Telework** is telework that is approved on a case-by-case basis where the hours or days teleworked are not part of an ongoing, and regular telework schedule. Supervisors may approve instances of non-recurring work away from the agency when the employee has an approved Situational or Regular Telework arrangement.

3-2 Eligibility Criteria:

Employee Requirements:

These requirements apply to all employees in positions conducive to telework and remote work, including managers and supervisors, if the position meets the position requirements specified below.

1. The following employees are statutorily *ineligible* to participate in telework or remote work:

a. An employee who has been officially disciplined for being absent without permission for more than 5 days in any calendar year, for as long as the documentation of the disciplinary action remains in the employee's Official Personnel Folder.

b. An employee who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties [5 U.S.C. 6502(a)(2)(A)(B)], for as long as the documentation of the disciplinary action remains in the employee's Official Personnel Folder.

2. **Technology:** The employee must have appropriate access to secure, reliable internet service that will accommodate remote access to HUD programs at the alternative worksite, if required to perform the duties of the position.

3. **Additional Factors for Consideration:** Supervisors should consider factors in addition to the basic eligibility criteria when evaluating an employee's request to participate in telework, but these factors cannot be used to arbitrarily restrict participation. Factors appropriate for consideration include:

- a. **Conduct:** Although an official record of misconduct does not automatically exclude an employee from telework, a record of disciplinary or other corrective action may be considered as it relates to the employee's ability to successfully work at an alternative worksite.
- b. **Attendance:** An employee who is on leave restriction or who has a documented history of unsubstantiated excessive absences or being charged with Absence without Leave (AWOL) may not be a suitable candidate for telework.
- c. **Performance:** Although an official record of performance issues does not automatically exclude an employee from telework, a record of performance actions or less than Fully Successful performance may be considered as it relates to the employee's ability to successfully work at an alternative worksite.
- d. **Office Coverage:** The organization should be sufficiently staffed to prevent a hardship when one or more employees are permitted to work at an alternative worksite.
- e. **Supervision:** Telework and remote work may not be suitable for employees who have not demonstrated the ability to work independently, or for employees in developmental or trainee positions.
- f. **Budget Constraints:** Appropriate equipment needed to perform the employee's duties at the alternative worksite may not be available within allocated resources.

Position Requirements:

1. Employees eligible for telework are persons engaged in tasks and work activities that are portable, do not depend on the employee being at the traditional worksite, and are conducive to supervisory oversight at the alternative worksite. Employees shall not be excluded as eligible on the basis of their occupation, series, grade, or Union activities. All telework decisions must align with the position's eligibility for participation in Flexiplace arrangements, normally determined during the position classification process.

Tasks and work activities generally eligible for telework include, but are not limited to, work that requires:

- a. Reviewing grants, reports, and cases.
- b. Writing decisions or reports.
- c. Participating in conference calls.
- d. Researching and analyzing regulatory or other documentation.
- e. Conducting computer-oriented tasks such as programming, data entry, and word processing.
- f. Researching legislation.
- g. Editing and proofreading reports.
- h. Data analysis.
- i. Continuity Program-related task and work activities.

Note: The above are examples only and do not represent all types of work suitable for telework.

2. Ineligible positions **may** include positions which:

- a. Require the employee to have daily face-to-face contact with the supervisor, colleagues, clients, or the general public in order to perform their job effectively.
- b. Require routine access to national security classified information or other sensitive information/material that cannot be secured from or transported to a remote location.

3. Employees in training-driven positions, such as Pathways Program participants, must adhere to the following conditions:

- a. During periods of training, telework may be suspended.
- b. The telework program must not impede the progression or the ability for the employee to complete all of the requirements of their training program.

3-3 Employee-Initiated Telework Arrangement Modification:

1. A teleworker may request a temporary modification to the telework arrangement based on their personal needs. For example, a teleworker may request to change their telework day from Tuesday to Wednesday one week.

- a. Supervisors are encouraged to accommodate the employee's request if it does not impact or impede the work of the office. However, supervisors may disapprove this request.
- b. If the request involves a change for up to two pay periods, a verbal agreement is acceptable. Any change that extends beyond two pay periods requires a written request and response.

2. An employee may request a permanent modification to their telework arrangement. Requests that create a need for additional office-based workspace may require the employee to participate in space sharing arrangements, such as hot desking or hoteling, temporarily until such time as sufficient workspace becomes available.

- a. Supervisors are encouraged to accommodate the employee's request if it does not impact or impede the work of the office. However, supervisors may disapprove this request.
- b. If approved, a new Flexiplace agreement must be put in place.

3-4 Supervisor-Initiated Telework Arrangement Modification:

1. Supervisors may require a temporary modification to the telework arrangement based on the needs of the office. For example, a supervisor may request an employee to change their telework day from Tuesday to Wednesday.

a. The request will be documented in writing and will include the estimated time period of the change (e.g., one day, three weeks, etc.).

b. The supervisor will give the employee reasonable advance notice of the required change to the extent possible.

2. Supervisors reserve the right to permanently modify an employee's telework agreement, at any time, for business or performance-related reasons.

a. Supervisors are encouraged to work with the employee to select a telework day or days mutually agreeable to both, but ultimately, this is the decision of management.

b. This constitutes a change in the telework agreement and the changes must be documented in a new Flexiplace agreement.

c. Supervisors should give the employee reasonable notice of this change to the telework agreement, in advance to the extent practicable.

d. Supervisors must provide the notice in writing and include the reason(s) for the modification.

3-5 Termination of the Telework Arrangement:

1. Employees may terminate participation in the telework program at any time, for any reason. The termination must be in writing and state the effective date of the termination. If an employee's choice to terminate their telework creates a need for additional workspace in the office, the employee may need to participate in space sharing, such as hot desking or hoteling, temporarily until such time as sufficient workspace becomes available.

2. Supervisors may terminate participation in the telework program at any time, for any business, conduct, or performance-related reason and will notify the employee in writing and provide the reason(s) for termination. Reasonable notice will be given to the employee to the extent practicable. Supervisors are encouraged to consider warnings, modifications, and temporary suspensions of telework before terminating an agreement. A supervisor may terminate a telework agreement whenever:

a. There is a change in work requirements, office coverage or the arrangement no longer supports the Department/Office mission.

b. The employee has demonstrated conduct and performance problems such as:

- Violating time and attendance policies;

- An employee does not have to be placed on leave restriction in order to terminate telework.
 - Work products are not done in a timely manner and/or the quality of the work significantly decreases in quality and/or quantity, etc.
 - An employee does not have to be placed on any type of performance improvement mechanism (i.e., PIP, OIP, or equivalent) in order to terminate telework.
 - c. Changes in technology require that work be conducted in the office; such as the employee does not have access to the internet, hardware is not working, etc.
 - d. The employee does not conform to the terms of the Flexiplace agreement.
 - e. The employee’s performance has fallen such that it no longer meets business needs.
3. Removal from telework does not prevent an employee from reapplying at a later date.

CHAPTER 4. REMOTE WORK

4-1 Types of Remote Work:

Remote work is a special type of alternative work arrangement by which an employee is scheduled to perform work within or outside the local commuting area of an agency worksite and is not expected to report to an agency worksite on a regular and recurring basis at least twice a pay period.

Employees must submit a Flexiplace application and obtain managerial approval for remote work arrangements. Remote work arrangements may have budget implications, equity considerations, and other factors that management must consider when making decisions to institute or execute a remote work agreement or position. All remote work decisions must align with the position’s eligibility for participation in Flexiplace arrangements, normally determined during the position classification process. Current employees will not be required to enter into a remote work arrangement if they were not explicitly hired as remote workers.

Types of remote work arrangements:

1. **Remote work – Near HUD Office:** Work performed at an alternative worksite within a 50-mile radius of a HUD office. Examples:
 - a. An employee whose position would normally be based in HUD’s Robert C. Weaver headquarters building in Washington, DC is instead stationed in their home in the DC suburb of Arlington, VA.
 - b. An employee whose position would normally be based in HUD’s Robert C. Weaver headquarters building in Washington, DC is instead stationed in their

home in the Denver suburb of Lakewood, CO, which is within 50 miles of the HUD Denver Regional Office.

2. **Remote work – Outside Commuting Area:** Work performed at an alternative worksite outside of a 50-mile radius of a HUD office. New positions that are advertised as remote positions could be duty stationed either anywhere within a specified geographic area or anywhere in the United States, outside the local commuting area of a HUD office, as determined by management. Existing employees may also be in positions that are eligible for remote work outside the local commuting area of a HUD office, either within a specified geographic area or anywhere in the United States. Examples:
 - a. An employee whose position would normally be based in HUD’s Robert C. Weaver headquarters building in Washington, DC is instead stationed in their home in Gettysburg, PA, which is more than 50 miles away from any HUD office but meets management’s requirement that the position be stationed within Region III.
 - b. A position whose manager is based in HUD’s Robert C. Weaver headquarters building in Washington, DC is advertised with a remote duty station anywhere in the United States and the selected employee is stationed in their home in Midland, TX, which is more than 50 miles away from any HUD office.

4-2 Eligibility Criteria:

Position Requirements:

Management determines position eligibility for remote work, normally during the position classification process. Considerations include, but are not limited to:

- Portability of the duties of the position,
- Frequency that the position requires performance of duties in the office,
- Frequency of travel required for work, and
- Budgetary implications of changes in locality pay area, transit and travel costs, and real estate and facility savings.

Duties that require handling personally identifiable information (PII) or other sensitive information, barring national security classified information, may be deemed portable for remote work purposes, subject to management approval.

The availability of space in the HUD office of the position’s normal work location may also be taken into consideration when determining where remote arrangements may be appropriate.

Employee Requirements:

If an employee’s position is eligible for remote work, management will consider all telework employee eligibility factors listed in Chapter 3 when reviewing employee requests for remote work.

4-3 Employee-Initiated Remote Work Arrangement Modification or Termination:

1. An employee may request a temporary modification to their remote work location based on their personal needs, for a period not to exceed two pay periods.

a. Supervisors are encouraged to accommodate the employee's request if it does not impact or impede the work of the office. However, supervisors may disapprove this request for business reasons.

b. Requests must be submitted and approved/denied in writing (via email or another written format).

c. Requests that increase an employee's presence at an agency's worksite will be subject to space availability and may require the employee to participate in space sharing (for example, hot desk or hotel (reserve space)).

2. Any change that extends beyond two pay periods, including a permanent change or termination, requires a written request to the supervisor, written approval from the Assistant Secretary or designee and may require a change in the duty station. An employee may request a permanent modification to their remote work arrangement. Employees whose requests result in a greater presence in the HUD office may need to participate in space sharing, such as hot desking or hoteling, temporarily until such time as sufficient workspace becomes available.

a. Supervisors must consider position requirements, such as frequency of travel, as well as budgetary implications of changes in locality pay area, when considering requests to change an existing remote work arrangement.

b. Remote workers may request a temporary change to report to the HUD office on a regular basis to temporarily support an assignment that can be performed more effectively at the agency worksite. Upon completion of this status or project, the employee will return to their remote work status.

c. Employees may request to terminate participation in the Flexiplace Program at any time, for any reason. Employees shall provide the termination notice to their supervisor in writing and state the effective date of the termination. Employees do not need to provide a reason. Employees who choose to terminate their participation in remote work may need to participate in space sharing arrangement, such as hot desking or hoteling, temporarily until such time as sufficient workspace becomes available.

d. If a change lasting longer than two pay periods is approved, a new Flexiplace agreement must be put in place and may require a change in the employee's official worksite for pay purposes (duty station) in the personnel system.

3. HUD will not reimburse relocation expenses for employee-initiated changes to Flexiplace arrangements. Any relocation costs arising from employee-initiated requests to change to a

different geographic area (e.g., changing from one HUD regional office to another) are the responsibility of the employee.

4-4 Management-Initiated Temporary Change to or Termination of the Remote Work Arrangement:

1. Management may change or terminate participation in the remote work program at any time based on business needs, misconduct, or performance, not for arbitrary or capricious reasons, and will notify the employee in writing and provide the reason(s) for the change or termination. Advance written notice will be provided at least two weeks in advance to the affected employee before the change or termination date, unless emergency conditions exist, which may necessitate expedited termination. The change or termination will be documented in writing.
2. Management may terminate a remote work arrangement whenever there is a change in work requirements, or the arrangement no longer supports the Department/Office mission.
3. Management must consider position requirements, such as frequency of travel, as well as budgetary implications of changes in locality pay area, and the potential costs of relocation, when determining whether to change or terminate an existing remote work arrangement.
4. When a remote work arrangement was initiated at the request of an employee and management terminates the agreement due to a decline in the employee's performance or misconduct, the resulting reassignment to the new duty station will not be considered involuntary, and the employee will thus be ineligible for a severance payment, should they separate from HUD instead of accepting the reassignment.
5. Supervisors may consider whether to terminate a remote work arrangement and/or take disciplinary or performance-based actions while the employee remains remote when:
 - a. The employee has demonstrated conduct and performance problems. For example:
 - Violating time and attendance policies;
 - An employee does not have to be placed on leave restriction in order to terminate remote work.
 - Work products are not done in a timely manner and/or the quality of the work significantly decreases in quality and/or quantity, etc.
 - An employee does not have to be placed on any type of performance improvement mechanism (i.e., PIP, OIP, or equivalent) in order to terminate remote work.
 - b. The employee does not conform to the terms of the Flexiplace agreement.
 - c. Supervisors are encouraged to consider warnings, modifications, and temporary suspensions of remote work before terminating an agreement.
6. When a remote work arrangement was initiated at the employee's request and management terminates the arrangement due to a decline in the employee's performance or an occurrence of

misconduct, the employee will be responsible for covering their own costs to relocate to an agency duty station and will not seek relocation costs from HUD. Any employee relocation costs arising from management-initiated remote work changes or terminations that result in a change to a different geographic area (e.g., changing from one HUD regional office to another) for other reasons will be paid by HUD in accordance with the GSA Federal Travel Regulations. Management must coordinate such arrangements with the Program Office's funds control/budget officer in advance of making a determination that may create an entitlement to relocation costs.

7. Employees whose remote work arrangements have been terminated may have to participate in space sharing arrangements, such as desk sharing, hot desking, or hoteling temporarily until such time as sufficient workspace becomes available in the office.

8. Removal from remote work does not prevent an employee from reapplying to the Flexiplace Program at a later date.

CHAPTER 5. MOBILE WORK

Mobile work is work which is characterized by routine and regular travel to conduct work in customer or other worksites as opposed to a single authorized alternative worksite. Examples of mobile work include site audits, site inspections, investigations, property management, and work performed while commuting, traveling between worksites, or on official travel for temporary duty (TDY).

5-1 Eligibility Criteria:

The primary duties in the position description determine position eligibility for mobile work. Mobile workers are designated as such when they are hired for a mobile work position. When designing mobile work positions, management considerations include, but are not limited to:

- Degree of variability of the position's worksite,
- Portability of the duties of the position,
- Frequency that the position requires performance of duties in a HUD office, and
- Frequency of travel required for work.

CHAPTER 6. APPLICATION FOR TELEWORK AND REMOTE WORK

1. The application for the Flexiplace Program consists of the following:

- a. Flexiplace Application and Agreement.
- b. Telework Fundamentals training completion certificate.

2. Any references to a Flexiplace application, in this policy or any other references include both of the above.

3. Failure to complete either of the above constitutes an incomplete application and will not be considered.

6-1 Application Process:

1. The employee must submit an electronic Flexiplace application package to the immediate supervisor for review.

2. The supervisor will notify employees of an incomplete Flexiplace application within two business days, barring extenuating circumstances.

3. The supervisor or approving official will review the Flexiplace application package and provide a decision, in writing, within the timeframe described in Chapter 2-2.

4. If the request is approved, the employee and supervisor must abide by the terms and conditions of the arrangement.

5. The employee must complete all lessons of the applicable Telework Fundamentals prerequisite training. The training may be accessed at <https://www.telework.gov/training-resources/telework-training/virtual-telework-fundamentals-training-courses/>. (At the time of this policy's issuance, the training consists of five lessons, all of which must be completed.)

6-2 Agreement:

The electronic Flexiplace agreement, which must be completed and signed by an employee and their supervisor, outlines the terms and conditions of the Flexiplace arrangement. Among other requirements, the agreement stipulates:

1. Any set time, methods, and/or frequency for the employee to communicate during their tour of duty.

2. HUD management officials, the immediate supervisor and staff members may contact the employee throughout their tour of duty.

3. Employees should answer phone calls and emails and attend meetings with the same frequency and quality as they would while in the office. This may include turning on their camera for videoconference meetings, as requested by management.

6-3 Supervisor-Initiated Temporary Reporting to the Agency Worksite:

1. A supervisor has the right to require a Flexiplace participant to report to the official worksite at any time, based on operational requirements. A supervisor may require a teleworker to modify their telework schedule or a remote worker to report to the agency worksite in order to participate in a mandatory training activity, meeting, special project, day-of in-person team meeting(s), established in-person collaboration (shared) days, provide office coverage, etc., that cannot be performed at the alternate worksite. Therefore, employees participating in the

Flexiplace program must be accessible and available to report to the agency worksite for work needs that cannot be performed at the alternative worksite.

- a. The supervisor will give the employee advance notice to the extent practicable.
- b. Reporting to the agency worksite will last no longer than is reasonable to complete a work assignment or training.
 - i. For teleworkers, the supervisor may consider allowing the employee to work another day in the same week from the alternate worksite but is not required to do so.
- c. Normally, this type of modification will be communicated in writing, which may include email.
- d. Requiring the employee to report to the agency worksite is not a termination of the Flexiplace agreement.
- e. The supervisor (or designee) will communicate directly with the employee regarding the decision to report to the agency worksite.
- f. For same day reporting to the agency worksite at management's behest, occurring after the tour of duty begins, the commute time is considered as part of the tour of duty. (If the employee is reporting to the worksite at the employee's election, the commute time is not considered part of the tour of duty.)
 - i. For example, if an employee's tour of duty begins at 8:00 am and the supervisor requires the employee to report to the office to attend a 1:00 pm conference, the time spent commuting by the employee is considered to be work time.
- g. Management must take into consideration the distance from the alternative worksite and transportation options available to the employee and allow adequate time for the employee to report. Mobile workers and Remote Work – Outside Commuting Area workers may need to be on official travel orders (temporary duty travel - TDY), if they are traveling outside the travel status radius of their official worksite, as defined in the GSA Federal Travel Regulations, when reporting to the agency worksite.
- h. The tour of duty ends at the same time it would have if the employee had been working from the alternative worksite.
- i. Time for travel back to the employee's home is not considered as part of the tour of duty unless the employee is on TDY.
- j. Employees on TDY may earn compensatory time off for travel for time spent in travel status that is not otherwise compensable in accordance with applicable policy and regulations.

- k. For teleworkers, any costs incurred to report to the office, e.g., public transportation, is at the employee's expense as a normal commuting expense. Remote and mobile workers will be reimbursed for TDY expenses per applicable policy and regulations.
- l. Failure to report to the agency worksite or other designated locations (training center, etc.) may result in the termination of the Flexiplace arrangement.

6-4 Denial and Appeal Process:

While telework and remote work are not employee entitlements, and not all employees and/or positions are conducive to telework or remote work, management officials are urged to look at all facets of an employee's request and make decisions fairly in their office.

1. If the request is denied, the supervisor must notify the employee of their decision and provide the employee written justification for the denial on the Flexiplace application.
2. The employee may appeal the denial of the telework or remote work request to the level above the approving official. For example, if the application is denied by a Branch Chief, the employee can appeal the decision to the Division Director.
 - a. The employee must appeal the decision within 15 calendar days of receipt of denial.
 - b. The appeal must be accompanied by any circumstances the employee believes are relevant to the request for reconsideration.
3. The deciding official will render a decision in writing within 21 calendar days upon receipt of the appeal.

CHAPTER 7. TIME, ATTENDANCE AND PAY

7-1 Flexiplace Hours of Duty:

1. The existing policies relating to "hours of duty" apply to employees participating in Flexiplace arrangements.
2. If a situation arises and the employee's agency worksite is closed due to emergency situations (e.g., inclement weather or office repairs), and the alternative worksite is not affected, the employee is required to complete their tour of duty, if feasible.
 - a. Flexiplace workers are required to work during their regular tour of duty on a day when the agency worksite is closed (or when employees at the agency worksite are granted late arrival or dismissed early). They are not entitled to receive weather and safety leave, overtime pay, credit hours, or compensatory time for performing work during their regularly scheduled hours. Generally, employees who are Flexiplace

participants will not receive weather and safety leave, since they are not usually prevented from performing work at an approved alternative worksite due to a weather or other safety-related emergency. If the agency worksite is closed, all employees participating in the Flexiplace program whose alternative worksite is their home are required to work from their homes – even if it is a day when they would be reporting to the agency worksite. This will be considered regular time. If the employee chooses not to work from their alternate worksite or home, a leave request may be submitted, but the employee is not eligible for weather and safety leave.

- b. If the employee is working from home due to an unexpected agency worksite closure, it is understood there may be circumstances that impede or prevent the employee from performing some or all of their duties. These include situations where a teleworker could not have reasonably anticipated severe weather or emergency and thus is not prepared to telework and is otherwise unable to perform productive work at the alternative worksite, or a where Flexiplace participant cannot safely work at the alternative worksite due to severe weather or an emergency situation. With proper justification, the employee may not be penalized for a situation beyond their control. Proper justification could include loss of power, lack of work assignments, lack of child/dependent care, etc.
 - i. Under these circumstances, the employee is required to notify the supervisor via email (if available) of the situation, and the supervisor will determine if a leave request is required or if weather and safety leave applies. The applicable regulations and procedures describe a few limited exceptions under which Flexiplace program participants may be granted weather and safety leave. The email should contain the specific reasons that prevent the employee from working all or a part of the day.
 - ii. For example, if the employee is the parent of two very young children AND there is no one else in the home to assist in their care, the employee's work may be impeded and the supervisor will take this and any other factors under consideration to determine if any, or how much leave must be taken.
3. When an emergency or other situation affects only the alternative worksite for a major portion of the workday, HUD may require Flexiplace participants to report to the agency worksite or the employee may request annual leave or leave-without-pay (LWOP). This requirement does not apply to Remote Work – Outside Commuting Area participants.
 - a. If HUD remote access is down, and internet access is required to perform work, the employee shall report to the agency worksite.
 - b. If it appears that the system will only be down for a short period, or there is other work that could be done without the access, the supervisor should be consulted to determine if reporting to the official worksite is practical.

4. Weather and safety leave also may be granted to Flexiplace participants when they are prevented from working by the need to make safety preparations for emergency weather situations, such as storm preparation when there are severe storms approaching (e.g., hurricanes and tropical storms).
5. If the Federal Government (or HUD) is closed or released early due to a holiday or “good will” gesture, Flexiplace employees will receive the same benefit as those employees at the official duty station.
6. If the Federal Government (or HUD) is open but operating under a status of “unscheduled leave or unscheduled telework,” employees must notify their supervisor by the start of their workday if they are performing unscheduled telework or using unscheduled leave.

7-2 Flexiplace Work Schedules:

1. Flexiplace is not a “work schedule;” it is a program allowing employees to work at an alternative worksite. Employees continue to be permitted to work alternative work schedules, with supervisory approval, while they participate in Flexiplace. Work schedules are at the discretion of supervisors. However, supervisors are encouraged to exercise as much flexibility as possible.
2. With supervisory approval, employees may work a fixed schedule or an alternative work schedule permitted by the most current HUD Alternative Work Schedules policy or applicable labor-management agreement. With supervisory approval, teleworkers may establish in their Flexiplace agreement different work start/stop times for telework days as compared to when they are in the office.

7-3 Leave:

All OPM and Department leave requirements remain the same. If an employee is scheduled to work from an alternate worksite and will not be working due to sickness, or any other reason that would prevent or impede the employee’s work, the employee is required to contact their supervisor to request the appropriate leave.

7-4 Overtime, Compensatory Time and Credit Hours:

Supervisors must approve overtime, compensatory time, and credit hours **in advance**.

The existing provisions in Title 5 U.S.C. and in the Fair Labor Standards Act governing overtime also apply to Flexiplace workers. Supervisors must approve all credit hours, overtime and/or compensatory time in advance and in writing. Flexiplace employees should not work credit hours, overtime or compensatory time without advance supervisory approval. If they do so, they may be removed from the Flexiplace program and may not be eligible for compensation.

7-5 Travel, Leave and Holidays:

For teleworkers, if the employee is on travel, leave, or the scheduled telework day is a holiday, the employee may not substitute an alternative telework day without advance supervisory approval. Whether or not a substitution will be approved is within the discretion of the supervisor.

7-6 Effect of Flexiplace Arrangements on Official Worksite & Locality Pay:

1. Teleworkers' Worksites:

The official worksite for an employee covered by a telework agreement is the location of the regular agency worksite for the employee's position (i.e., the place where the employee normally reports for work on non-telework days), as long as the employee is scheduled to physically report at least twice each biweekly pay period on a regular and recurring basis to that regular worksite, except in certain temporary situations.

2. Remote Workers' Worksites:

The official worksite for a remote worker is the approved alternative worksite (i.e., home or another alternative worksite).

3. Mobile Workers' Worksites:

A mobile worker's official worksite will be determined in accordance with 5 CFR 531.605.

In accordance with 5 CFR 531.605(d), in the case of a mobile work employee whose work location varies on a recurring basis, the employee need not report at least twice each biweekly pay period to the official worksite as long as the employee is performing work within the same geographic area (established for the purpose of a given pay entitlement) as the employee's official worksite.

4. Locality Pay:

For all General Schedule employees, locality-based comparability payments are authorized based on an employee's official worksite under the most current Federal regulation. The location of an employee's official worksite—the HUD office for teleworkers and the approved alternative worksite (normally, the employee's home) for remote workers—determines the employee's locality pay area, which has an assigned Government-wide locality payment percentage. At the time of this policy, 5 U.S.C. § 5304 and 5 CFR part 531, subpart F apply to most General Schedule positions. Current locality pay area definitions and rates can be found at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>. Employees in executive and senior level pay plans do not receive locality pay.

For teleworkers, in certain temporary situations, such as an extended office closure or other operating status announcement, or where an evacuation order has been issued, the employee may be precluded from returning to the agency worksite with the twice per pay period frequency required by regulation. In such situations, HUD may continue to treat the agency worksite as the

official worksite of the employee even though, during that period, the employee is working from the alternative worksite and not returning to the agency worksite at least two days per pay period. In that situation, HUD is unable to offer an agency worksite but expects employees to return when the event has concluded. HUD may also permit an employee to telework without returning to the office twice per pay period in a situation where an employee is temporarily recovering from an injury or other medical condition but is expected to return to a normal telework schedule upon recovery.

Examples of appropriate temporary situations include:

- Recovery from an injury or medical condition;
- Emergency situations preventing an employee from regularly commuting to the agency worksite, such as a severe weather emergency or a pandemic health crisis. (For instance, in the aftermath of a hurricane or flood, an employee may be forced to temporarily relocate, making commuting to the agency worksite twice each biweekly pay period on a regular and recurring basis not possible. If the employing agency sets up telework arrangements for the employee, a temporary exception to the twice-a-pay-period requirement would be appropriate.);
- An extended period of approved absence from work (e.g., paid leave) during which the employee will not be able to report to the agency worksite at least twice a pay period;
- A period during which the employee is in temporary duty travel status away from the official worksite; or
- A period during which an employee is temporarily detailed to work at a location other than a location covered by a Flexiplace agreement.

This exception is intended to address certain situations where the employee is temporarily unable to report to the agency worksite for reasons beyond the employee's control. The temporary exception should generally be used only in cases where: (1) the employee is expected to return to work at the agency worksite in the near future, or (2) the employee is expected to continue teleworking and will be able to report to the agency worksite at least twice each bi-weekly pay period on a regular and recurring basis in the near future.

5. Tax or other legal implications for the business use of the employee's home will be based on IRS and state and local government rules and restrictions. It is the employee's responsibility to determine any income tax implications for maintaining a home office. Employees are encouraged to consult with a qualified tax professional to discuss the tax implications of a remote work arrangement or mobile work arrangement where the employee's home is their official worksite. It is the responsibility of the employee to make state designations for employment taxes. Management will process the employee's elections in accordance with Department of Treasury requirements.

CHAPTER 8. EXPENSES, EQUIPMENT AND FACILITIES

8-1 Expenses:

1. To make calls and scan copies, employees should use tools and technology that do not incur costs, to the fullest extent practicable. To this end, employees should log onto HUD's group chat/call software (currently Microsoft Teams) when they start their day and throughout their day so that they can be reached by their supervisors and colleagues via video or teleconference without incurring a cost to the government. When using tools and technologies that do not incur costs is not possible, the following may occur:

a. Program offices may issue cell phones to Flexiplace participants upon request where there is a business need.

b. Employees will be reimbursed for mail charges, facsimile charges, and hard copies only if they are instructed and approved in advance by their supervisor to incur such costs.

2. The following expenses will not be reimbursed:

a. Reimbursement for internet access, personal computer equipment, and/or other related charges.

b. Reimbursement for utility costs for heating, air conditioning, lighting, and the operation of government-furnished data processing equipment associated with the alternative worksite.

8-2 Equipment & Software:

1. Employees who have a personal computer at home and have secure, reliable internet access are only permitted to use their personal computer if they are awaiting issuance of a HUD laptop. In such cases, they may be provided remote access to the HUD system on their personal computer in alignment with IT Helpdesk instructions.

2. On a rare, case-by-case basis, supervisors may approve employees to participate in the Flexiplace Program without secure, reliable internet service as long as their work does not require access to HUD systems.

3. All HUD-provided laptop computers will be pre-configured with HUD standard software by local IT staff and provided to the employee. If there is a problem with the hardware and/or software applications, the employee is required to call the HITS Helpdesk at 1-888-297-8689.

a. If the problem cannot be resolved over the telephone, the employee is required to bring the equipment on-site (or if they are Remote Work – Outside Commuting Area participants, ship it in accordance with instructions provided by the Helpdesk) so that IT staff can repair the problem. Employees will notify their supervisor when a failure of the technology occurs to determine the need to report to the agency worksite.

- b. Employees who are issued a HUD laptop computer are prohibited from installing non-government owned or unauthorized hardware or software, e.g., social networking software, etc.

4. Flexiplace participants must comply with organizational security procedures and ensure adequate security measures are in place to protect the equipment from being damaged, stolen, or accessed by unauthorized individuals.

5. Flexiplace participants are responsible for taking reasonable precautions in preventing any loss or damage to equipment that is issued to them. If HUD-provided equipment is lost, stolen, or damaged due to negligence, the employee may be held accountable for replacement. In the event a computer is lost or damaged, the employee will immediately (24 hours or less during the week) call the HITS Helpdesk at 1-888-297-8689 to report the incident. Replacement equipment will be provided by HUD as soon as it becomes available.

- a. If a Flexiplace participant has personal equipment or other equipment available, they may be allowed to use it in alignment with instructions provided by the Helpdesk until the HUD laptop is repaired or replaced, at which point the employee must cease use of personal equipment.
- b. If alternative equipment is not available, teleworkers and Remote Work – Near HUD Office participants may be required to report to the agency worksite on the next business day and continue reporting to the office until the equipment problems are resolved.

6. Supervisors must establish methods of communicating with their employees and ensure that all employees participating in the remote work program have alternative means of contacting the supervisor in the event that email is not available (due to HUD system failures, weather, or other conditions).

8-3 Facilities:

If working at home, employees participating in the Flexiplace program should have a designated workspace or workstation for the performance of their work duties. Requirements will vary, depending on the nature of the work and the equipment needed to perform the work. In addition, employees must acknowledge reviewing the “Self-Certification Safety Checklist” portion of the electronic Flexiplace application.

8-4 Space Sharing:

Employees who regularly work at least six days per pay period in a HUD office will be assigned a workstation/cubicle or office. Employees who regularly report to a HUD office on fewer than six days per pay period may be subject to space sharing, which may include hoteling and hot desking. Vacant and available workspaces will be assigned in accordance with the most recent space sharing policy.

CHAPTER 9. MISCELLANEOUS INFORMATION

9-1 Position Description:

Changes to existing position descriptions are not necessary for telework arrangements. For remote work arrangements, approving officials must review the employee's position description and may make any necessary changes to ensure that the duties are conducive to remote work and a change in duty station before approving the arrangement. For example, changing the employee's status to or from remote work could affect their bargaining unit coverage in terms of which local or union may cover the employee based on geographic location. As position descriptions are developed or updated or vacancy announcements are opened, Flexiplace eligibility will be documented.

9-2 Performance Standards:

Critical elements and performance standards must have clearly defined performance requirements that are quantifiable, measurable, results-oriented, and tied to the Department's strategic plan. Explicit and objective "norms" for work output should be based on experience with those required and sustained in the office and monitored through scheduled and required progress reports. The performance of Flexiplace participants will be evaluated consistent with the applicable HUD performance management system, such that Flexiplace participants are treated the same as non-participants regarding performance management.

9-3 Work-Related Opportunities:

All participants in the Flexiplace Programs will be treated the same as non-participating (in-office) employees for purposes of periodic appraisals of job performance, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees, work requirements, or other acts involving managerial discretion.

9-4 Liability Issues:

Questions related to claims for personal property damage or loss, or personal injury related to the employee's performance of official duties should be directed to the Office of the Chief Human Capital Officer (OCHCO). The Department will address issues of employee or Department liability in accordance with the specific facts of each case and under the provisions of the Federal Employees Claims Act, the Federal Tort Claims Act, and the Military Personnel and Civilian Employees Claims Act, as applicable.

9-5 Workers' Compensation:

1. The Federal Employees' Compensation Act (FECA) covers Flexiplace participants. Employees may receive Workers' Compensation for an on-the-job traumatic injury sustained while performing official duties at the official or alternative worksite. Employees must inform their supervisor immediately or as soon as practical following an injury. Supervisors must ensure that the appropriate Workers' Compensation forms are completed within 10 days of the reported

traumatic injury. In addition, the supervisor will immediately inform OCHCO about the injury. Information regarding the process for filing a Workers' Compensation Claim, as well as the forms may be accessed at <http://hudatwork.hud.gov/HUD/chco/po/arh/notices/workcomp>.

2. In a home office (whether the home office is near the HUD office or outside the commuting area where the employee is assigned organizationally), the employee is covered under FECA at their workstation while performing assigned duties or performing employment activities incident to those duties. A workstation would generally consist of a location in the home where the employee performs work assignments such as a desk with a computer and internet access. Injuries sustained while performing activities that are not immediately directed toward the actual performance of assigned duties are not covered. Unlike in a traditional office setting, employees remove themselves from the performance of assigned duties as soon as they walk away from that desk to use the bathroom, get a cup of coffee, or seek fresh air.

3. Employees must review the "Self-Certification Safety Checklist" to understand the importance of safety at their alternative worksite in compliance with Occupational Safety and Health Administration (OSHA) guidelines as part of the Flexiplace application. Any claim for Worker's Compensation based on a traumatic injury will be investigated by the Department of Labor. For additional information regarding OSHA requirements, visit to www.osha.gov.

9-6 Transit Subsidy:

1. Remote workers and mobile workers whose official worksite is their approved alternative worksite (e.g., the employee's home) are not eligible for the transit subsidy program. Approved regular teleworkers who receive a transit subsidy under HUD's Transit Subsidy Program must complete and return the HUD-80-A to the Transit Subsidy Program within two business days of notice of approval to telework, accounting for their approved telework schedule.

2. Participation in the telework program may or may not affect the amount of the transit subsidy awarded.

3. Failure to notify the appropriate headquarters or field representative of changes to a telework schedule may result in termination of not only the telework program, but the transit subsidy program as well, if the changes affect the amount of commuting trips and/or the amount of the subsidy to which the employee may be entitled.

9-7 Policy Questions:

Questions about HUD's Flexiplace Program may be directed to the Department Flexiplace Managing Officer, as listed on <http://hudatwork.hud.gov/HUD/chco/po/arh/eap/flexiplace>.

9-8 Continuity of Operations:

Continuity of Operations is a Federal Executive Branch program to ensure that Departments and Agencies can continue essential functions during disruption of normal operations across a wide spectrum of threats. Each Department is required to develop and maintain a Continuity of

Operations Plan to ensure that Mission Essential Functions are operational within 12 hours of an emergency, with or without warning. Further information can be found in Federal Continuity Directive 1, located at <https://www.fema.gov/emergency-managers/national-preparedness/continuity>.

Telework is a critical part of HUD's Continuity of Operations Program. Employees are designated as Continuity Personnel by their Assistant Secretary and must adhere to requirements in HUD's Continuity of Operations Plan. Continuity Personnel must apply for telework, maintain telework readiness at all times, and abide by the terms of the HUD Flexiplace agreement, as documented, for the duration of their appointment to the Continuity of Operations program. The employee's telework capability should be verified on a regular basis, at a minimum once every quarter. All other eligibility criteria required in Chapter 3 are not applicable for Continuity Personnel conducting continuity-related telework. Continuity Personnel who are approved to telework only for continuity purposes must have their application annotated accordingly.

EXHIBIT 5



Agreement



between
U.S. Department of Housing
and Urban Development

and
American Federation of
Government Employees
AFL-CIO



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PREAMBLE

This Agreement reflects the values and commitment of the Department of Housing and Urban Development (“the Department”) and its employees through the American Federation of Government Employees -AFL-CIO (AFGE) (“the Union”), while maintaining a diligent focus on the public we serve. It is designed to recognize the realities of the 21st Century workplace by remaining flexible to technological and societal changes as they occur.

The terms and conditions of this Agreement apply only to employees within the bargaining unit.

The Department and the Union agree that the labor-management relationship is strengthened by the participation of employees in the formulation and implementation of personnel policies and practices and their conditions of employment. This is best achieved through a constructive and cooperative working relationship.

The Department shall allow employees and their Union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving subjects set forth in 5 U.S.C 7106(b)(1), through labor-management forums.

Advance collaboration and consultation are the preferred methods for maximizing positive results and minimizing conflict.

The Department and Union affirm the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. The Department and Union affirm that the public service to which the Department is dedicated can be advanced through understanding and cooperation achieved through the collective bargaining process. The provisions of this Agreement shall be administered and interpreted in a manner consistent with the requirement for an effective and efficient Government.

Therefore, the Department and the Union here by further agree as follows:

**ARTICLE 1
COVERAGE AND RECOGNITION**

Section 1.01 - Recognition.

- (1) The Union is recognized as the sole and exclusive representative for all bargaining unit employees as defined in the following Sections of this Article.
- (2) As the sole and exclusive representative, the Union is entitled to act for and to negotiate agreements covering all employees in the bargaining unit. The Union is responsible for representing all employees in the bargaining unit without discrimination and without regard to Union membership.
- (3) Management agrees that in regard to the bargaining unit, it will not enter into other agreements, understandings, or contracts with any other organization, association, group of employees, or union on matters concerning the conditions of employment of the bargaining unit.
- (4) Management and the Union agree that, in regard to the bargaining unit, they will not do anything by custom or practice that will contravene or violate this Agreement. The parties recognize that changes may be made to this Agreement when required by law, Government-wide regulation, or other appropriate authority outside the Department, such as the Comptroller General.

Section 1.02 - Bargaining Unit. Bargaining unit employees include all eligible employees of the offices listed on the description of the consolidated unit which is attached as Appendix B.

- (1) The Union represents employees in a nonprofessional unit and a professional unit as described in Appendix B.
- (2) "Professional employee" is defined by Public Law 95-454 (Title VII of the Civil Service Reform Act of 1978 (5 U.S.C. 7103)). Examples of professional positions in the Department's professional unit are: accountants, architects, attorneys, engineers, and economists, as well as other similar fields.

Section 1.03 - Position Exclusions. The following groups of employees are excluded from the units:

- (1) Any management official or supervisor;
- (2) A confidential employee, as defined in 5 U.S.C. Section 7103;
- (3) An employee engaged in personnel work in other than a purely clerical capacity;
- (4) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity; and
- (5) Temporary employees with appointments not to exceed six (6) months or less.

Section 1.04 - Scope and Future Application. If the Union, in the future, becomes certified as exclusive representative for employees of the Department not now included with the bargaining unit, this Agreement shall extend automatically to those employees. Management and the Union agree that when a new group of employees is added to the bargaining unit, any past practices that exist with respect to those employees shall continue unless such practices contravene or violate specific provisions of this Agreement, any law, Government wide regulation, or other appropriate authority outside the Department. If the past practice is discontinued, the Union shall be given an opportunity to bargain in accordance with the Statute.

With regard to past practices in existence at the time of the execution of this Agreement, those practices shall be discontinued if such practices contravene or violate specific provisions of this Agreement, any law, Government wide regulation, or other appropriate authority outside the Department. If any past practice is discontinued, the Union shall be given an opportunity to bargain in accordance with the Statute.

Section 1.05 - Exclusions from the Unit. If Management makes the decision to exclude any position from the existing bargaining unit as it stands on the effective date of this Agreement, before Management takes the action, the Local Union representative shall first be notified. Upon receipt of the notice, the Local Union representative may meet with Management within five (5) working days to attempt to resolve the matter, taking into account relevant determinations by the FLRA and any new duties assigned. If the matter is not resolved, either party may allow the applicable Federal Labor Relations Authority (FLRA) procedures.

ARTICLE 2 DEFINITIONS

Section 2.01 - Definitions. For the purposes of this Agreement, the following words and terms shall have the stated meanings:

- (1) **"Agency"** or **"Department"** are interchanged within this Agreement and shall be synonymous for the U. S. Department of Housing and Urban Development.
- (2) **"Contract"** or **"Agreement"** shall mean this collective bargaining Agreement between the parties.
- (3) **"Council"** shall mean the Council of HUD Locals 222, the Union's designated agent to handle the day-to-day business in the administration of this Agreement and other appropriate business of the Union, as specified in the delegation of authority by the American Federation of Government Employees, AFL-CIO.
- (4) **"Days"** means calendar days unless specified otherwise.
- (5) **"Disabled"** with respect to employment, it shall mean a qualified person with a disability, as defined in the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990 (ADA); the Americans with Disabilities Amendments Act of 2008 (ADAA); and Executive Order 13164.
- (6) **"Emergency"** with respect to the Agency, site or office, shall mean a man-made (technological) or natural hazard creating a situation that causes substantial disruption, damage and destruction to properties and services and the environment, and may result in severe adverse effects for a substantial number of employees at the agency site or office. These effects may include loss of life, physical injury, mental or emotional trauma. With respect to individual employees and/or office-wide emergencies, please refer to Articles 15, 18 and 23.
- (7) **"Employee"** shall mean bargaining unit employee as described in Article 1, Section 1.02, of this Agreement.
- (8) **"Family member"** has the meaning defined by the appropriate regulations of the subject matter. For those regulations that do not exclude family relationships, the following shall apply:
 - (a) Spouse, and parents thereof;
 - (b) Sons and daughters, including foster, adoptive, step, legal guardian, loco parentis and spouses thereof;
 - (c) Parents, and spouses thereof;
 - (d) Brothers and sisters, and spouses thereof;

- (e) Brothers and sisters, and spouses thereof;
 - (f) Grandparents and grandchildren, and spouses thereof;
 - (g) Domestic partner and parents thereof, including domestic partners of any individual in (a) through (e) of this definition, including same sex and opposite sex relationships; and
 - (h) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (9) **"Geographic Area"** means the duty location and/or the Department's designated geographic areas where it maintains HUD Offices.
- (10) **"Government"** means the Federal Government of the United States of America.
- (11) **"Government wide rule"** or **"regulation"** shall have the meaning ascribed to it by the Federal Labor Relations Authority.
- (12) **"In writing"** means any written document and includes electronic mail (e-mail).
- (13) **"Local"** shall mean a constituent AFGE Local designated by the Council of HUD Locals 222.
- (14) **"Local Commuting Area"**
- (a) For purposes of employment, means the geographic area that usually constitutes one area. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment; and
 - (b) For the purposes of travel on official business from permanent or temporary stations located within the Department, means the regulatory definition.
- (15) **"Management" or "Department"** shall mean the United States Department of Housing and Urban Development and its managers and supervisors, to the extent authorized to act on behalf of Management.
- (16) **"Parties"** shall mean the Union and the Department, except as referenced in the article on Collaborative Conflict Resolution.
- (17) **"Position"** shall mean bargaining unit position; unless otherwise specified.
- (18) **"Reorganization"** shall mean the planned elimination or redistribution of functions or duties within the Agency.
- (19) **"The Statute"** shall mean the labor relations Statute which is the title that governs Federal labor relations for employees of the Federal Government. (Also known as the Federal Service

Labor-Management Relations Statute, 5 U.S.C. 7101, et seq., (Title VII of the Civil Service Reform Act of 1978)).

- (20) **"Statutory appeal"** means an appeals process which is specifically prescribed by law, as opposed to one negotiated by the parties, as an employee's redress for complaint.
- (21) **"Supervisor"** or **"manager"** means a non-bargaining unit position or employee that accomplishes work through the direction of subordinate bargaining unit/Civil Service employees, whether full-time, part-time, intermittent, or temporary; non-Federal workers; unpaid volunteers; student trainees, or others.
- (22) **"Training"** means the process of providing for and making available to an employee, on-the-job training (OJT), and/or placing or enrolling the employee in a planned, prepared, and coordinated program, course, or curriculum, in technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.
- (23) **"Union"** shall mean the American Federation of Government Employees (AFGE), AFL-CIO, and its authorized agents, including the Council of HUD Locals 222, and its officers and stewards, to the extent that they are authorized to act on behalf of the Union.
- (24) **"Unit"** or **"Bargaining Unit"** as used in this Agreement shall mean all employees covered by this Labor-Management Agreement represented exclusively by AFGE.

Section 2.02 - Other Words and Terms. Any word or term used in this Agreement not defined in Section 2.01 above shall have the common, dictionary meaning with only the following exceptions:

- (1) **Statutory Wording.** Where wording is used which is the same and in the same context as the Statute, it shall have the same meaning as that in the Statute unless clearly stated otherwise.
- (2) **Terms of Art.** Where terms or phrases are used having special meaning in Government personnel systems, the meaning ascribed to them in Federal Statutes, Regulations and Executive Orders (i.e. CFR, U.S. Code) recognized regulatory guidance, case law, HUD Handbooks and policies, etc. shall be controlling unless clearly stated otherwise.
- (3) **Contract Phrases.** Where an Article of this Agreement deals with special terms or phrases, they shall be defined by the particular Article in which they appear.

ARTICLE 3
LABOR MANAGEMENT FORUM/RELATIONS MEETINGS

Section 3.01 - General. The parties agree to the establishment of a Labor Management Forum (LMF) / Labor Management Relations meetings. The intent of the LMF/ LMR Meetings is to establish a cooperative and productive labor-management relationship; create a non-adversarial forum for managers, employees and employee union representatives to help identify problems and propose solutions to better serve the public and the agency mission. The Agency shall comply with Executive Order 13522 wherein the head of each Executive agency shall, to the extent permitted by law, allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106.

The forum/relations meetings participants are encouraged to share information on pre-decisional topics and make good faith attempts to resolve issues. However, the forums/relations meetings do not replace either party's rights granted by statute; the forums/relations meetings do not take the place of traditional bargaining.

Section 3.02 - Time and Travel. To recognize the importance of this cooperative effort, the time spent by bargaining unit members or Union representatives to travel to/from and participate in LMF meetings described in Section 3.03 will be considered duty time, not official time. By mutual consent, duty time may be used by the Union to prepare for LMF/ meetings and/or LMF training. In the event these activities are conducted beyond normal duty hours, members will be compensated in accordance with applicable law and this Agreement. This shall not preclude Union representatives from utilizing official time before or after LMF meetings.

The Agency will pay employee travel expenses when it is necessary for individuals to travel to LMF/LMR meetings outlined in Section 3.03 of this Article.

Section 3.03 -Structure. Meetings will be conducted at the Local, Regional, and National levels as described below:

Local LMF/LMR Meetings - This forum shall be co-chaired by the Field Office Director or an appropriate Headquarters Director and the Local Union President. The participants shall include the Directors and Union Officials within the office, a representative from the Office of Employee and Labor Relations (ELR), and, by mutual consent, other local persons who may be helpful in the discussion and resolution of issues identified on the agenda. These meetings shall take place at least quarterly, at mutually agreed upon times and places.

Regional LMF/LMR Meetings - These forums/ meetings shall be held annually and should precede the annual National LMR/meeting. The participants shall be the Regional Administrator, a representation from ELR, the Program Office Directors who have employees in the affected offices, the Council RVP, the Local President or representative for each HUD office within the Region, and by

mutual consent other local persons who may be helpful in the discussion and resolution of issues identified on the agenda.

National LMF/LMR Meetings - This forum shall be sponsored by the Deputy Secretary for HUD and the AFGE Council President. The Deputy and Council President will be present on the first day of the forum/meeting to give introductory remarks and to set the tone for the agenda and outline the desired outcomes of the forum/meeting. The Deputy and Council President may designate alternates to assume their responsibilities throughout the rest of the forum/meeting. Prior to the meeting the parties will meet on the agenda and mutually determine the attendees. In addition, they will discuss and mutually agree on payment of costs and expenditures. By mutual consent, from year to year, attendees at the LMF/LMR may vary. Typically, the participants in the meetings shall be Officers of the AFGE HUD Council; Regional Vice Presidents; Local AFGE Presidents and Assistant Secretaries or their designated GDAS, and a representative from ELR. By mutual consent other persons who may be helpful in the discussion and resolution of issues identified as agenda topics may be invited to attend. The agenda for this forum/relations meeting will be mutually determined at least 30 days before the date of the forum/relations meeting. The agenda will be comprised of items that are national in scope. The Agency and Union shall exchange pertinent information at least 30 days prior to the scheduled LMF/LMR with respect to any reorganization, transformation, or other initiatives and any other topic to be discussed. These meetings shall be held annually, normally in the month of April in Washington, D.C. The meetings will last for 3 (three) days with travel on Monday and Friday before and after the forum. This forum may be facilitated by mutual agreement of the parties.

Section 3.04 - Authority of the Forums/Meetings. As stated above, the LMF/LMR Meetings does not take the place of bargaining as applicable under the statute; however, the parties are expected to work collaboratively in order to make the LMF a suitable and less formal means of resolving issues. The LMF/LMR Meetings may use consensus decision making as the process for reaching agreements, however other decision making processes may be used if mutually agreed upon. The parties are encouraged to put agreements resulting from LMF/Meetings discussions in writing in the forum minutes and in the form of Memoranda of Understanding or Supplements when appropriate.

Section 3.05 - Joint LMF/LMR Training. To achieve optimal results from the LMFs/ LMRs, the best interests of both Parties are served by joint Labor-Management training. The parties agree that the following joint training, both taken and/or given, is of mutual benefit and furthers the goals of the Department. Whenever possible, this type of training will be added to the agenda of the LMF/LMR Meetings. The joint training does not supplant the Union training identified in Article 47 of this Agreement nor does it supersede management's right to conduct these or other types of training. The training may include but is not limited to:

FMCS Labor/Management sponsored training

FLRA sponsored training

New Contract Interpretation

Conflict Resolution/Alternate Dispute Resolution

FLSA Compliance

Any other training recognized by the parties to support Labor Management relations.

ARTICLE 4
RIGHTS AND OBLIGATIONS OF THE PARTIES

Section 4.01 - Governing Authorities. In the administration of all matters covered by this Agreement, the parties are governed by existing and future laws, existing Government-wide regulations, and existing and future decisions of outside authorities binding on the Department. The parties also recognize the importance of pre-decisional involvement to the fullest extent practical without regard to whether those matters are negotiable subjects.

Section 4.02 - Rights of Union Recognition. The Union is the exclusive representative of the employees in the unit and is entitled to act and contract for all employees in the unit.

Section 4.03 - Union Presence at Formal Discussions.

(1) The Civil Service Reform Act of 1978 provides that the Union shall be informed of and entitled to at least one representative or more by mutual agreement, at all formal discussions between one (1) or more representatives of Management and one (1) or more unit employees, or their representatives, concerning any grievance, personnel policy and/or practice, and other general conditions of employment. The Union has the exclusive right to name its representative and may participate and ask questions, as appropriate. (2) Meetings held for the purpose of making a statement or announcement and not to engender a dialogue, if they meet the Federal Labor Relations Authority (FLRA) criteria, are formal discussions. It is not necessary that a meeting propose or result in a change in working conditions or personnel policies or practices to be considered a formal meeting. Direct communication is defined by prevailing FLRA case law.

(2) In a number of case decisions, the FLRA has noted several factors relevant to a determination of whether discussions are formal. **In most cases, several of these factors must be present for a meeting to rise to the level of a formal discussion.**

- (a) Whether the individual who held the discussions is a first-level supervisor or is higher in the management hierarchy;
- (b) Whether any other Management representatives attended;
- (c) Where the individual meetings took place, i.e., the supervisor's office, at each employee's desk, or elsewhere;
- (d) How long the meetings lasted;
- (e) How the meetings were called, i.e., with formal advance written notice or more spontaneously and informally;
- (f) Whether a formal agenda was established for the meetings;
- (g) Whether each employee's attendance was mandatory; and
- (h) The manner in which the meetings were conducted, i.e., whether the employee's identity and comments were noted or transcribed.

(3) Examples of discussions which would be formal, if the above described factors are present, are meetings between bargaining unit employees and Management representatives to discuss such topics as reorganizations, reductions-in-force, employee orientation, exit interviews, and office relocations. A discussion that begins as an informal meeting may evolve into a formal discussion if the above criteria

are met. In that circumstance, the Union would be given the opportunity to be present. These examples are not intended to be exhaustive.

Examples of discussions that are not formal are:

1. Meetings between a supervisor and an employee that involves the employee's performance;
2. Performance evaluations and appraisals; and
3. Supervisory discussions to a group of employees that merely involves the assignment of work;
4. The delivery of a proposed disciplinary action or the final decision.

These examples are not intended to be exhaustive.

Section 4.04 - Proper Notice. Notice to the Union of a formal meeting shall be provided to the designated Union representative at least 2 days in advance unless extenuating circumstances exist.

The notice shall include:

- (1) The general nature of the meeting;
- (2) Copies of any handouts that will be distributed, if available; and
- (3) The general identification of who will be expected to attend.

Section 4.05 - Union Delegations of Authority. The Union may delegate its authority as exclusive representative to whatever agent it deems appropriate. Upon written receipt, Management shall recognize such agents and conduct appropriate labor relations business with them. If the designated union representative or agent is unavailable, an alternate representative will be made available within a reasonable period of time.

Section 4.06 - Management Rights. Nothing in this Agreement shall affect the statutory authority of Management under the Labor-Management Relations Statute, Section 7106.

Section 4.07 - Management Delegations of Authority. Should a Union representative be uncertain of which Management official has the authority to represent the Department on a matter of concern, the Union official may request clarification from Management. Management shall promptly provide clarification.

Section 4.08 - HUD and Other Surveys. The parties recognize the importance of conducting surveys and/or data collection initiatives in order to ascertain employee morale and workplace concerns. Management will provide the Union with an advance copy of all HUD surveys and other non-HUD surveys on personnel practices, policies and working conditions, if Management receives them in advance. Results, analyses, and recommendations produced by these surveys will be shared with the Union before it is communicated to Bargaining Unit employees. Jointly developed surveys shall include a statement of the Union's concurrence.

Section 4.09 - Conduct of Labor-Management Relations.

Representatives of the parties shall conduct themselves in a professional, respectful manner that reflects their duties and responsibilities irrespective of their grade level or pay.

Section 4.10 - Agency Regulations. Management will furnish the Council with an advance copy of any proposed change in agency regulations referred to in this Agreement governing personnel policies and practices, and general conditions of employment. This Section shall not be construed to require Management to issue, change, or retain a regulation.

**ARTICLE 5
DUES WITHHOLDING**

Section 5.01 - Definitions.

- (1) **Dues** - means dues, fees, and assessments as determined by the Union.
- (2) **SF-1187** - is a Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues.*
- (3) **SF-1188** - is a Cancellation of Voluntary Allotment of Compensation for Payment of Employee Organization Dues.*

Section 5.02 - Eligible Employees. To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- (1) Be in one (1) of the units (see Appendix B) covered by this Agreement;
- (2) Be a member in good standing with the Union;
- (3) Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- (4) Request the allotment on the prescribed form (SF-1187) which has been certified by the authorized Union official.

Section 5.03 - Responsibilities of the Union. The Union shall:

- (1) Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing institution of allotments. This may be completed at new employee orientations;
- (2) Provide the SF-1187 form to employees;

*This includes any electronic successor version.
- (3) State on the SF-1187 form the amount of dues to be withheld each biweekly pay period;
- (4) Furnish written notification to the servicing Employee and Labor Relations (ELR) office concerning the names and titles of Local Union officials authorized to certify the SF-1187 form;
- (5) Promptly forward completed SF-1187 forms to the appropriate servicing ELR Office; and
- (6) Provide the appropriate servicing ELR office with written notification concerning:
 - (a) Changes in the amount of Union dues;
 - (b) The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days after the date of such determination; and

- (c) The name of any employee on dues check-off who transfers from one Local to another; the new Local to receive the dues deducted; and any change in the amount of dues to be deducted resulting from the transfer to a new Local.

Section 5.04 - Responsibilities of Management. Management shall effect the following:

- (1) **Accuracy.** The servicing ELR office shall honor and expeditiously implement each SF-1187 to ensure that only eligible employees are on the dues withholding listing. The servicing ELR office shall also screen each promotion and reassignment action to remove employees who are promoted or transferred out of the unit.
- (2) **Promptness.** Upon receipt in the appropriate servicing ELR office of the SF-1187 form from the Union, certify on the SF-1187 form that the employee is in the unit covered by this Agreement and promptly forward the SF-1187 form to the payroll office for processing. This process shall be completed within two pay periods of ELR's receipt.
- (3) **Privacy.** Copies of the SF-1187 shall not be filed in the employee's Official Personnel Folder.

Section 5.05 - Responsibility of the Employee. Management does not assume responsibility for the maintenance in good standing in the Union of the employee.

Section 5.06 - Procedures.

(1) Initiating the Withholding of Dues.

- (a) Upon receipt of a properly completed SF-1187 form from the servicing ELR office, the payroll office shall arrange to withhold the Union dues in accordance with existing pay periods (twenty-six (26) biweekly periods) and procedures under which employees are regularly compensated.
- (b) The dues deduction shall be effective as soon as possible, but in no case shall it be later than one (1) pay period following receipt of the SF-1187 form by the payroll office.
- (c) Employees who meet the eligibility requirements for dues withholding and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF-1187 form to come under the provision of this Agreement.
- (d) Any SF-1187 submitted to the servicing ELR office that Management does not process shall be returned to the Union with the reason why it was not accepted. The Union reserves the right to discuss the exclusions with Management.

(2) Changes in Dues.

- (a) The amount of dues certified on the original allotment form (SF-1187) shall remain unchanged until the authorized Union official provides written certification to the servicing ELR office that the amount of dues has changed. New SF-1187 forms shall not be required.

- (b) No more than four (4) levels of dues shall be withheld in any one (1) local office. Changes in the amount of the allotment by reason of changes in the Union dues structure may be made only twice a year by any one (1) local.
- (c) Change in the amount deducted for Union dues shall be effective as soon as possible but in no case shall it be later than one (1) pay period following receipt by the payroll office of the Union's certification of changes in its dues.

(3) Termination of Dues Allotments.

- (a) **Automatically.** Termination of dues allotments shall be automatic in the following situations:
 - i. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
 - ii. When the dues withholding agreement is by mutual agreement terminated;
 - iii. When an employee ceases to be eligible for inclusion in the unit covered by this Agreement for which the Union is the exclusive representative; and
 - iv. When an employee is expelled or ceases to be a member of the Union in good standing, effective with the first complete pay period after receipt of the payroll office of written notice from the authorized Union official.
- (b) **Voluntarily.** An employee may submit a written request, SF-1188, for the revocation of an allotment no more than two (2) weeks before, and no later than two (2) weeks after the anniversary date of the date on the form SF-1187. The request may be submitted, in duplicate, to the servicing ELR office. Revocations shall be effective the first full pay period following a timely filing of the form SF-1188, if the request is received in the servicing ELR office during the acceptance period.

Revocations by employees shall be in duplicate, preferably on the SF-1188 form, and shall be forwarded by the employee to the servicing ELR office. The ELR office shall forward a duplicate immediately to the designated Union official.

Requests for revocation of dues allotments which are not filed in a timely manner shall be returned to the employee with an explanation of the reason for the rejection. A copy of both the employee the SF-1188 and the explanatory letter shall be furnished to the Union.

The anniversary date of the authorization for dues withholding, SF-1187, shall be one (1) year from the first day (Sunday) of the first pay period that dues are initially withheld.

Section 5.07 - Remittance of Dues. Management shall remit the dues withheld after each pay period for which deductions are made within two (2) weeks. Payment of dues shall be made to the American Federation of Government Employees (AFGE) National Secretary-Treasurer's Office.

Overpayments by agency electronic transfers will be corrected by the agency promptly, once the agency is made aware of the error.

Underpayment of dues withholding will be promptly brought current with the union, once the agency is made aware of the error.

Section 5.08 - Detailed Listings. The remittances shall be accompanied by listings of the following information:

- (1) Identification of the payroll office reporting the data and the Union Local to receive the dues;
- (2) Pay period ending date;
- (3) The name of each member whose dues were forwarded to the Union and the amount of dues withheld; and
- (4) The amount remitted to the Union.

Section 5.09 - No Cost for Withholding. The service of withholding the Union dues shall be provided by Management at no charge to the Union.

Section 5.10 - Details Outside the Unit. Employees temporarily dropped from dues withholding due to a detail outside the bargaining unit shall be automatically reinstated upon the conclusion of the detail.

Section 5.11 - Errors. Employees dropped from dues withholding due to an error shall be automatically reinstated upon notification of the error.

Section 5.12 - Funds Transfer. Funds due the Council shall be electronically transferred.

**ARTICLE 6
EMPLOYEE RIGHTS/STANDARDS OF CONDUCT**

Section 6.01 - General. Employees have the right to pursue their private lives consistent with governmental Standards of Conduct and this Agreement without fear of reprisal. Employees shall be treated fairly and equitably in the administration of this Agreement and in policies and practices concerning conditions of employment.

Section 6.02 - Right to Participate in the Labor Organization.

Any employee of the Department shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right

Section 6.03 - Complying with Orders.

Employees recognize their responsibility to promptly comply with all orders and instructions from their supervisors. If an employee reasonably believes that an order or instruction patently violates any law, rule, or regulation, they have the right to state those beliefs to the supervisor. If the instruction remains unchanged, the employee has the right to state concisely their beliefs promptly and orally to the next higher level of Management available. If the order or instruction is confirmed by that higher level Management, or if the higher level of Management is not readily available, then the order or instruction shall be carried out promptly by the employee. Continued refusal to carry out an order or instruction may be cause for disciplinary action.

Section 6.04 - Employee's Personnel Records.

- (1) Management shall maintain and retain an employee's Official Personnel Folder (OPF) in accordance with law, rule, regulation, and this Agreement. The contents of an employee's OPF shall be made available for review without charge to leave or loss of pay, and copies thereof provided, upon the employee's request, to the employee or designated representative. Employees shall be advised annually of how to access their OPF.
- (2) An employee has the right, on duty time, to prepare, submit or request removal of information to ensure the accuracy of their OPF;
- (3) Personnel records kept by an employee's immediate supervisor shall be maintained in a secure, confidential file and shall be accessed only by officials with an administrative need to know its contents. They may not be used in disciplinary action unless they have been disclosed to the employee on a timely basis.

Section 6.05 - Morale. Recognizing that productivity is enhanced when employee morale is high, everyone working at HUD shall endeavor to treat one another with the utmost respect and dignity, notwithstanding the type of work or grade level held. This is the union's proposal, accepted by management.

Section 6.06 - Voluntary Participation. Management may provide the opportunity, but may not require employees to participate in recognized Savings Bonds programs, charitable campaigns for contributions, or other community activities not related to the employee's job.

Section 6.07 -Right to Representation. Employees have the right to be represented by the Union and meet with a Union representative during duty hours.

Section 6.08 -Right to Representation in Investigatory Interviews.

1. Employees have the right to be represented by the Union at an examination of the employee conducted by a representative of Management in connection with an investigation ,if:
 - (a) The employee reasonably believes the investigation may result in disciplinary action against the employee and;
 - (b) The employee requests representation.

If, during a meeting between the employee and a Management representative, the employee reasonably believes the meeting may result in disciplinary action taken against the employee, the employee may request to be represented by the Union. If such a request is made, the Management representative shall suspend the meeting. The Management official shall reschedule the meeting as soon as a Union representative is available, to avoid impeding the investigation.

2. At any meeting described in this Section in which attendance, participation, or representation by an official of the Union takes place, that official shall continue on official time as provided for in this Agreement.
3. Nothing in this section shall countermand or supersede the rights of the Union under the Statute to be present at Formal Discussions.
4. The Department shall annually inform employees of their rights to Union Representation during an investigation.

Section 6.09 - Standards of Conduct.

(1) **General.** Employees of the Executive Branch are subject to Government-wide ethics regulations pursuant to several statutory authorities. For guidance, employees should contact designated Agency ethics officials posted on the HUD website. To the extent that any provision of this Agreement conflicts with any provision of a Government-wide law, rule or regulation, including HUD's supplemental regulation, the law, rule or regulation shall prevail.

(2) **Political Activities.**

(a) Consistent with the Hatch Act, the Hatch Reform Amendments, and Government-wide regulation, employees may engage in political activities.

(b) Questions concerning interpretation or application of the Hatch Act or restricting political activities may, at the employee's option, be directed to the Office of Special Counsel, the HUD Associate General Counsel for Ethics and Personnel, or to any HUD Regional Counsel.

(3) **Outside Employment and Other Activities.**

(a) Outside employment and other activities are governed by, among other ethics authorities, 5 CFR 2635 - Subpart H and the HUD Supplemental Standards of Ethical Conduct at 5 CFR 7501. While not every outside activity requires a request for an ethics opinion, employees shall obtain prior written approval before engaging in outside employment and activities consistent with 5 CFR 7501.105. Responses to requests for

prior approval provided in a timely manner and will generally be approved unless inconsistent with the executive Branch Government-wide standards of conduct determine whether an employee is required to obtain prior approval, employee encouraged to consult with the Agency Ethics Official in the geographic or Headquarter prior to engaging in any compensated or uncompensated outside employment or activities.

(b) Management will provide ethics training and guidance to employees. Agency Ethics Officials will be available to employees for counseling and discussion of issues regarding outside employment and other activities covered by the standards of conduct.

(4) **General Conduct.** Employees shall be courteous and considerate when dealing with the public and shall provide timely, professional customer service. Personal attire and hygiene in the workplace shall be considerate of others both at the official duty station and when representing HUD during outside endeavors.

(5) **Information to the Union.** Upon request, the Union shall be provided with a relevant copy of any standards of conduct opinion or any waiver granted under the Government-wide standards of conduct. However, when required by law to protect personal privacy or confidentiality, names, personal identifiers or other confidential information shall be deleted by Management.

(6) **Employee Right to Privacy.**

(a) **Searches and Seizures.** Searches and seizures by the Government of the private property of its employees are subject to Constitutional constraints. Employees may store personal papers and effects in their offices, desks, and file cabinets, however HUD assumes no liability for their loss. Additionally:

1. A search or seizure of such items without a warrant may be justified if Management has reasonable grounds for suspecting that the search will produce evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a non-investigative work-related purpose, such as insuring the internal security of the agency. Security concerns may necessitate searches of HUD space by any appropriate and legal method.
2. The provisions outlined above are intended to deal with matters such as, but not limited to, possession of illegal drugs, firearms, weapons, explosives or other material that presents a threat to the internal security of the agency. It should be understood that personal items and their contents owned by the employee such as; pocketbooks, briefcases, and personal technology, are not normally subject to search without probable cause to believe criminal activity is involved, but that failure to comply with a search prompted by security concerns may be grounds for disciplinary action or denial of access to HUD space.
3. No inappropriate information shall be stored, housed, transmitted, or viewed on a HUD owned computer. HUD owned computers are subject to search and/or seizure at any time by HUD management.
4. Employees should also be aware that Management may exercise its right to access work spaces to obtain work materials when the employee is not present or for other legitimate reasons.
5. Random spot checks of employees and their possessions' is permitted upon entrance to a HUD facility, subject to applicable law and government regulation.

6. Employees may be asked at any time by security to show HUD identification when identification is not clearly visible.
7. Management will maintain an employees' privacy according to applicable law.

(7) **Whistle Blowing.** Employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law, which the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences fraud, gross waste or gross mismanagement, an abuse of authority, or a substantial or specific danger to public health or safety. Employees shall receive annual notification of the Whistle Blower Protection Enhancement Act.

(8) **Prohibited Personnel Practices.** Management agrees to place a copy of "prohibited personnel practices" as defined by 5 U.S.C. 2302 on the HUD webpage.

(9) **No Waiver of Rights.** Nothing in this section shall waive, limit or impair the statutory or legal rights of employees or their representatives.

(10) **No Fear Act.** Upon request, the Department will provide copies to the Union of reports sent to Congress regarding the No Fear Act.

ARTICLE 7
PROFESSIONAL EMPLOYEES

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

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

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

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

ARTICLE 8 TEMPORARY EMPLOYEES

Section 8.01 - Applicability. This Article applies only to employees with temporary appointments of more than six (6) months. These temporary employees are in the bargaining unit and have all the rights under the Agreement afforded to other bargaining unit employees, unless specifically excluded by law, regulation, or this Agreement.

Section 8.02 - Time Limits

- (1) An agency may make a temporary appointment for a specified period not to exceed 1 year. The appointment may be extended up to a maximum of 1 additional year (24 months of total service).
- (2) An agency may not fill a position by temporary appointment if that position has previously been filled by temporary appointment(s) for an aggregate of 2 years, or 24 months, within the preceding 3-year period.

Section 8.03 - Terminations.

- (1) Whenever possible, a temporary employee shall be given a two (2) week notice of the termination of his/her appointment. Some conditions that may require the release of an employee earlier than two (2) weeks include, but are not limited to:
 - (a) The protection of the health and safety of other employees;
 - (b) The disruption of the office environment or the work processes;
 - (c) The possibility of sabotage by the employee being dismissed;
 - (d) The negative impact of the employee's performance; or
 - (e) A financial emergency which requires an immediate reduction of staff.
- (2) The Union shall be notified if a temporary employee is terminated.

Section 8.04 - Use of the Grievance Procedure. Employees with temporary appointments may not grieve termination when the Standard Form-50 states that the termination was based upon a lack of work or funds.

ARTICLE 9

Equal Employment Opportunity and Discrimination Free Workplace

Section 9.01 - Policy. Recognizing that the mission of the Department is building strong and inclusive communities free of discrimination, the Parties commit to building the same within the Department. This is accomplished by:

(1) Providing equal employment opportunity pursuant to all employees, to prohibit discrimination on the bases of race, color, religion, sex (including gender identity and sexual orientation based on failure to conform to sex stereotypes), age, national origin, genetic information, disability, or reprisal. This article covers employee protection from discrimination and retaliation as provided by the Title VII of the Civil Rights Act of 1964, and as amended, Age Discrimination in Employment Act (ADEA), the ADA Amendments Act of 2008, the Rehabilitation Act of 1973, the Equal Pay Act, the Genetic Information Nondiscrimination Act of 2008 (GINA), and all other laws and regulations related to unlawful discrimination.

(2) In addition, the parties recognize their historic commitment to fight against discrimination on bases beyond these statutorily protected classes. Therefore, there shall be no discrimination on the basis of marital status, sexual orientation, gender identity, parental/familial status, veteran's status, and political affiliation. Although discrimination on these bases may not be covered by Title VII of the Civil Rights Act of 1964, as amended, and may not be appealable to the EEOC, any employee alleging discrimination on these bases may seek assistance under certain circumstances through other forums or the Negotiated Grievance Procedure.

Section 9.02 - Equal Employment Opportunity Program

- (1) The Department's Equal Employment Opportunity (EEO) Program is designed to promote equal employment opportunity in every aspect of HUD's personnel policy and practice in accordance with applicable law and government-wide rules and regulations. The Department shall conduct a continuing campaign to eliminate discrimination from its personnel practices, policies and employment conditions consistent with 29 CFR §1614 and with EEOC Management Directive (MD) 110 and 715. The Department will have a positive, ongoing and results-oriented program of affirmative employment.
- (2) Consistent with EEO regulations, the EEO program shall provide prompt, fair, and impartial processing of complaints at the informal and formal complaint stage. As part of the EEO program, Management will:
- (a) Establish a system through the MD 715 process for periodic evaluation of the effectiveness of the Department's overall equal employment effort;
 - (b) Make available and encourage the use of the EEO Alternative Dispute Resolution (ADR) program for appropriate EEO matters pursuant to EEOC Regulation 29 C.F.R. § 1614; and

- (c) Review Departmental EEO policies and procedures for consistency with applicable laws and regulations, and provide training opportunities for Departmental managers, experts, and union representatives to ensure that EEO policies and procedures are current.
- (3) Consistent with this Agreement and EEO regulations, the EEO program shall include, but not be limited to:
- (a) Providing prompt, fair, and impartial processing of complaints at the counseling and complaint stage and expeditious adjudication of complaints of discrimination filed through the EEO administrative complaint process or the negotiated grievance procedure. The Department shall provide through various media (including at a minimum, the Department's hud@work or successor website and periodic e-mails) the names and current contact information of all relevant individuals responsible for providing counseling, processing, and adjudicating complaints. Persons who complain of alleged discrimination, who participate in presenting such complaints, or who present information or evidence relevant to such complaints shall be unimpeded by the Department in such efforts and will be free from restraint, interference, discrimination or reprisal.
 - (b) Conducting a continuing proactive campaign to remove every form of prejudice and discrimination from the Department's personnel policies, practices, and working conditions, including establishing and maintaining training and education programs.
 - (c) Managing an anti-harassment policy and program intended to take immediate and appropriate corrective action, including the use of disciplinary actions to eliminate harassing conduct against employees, managers, and supervisors.
 - (d) Reviewing, evaluating, and training managerial and supervisory personnel to ensure the enforcement and implementation of the equal employment policy and program.
 - (e) Establishing a system through the MD 715 process for periodically evaluating the effectiveness of the Department's overall equal employment effort; (1) Taking appropriate disciplinary action against employees, managers, and supervisors who engage in discriminatory practices. Employees who participate in any process leading to such disciplinary action shall be free from reprisal.
 - (f) Making available and encouraging the use of the Alternative Dispute Resolution (ADR) program pursuant to this Article.
 - (g) Working to support HUD becoming a model employer of people with disabilities and targeted (severe) disabilities by collaborating with appropriate Departmental Offices to ensure workplace accessibility through the provision of reasonable accommodation (e.g., assistive technology, work-at-home, job restructuring, etc.) and other appropriate actions (e.g., facility accessibility, IT accessibility, etc.).
 - I. Periodically reviewing Departmental EEO policies and procedures for consistency with applicable laws and regulations, and providing training

opportunities for Departmental managers, experts, and union representatives to ensure that EEO policies and procedures are up to date; and

- II. Working with the appropriate Departmental official(s) in order to provide religious accommodations for employees that make such requests.

Section 9.03 - EEO Discrimination Complaint Procedures. Employees who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, genetic information, or reprisal for engaging in Equal Employment Opportunity (EEO) activity may file an EEO complaint or grievance pursuant to this Article. The parties acknowledge that employees who have discrimination complaints subject to EEOC procedures can opt to have their complaints resolved by either the negotiated grievance procedure as provided in Article 51 of this Agreement or the EEO complaint process, but not both procedures.

- (1) The EEO complaint process begins with the complaining employee contacting an EEO Counselor within 45 calendar days of the alleged discriminatory action or within 45 calendar days of when the employee became aware of the alleged discrimination. The Department shall provide the current statutory EEO complaint procedures through various media, including at a minimum, the Department's hud@work or successor website and periodic e-mails.
- (2) Communication with the EEO counselor, including the filing of an Informal Complaint of Discrimination form or its successor form, does not preclude the employee from selecting another forum.
- (3) The timely filing of the formal discrimination complaint constitutes selection of the EEOC statutory appeal procedures, and, therefore, precludes the filing of a grievance under Article 51 on the same issue.
- (4) The timely filing of a grievance under Article 51 constitutes selection of the negotiated grievance procedure, and therefore, precludes the filing of a formal EEO complaint on the same issue.
- (5) An employee has the right to be accompanied, represented, and advised by a representative of his/her choice at any stage of the EEO complaint process. The employee will designate his/her personal representative in writing.

Section 9.04 - EEO Alternate Dispute Resolution (ADR) Program.

- (1) It is the policy of the Department to make all reasonable efforts to resolve potential EEO conflicts informally and to the mutual satisfaction of the employee and their Management organization. An employee or party may use the EEO ADR process prior to or following the filing of an EEO complaint or grievance or to resolve any underlying EEO issue consistent with this Article. The Department and the Union agree that EEO ADR should be made available to the employee and the employee's organization as soon as possible following the events that would form the basis of a complaint or grievance. If an employee files a formal EEO complaint or appeal, once the matter has been assigned to a judge or other adjudicator, the Department and the employee will consider mediation or other facilitated resolution of the matter available from

the outside agency or court prior to seeking resolution through the Department's EEO ADR process. To the extent authorized by such third party tribunals and if the parties (i.e., the Department and the employee) mutually agree, the parties may utilize HUD's EEO ADR process after a third party tribunal takes jurisdiction over the matter. When a judge has been assigned, the parties seeking EEO ADR will provide appropriate notice and accord appropriate deference to the judge. The purpose of the EEO ADR program is to facilitate the resolution of matters arising under this Article.

(2) All EEO ADR sessions will occur during regularly scheduled hours of work. No EEO ADR participant will be made to suffer loss of pay, or charged leave to the extent they are otherwise in duty status.

(3) Employee Rights. The ADR Program is voluntary for employees and is an informal and confidential process to assist employees and employers to reach their own resolution of disputes involving EEO matters. When an employee requests ADR, Management, within the affected Program Office, shall designate an individual with settlement authority. If the Program Official with settlement authority is not directly involved in the ADR proceeding, then he or she shall be available to provide information, make an offer of settlement, or make a decision during any ADR session.

(4) EEO ADR Program Conformance. The Department's ADR program will be conducted in accordance with Chapter 3 of the EEOC Management Directive MD-110. Information on ADR will be available on the Department's intranet (hud@work) or its successor.

(5) Alternative Dispute Resolution Process. ADR shall be available during both the informal and formal complaint process. If ADR is elected, it will not prevent the filing of a formal EEO complaint.

(6) Employee Participation. Participation in the ADR program at the informal stage does not preclude the employee from exercising rights under any of the Department's other complaint or appeals procedures, including the negotiated grievance procedures, when no resolution is reached. However, timeframes are not extended by use of ADR.

(7) Representation. The parties in the ADR process are entitled to representation of their choice.

(8) ADR Proceedings and Records. ADR proceedings are confidential and, if resolution attempts fail, offers and statements made by parties cannot be used as evidence against either party in any administrative, judicial or arbitration proceeding. All parties involved in the ADR process shall not disclose any information said or done during the ADR proceedings, except for those with a need to know in order to authorize, approve or implement a resulting resolution. There will be no recorded transcript taken of the ADR sessions. If settlement is reached, then the settlement agreement will be the record from the ADR proceeding.

(9) Mediators. Only certified ADR mediators/neutrals shall be used for the ADR mediation process. These may be contract mediators or shared interagency neutrals/mediators.

(10) Availability of Mediators. ADR mediators will be made available Department-wide, regardless of geographical location. However, mediation may occur via teleconference or video-conference by mutual agreement.

(11) Concurrent Process. If the ADR process is requested after a formal complaint has been filed, then the formal complaint process and the ADR process proceed concurrently.

(12) Alternative Solutions. The ADR process shall allow for the use of innovative alternative solutions that will be fully considered by the Department.

(13) Settlement Agreements. The parties have significant flexibility in structuring settlement agreements. As long as the parties agree, they can settle for any relief that a court could order if the case were to go to trial. For example, a Department and an employee may agree to a retroactive or prospective personnel action, back pay or lump sum payment, attorney's fees, costs, and/or monetary damages or other appropriate solutions. ADR settlements that are part of the EEOC statutory appeals procedure can be appealed to the EEOC Office of Federal Operations for enforcement. If the settlement agreement was made to settle a grievance or arbitration, then the employee and union could file a grievance/arbitration or ULP charge for enforcement.

(14) Binding Effect. All final ADR agreements are binding.

Section 9.05 - Information and Data. The annual report to the EEOC (MD-715 Annual Report) will be posted on the ODEEO website. The Department agrees to provide the Union with the MD-715 report required by the EEOC concurrently with posting on the website

Section 9.06 - Other Discrimination Complaints.

(1) Discrimination complaints not appropriate for consideration under the EEOC administrative complaint process may include marital or familial status, political affiliation, veterans' status, or reprisal for alleging such discrimination. Often times, employees who have discrimination complaints can opt to have their complaints resolved in multiple forums, but must choose one.

(2) Depending upon the basis of discrimination, employees may be able to file a complaint or appeal under the negotiated grievance procedure, or other forums may be available under law. Examples include the following:

- Merit Systems Protection Board (MSPB)
- Office of Special Counsel (OSC)
- Department of Labor (DOL))

(3) Employees may be able to have a representative of their choosing. Employees are advised that each forum has its own specific filing deadlines. Employees may locate filing deadlines and other filing requirements in MSPB, OSC, and DOL regulations at 29 CFR part 1614, 5 CFR part 1800, and 29 CFR parts 31-37, or successor regulations. Employees are encouraged to seek advice to determine the appropriate forum and filing deadlines (e.g. union

representative, attorney, etc.). Time spent by representatives shall be assessed in accordance with applicable regulations.

- (4) **Veterans.** The Department and Union affirm their support for hiring veterans, including disabled veterans; restoring employees who leave their positions temporarily to go on active duty to their positions; and ensuring equal and fair treatment of HUD employees on active duty, returning from active duty, or with a family member on or returning from active duty.
- (a) The Department and the Union agree that, although it may not be covered by EEOC-enforced statutes and regulations, workplace discrimination will not be tolerated on the basis of active duty or reserve military service. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) contains provisions that prohibit federal agencies from discriminating against service members or reservists when returning to their federal job. Returning service members are entitled to restoration of their job, pay, and benefits in accordance with DOL regulations at 20 CFR 1002.
 - (b) Affected employees may file complaints with the Veterans Employment and Training Service (VETS) in the U.S. Department of Labor. Reemployment or discrimination cases under USERRA may be filed also with the MSPB. If VETS is unable to resolve the complaint, the complainant may request the DOL refer the complaint to the Office of Special Counsel (OSC) or the complainant may file an appeal with the MSPB.
 - (c) The Department and the Union are committed to implementing the Veterans Employment Opportunities Act and Veterans Recruitment Appointment Act to encourage the employment of veterans in HUD's workforce. Complaints under the VEOA may be filed with DOL. If DOL cannot resolve a complaint, the complainant may file an appeal with the MSPB. The Department and the Union recognize that the policies, procedures and regulations of outside agencies such as the MSPB, OSC and DOL regarding veterans and members of the uniformed services are subject to change. Employees are encouraged to obtain current information regarding veterans and uniformed services rights directly from such organizations.
 - (d) The Department will inform employees who are veterans, on active duty, or in the reserves of their right to redress veteran's rights complaints through the appropriate authorities or through the Negotiated Grievance Process.

Section 9.07 - Participant Protection. Any employee, employee representative, or witness will be free from coercion, interference, dissuasion and reprisal related to the exercise of any rights under the law or this Agreement.

Section 9.08 - Third Party Settlements. If a settlement agreement results in a change of working conditions for employees other than the complainant the Union retains their rights under Article 49. Section 7106 of the Civil Service Reform Act excludes the Union from participating in certain substantial personnel decisions; particularly in the areas of hiring, training, selections, promotions, and similar matters. The settlement of discrimination complaints may, therefore, require modification to certain personnel policies and practices contained in this Agreement. As appropriate, the Union shall be offered the opportunity to negotiate under the terms of the mid-term bargaining article of this agreement over significant changes in working conditions brought about by a third party settlement for a discrimination complaint.

ARTICLE 10
COLLABORATIVE CONFLICT RESOLUTION (CCR)

Section 10.01 - Purpose. The Department and the Union recognize the beneficial effects to be achieved by embracing non-adversarial procedures that may facilitate resolution of workplace disputes and other matters between employees and Management. The Collaborative Conflict Resolution (CCR) process demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. The CCR processes described in this Article may be used for any informal dispute resolution step described in this Agreement and may be utilized at any time in any formal adversarial process. It is intended to resolve disputes more quickly, effectively, informally, and comprehensively than traditional processes. CCR includes mediation, but is not limited to mediation. Parties may suggest different modes of CCR, including neutral evaluation, shared neutrals programs, interest-based problem solving, peer review, conciliation, facilitation, and neutral fact-finding. The intent is to keep the process as informal as possible.

Section 10.02 - Promotion and Training. The Department and the Union will promote and encourage the use of CCR. The Department shall provide an initial training program for employees and supervisors on CCR, and shall provide annual online training for Department and Union representatives in the use of CCR principles and methods. The Department will provide opportunities for periodic Union input and suggestions on training programs, curriculum, and pilot tests in the Labor Management Forums. The Labor Management Forums may evaluate CCR programs and activities, identify subjects and situations appropriate for CCR, and advise the Department on CCR programs, training, and other resources.

Section 10.03 - Definitions.

- (a) **The Parties** are usually those affected employee(s) and affected management who will be significantly involved in the CCR process and who participate in a proceeding. In these proceedings, the Parties may be represented (usually by the Union and the Employee/Labor Relations Specialist).
- (b) **Shared Neutrals Programs** consist of disinterested third parties that are not involved in the conflict and the neutrals are shared between organizations.
- (c) **Mediation** is a process where a mediator helps the parties who are in conflict attempt to reach a resolution that is acceptable to them.
- (d) **Settlement** is a mutually agreed upon resolution between disputing parties.
- (e) **Settlement Agreement** is a written document signed by the employee and/or employee's representative and management representative that identifies the dispute and specifies the terms of the Settlement.

Section 10.04 - Mediation. Generally, CCR will take the form of mediation.

- (l) Normally mediation sessions will be short in duration, typically not to exceed 1 day.

- (2) All notes will be destroyed at the close of the process.
- (3) The management representative must have authority to sign the Settlement Agreement and bind the Department in the Settlement, subject to a legal sufficiency review.
- (4) The Settlement Agreement may be used as evidence in any subsequent third party proceeding.
- (5) If the mediation fails to result in a Settlement, the employee or Union shall have the right to move the matter to the grievance or arbitration process or other statutory proceeding before a third party in accordance with this Agreement.
- (6) It is understood and agreed that mediators will not be called as witnesses in any subsequent proceedings.
- (7) If the parties agree to mediation, the Employee/Labor relations (ELR) Specialist shall promptly contact the Federal Mediation and Conciliation Service (FMCS) or other appropriate source(s). The ELR Specialist shall provide the FMCS or other provider with the name, organization, and phone number of the employee and the Union representative representing the employee, if any, and the management official(s) who will represent the Department in the mediation. If the employee is self-represented, the ELR Specialist will notify the appropriate Union official of the meeting in accordance with this Agreement. The ELR Specialist shall provide the mediator a copy of this article. The parties to the mediation may mutually agree to use a mediator who is an employee of the Department.

Section 10.05 - Informal Resolution of Grievances. The CCR process can be used to prevent or accelerate the process of resolving an employee grievance. The scope of CCR may extend beyond the range of grievable subjects as defined in this Agreement.

- (1) The initiation of the CCR process suspends any deadlines or other timeframes in the grievance process until completion. The CCR can be initiated either before a grievance is filed or at any step during the grievance process. However, the time that has elapsed before initiating the CCR shall count against the grievance time limits should CCR be unsuccessful.
- (2) The Union may initiate the CCR process in any party grievance.

Section 10.06 - CCR in the Discipline process. The CCR can be initiated before a disciplinary action is completed. The initiation of the CCR process suspends any deadlines or other timeframes in the discipline process until completion.

Section 10.07 - CCR in Conflicts between Employees. The parties may utilize the CCR process for employees to resolve workplace conflicts with other employees.

Section 10.08 - CCR in Unfair Labor Practices. The parties may utilize the CCR process for resolving allegations of Unfair Labor Practices.

Section 10.09 - Reporting. Management shall furnish any statistical reports developed regarding CCR to the Council.

ARTICLE 11 EMPLOYEE ASSISTANCE PROGRAM

Section 11.01 - General. Management agrees to continue the Department's Employee Assistance Program (EAP) for employees with either personal or work-related concerns, including but not limited to: alcohol or drug abuse, mental illness, financial issues, or family situations. Participation in the program shall be voluntary.

Section 11.02 - Relationship to Disciplinary Action. The parties recognize that the program is designed to be carried out as a non-disciplinary procedure aimed at assisting employees who have health or personal concerns. If an employee requests assistance under the program, the responsible supervisory official shall give consideration to this fact in determining any appropriate disciplinary and/or adverse action based upon the employee's performance or conduct.

Section 11.03 - Training. Upon request, Management shall include Local Union representatives in employee briefing sessions or training and orientation programs so that there shall be mutual understanding of policy, referral procedures, and other elements of the program.

Section 11.04 - Employee Notification. The Agency shall advertise and emphasize the program in a prominent and permanent location on the employee home page. Notification shall include a statement of the purpose of the program and telephone numbers of the EAP Counselors. In addition, HUD will notify employees of the EAP program on an annual basis. Although the existence and functions of counseling and referral programs shall be publicized to employees, no employee shall be required to participate or be penalized for merely declining referral to an available counseling service.

Section 11.05 - Leave. When an employee requests use of EAP for any counseling appointment that requires an absence from duty, the employee must obtain the appropriate leave approval or make other appropriate arrangements with the supervisor. In order to facilitate the use of EAP, employees shall be entitled to Administrative Leave for up to 3 (three) visits of two (2) hours per visit, per calendar year. The Agency may approve additional leave, including Administrative Leave, if necessary.

Section 11.06 - Confidentiality. Whenever an employee participates in the program, the content of the employee's discussion and participation shall be treated as private and confidential, unless precluded by law. The agency may require verification of attendance at an EAP session when Administrative Leave has been granted.

Section 11.07 - EAP Counselors. Employees in all HUD offices shall have access to the EAP program, including a toll free number to contact qualified EAP counselors.

ARTICLE 12 DISCIPLINE

Section 12.01 - General.

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

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

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

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

(5) This Article applies to:

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

(6) This Article does not apply to:

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

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

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

Section 12.03 - Definitions

Disciplinary Actions.

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

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

Adverse Actions.

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

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

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

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

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

Section 12.06 - Adverse Action

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

An employee shall be entitled to:

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

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

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

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

Section 12.08 - Alternative Discipline.

(1) General:

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

(2) Types of alternative discipline include:

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

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

(3) Process:

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

The disciplinary process will be put on hold for up to 5 days to provide the employee time to consider alternative discipline. During the 5 day period, the employee or union representative may request to meet with management to discuss or propose a type of alternative discipline.

Employees shall be notified of the manager's decision within five (5) days after the meeting.

If the employee accepts the alternative discipline proposed by management, the alternative discipline will be placed in a written agreement between the employee and management. The agreement may include, but is not limited to:

- (a) the specific form of the alternative discipline;
- (b) the date by which it is to be completed;
- (c) the charged misconduct and the proposed traditional discipline;
- (d) recognition by the parties that the alternative discipline may be referenced in any subsequent disciplinary action; and
- (e) a voluntary waiver of any appeal rights the employee may have regarding the matter.

If the employee declines or fails to respond to the alternative discipline, the disciplinary process will continue pursuant to this Agreement. If the employee accepts the alternative discipline and fails to meet the terms and conditions of the agreement, then the traditional penalty as identified in the agreement will be imposed.

The parties recognize that any alternative discipline taken by management is non-precedential. Alternative discipline is based on the unique circumstances of each situation and may not be appropriate in other situations.

12.09 - Last Chance Agreement.

If proposed, a Last Chance Agreement (LCA) is an offer by management to create a contract between an employee and the Department in which the Department agrees to hold an adverse action decision in abeyance, in exchange for:

- (a) an employee's commitment to a certain set of behaviors or conditions for a set period of time
- (b) an employee's waiver of their appeal rights.
- (c) If the employee fails to fulfill the terms of the agreement, the penalty is effectuated.

The effective period of a LCA will not exceed two (2) years, but at management's discretion may be for a shorter period of time. The Union will be notified when an employee is offered a LCA.

ARTICLE 13
UNACCEPTABLE PERFORMANCE ACTIONS

Section 13.01 - General.

- (1) **Applicability.** If, after being given the opportunity to demonstrate acceptable performance and assistance to improve, the employee's performance is determined to be unacceptable on one (1) or more critical elements, the Department must initiate reduction in grade or removal, subject to the provisions of 5 CFR 432, and 5 U.S.C. 4303 and 4305. The Department may consider reassignment in lieu of initiating action under 5 CFR 432, and 5 U.S.C. 4303 and 4305.

This Article does not apply to those exclusions of 5 CFR 432.102(b), which are partially stated below:

- (a) Actions based in whole or in part on misconduct;
 - (b) A reduction in the grade of a supervisor or manager who has not completed a probationary period;
 - (c) A reduction in grade or removal of an employee who is serving a probationary period or trial period under an initial appointment; or
 - (d) Discharge of employees serving on temporary appointments.
- (2) **Applicable Grievance Procedure.** The grievance procedure for employees who have been reduced in grade or removed for unacceptable performance under Chapter 43 is set forth in this Article and is in lieu of the procedures identified in Article 51 (Grievance Procedure).
- (3) **Definitions.** The definitions set forth in the regulations at 5 CFR 430.203 and 432.103 apply to this Article:
- (a) **Critical Element.** A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that employee's overall performance is unacceptable.
 - (b) **Opportunity to Improve Performance (OIP).** A reasonable opportunity, including sufficient time, for an employee whose performance has been determined to be Unacceptable in one or more critical elements to demonstrate acceptable performance in the critical element(s) at issue.
 - (c) **Performance Improvement Plan (PIP).** A reasonable opportunity, including sufficient time, for an employee whose performance has been determined to be marginal in one or more critical elements to demonstrate Fully Successful performance in the critical element(s) at issue.
 - (d) **Performance Standards.** The management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a

particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

- (e) **Acceptable Performance.** Performance that meets an employee's performance requirement(s) or standard(s) at a level of performance above Unacceptable in the critical element(s) at issue.
- (f) **Reduction in Grade.** The involuntary assignment of an employee to a position at a lower classification or grade level.
- (g) **Removal.** The involuntary separation of an employee from employment with an agency except when taken as a reduction-in-force action.
- (h) **Unacceptable Performance.** Performance of an employee which fails to meet established minimum performance standards in one (1) or more critical elements of such employee's position.
- (i) **Marginal Performance.** Whenever performance is determined to be below "Fully Successful" or equivalent but above "Unacceptable".

Section 13.02 - Procedures. The Department must determine that the performance standards and elements are valid before issuing a notice of unacceptable performance.

- (1) **Prior to Determining Acceptable Performance.** The Department and the employee have the responsibility in maintaining or improving performance in the employee's current position through on-going performance communication. This is encouraged throughout the performance cycle prior to a PIP/OIP being issued. Serious declines in performance should be addressed at the earliest detection.
- (2) **Failure to Meet Minimum Performance Standards.** If at any time during the performance appraisal cycle an employee fails to meet the minimum performance standards, the Department shall identify in writing for the employee the critical element(s) for which performance is unacceptable and specific work examples illustrating the performance which is deficient. The employee shall be provided a reasonable time and opportunity to demonstrate acceptable performance. The Department shall assist the employee to the maximum extent feasible to improve the performance to the required level. Standards used in determining the employee to be unacceptable will be the same standards used the opportunity for improvement. Unacceptable performance prior to the rating period will not be considered in the current rating period.
- (3) **Proposed Notice of an Unacceptable Performance Action.** Normally, the notice of proposed action must be consistent with the most recent performance rating or progress review. An employee for whom reduction in grade or removal for unacceptable performance is proposed is entitled to: Advance, written, thirty (30) day notice which identifies the specific instances of unsatisfactory performance within the last twelve (12) months and the critical element or elements of the employee's position involved in each instance. The Department shall provide to the employee one (1) copy of the documentation relied upon to support the proposed action.

Only instances of unacceptable performance which occurred during the one (1) year period ending on the date of the proposed notice may be used as the basis for an action.

- (4) **Response.** The employee has the right to reply to the proposal orally and/or in writing within twenty-one (21) days. An extension to prepare a response may be provided to the employee in accordance with the terms of this Agreement.
- (5) The **PIP/OIP** process may be extended where the reasonable accommodation process has been initiated.
- (6) **Decision.** The deciding official shall issue a final written decision, including a statement of the employee's appeal rights, within thirty-five (35) days of the receipt of the employee's response, or after the expiration of time limits for the employee to respond if the employee fails to respond.

If the Department determines that further investigation is necessary, the time limit for issuance of the decision shall be extended. The employee shall be notified of such an extension and shall continue to be notified at thirty (30) day intervals thereafter.

Any improvement in the employee's performance during the notice period shall be considered when the final decision is made.

- (7) **Representation.** The employee has the right to be represented by an attorney or other representative, which includes the right to Union representation.
- (8) **Appeals.**
 - (a) **Merit Systems Protection Board (MSPB).** Within thirty (30) calendar days of the effective date of the action, the employee may appeal the matter to MSPB.
 - (b) **Arbitration.** If the employee elects not to appeal the matter to the Merit Systems Protection Board, then the Union may invoke arbitration within the timelines stated in this Agreement.
 - (c) **Equal Employment Opportunity (EEO).** If an employee believes the unacceptable performance action is based in whole or in part on prohibited discrimination (race, age, sex, national origin, etc.), they may file an EEO complaint in accordance with the statutory and regulatory appeals process.

Section 13.03 - Performance Improvement Plan (PIP)/Opportunity to Improve

Performance (OIP) Notice. The purpose of the performance improvement period is to help the employee improve.

- (1) If there are mitigating circumstances concerning a performance deficiency, the supervisor may consider alternative means of addressing the deficiency.
- (2) The PIP/OIP notice shall include the following information:

- (a) Each standard and element on which performance is less than Fully Successful.
 - (b) Specific examples illustrating the less than Fully Successful performance.
 - (c) A specific description of the requirements that the employee must attain in order to demonstrate acceptable performance on each critical element at issue by the conclusion of the PIP/OIP.
- (3) After the notice is given to the employee, they shall be provided a reasonable time, normally not less than 30 days (depending on the complexity of the critical element or other relevant factors); the employee has the opportunity to demonstrate acceptable performance. The time period established must be specified in the PIP/OIP notice and it must be adequate, commensurate with the duties and responsibilities of the position, to allow the employee an appropriate amount of time to demonstrate acceptable performance. The performance improvement period may be extended.
- (4) The supervisor shall assist the employee to the maximum extent feasible which may include training, meetings, or counseling to improve the performance to an acceptable level. Performance requirements presented at a meeting may be provided in writing.
- (5) Training may be an integral component of the supervisor's responsibility to improving employee's performance. If there are multiple employees in the same or similar position that resulted in minimal performance, a determination needs to be made if there was a training deficiency.
- (6) The employee shall be given an opportunity to provide suggestions for assistance in the PIP/OIP throughout its process. The supervisor will consider the employee's suggestions.
- (7) Notify the employee that unless their performance in the unacceptable critical element(s) reaches the acceptable performance level and is sustained at an acceptable level, the employee may be reduced in grade or removal.

Section 13.04 - Union Notification. When the Department issues a notice of proposal and/or a decision to reduce in grade or remove an employee in the unit for unacceptable performance, the Department shall provide to the Union a general statement of the unacceptable performance, proposed action, and subsequent decision.

Section 13.05 - Standard of Evidence. The standard of evidence required for unacceptable performance action is "substantial evidence."

Section 13.06 - Evidence. The Department shall timely produce all evidence, including the names of witnesses that were relied upon to support the proposed action, to facilitate preparation of the oral and/or written response. Nothing will waive the employee's or Union's right to request additional information under other authorities.

ARTICLE 14
PAY ADMINISTRATION

Section 14.01 - Timely and Proper Compensation. Employees are entitled to timely receipt of all wages earned by them for the applicable pay period. Therefore, the Department must provide for timely payment of all wages, benefits and awards through the direct deposit/electronic transfer to employees.

Section 14.02 - Delivery of Pay Checks. Employees must utilize direct deposit/electronic transfer. The Department will provide for alternative process where an exception is required to pay an employee.

Section 14.03 - Annual Statement of Benefits. Employees shall have electronic access to their annual statement of benefits, including information on retirement benefits. Employees may use duty time and equipment to access and print HIRTS information including their annual statement of benefits.

Section 14.04 - Debt Collection. Collection of salary overpayments by offset shall require no less than a thirty (30) day notice. Salary offsets that result from termination of Service Agreements shall also require no less than a thirty (30) day notice. Disputes shall be handled as described in the notice to employee, which notice shall be in accordance with law, rule, government-wide regulation and this Agreement. To the extent permitted by law, rule or government-wide regulation, no action to collect alleged overpayments shall be taken pending the completion of any administrative considerations requested by the employee.

Section 14.05 - Waiver of Debt Collection. An employee may make a written request for a waiver, in whole or in part, for collection of an overpayment. The Department will consider the request in accordance with 5 USC 5584.

Section 14.06 - Information to the Union.

- (1) A code for bargaining/non-bargaining unit employee shall be included in the NFC data base. In accordance with law, upon request, but not to exceed twice a year, the following information on bargaining unit employees shall be provided to the Union, subject to the limitations and capabilities of the NFC system:
 - (a) Name
 - (b) Title, series, grade, and step
 - (c) Date of last promotion
 - (d) Service computation date
 - (e) Beginning date of dues deduction
 - (f) Amount of Union dues deduction
 - (g) Organization code
 - (h) Organization title

- (2) Upon request, but not to exceed twice a year, servicing human resources offices and Headquarters shall provide Locals, subject to the limitations and capabilities of the NFC system, the following information:
 - (a) Employee name
 - (b) Working title
 - (c) Position title
 - (d) Pay plan, series, and grade

- (e) Salary
- (f) Work schedule
- (g) Organizational code and position number
- (h) Promotions, QSIs, reassignments, details, resignations, removals, appointments, and similar personnel actions and the effective date, if readily available.

This does not affect any other statutory requests.

Section 14.07 - Delayed Pay.

- (1) **Pay Not Issued.** As soon as the Department is aware of delayed salary payment, it shall ensure immediate notification and expeditious payment to an employee who did not receive their pay on time (normally within 5 days). Upon request from an employee, Management shall issue a written statement to banks, creditors, and payees in regards to non-receipt of salary pay.
- (2) If the Union asks a servicing human resource office whether a bargaining unit employee received their pay during a particular pay period and whether replacement pay has been requested or received, the Union shall be provided that information, if it is available.

Section 14.08 - Voluntary Deductions.

Employees may elect voluntary allotments and the Department will process them in a timely manner. Allotments include but are not limited to union dues, insurance, and savings, provided the allotments meet with the capabilities of the payroll system.

Section 14.09 - Advances in Pay. Employees will receive information regarding the Advance Pay policy and procedures for requesting an advance in pay in orientation packets.

Section 14.10 - Repayment Plan. When an employee has been determined to be indebted to the United States because of an erroneous payment which is not waived, there will be a repayment plan consistent with law, rule or regulation. The employee may contact the Pay, Benefit and Retirement Division or successor organization for more information and guidance on repayment. When an employee has been determined to be indebted to the United States because of an erroneous payment which is not waived, the amount of the indebtedness may be collected in biweekly installments. For salary overpayments not related to health benefits, the Department will not require a deduction of more than 15% of the disposable salary per pay period. If the employee retires or resigns, or if his/her employment otherwise ends before collection of the amount of the indebtedness is completed, the final salary payment may be held or a deduction shall be made from later payments of any nature due the individual from the NFC.

ARTICLE 15 LEAVE

Section 15.01 - General.

- (1) Accrual of Sick and Annual leave and use of all leave shall be in accordance with applicable laws, regulations, and this Agreement.
- (2) Employees shall use the Department's automated time and attendance system, or any successor system to request all leave. When an employee is unavailable due to leave or a non-duty status at the end of the pay period, the Department will ensure that the employee's time and attendance is processed timely according to applicable guidance.
- (3) In cases where it is not practicable to submit a request in advance using the departmental time and attendance system the employee shall do so upon return to duty.
- (4) Employees should request, in advance, approval of anticipated leave. Leave requests must be approved or disapproved by the supervisor or their designee. Employees will be informed of whether their requests for leave have been acted on promptly taking into account the start date of the leave and other relevant circumstances. When requests are made to use leave on the following day, the response will be made as soon as possible, but no later than the end of the employee's work day, if feasible.
- (5) Employees are responsible for informing their supervisor or designee, if known, of a request for unscheduled leave as soon as possible, but no later than one (1) hour after the core hours begin. A call in does not necessarily constitute leave approval; however if the supervisor or designee intends to deny the leave, the supervisor will contact the employee promptly. If the employee is unable to personally advise the supervisor or designee, any responsible person may request the leave on behalf of the employee. If the supervisor or their designee is not available, the person requesting the leave or the employee shall provide appropriate contact information. If the employee requesting the unscheduled leave provides an estimate of the date when they shall return to work and the leave is approved by the supervisor, the employee need not be required to call in again unless the date of their return changes.
- (6) Leave shall normally be approved by the supervisor unless the employee's services are required to meet an operational need.
- (7) All leave shall be requested and used in increments of one-quarter hour.
- (8) Employees will not be denied leave based solely on their leave balance as long as leave is available.
- (9) When leave is denied the reasons for the denial will be in accordance with this Article and provided to the employee in the departmental time and attendance system. An alternative written response will be provided to the employee if the automated system is not available.

- (10) Leave denial should not be used as a form of discipline.
- (11) The impact and implementation of changes to the Department's automated departmental time and attendance system, or any future automated leave system, shall be negotiated in accordance with government-wide law, regulation and this Agreement.
- (12) Management will ensure that proper procedures are in place to protect employees' information. Information regarding types of approved leave and information in support of leave requests are confidential.
- (13) Employees may, upon supervisory approval, change authorized types of leave.
- (14) The Department shall maintain an internal web page on leave administration.
- (15) An employee may grieve denial(s) of leave.
- (16) Employees may be granted extended absence by combining accrued leave (excluding sick leave) and/or LWOP for such reasons as, but not limited to, unpaid sabbatical, education, personal development, religious activities, career enhancement and relocation. Such leave shall be subject to operational needs and supervisory approval. Such activities may be subject to HUD Standards of Conduct regulations; managers and employees are encouraged to consult with their HUD Ethics Official regarding such matters.
- (17) The following additional provisions shall apply to employees working Maxiflex Schedules:
 - (a) For Maxiflex Schedules, an employee who is on annual, sick, or other leave for a full or partial workday shall be charged leave according to the number of hours they were scheduled to work for that day.
 - (b) When an employee's scheduled day off falls on a holiday, the employee shall be entitled to an in-lieu-of holiday on the immediately preceding workday.
 - (c) For Maxiflex Schedules, an employee shall be credited with holiday leave according to the number of hours they were scheduled to work on that holiday.
 - (d) The amount of excused absence to be granted to an employee working a Maxiflex Schedule shall be based on the employee's scheduled tour of duty on the day on which the excused absence is granted. An employee shall not be entitled to an excused absence on their scheduled day off, regardless of whether excused absences are granted to other employees in the same work unit on that day.
 - (e) Any other necessary determinations with respect to the crediting or use of leave under flexitime, credit hours, and/or Maxiflex Schedules shall be made in accordance with OPM regulations.

- (18) For the purpose of this Article health care provider is defined as (1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations; (2) any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question; (3) a health care provider as stated in (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of their practice as defined under such law; (4) a Christian Science Practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or (5) a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with public law.

Section 15.02 - Annual Leave.

- (1) Annual leave is a right of the employee and not a privilege. Annual leave shall be requested in advance and shall be acted on promptly.
- (2) The approval of annual leave requested in advance by a supervisor shall be governed by the following:
- (a) The number of employees granted leave during any given period shall be governed by operational needs as defined in Article 16 of this Agreement.
 - (b) Employees shall be responsible for making timely requests for their annual leave in accordance with their personal desire and the provisions stated below.
 - (c) Supervisors shall approve annual leave, to the extent practicable, in a manner which permits each employee to take at least two (2) consecutive weeks in each year.

Section 15.03 - Annual Leave Schedules. Except for requests for annual leave of five (5) days or fewer falling within an administrative workweek, all requests for annual leave shall be subject to the following:

- (1) Employees shall request leave sufficiently in advance of peak use periods (i.e., June, July, August, November, and December) to permit scheduling. Leave schedules shall be established and posted in a conspicuous place.
- (2) When it is impracticable to grant all requests for annual leave for a given period, including, in this case, leave for five (5) days or fewer, the supervisor shall provide the affected employees with the opportunity to work out leave conflicts prior to resolving the conflict. If it is necessary for the supervisor to resolve a conflict, the relative importance of each of the following criteria shall be considered:

- (a) Employees with "use or lose" leave, especially in the cases where the period involved is at the end of the leave year.
 - (b) The amount of leave to an employee's credit.
 - (c) Relative need of employees for taking leave at a specific time.
 - (d) Whether the employee had to reschedule or forego leave in a similar scheduling conflict.
- (3) If an employee wishes to change scheduled leave, their leave shall be approved if workload permits. If workload does not permit, they shall be provided an opportunity to interchange leave periods with an employee who has similar skills and duties, with the concurrence of the supervisor.

Section 15.04 - Annual Leave Denial or Cancellation.

- (1) In the case of annual leave denial or cancellation, the supervisor and the employee should discuss an alternative time to reschedule the leave request, to ensure that the leave shall not be forfeited.
- (2) In no case shall any particular time of the year or season, be excluded from consideration for the granting of annual leave for reasons other than operational needs.
- (3) The Department will make every reasonable effort to manage the workload so as to avoid rescinding previously approved leave. It is understood that the possible reimbursement for financial loss resulting from the rescinding of previously approved leave is not covered by this Agreement.

Section 15.05 - Advanced Annual Leave. Advanced annual leave may be approved at the discretion of the approving official. The amount of annual leave advanced may not exceed the number of hours that the employee would accrue during the remainder of the leave year. Employees are not required to exhaust other leave prior to approval for advanced leave.

Section 15.06 - Forfeiture and Restoration of Annual Leave. Employees are allowed to carry over 240 hours of annual leave from pay period 26 to pay period 1. Management shall remind employees sufficiently in advance of the end of the leave year of the pending deadline and the conditions of the employees' rights to restored leave under the provision of 5 CFR Part 630. Management shall process requests for restored leave in a timely manner.

Section 15.07 - Sick Leave.

- (1) In accordance with 5 CFR Part 630, the Department must grant sick leave to an employee when he or she:
 - (a) Receives medical, dental, or optical examination or treatment;

- (b) Is incapacitated for the performance of their duties by physical or mental illness, injury, pregnancy, or childbirth;
 - (c) (i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or
 - (ii) Provides care for a family member with a serious health condition.
 - (d) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
 - (e) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease; or
 - (f) Must be absent from duty for purposes relating to their adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- (2) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (1)(c)(i) and (d) of this section may not exceed a total of 104 hours (or, for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year).
- (3) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraph (1)(c)(ii) of this section may not exceed a total of 480 hours (or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in their scheduled tour of duty each week), subject to the limitation found in paragraph (4) of this section.
- (4) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (3) of this section, he or she has used any portion of the sick leave authorized under paragraph (2) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (3) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (3) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (2) of this section.
- (5) If the number of hours in the employee's tour of duty is changed during the leave year, their entitlement to use sick leave for the purposes described in paragraphs (1)(c) and (4) of this section must be recalculated based on the new tour of duty.

Section 15.08 - Advanced Sick Leave. An agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. Thirty days is the maximum amount of advance sick leave an employee may have to their credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

Section 15.09 - Documentation for Sick Leave.

- (1) In accordance with 5 CFR Part 630, the Department may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. The Department may consider an employee's self-certification as to the reason for their absence as administratively acceptable evidence, regardless of the duration of the absence. The Department may also require a medical certificate or other administratively acceptable evidence as to the reason for the absence for any of the purposes described in Section 15.07(1) for an absence in excess of 3 workdays or for a lesser period when the Department determines it is necessary.
- (2) An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the Department requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the Department despite the employees diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Department requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.
- (3) The Department may require an employee requesting sick leave to care for a family member under Section 15.07 (1)(c) (ii) above to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that:
 - (a) The family member requires psychological comfort and/or physical care;
 - (b) The family member would benefit from the employee's care or presence; and
 - (c) The employee is needed to care for the family member for a specified period of time.
- (4) Requests for approval of sick leave for non-emergency medical, dental, or optical examinations or treatments shall be submitted, where practicable, at least one (1) workday in advance to the supervisor in the departmental time and attendance system.
- (5) In cases where it is not practicable to submit a written request in advance, the employee shall, upon return to duty, submit a written request in the departmental time and attendance system.

- (6) If an employee suffers from a chronic condition, which does not necessarily require medical treatment, although absence from work is necessary, the employee shall not be required to furnish a medical certificate if a medical certificate of the chronic condition has been previously furnished. However, the supervisor may periodically require that such documentation be updated.
- (7) Employees who, because of illness, are released from duty shall not be required to furnish a medical certificate to substantiate sick leave for the day released from duty. Subsequent days of absence may be subject to medical certification or a written statement from the employee of the nature of the illness.
- (8) For the purposes of Sick Leave, the employee will not be required to reveal diagnoses or details of their medical condition. However, medical certification or administratively acceptable evidence must indicate that the employee is incapacitated for work, and the period of incapacitation for work.
- (9) Family Care or Bereavement.
 - (a) Advance approval must be received for sick leave for family care or bereavement on the departmental time and attendance system. It must indicate the name and relationship of the family member; and provide an administratively acceptable certification/statement for an absence of more than three (3) consecutive days.
 - (b) Eligible employees may use sick leave to provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental or optical examination or treatment; and for bereavement purposes, i.e., to make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
 - (c) All covered full-time employees may use a total of up to 104 hours of sick leave each year to provide care for these purposes. A part-time employee is entitled to an amount equal to the average number of hours of work in each week of the employee's scheduled tour of duty. A part-time employee who maintains a sick leave balance equal to at least twice the average number of hours of work in each week of the scheduled tour of duty may use an amount equal to the number of hours of sick leave normally accrued by the employee during a leave year for these purposes.

15.10 - Sick Leave Restriction. Abuse of sick leave shall not be determined solely on the basis of leave balance. In those cases where the supervisor has a reasonable belief that an employee is abusing their sick leave, the supervisor may discuss the matter and the employee shall be given the opportunity to explain their use of sick leave. An employee may choose to provide medical information to support the use of sick leave. Absent a reasonably acceptable explanation the employee should be counseled that continued and frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation for duty regardless of duration.

- (a) If reasonable grounds continue to exist for questioning an employee's use of sick leave, the supervisor may request that the employee provide a medical certification indicating that the employee is under the care of a physician, is incapacitated for duty, and the expected duration of such incapacitation.
- (b) If reasonable grounds continue to exist for questioning an employee's use of sick leave, the employee may be placed on leave restriction. The notification will be in writing and inform the employee that no request for sick leave, or other leave in lieu of sick leave, will be approved for a stated period (not to exceed six (6) months) unless supported by a doctor's certificate. Any such written notice will describe the frequency, patterns or circumstances which led to its issuance, and will specify the termination date of the letter. At the end of the stated period, the Department will review the employee's situation and will notify the employee in writing if the leave restriction is no longer in effect. Restrictions may be renewed if there are reasonable grounds to believe that the abuse is continuing.

Section 15.11 - Advanced Sick Leave.

- (1) An employee who is ill or injured without sick leave to their credit may be advanced a maximum of thirty (30) days (two hundred forty (240) hours) sick leave. Application for advance sick leave must be supported by a medical certificate and signed by a physician or authorized practitioner. The advance sick leave provision does not apply to employees with probationary appointments. If intermittent use of advanced sick leave immediately following an absence due to injury or illness is anticipated, it must be requested when the advance sick leave is requested and approved in writing. The request must specify the frequency of use; otherwise the remaining advanced sick leave is forfeited when the employee returns to work.

Requests for advanced sick leave may be approved at the discretion of the approving official, based on the above, except in certain situations including but not limited to the following:

- (a) It is known or reasonably expected that the employee shall apply for disability retirement or voluntarily retire for health reasons;
- (b) The employee is absent for maternity reasons after the delivery of her child and the request is for a period of adjustment and/or to make arrangements for the care of the child;
- (c) The remaining time on a limited appointment would be insufficient to liquidate the advance by future accruals;
- (d) The employee is terminally ill;
- (e) Chronic ailments have necessitated the employee's absences in the past, and are expected to continue; or
- (f) The total illness lasts less than two (2) consecutive workdays.
- (g) Employees are not required to exhaust other types of leave prior to approval of advanced sick leave.

Section 15.12 - Administrative Leave. Administrative leave is time an employee is approved for absence from duty without loss of pay and without charge to accrued leave. Employees will make their request for administrative leave via the departmental time and attendance system as soon as practicable. If a third party verification is required to support the request it will be done outside the departmental time and attendance system, but will be noted in the system by the employee and/or the approving official. Administrative leave is treated as time worked for all purposes except that the employee is excused from their regular assigned duties. If administrative leave is granted to employees, all affected parties will be notified in a fair and timely manner.

The parties agree the reasons listed below for granting administrative leave are not all inclusive and that there may be other situations supporting a request for the granting of such leave. Such requests shall be considered based on the reasons presented at the time; the Department may require documentation as appropriate to support the reasons for and/or duration of such administrative leave requests.

- (1) **Hot or cold working conditions.** Employees may be granted administrative leave when the workplace experiences unusually hot (at or above 80 degrees F) or cold (at or lower than 65 degrees F) due to a breakdown of essential building services and the situation is expected to remain for a substantial period of time.
- (2) **Voting.** An employee may be excused to vote as follows:
 - (a) If the polls are not open at least three (3) hours, either before or after an employee's hours of duty, they may be allowed to report for work three (3) hours after the polls open or to leave work three (3) hours before the polls close, whichever is the lesser (see also Section 17.04(4)).
 - (b) If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, sufficient time off may be granted to enable the employee to make the trip to the voting place. Where more than one (1) day is required, a liberal leave policy shall be observed, and time off in excess of one (1) day shall be charged to annual leave, if available, or to leave without pay.
 - (c) An employee may be excused for such additional time as may be needed by him/her to vote depending upon the particular circumstance in their individual case, but not to exceed one (1) full day.
 - (d) A reasonable amount of administrative leave, normally not to exceed up to two (2) hours, shall be granted for voter registration, except when it can be done by mail or on a non-workday.
- (3) **Blood Donation.** Upon advance request to their supervisor, employees may be granted up to four (4) hours of excused absence to donate blood. Additional time may be granted for the donation of Platelets, if circumstances warrant. Such absences shall include the amount of time necessary to travel to the donation site, donate blood, recuperate at the donation site, if needed, and return to work if the employee's tour of duty is not over.

- (4) **Tardiness and Brief Absences.** Brief absences from duty of less than one (1) hour and infrequent tardiness up to one (1) hour may be excused when reasons are justifiable to the supervisor, including but not limited to reasons such as inclement weather, emergencies, and transportation delays.
- (5) **Bone Marrow/Organ Donations.** Within established limits, employees may be granted excused absence for bone marrow or organ donation. An employee may be granted up to seven (7) days of excused absence per calendar year to serve as a bone marrow or organ donor. The employee must obtain advance written approval for any period of excused absence related to the bone marrow/organ donation process, using the departmental time and attendance system along with administratively acceptable evidence that the absence is related to a bone marrow or organ donation.
- (6) **Funeral Leave of an Immediate Relative In Armed Forces.** An employee shall be granted up to three (3) days of administrative/funeral leave to make arrangements for or attend the funeral or memorial services of an immediate family member who died as a result of wound, disease, or injury incurred while serving as a member of the armed forces in a combat zone. The leave need not be consecutive days however; the employee shall furnish the approving official satisfactory reasons justifying a grant of funeral leave for non-consecutive days. Additional information may be found in 5 USC 6326.
- (7) **Absence of Veterans to Attend Funeral Services.** An employee who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized or a member of an honor or ceremonial group of an organization of those veterans, may be granted administrative leave not to exceed 4 hours in any one day, to enable him/her to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States. Additional information may be found in 5 USC 6321.
- (8) **Unsanitary/Dangerous Conditions.** Employees may be granted administrative leave where conditions exist that may affect the health of employees (e.g. leaking pipes, bathroom facilities not functioning, lack of hot water, etc.).
- (9) **Court Leave.** Employees shall be granted administrative leave to serve as a juror or as a witness, when one of the parties is, the United States, District of Columbia or state or local government in a proceeding located in a State, territory, or possession of the United States including the Commonwealth of Puerto Rico or the Trust Territory of the Pacific Islands or the District of Columbia as required in 5 USC 6322. If the employee receives compensation and the court defines the compensation as "expense," the employee may retain the monies. If the court defines the compensation as "fee," the employee must remit the monies to the Department.
- (10) **Volunteer Activities.** To participate in Volunteer activities as defined in this Agreement.

- (11) **Military.** Employees shall be granted administrative leave based on their military or veteran status as provided by law, rule or regulation. Employees shall also be granted administrative leave based on a family relationship to a member of the armed forces, as provided by law, rule or regulation.

Section 15.13 - Dismissals during Emergency Situations. The designated Union representative shall be notified when a decision is made regarding any administrative leave under this Section. The following policies shall be followed unless superseded by directives of the Office of Personnel Management or the Telework Article:

- (1) **Emergency Occurs During Working Hours.** Leave shall be charged as follows based on the employee's duty or leave status as of the time set for dismissal:
- (a) **On Duty.** For non-teleworkers, the remainder of the day shall be charged to administrative leave. For teleworkers, the amount of excused time, if any, shall be consistent with the telework article and policy.
 - (b) **Departed Before Time Set for Dismissal, but after Notification.** The appropriate type of approved leave shall be charged from the time of departure to the time set for the dismissal. Administrative leave shall be charged from the time set for the dismissal to the end of the day.
 - (c) **On Approved Leave, but Scheduled to Report to Work Later.** The appropriate type of approved leave as scheduled is charged up to the time set for dismissal. Administrative leave shall be charged from the time set for the dismissal to the end of the day.
 - (d) **Approved Leave for the Entire Day.** The appropriate type of leave shall be charged up to the time of dismissal and the remainder of the day shall be charged to administrative leave.
- (2) **Emergency Occurs During Non-work Hours.** If the emergency condition prevented an employee from arrival or timely arrival at work, even though the workplace is not closed, the employee may be granted administrative leave for the absence. The amount of administrative leave granted will depend on where the employee lives, mode of transportation normally used by the employee, efforts the employee made to come to work, the success of other similarly situated employees, any physical disability of the employee; and or any local travel restrictions. Employees should contact their supervisors as early as practicable to explain the circumstances and provide an estimated arrival time at work.
- (3) **Liberal Leave Policy.** A liberal leave policy is instituted when the Office of Personnel Management, for Headquarters, or a Federal Executive Board, or its equivalent, in the Field Offices, has determined that the emergency conditions do not warrant closing Government offices in the area. In such instances, employees may use annual leave or LWOP without advance approval or providing detailed justification.

(4) **Federal Agency Closed by Administrative Order.**

- (a) **Pay Status.** Full-time and part-time employees who were in a pay status the last day immediately before the closing, including employees who were scheduled to be on approved, paid leave on the day(s) of the closing, shall not be charged leave or lose pay for the day(s) that the office did not open due to an emergency arising during the nonworking hours. The absence shall be charged to administrative leave.
- (b) **Non-pay Status.** Full-time and part-time employees who are in a non-pay status immediately before and after the day that the office is closed are not entitled to administrative leave for the day(s) that the office is closed. The employee shall be charged leave without pay.

Section 15.14 - Military Leave. The Parties recognize the value of service in the Armed Forces by employees. Any employee who meets the eligibility requirements of 5 USC 6323 shall be entitled to military leave. All military leave will be granted consistent with statutes, government wide rules, regulations and this Agreement. Any employee anticipating the use of military leave shall advise the employer as soon as possible of the anticipated dates of such leave and shall provide the appropriate documentation.

- (1) The Department will not arbitrarily deny any employee's request for military leave. Approval of the military leave shall be based on the copy of the orders provided by the employee.
- (2) Employees who are either voluntarily or involuntarily called to military training or a period of active duty beyond those provided for in the above referenced regulations shall be granted annual leave, credit hours, compensatory time or LWOP upon request.
- (3) In accordance with the applicable directives, and to welcome home employees who are called to active duty, eligible employees shall be granted five (5) days of administrative leave following every eligible deployment.
- (4) The Department will comply with the provisions of the Uniformed Services Employment and Reemployment Rights Act.

Section 15.15 - Leave without Pay (LWOP). Leave without pay is a temporary non-pay status and absence from duty for a specific period of time. LWOP may impact pay and benefits in accordance with applicable laws, rules and regulations. In addition to regulatory entitlements regarding the granting of LWOP, including FMLA, USERRA, etc., LWOP may be granted at the discretion of the supervisor for a variety of reasons. These reasons could include but are not limited to educational purposes, disability retirement, personal development, etc. LWOP will be processed in the same manner as annual leave and sick leave. Periods of LWOP which exceed 30 days must be documented by a personnel action.

Section 15.16 - Leave Entitlements under the Family and Medical Leave Act of 1993 (FMLA) and 5 CFR 630.

- (1) Within established limits of FMLA and 5 CFR Part 630, employees have an entitlement of up to twelve (12) administrative workweeks of unpaid leave during any (twelve) 12-month period for:
 - (a) Birth of a child and care of a newborn (within one (1) year after birth);
 - (b) Placement of a child with an employee for adoption or foster care (within one (1) year after placement);
 - (c) Care of a spouse, child, or parent of an employee, if such spouse, child, or parent has a serious health condition; or
 - (d) Serious health condition of the employee that makes the employee unable to perform the duties of their position.
- (2) If the employee invokes entitlement to FMLA leave, they shall be able to choose to substitute their annual leave or sick leave as available, or leave without pay under the FMLA. FMLA leave does not have to be taken as continuous days, but may be taken on a weekly or bi-weekly schedule with leave days interspersed with work days.
- (3) In an emergency, an employee shall be able to invoke their entitlement to FMLA leave on the day of the emergency.
- (4) The Department may not put an employee on FMLA leave and may not subtract leave from an employee's FMLA entitlement unless it has obtained confirmation from the employee of their intent to invoke leave under FMLA.
- (5) The Department will otherwise comply with all requirements under the FMLA. The Department will make readily available electronic information including but not limited to 5 CFR Part 630 on the Departmental website under the subject heading Family and Medical Leave Act (FMLA).
- (6) **Time Frames.** The Department agrees that the time frames established in 5 CFR Part 630 shall be the Departmental Policy and that the Department may waive the time frames.
- (7) **Medical Certification.** The Department agrees employees will not be required to submit medical documentation either initially or for recertification purposes that exceeds the requirements of 5 CFR Part 630 and will comply with the timeframes in the CFR. If the Department doubts the validity of the certification provided it may require, at the Department's expense that the employee obtain the opinion of a second health care provider designated or approved by the Department. Should the Department require a second opinion the time for the appointment(s) shall be considered duty or administrative time.
- (8) The Department official who issues a final decision to deny a FMLA certification will identify to the employee in writing the specific reason(s) for denial and notify the employee of their rights (Alternative Dispute Resolution (ADR), EEO Complaint process, Grievance process, or Merit Systems Protection Board process).

- (9) **FMLA Leave Balance.** If the Department is made aware that an employee is unable to track FMLA leave the employee shall receive written notification from the Department via US mail to their home address indicating how much time has been charged against their FMLA allotment prior to the exhaustion of the FMLA leave.

If an employee is on intermittent FMLA leave (chronic health condition, scheduled multiple treatments), they shall be able to review FMLA balances utilizing the departmental time and attendance system or through an inquiry to their supervisor.

- (10) **Employees returning from Workers Compensation.** An employee returning from Workers Compensation who meets the FMLA requirements may invoke their entitlement to FMLA leave.
- (11) **Protection of employment and benefits.** Employees who take FMLA shall be entitled to return to the Department to the same or equivalent position and benefits in compliance with 5 CFR Part 630.
- (12) **Additional Leave Provision.** As permitted by 5 CFR 630.1210, on a case by case basis, the Department shall consider requests for sick leave, annual leave, advanced sick leave, advanced annual leave, FMLA, LWOP, or any other discretionary leave.

Section 15.17 - Unauthorized Absences/Absent without Leave (AWOL).

- (1) An employee who fails to report for duty and has not received supervisory approval for leave or absence shall be carried in an absent without leave (AWOL) status for timekeeping purposes and may be subject to disciplinary action.
- (2) Employees will be notified of the periods for which AWOL is charged. AWOL may be changed to appropriate leave if it is later determined that the absence was excusable.

Section 15.18 - Compensatory Time for Religious Observances. To the extent that modifications in work schedules do not interfere with the efficient accomplishment of the Department's mission, an employee whose personal religious beliefs require that they abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. Any employee who elects to work compensatory time for this purpose may be granted (in lieu of overtime pay) an equal amount of compensatory time off from their scheduled tour of duty. The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay). The compensatory time may be worked thirteen (13) pay periods before or after the compensatory time off.

- (1) **Requests.** Compensatory time off for religious observances and for compensatory time worked for religious observance shall be processed in the same manner (via departmental time and attendance system) as other requests for leave without the imposition of additional burdens or submission of written forms in hard copy.
- (2) **Supervisory Notification.** Employees shall notify their supervisor of their intent to work religious compensatory time in the same manner and under the same procedures as employees do for credit hours and or compensatory time. A grant of advanced compensatory time off shall be

repaid by the appropriate amount of compensatory time worked within a reasonable time, (i.e., thirteen (13) pay periods). If religious compensatory time is not repaid within 13 pay periods the supervisor will advise the employee of their obligation to repay the time or either party may elect to use LWOP or annual leave to repay the time. Notification under this Section shall not be considered a disciplinary action, nor shall it be referred to with regard to any future disciplinary action(s).

- (3) **Approval.** In making a decision to grant compensatory time off for religious observances, supervisors shall not make any judgment about the employee's religious belief, affiliation with a religious organization, or cultural beliefs. The employee's election to work religious compensatory time or take religious compensatory time off to meet religious obligation/schedules, may be disapproved only if such modifications in the work schedule interfere with the efficient accomplishment of the Department's mission, cannot be performed in advance of the requested time by another employee or may not be delayed until the employee's return to duty.
- (4) **Limits.** The ability of employees to earn religious compensatory time shall not be impacted by de minimis budgetary constraints on compensatory time or overtime.

Section 15.19 - Voluntary Leave Transfer Program (VLTP). This program permits employees to donate accrued or restored annual leave to other federal employees who have insufficient leave (at least 24 hours) available to cover absences from work because of a medical emergency involving the employee or a family member. This process shall be managed in accordance with 5 CFR §630 Subpart I.

- (1) **Application.** An employee may make written application to the designated VLTP official or their immediate supervisor. If the employee is not capable of making application on their own behalf, a personal representative of the employee may submit a written application on their behalf. Applications will be processed within 10 business days. The recipient will be notified of the Department's approval or denial for participation in the program.
- (2) **Interagency Transfers.** The Department shall accept and process leave donations from employees in other Federal agencies.
- (3) **Donation Restrictions.** Employees are prohibited from donating leave to either their first or second-line supervisor. The minimum amount of leave a donor can donate is one (1) hour. The maximum donation cannot exceed an amount equal to one-half of the number of hours the donor will earn in the current leave year.
- (4) **Documentation.** The Department may require a medical certification from a medical provider, with respect to the medical emergency. If the Department requests the applicant to provide medical documentation of the emergency from more than one (1) source, the Department shall pay for the second certification. The medical certification and supporting documentation will be treated as confidential information.
- (5) **Information about recipient.** Recipients must agree to have their name published. The names of approved leave recipients, information about the leave transfer program, and the

names and telephone numbers of the coordinators shall be maintained by the servicing human resources office and posted on the internal web page. A statement regarding the leave transfer program shall also be included in the reminder to all employees concerning the scheduling of use-or-lose leave. A copy of the most recent notice to all employees regarding the leave transfer program shall be included in the new employee orientation package.

- (6) **Information about donor and donation.** The recipient shall be provided notification of donations. Upon the recipient's request and the donor's written authorization, recipients shall also be provided the donor's name and amount of leave donated.
- (7) **Restoration.** Any unused donated annual leave must be restored to the leave donor(s) if it cannot be credited to the intended recipient within 60 days of the termination of the recipient's eligibility. Restoration of donated leave is considered to be administratively infeasible when the donor is no longer employed by the Department and attempts to locate him or her at a last known address have failed or when the amount of leave to be restored is less than one (1) hour. At the time a leave donor becomes eligible for restoration of annual leave, the donor shall be informed in writing of the donor's right to donate such restored leave to another leave recipient or retrieve the leave.
- (8) **Crediting.** Donated leave shall normally be processed and credited to the recipient's account within two (2) pay periods.
- (9) **Inquiries about transferred leave.** If an employee has a question regarding the use or distribution of leave, they may contact the VLTP Coordinator, and they shall receive a prompt response.
- (10) **Use of transferred annual leave.** A leave recipient may use donated annual leave using the departmental time and attendance system in the same manner and for the purposes identified in the application for the VLTP. Any annual leave, and any sick leave, accrued or accumulated by the leave recipient and available for the purpose involved must be exhausted before any transferred annual leave may be used. VLT donations may be substituted retroactively for leave without pay (LWOP), or used to liquidate indebtedness for advanced sick or annual leave, so long as the LWOP or advanced leave was taken relates to the approved medical emergency.

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

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

Section 16.02 - Definitions.

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

Section 16.03 - Tours of Duty.

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

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

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

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

Following are examples of a Maxiflex Schedule:

Example 1:

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

Example 2:

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

37 +43 =80 hrs

Example 3:

A 5/4/9 Work Schedule

Example 4:

A4/10 Work Schedule

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

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

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

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

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

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

Section 16.05 - Credit Hours.

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

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

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

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

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

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

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

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

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

Section 16.10 - Employee Responsibilities.

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

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

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

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

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

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

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

Section 16.13 - Rest Breaks.

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

ARTICLE 17
REST BREAK AREAS

Section 17.01 - The Agency shall provide rest break areas for employees which are safe, clean and well lit.

Section 17.02 - When vending machines are provided in rest break areas in accordance with this Article, the Agency shall take appropriate steps within its authority to assure that the machines are maintained in good working condition, regularly resupplied, and that an adequate means of reimbursement for money lost in malfunctioning machines is provided. Each machine shall have posted on it in a conspicuous place a twenty-four (24) hour telephone number, where available, for reporting malfunctions.

Section 17.03 - Where the Agency contracts for such services, it shall have these requirements as a condition of this contract until such time as the Agency determines to change or cancel a contract.

ARTICLE 18 TELEWORK

Section 18.01 - General. The Office of Personnel Management and the Department define telework as "work arrangements in which an employee regularly performs official assigned duties at home or other work site geographically convenient to the residence of the employee." Telework is simply a way of getting work done from a different location.

In accordance with § 359 of Public Law 106-346, Handbook 625.1 dated May 2010 is the Telework Policy for the Department of Housing and Urban Development. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend Handbook 625.1 dated May 2010 without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligations with I IUD AFGE Council 222. The provisions of hoteling and hot desking are not being implemented at this time. When they become available, management agrees to negotiate as appropriate the applicable provisions.

The Department recognizes the potential benefits of voluntary telework to both employees and the Agency. Under normal circumstances, a manager may not require an employee to work from home. However, a manager may require an employee to work at an alternative worksite.

Section 18.02 - Eligibility.

- (1) With the exception of summer or seasonal employees, all employees in positions with duties that are conducive to telework are eligible to telework.
- (2) **if** the employee is considered "eligible" by HUD policy or this agreement, denial and termination decisions must be based on business needs or performance, not arbitrary or capricious reasons. When provisions of the Departmental policy are inconsistent with or contradict this Article, the Article will prevail.

Section 18.03 - Roles and Responsibilities.

- (1) The approving official shall:
 - (a) Approve, modify, or disapprove the employee's participation in the program in writing, within 10 business days upon receipt of a completed application, unless extenuating circumstances exist. The written notice shall provide the reason(s) for modification or disapproval.
 - (b) Within 2 business days, supervisors will notify employees of an incomplete application, unless extenuating circumstances exist.
 - (c) Submit a copy of the approved signed Telework Application to the Program Office Telework Coordinator. The list is available on the HUD website.

- (d) Notify the Union when the agreement is terminated, suspended or modified by the Supervisor for one pay period or more.
- (2) The employee shall:
 - (a) Submit applications for telework to their immediate supervisor or the supervisor's designee.
 - (b) Teleworkers will be treated the same as non-teleworking employees in the telework reporting requirements. There will be no sign in or out.
 - (c) Employees may use the call forwarding feature of their office telephone while on telework provided the feature can be initiated or cancelled from the alternative worksite.

Section 18.04 - Application Requirements and Process.

- (1) Employees on a five (5) day per week schedule may telework up to three (3) days per week. Employees on compressed work schedules may telework up to two (2) days per week during a compressed week.
- (2) Once an agreement is approved, employees may begin teleworking upon mutual agreement between the employee and their immediate supervisor.
- (3) Employees who are denied telework or the request is modified by the supervisor may select either the appeal process in HUD Handbook 625.1, Telework Policy, -or- the grievance procedures outlined in Article 51 of this Agreement.
- (4) Telework agreements are not required to be renewed once they have been approved. They remain in place until either party decides to modify or terminate the agreement. The telework agreement in place at the time of the implementation of this agreement will remain in effect unless the employee is no longer eligible for telework. If the employee requests a change based on the provisions of this supplement, a new agreement will be prepared. The self-certification safety checklist and IT approval Form are not required to be resubmitted unless there are substantial changes in the teleworking situation.
- (5) Employees may apply for telework at any time.
- (6) Employees who chose not to participate in the program will not be penalized.
- (7) Modifications to the telework agreement do not require a new Rules of Behavior for Remote Access User Agreement (HUD-22018); Telework Self-Certification Safety Checklist (HUD-25229) or IDT/HQOTC concurrence.

- (8) Communication levels and the methods of communication between employees and supervisors are expected to remain the same whether an employee is working in the office or teleworking. The communication requirements of the manager will be discussed with employee and identified in the telework application and agreement. Teleworkers will provide a telephone number where they may be reached by the supervisor and or, other management officials.
- (9) Management agrees not to disseminate or require an employee to publish personal information such as home or cell phone numbers.
- (10) Management agrees that the remote work site is not a governmental facility and that employees have the freedom to safeguard, insure and maintain the privacy of their home work place.

Section 18.05 - Same Day Recall (SDR). A SDR is when the supervisor requires an employee to return to the official worksite while teleworking.

- (1) A recall shall only be initiated due to extreme operational exigencies requiring same day attention. Recalling an employee should be a last resort effort and a rare occurrence.
- (2) Commute time back to the office of a recall is always considered part of the tour of duty.

Section 18.06 - Modification of Telework Agreements.

- (1) Supervisors must give reasonable advance notice for permanent or long term modifications to telework agreements and, under normal circumstances no less than one full pay period. The modification must be in writing and provide the reason(s) for the modification.
- (2) Handbook 625.1 Section 5-3-1 (a) of the HUD May 2010 Telework Policy is no longer applicable.
- (3) A permanent modification to a telework agreement requires a new agreement.

Section 18.07 - Termination of Telework Agreements.

- (1) Supervisors may terminate telework for business or performance related reasons. Employee's morale and quality of work life shall be considered in any decision to terminate an agreement.
- (2) Employees will be given written notification of termination of their telework agreement a minimum of one full pay period before the effective date, unless emergency conditions exist. The termination must be in writing and provide the reason(s) for the termination.

- (3) By mutual agreement of the supervisor and the employee, an employee may discuss the termination notice with their supervisors and have a union representative attend and participate in this discussion.
- (4) Supervisors are strongly encouraged to consider warnings, modifications, and temporary suspensions of telework before terminating an agreement.
- (5) If an employee is terminated from telework, the employee may reapply at any time.

Section 18.08 - Hours of Duty. Employee's teleworking may participate in and are subject to the provisions of Article 16 of this Agreement.

Section 18.09 - Leave. Employees working from an alternative worksite other than their home shall be covered under the same leave provisions as employees at the official work site,

Section 18.10 - Work Schedules.

- (1) Telework is not a "work schedule" it is a program allowing employees to work at an alternative work location/worksite.
- (2) In accordance with the Office of Personnel Management guidance, teleworking employees continue to be eligible for all Alternative Work Schedules. However, employees choosing a flex-time schedule will inform their supervisors at least one day in advance of the time they will start work on their telework days, unless extenuating circumstances exist. In the absence of advance notice from the employee, it is understood that the employee will begin work at the time designated on the telework agreement.
- (3) Management is responsible to ensure that the mission and operational requirements of the Department care carried out effectively and efficiently.

Section 18.11 - Overtime, Compensatory Time and Credit Hours. Employees participating in any telework agreement are eligible to work credit hours, overtime and/or compensatory time on both scheduled and unscheduled telework days in accordance with the applicable provision of Article 16 of this Agreement and the Telework Policy.

Section 18.12 - Equipment used while on telework.

- (1) If an employee participating in telework has a loss or damage to equipment and does not have personal equipment available, the employee may be able to continue to work at home once the supervisor is notified and determines that work can be done without the use of a computer or internet access. HUD will make all reasonable efforts to provide replacement equipment as soon as possible, and will not purposely avoid replacing equipment to limit telework by any employee with an approved agreement.
- (2) Employees will not be required to purchase or obtain any equipment that is not required by the policy to telework. (e.g. fax machine, copier, scanner).

- (3) The Union may make requests to the Agency Head or Designee in accordance with 41 CFR 102-36.30 in order to obtain equipment for bargaining unit employees that is no longer needed for its original purpose.
- (4) In order to support telework to the maximum extent possible, HUD will endeavor to provide laptops to all teleworkers. However, there is nothing that precludes employees from using their own equipment.
- (5) Management agrees that the Department will provide supplies e.g., paper, pens, staples, and/or CD's to teleworkers that are routinely provided to employees in the office.
- (6) Employees may use HUD equipment and software programs while teleworking subject to the HUD Policy/Guidance on "Limited Personal Use" of government office equipment including information technology.
- (7) Employees without an internet connection may be eligible to participate in the telework program as long as the work to be performed at an alternative site would not require HUD internet services.

Section 18.13 - Training. A telework frequently asked questions document will be established and updated on the HUD website, which complies with this Article and the Departmental policy. Within 90 days of the effective date of this Agreement, the parties shall prepare and present telework contract interpretation training to all employees. The training will also jointly create the frequently asked questions that will be updated and maintained by management.

Section 18.14 - Union Representatives. Union representatives that are authorized official time may use official time while teleworking subject to the same approval and recording procedures.

Section 18.15 - Reasonable Accommodation. Work at home approved as a reasonable accommodation under the provisions of Article 45 is governed by reasonable accommodation provisions not necessarily the provision of the telework policy or this agreement.

ARTICLE 19
OVERTIME AND COMPENSATORY TIME

Section 19.01 - General. Overtime pay provided for in this Article is pay for hours of work officially ordered or approved in excess of eight hours per day (or other approved daily alternative schedule) or 40 hours in an administrative workweek (or other approved weekly alternative schedule) for nonexempt federal employees covered under the Federal Labor Standards Act (FLSA) and 5 CFR 551. Overtime provisions for FLSA exempt and non-exempt federal employees are found at 5 USC 5541 and 5 CFR 550.101. Compensatory time provisions are covered under 5 USC 5543 and 5 CFR Part 550.114. Travel compensatory provisions are covered under 5 CFR 551.422.

- (1) FLSA Exempt employees are not covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.
- (2) FLSA Nonexempt employees are covered by the minimum wage and overtime provisions of the Fair Labor Standards Act.

Section 19.02 - Eligible Positions. All bargaining unit positions will be determined to be FLSA exempt or nonexempt at the time the position is classified and this information will be communicated on the vacancy announcement and position description. The Union may request a list of FLSA exempt and non-exempt positions from the Office of the Chief Human Capital Officer (OCHCO). Upon request, The Department will provide a listing of bargaining unit employees with their in FLSA status on a quarterly basis. FLSA determinations will be based on current law, rule, and regulation.

Exempt employees may be eligible for overtime or compensatory time with supervisory approval.

The use of official time during a pay period shall not be sufficient cause to exclude an employee from working overtime.

Section 19.03 - Types of Overtime Work. Generally, this Article refers to two (2) types of overtime work:

- (1) Regular and recurring overtime work scheduled in advance of the administrative workweek as part of the employee's regularly scheduled tour of duty; and
- (2) Irregular or occasional overtime which is intermittent and usually ordered on short notice.

Section 19.04 - Authorization for Overtime/Compensatory Time. The Department may order overtime in writing such as in email, and the overtime will be documented using webTA or the successor timekeeping system. If available, employees may request compensatory time or overtime when there is an inability to complete work assignments during their regular schedule.

Section 19.05 - Approval. All overtime and compensatory time must be approved in advance by the appropriate official, except where employees are entitled to overtime within the meaning of the Fair Labor Standards Act.

Section 19.06 - Compensation for Overtime Work.

- (1) Consistent with the Fair Labor Standards Act (FLSA) and other applicable laws and regulations, nonexempt employees and exempt employees whose salary is less than or equal to GS-10/10 will be allowed to choose between compensatory time and overtime pay.
- (2) FLSA exempt employees whose salaries are in excess of GS-10/10 shall be given the option to receive overtime pay or compensatory time for irregular or occasional overtime, except that they may be required to accept compensatory time in lieu of overtime pay if valid reasons preclude The Department from payment of overtime.
- (3) In accordance with applicable law and implementing regulations, the maximum rate of overtime pay shall not exceed times the hourly rate of the basic pay of a GS-10, step 1. FLSA nonexempt employees are not subject to maximum earnings limitations.
- (4) The Department shall not show preferential treatment to employees based on their choice between taking overtime pay and compensatory time.

Section 19.07 - Accumulation of Compensatory Time. Compensatory time credits shall be used within 26 pay periods after it is earned. While it is the employee's responsibility to track the timeframes for use of earned compensatory time, The Department and the employee are responsible for assuring that earned compensatory time credits are used within the above time frame. If an FLSA nonexempt employee does not request or take compensatory time within the established time periods, the unused compensatory time will be paid at the overtime rate in effect for the work period in which it was earned.

Section 19.08 - Overtime and Compensatory Time While in Travel Status.

- (1) For nonexempt employees, time spent in travel status will be considered work hours. Employees may choose between overtime or regular compensatory time (and not travel compensatory time) if the employee:
 - (a) is required to travel during regular working hours (i.e., during the regularly scheduled administrative workweek);
 - (b) is required to work while traveling (e.g. being required to drive as part of a work assignment);
 - (c) is required to travel as a passenger on a one (1) day assignment away from the official duty station;
 - (d) or is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours (See 5 CFR 551.422(a)).
- (2) For exempt employees, time spent traveling is hours of work which may be subject to overtime or regular compensatory time (and not travel compensatory time) if the travel is:

- (a) within the days and hours of the employee's regularly scheduled administrative workweek, including regularly scheduled overtime hours, **or**
- (b) outside the hours of the employee's regularly scheduled administrative workweek, is ordered or approved, **and** meets one of the following four conditions-
 - i. involves the performance of work while traveling (such as driving a loaded truck);
 - ii. is incident to travel that involves the performance of work while traveling (such as driving an empty truck back to the point of origin);
 - iii. is carried out under arduous and unusual conditions (e.g., travel on rough terrain or under extremely severe weather conditions); or
 - iv. results from an event that could not be scheduled or controlled administratively by any individual or agency in the executive branch of Government (such as training scheduled solely by a private firm or a job-related court appearance required by a court subpoena).

Note: An agency may not adjust an employee's normal regularly scheduled administrative workweek solely to include travel hours that would not otherwise be considered hours of work.

Section 19.09 - Travel Compensatory Time. Compensatory time off for travel (Travel Compensatory Time) is earned by an employee for time spent in travel status away from the employee's official duty station when such time is not otherwise compensable.

- (1) The Department shall credit an employee on an hour for hour basis with travel compensatory time for time in travel status.

For the purpose of compensatory time off for travel, time in a travel status includes:

- (a) Time spent traveling between the official duty station and a temporary duty station;
- (b) Time spent traveling between two temporary duty stations; and
- (c) The "usual waiting time" as defined in 5 CFR 550.1404 (b) preceding or
 - i. interrupting such travel (e.g., waiting at an airport or train station prior to departure).

In circumstances beyond an employee's control, approval may be granted after the fact (i.e., travel delay/emergencies, etc.).

- (2) Travel compensatory time does not impact the budget.

Section 19.10 - Impact of Required Overtime for Leave Purposes. Leave usage or balance will not be a factor in offering or assigning employees overtime. Prior to cancelling or recalling an employee from approved leave, the Department shall consider other qualified employees for assignment of overtime which may result in overtime pay and/or compensatory time. Overtime in conjunction with leave usage in the same pay period is permitted.

Section 19.11 - Recording of Overtime, Compensatory Time and Travel Compensatory Time . The Department agrees that in the scheduling of overtime in advance, such work shall be scheduled in quarter hour increments. Such increments shall be recorded in hours or portions thereof at the end of each pay period for compensation. Any portion of a quarter hour beyond 7 minutes shall be rounded off and recorded at the next higher increment.

Section 19.12 - Rest Breaks on Overtime. Each employee who works overtime shall be entitled to a rest break of fifteen (15) minutes for each four (4) hours of overtime. A rest break may be taken after the first two (2) hours of the overtime period. However, no rest break is intended at the end of the overtime period, nor is it intended that a rest break shall replace or be added to the normal lunch break after a four (4) hour segment of overtime worked.

Section 19.13 - Assignment to Overtime/Compensatory Time Work. The Department shall advise employees that those who desire to volunteer for overtime work may indicate their preference by signing up on a volunteer overtime list which shall be made readily available for inspection. The Department shall first consider the assignment of overtime to volunteers who perform work of the same nature during the time falling within their basic workweek, as well as to other qualified employees having the requisite skills and personal qualifications for the work to be performed. The Department will give fair consideration of all relevant factors prior to bringing employees into an office to work overtime when there are qualified employees currently in that office who have volunteered to work overtime. Assignments of overtime shall be made on a fair and equitable basis in accordance with The Department's need to accomplish the work.

Any adjustments of employee work schedules which may avoid the payments of overtime shall be based on business needs.

Overtime shall be offered to qualified permanent full time employees before being offered to part time or temporary employees.

Section 19.14 - Overtime/Compensatory Time Work. The parties explicitly recognize the Department's right to order or approve overtime work by any employee on any work schedule/tour of duty. Overtime/Compensatory time work will not be distributed or withheld as a reward or penalty.

Section 19.15 - Excusal. Upon request and a reasonable showing that a requirement to work overtime will result in a hardship on an employee, the Department shall excuse the employee from overtime work provided that a comparably qualified employee is available for the assignment. The Parties understand that approved leave may be reasonable grounds for excusal.

Section 19.16 - Election. The election of an employee to request either compensatory time or overtime pay shall not be a factor in the assignment of overtime work.

Section 19.17 - Notice. The Department shall, to the extent practicable, provide employees with two (2) days' advance notice of overtime assignments. Employees will be notified of the cancellation of scheduled overtime.

Section 19.18 - Call-Back Time. Call back overtime is work required outside of the regular tour of duty after the employee has departed the work site. Employees called back to work outside of and unconnected with their regular hours of work shall be paid for at least two (2) hours of work. The Department, to the extent practicable, shall schedule such work for at least four (4) hours on those occasions, if appropriate work is available.

Section 19.19 - Official Vehicle Breakdown. When a vehicle used on official Government business breaks down or is otherwise inoperable, the employee shall, within an hour of the breakdown (or as soon thereafter as practical), provide the supervisor with an estimate of the situation and request instructions. The supervisor shall approve a reasonable amount of official time for the purpose of obtaining emergency repairs. Anytime beyond the end of the employee's tour of duty which constitutes overtime may be approved by the appropriate official, provided the employee presents a brief written explanation and, where available, documentation relating to the emergency.

Section 19.20 - Compensatory Time for Religious Observances. This is covered under Article 15, Section 15.18.

ARTICLE 20
EMPLOYEE VOLUNTEER PROVISIONS

Section 20.01 - General: This Article encompasses the procedures and conditions for employees to request and use leave for volunteer services, including volunteer activities under the Adopt-A-School program in accordance with OPM guidance.

Section 20.02 - Allowance of Time: Supervisors may approve up to 96 hours of administrative leave for volunteer purposes per twelve (12) month period.

Section 20.03 - Required Criteria: The volunteer activity must meet one of the following four (4) criteria: (1) the absence will enhance the professional development or skills of the employee in his/her current position; (2) the absence is brief and is determined to be in the interest of the Department; (3) the absence is due to emergencies, disasters or any other situation officially sponsored or sanctioned by the Department; (4) the volunteer activity is directly related to the Department's mission.

The volunteer activity is not limited by location. Any costs regarding a volunteer activity is solely the responsibility of the employee.

Section 20.04 - Request/Approval Procedures: Requests for administrative leave must be made in writing, and in most cases three (3) weeks in advance. The request should include the name of the organization sponsoring the volunteer activity, the location, the date(s), detailed information describing the volunteer activity, and which of the required criteria apply to the activity in question. The supervisor shall respond promptly, but no later than one (1) workweek after receipt of the written request. If circumstances preclude an advance written request for administrative leave, an employee may request approval of annual leave in accordance with established procedures. Upon approval of the absence for volunteer activity, the employee may subsequently have the leave changed Administrative Leave.

Section 20.05 - Ethics: All volunteer activities shall comply with current government wide and Agency standards of ethical conduct. Employees may not participate in volunteer activities that would create a conflict of interest with their official duties. Compliance with the standards of ethical conduct is the responsibility of the employee. Employees must obtain approval on the "Leave Request for Volunteer Activities" form from an Agency Ethics Official if the employee serving in the volunteer position has a potential conflict of interest. Volunteer activity may be performed for faith based organizations provided it does not involve inherently religious activities.

If the employee is not sure if the voluntary activity would create a conflict or an appearance of a conflict of interest, the employee should consult with an Agency Ethics Official.

ARTICLE 21 STUDENT LOAN REPAYMENT PROGRAM

Section 21.01 - General. The Department shall administer a Student Loan Repayment Program (SLRP), subject to appropriations, any other applicable laws and regulations, and the Department's Pay Administration Handbook 550.2, Chg 1, Chapter 4, dated January 2008, for the purpose of employee recruitment and retention. If changes are made to the handbook, bargaining will take place if applicable under Article 49.

Concurrently with the Secretary, the Deputy Secretary or designee has the authority to approve/disapprove and/or recertify the repayment of a student loan benefit up to a statutorily designated limit per calendar year, not to exceed an aggregate, based on statute, per employee as a maximum career benefit, subject to change. The Department may not repay more of an employee's student loan than the balance outstanding at the time of the most current agreement between the Department and the employee.

Section 21.02 - Eligible Student Loan Repayment. SLRP eligible Student Loans are made, insured, or guaranteed under parts B, D, E of Title IV of the Higher Education Act of 1965 or are health education assistance loans made or insured under part A of Title VII or part E of Title VIII of the Public Health Service Act.

Section 21.03 - Current Employees' Eligibility to Receive Student Loan Repayment (Retention Benefit). Any employee (as defined in 5 U.S.C. 2105) who has an eligible loan, has been in federal government service for at least 12 months prior to the anticipated date of benefit payment, and has a current performance rating of at least "fully successful" or equivalent is eligible to receive a student loan repayment. "Equivalent" is defined as the last annual performance rating received. If an employee has not received an annual performance rating, the employee's eligibility with respect to performance shall be the employee's most recent mid-year or other interim performance rating. If the official has not provided a timely rating, the employee will be deemed eligible.

Section 21.04 - Increases. The maximum annual or aggregate benefit per employee will increase to the maximum allowable amount whenever the Department is directed to increase it by law, regulation, or Executive Order.

Section 21.05 - Applying for Student Loan Repayment Program. In order to be considered for SLRP, an employee will submit an Application for Repayment of Student Loan(s) and a Service Agreement for Receipt of Repayment of Student Loan(s). The employee shall provide the Department with the Student Loan Verification Form with the following information: qualifying loans and dates executed, loan account number identified, lender EFT routing number, current and outstanding balance for each loan, the status of loan, such as forbearance, deferment, or default from the lender. The employee may provide their most current billing statement from the lender and self-certification that the information is accurate.

The SLRP application window will be open for at least forty-five (45) days, if practicable. Management may administer an electronic application.

Section 21.06 - Criteria for Payment of SLRP. The Department must make a written determination that (1) the employee is highly qualified and (2) the Department would have difficulty in filling the position with a highly qualified individual or the employee is likely to leave the agency for employment outside the Federal service and the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to its mission.

The second criterion for payment is addressed in part by incorporating the following statement in the SLRP application: "I certify that upon submitting my application, I am informing the Department that I am likely to leave for employment outside federal service, but would remain as an employee of the Department in consideration of a student loan repayment benefit."

Section 21.07 - Formula for Individual Repayment. Subject to funding, the Department's Student Loan Repayment Program shall be based on the employee's qualified debt amount as of the time of enrollment in the program as compared to the employee's annual gross salary (actual salary amount) which is calculated as follows:

- (1) The Outstanding Loans total is divided by the Annual Salary
- (2) If the Outstanding Loan to Annual Salary ratio (L/S) is greater than 1 it is reduced to 1
- (3) The Maximum Payment Allowed is multiplied by the L/S factor to get the Max Allocation
- (4) The Max Allocation is multiplied by the Current Proration to get the Current Estimated Repayment
- (5) The Current Estimated Repayment can be reduced if its addition to Career Total Payments exceeds the maximum career benefit allowed by the Department
- (6) The Estimated Net Funds Disbursed is the Current Estimated Repayment multiplied by the applicable After Tax Rate.

When the pool of accepted applications is final, the actual payment amount to the employee is adjusted so that the total of Student Loan Repayments equals, as far as possible, the total funding available for the year.

Section 21.08 - Review Panel. Applicants with eligible loans and complete applications will receive a SLRP benefit. The division that administers that SLRP determines the employee's eligibility. The Department will forward all rejected applications to a review panel comprised of a representative from a Program office as designated by the Assistant Secretary of that office, a representative of the Office of the Chief Financial Officer (OCFO), and a representative of the union, selected by the Council President. A representative from the policy office shall serve as the Subject Matter Expert (SME) for review. The review panel will review rejected applications prior to the distribution deadline.

Section 21.09 - Receipt of Student Loan Repayment. Upon approval of the SLRP application and receipt and review of all applicable documents from Servicing Human Resources Office (SHRO), HUD will initiate action to have the National Finance Center (NFC) issue a lump sum repayment directly to the lender in accordance with NFC guidelines. The lump sum payment of the SLRP is considered supplemental wages and appropriate taxes will be withheld. The employee will receive notice of the amount of taxes withheld, unless there is a change in law that makes student loan repayment non-taxable.

Section 21.10 - Employee Responsibility. The employee must continue to make all scheduled loan payments in accordance with the terms of their agreement with their lender(s). Repayments made by the Department are in addition to a normal loan payment(s) not in lieu of payment(s). Repayments will reduce the balance of the loan amount and duration of the loan and will not alter then terms of the borrower's loan. The Department is not responsible for late fees assessed by the holder due to repayment issuance not being received by the due date or any other reason.

Section 21.11 - Recruitment Incentive. The SLRP shall be used as a recruitment tool to fill an Agency position it would otherwise encounter difficulty filling with a highly qualified individual consistent with the standard operating procedures.

Section 21.12 - Information Request and Meeting. Upon request, the Department agrees to provide the Union with information on SLRP applications including whether the application is complete, accepted or rejected, benefit provided, geographical location of the employee, and office of the employee. Upon request, the Council will receive an annual report on recipients of the SLRP. The Department agrees to conduct a meeting via conference call with the Union during the second or third quarter of each fiscal year, to exchange information on the SLRP.

Section 21.13 - Information Regarding Program. The Department agrees to maintain the most recent information on the SLRP via the hud@work website or successor. All employees and supervisors are encouraged to review this information.

Section 21.14 - Overall Benefit. The funding allocation for the Student Loan Repayment Program will be determined by the Department's authorizing official in consultation with the Union on an annual basis. The results of this decision and/or status of the funding allocation will be discussed during a meeting or teleconference with the union.

Section 21.15 - Continuation of Service Agreements. Any employee who does not satisfy the terms of the service agreement is required to reimburse the Department for all loan payments received. However, the Department may waive recovery if they determine it to be against equity and good conscience or contrary to the public interest. (Employees should contact the Internal Revenue Service with respect to the repayment of SLRP funds used to pay federal income taxes.) Failure to complete the required service agreement period can be waived if the employee involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR Part 731.

ARTICLE 22 TRANSIT SUBSIDY

22.01 - Purpose. To encourage employees to use mass transit, carpools, vanpools, and other ecologically friendly means of commuting, e.g. bicycles.

22.02 - Eligibility to Receive Transit Subsidy. All employees are eligible to receive a monthly transit subsidy from the Department. The Department will pay such subsidy equal to 100% of the employee's commuting costs for mass transportation, or vanpools, up to the maximum amount currently allowed by law. The Department's subsidy reimbursement will be based on a direct route between the employee's home and duty station.

Employees who work compressed work schedules or telecommute will be eligible to receive the monthly transit subsidies. Employees must disclose their work schedules, including telecommuting days, on the application. The most cost effective transit subsidy purchase shall be utilized by the employee, which may include a monthly pass.

22.03 - Transit Subsidy Amount/Changes. The maximum amount of the transit subsidy will change whenever the Department is directed to change it by law or Executive Order. The change in allotment will be effective immediately and will be implemented along with any retroactive payment as soon as possible.

22.04 - Vanpools. Employees may utilize their transit subsidy to pay for vanpools. The Department will help employees identify commercial parking near the work location for vanpools.

22.05 - Bicycles. Employees who regularly use a bicycle for a substantial portion of their commute between the employee's residence and work may apply using the HUD-80 form to receive a \$20 monthly transportation subsidy for bicycle commuting costs incurred. An employee receiving a bicycle transit subsidy may not receive other transportation subsidy concurrently. . If the employee stops regularly bicycling to work, the employee shall immediately notify management to stop the monthly bicycling reimbursement.

22.06 - Applying for Transit Subsidy.

- (1) Employees who wish to apply for the transit subsidy will self-certify their monthly costs for commuting via public transportation or vanpool on the HUD-80 and will be immediately eligible for transit subsidy.
- (2) Employees whose commuting patterns change must self-certify the change in their monthly commuting costs using the appropriate form provided by the Department.
- (3) The Department will process employee requests to begin receiving a transit subsidy or change the amount of the subsidy within two (2) pay periods of its receipt of the completed application form, and will notify the affected employee.

22.07 - Receipt of Transit Subsidy.

- (1) The Department will distribute the transit subsidy according to the distribution schedule for the local area.
- (2) In instances where the transit subsidy is available and/or allowable in more than one format; e.g., Metrocheck, transit voucher, or credit card; the Department will make available the format that is most convenient for employees to use for their transit expenses, while maintaining necessary security in the program.
- (3) Any issues with the Department's transit subsidy disbursement can be directed to the Transit Subsidy Unit in Headquarters or the servicing Regional Support Manager (RSM) or Administrative Officer in the field. In the event the transit check arrives after the deadline (e.g. monthly or quarterly) due to no fault of the employee, bargaining unit employees shall receive reimbursement for the transit expenses incurred upon providing evidence of payment (e.g. receipts). Employees are encouraged to contact the Transit Subsidy Unit/servicing RSM or Administrative Officer, if the transit pass does not arrive by the deadline, who will assist in making the appropriate arrangements if reimbursement is necessary. Employees must return any commuter checks that are later received beyond the disbursement amount.

22.08 - Employee Notification of Transit Subsidy Termination. If transit subsidy is to be involuntarily terminated for any employee, the Department shall coordinate with Employee and Labor Relations and will first give reasonable notice to the employee and the employee's Local union.

22.09 - Recertification. Employees shall be given at least 30 days notice to provide annual recertification, which is generally due at the beginning of each fiscal year. The Department agrees to notify all employees from whom no recertification has been received and notify employees who have not completed recertification fifteen (15) days prior to termination.

22.10 - Leave. It is the employee's responsibility to inform the Agency when extended leave is approved and the employee will not be commuting to work. During that time, the employee may not use transit subsidy. If the employee is on continuous leave for more than 60 days, the Agency may suspend the employee from participation in the transit subsidy program.

22.11 - Local Bargaining. It is recognized that transit systems are different in each area where the Department's offices are located. The Department shall notify the local union 30 days before there is any change or delay in the form of distribution of funds, to the extent that the Department has received 30 or more days notice. When requested, AFGE Locals shall be able to conduct bargaining on local concerns regarding the Department's subsidized travel, in accordance with Article 49. The allowable frequency of changes to the mode of transportation shall be subject to local bargaining.

22.12 - Funding. The Department will implement any laws, regulations and/or Executive Orders regarding the Transit Subsidy Program. The Department and the Union recognize that the program is subject to the availability of funds.

ARTICLE 23
TRAVEL AND TRAVEL CHARGE CARDS

Section 23.01 - General. Management and the Union recognize that the nature of the mission of the Department may require bargaining unit employees to travel away from their official duty station. Travel is performed in accordance with the following:

- HUD Travel Handbook 2300.2 Rev-3 dated 1984;
- the Revised Authorization Policy dated June 25, 2010; and
- this Agreement.

Travel reimbursement shall be processed and paid timely in accordance with the Prompt Payment Act (5 CF.R 1315) and the Federal Travel Regulations (FTR), The FTR can be found in. 41 CFR Chapters 300 through 304 and can be accessed on the Department's internal website. The FTR and this Agreement shall prevail with any disagreements with HUD policies.

- (1) Changes to the HUD travel policy are subject to collective bargaining between the-Department and the Union. Towards this end, the Department shall give the Union notice of any proposed change to the policy in accordance with Article 49; Mid-Term-Bargaining: The parties understand that GSA and/or OPM Guidance are guidance and implementation of such guidance generally must be bargained with the Union prior to implementation.
- (2) This provision in no way diminishes the Union's right to bargain on the impact and implementation of the revised regulations. Management shall communicate their proposed implementation of GSA regulations to the Union in a timely manner.
- (3) Employee information collected by HUD and its contractors as a result of the travel process shall be considered confidential and shall be safeguarded and only released when cause is demonstrated.

Section 23.02 - Definitions. The following definitions are for the use of this article.

- (1) **Approver.** The approver is a management official .or designee who authorizes the employee to travel.
- (2) **Certifier.** The certifier is an employee who is responsible for verifying the availability of funds and the administrative processing of the authorization or voucher.
- (3) **Per Diem.** The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging, meals, and related incidental expenses. The per diem allowance is separate from certain transportation expenses and miscellaneous expenses. The per diem allowance covers all charges, excluding taxes and service charges, where applicable for lodging, meals, and incidental expenses as allowed. Lodging taxes in the United States are excluded from the per diem allowance but are reimbursable as an expense.

- (4) Most Advantageous to the Government (Traveling to/from the. TDY): The Department has established that "Most Advantageous to the Government" shall be determined When costs of per diem, overtime, lost work time, actual transportation costs, total distance traveled, number of points visited, number of travelers, or other factors are considered. Travel must be by the most expeditious means of transportation practicable.
- (5) Travel Authorization/Girder. The FTR's refers to travel orders which shall be synonymous with travel authorization. Authorization to travel shall not be approved until it is completed in FedTraveler or its successor program or a written order to an employee from management or an authorized designee.
- (6) **TDY and Temporary Duty Station.** Temporary Duty Station is the location an .employee is temporarily assigned to for travel. Temporary Duty Station is synonymous with TDY as used in the FTR's and this Agreement.
- (7) Home to work transportation (also known as home to AVON -"the use of a Government passenger carrier to transport an employee between his/her home and place of work," (Title 41 CFR 102-5.30) Home to work transportation is approved by the Secretary based on compelling operational considerations, which means those circumstances where home-to-work transportation is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy,
- (8) The following employees are not covered under the home to work transportation program: (a) Employees who are on official travel (TDY); or (b) Employees who are on permanent change of station (PCS) travel; and (e)Employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties when designated in writing as such by their agency head. (Title 41 CFR 102-5.20)
- (9) Emergency (under home to work) situations are defined in. Title 41 CFR102-5.30(3).
- (10) Government Furnished Vehicle (GFV) -a motor vehicle owned, leased, or rented by the United States Government.
- (11) The terms "vehicle operators," "operators," "drivers," are used interchangeably.

Section 23.03 - Scheduling Travel.

- (1) The Department shall, to the maximum extent practicable, schedule administratively controllable travel within each employee's standard work week. When planning training and meetings that may require travel, the Department should plan travel during the standard work week, if possible. If it is not possible, the Department official shall make the reason available upon the employee's request.
- (2) In accordance with the FTR § 301-11.20, if circumstances require the employee to depart their permanent duty station prior to official business hours on Monday, the employee is eligible to receive appropriate travel and per diem not to exceed 1-3/4 days by leaving during regular duty hours on Friday. (For example, except under unusual circumstances, per diem for an employee who departs on Friday for a

Monday meeting is limited to that amount which would have been payable had he/she departed on Sunday.)

- (3) In accordance with the FTR. § 301-11.20, if circumstances require the employee to return to their permanent duty station after official business hours, the employee must return no later than the next regularly scheduled work day and shall receive appropriate travel and per diem, not to exceed 1-3/4 days by leaving during regular duty hours on Friday. If the employee chooses to return to their permanent duty station after official business hours on Friday, the employee shall receive travel and per diem in accordance with the FTRs. If the employee chooses not to return after duty hours, the employee must return no. later than the next regularly scheduled workday. The employee shall receive travel and per diem limited to that amount which would have been payable had they departed on Friday night or Saturday morning.
- (4) Personal Travel in Conjunction with Official Travel. Employees are allowed to combine personal travel with official business, e.g., traveling in advance of the start of official travel or extending their stay beyond the dates of official travel, provided this does not interfere with mission requirements. However, the Department is not responsible for additional costs associated with personal travel.
- (5) The Department shall give as much notice as practicable to employees selected for assignments involving travel which requires advance planning. Except in urgent or unusual situations authorizations shall be issued sufficiently in-advance to permit the employee to complete all travel arrangements including lodging, transportation tickets, and an advance in funds, if desired. Employees should receive authorization at least 72 hours in advance of the date of travel of the ticketed transportation costs:
- If authorization is received late, employees should 'contact FedTraveler or its successor. Employees shall be eligible to receive compensatory/overtime for weekend travel contacts with FedTraveler for late authorizations, pursuant' to the Fair Labor Standards Act.
- (6) In accordance with FTR 301.11.24, if an employee voluntarily returns home or to their official station on non-workdays during a "Temporary. Duty" or TDY assignment, the maximum reimbursement for the round trip transportation and per diem or actual expenses is limited to what would have been allowed had the employee remained in the TDY location.
- (7) In accordance with FTR, you have to be in travel status for 12 hours or more to be compensated on the first and last day of travel the 75% of the per diem for the primary destination, and 100% of the per diem for all other days in travel status.
- (8) No disciplinary or adverse action will be taken against employees who do not use the FedTraveler online booking system for hotel or rental car reservations.
- (9) Employees may schedule travel to allow for an eight (8.) hour rest period prior to beginning work.

- (10) If employees are required to stay away from their duty station for more than thirty (30) days, employees may travel to their permanent duty station twice per month on non-work days. Appropriate travel costs will be paid by the Department.
- (11) Creation of an official travel authorization shall not be denied or delayed due to an outstanding disputed travel voucher(s). Employee and/or supervisor must contact the HUD travel system administrator to resolve the dispute.
- (12) The Department shall maintain and publish, on its internal website, accurate and working contact information for HUD travel personnel. HUD travel personnel will be available during normal business hours.

Section 23.04 - Travel Advance Through the Use of an Automated Teller Machine (ATM).

- (1) Travel advance(s) may be obtained using the government issued credit card at any Automated Teller Machine (ATM) and the fees associated with advance shall be reimbursed using the voucher processing system. However, ATM usage is voluntary. Non-ATM travel advance(s) shall be issued via electronic fund transfer(s) to employees that do not have government issued credit cards.
- (2) Non-ATM Travel advance(s) can be requested by employees who do not have a travel charge card. The advance is requested on the travel plan, processed through the financial system and deposited directly into the employee's banking facility. The processing time is approximately three (3) days after the travel plan has been approved.
- (3) Employees shall be advanced travel funds in amounts consistent with current applicable law, rule, regulation, and the terms of this Agreement for non-local travel. Such advances shall be based (currently on 80%) on an estimate of reimbursable travel expenses.
- (4) Any employee traveling on official business who is not eligible for a government travel charge card is entitled to an advance of funds to cover per diem, lodging costs, or actual subsistence expenses, mileage for use of a privately owned vehicle (currently not less than 80%) and all other costs incidental to official travel not directly billed to the Department or charged to a government travel charge card.

Section 23.05 - Mode of Transportation.

- (1) Official travel shall be accomplished by the method of transportation that is considered most advantageous to the Government when costs and other factors are considered and is authorized on the travel authorization.
- (2) If an employee elects to travel by a means of transportation other than the means determined most advantageous to the Government, the employee shall be responsible for any additional expenses.
- (3) Use of a contract carrier is mandatory by regulations when air travel is authorized, unless one of the regulatory exceptions for using a non-contract carrier is met.

- (4) Travelers must comply with all requirements listed in the HUD Travel Guidance for Using Non Contract Carriers dated 2010. Travelers will be authorized to purchase Non Contract flights as long as the cost savings is 25% or at least \$150 when compared to the government: Contract Carrier fare. Approval for Non Contract flights must still be approved from within the program office. The HUD form 2501 Non Contract Carrier Justification must be completed and approved prior to any authorizations being created in the current travel system. A response to the request shall be provided within sufficient time to provide the cost benefit but no longer than five (5) days from submission. All reservations for Non Contract flights must be reserved through the current travel system.
- (5) Employees must request approval to purchase discounted fares from other sources when contract or non-contract fares are not available in the current travel system. If a traveler finds a discounted fare that is cheaper than the government fare, the employee must obtain authorization prior to purchasing a non-refundable fare.
- (6) Further, the Department shall not be responsible for any penalties imposed by non-contract carriers if the trip is canceled for personal reasons.

Section 23.06 - Reimbursement of Official Travel. Employees traveling on official business are expected to exercise the same care and reasonableness in incurring expenses that a prudent person would exercise when traveling on personal business. The Department will not reduce claims unless the claims are unreasonable.

- (1) **Reimbursement.** Employees who are authorized by the Department to perform official travel shall be reimbursed for all authorized expenses at the maximum standard rate allowed by law, rule, Government-wide regulation, or actual expense. For costs that the FM's list as discretionary on the part of the Department and the Department approves the costs, it will reimburse 100% of the charge(s). Authorizations and expenses related to employees requiring special accommodations should be included in the travel authorization request.
- (2) **Effective Date.** Increased or decreased travel allowances shall go into effect on the first day allowed by the revised FTRs.
- (3) **Vehicle Use Reimbursement.** When the use of a privately-owned conveyance or Government-owned vehicle is authorized, reimbursement shall be in accordance with the Federal. Travel regulations and the HUD Travel Handbook, Policy and this Agreement.

Section 23.07 - Expense Report Processing. Under normal circumstances employees shall submit expense reports for travel within five (5) working days, of completion of travel or every thirty (30) days if on continuous travel, using the current travel system or its successor(s). Employees will be reimbursed for travel expenses that were authorized in writing.

- (1) If the Department fails to process the employee's proper travel claim within thirty (30)

days they must pay the employee late fees and interest in accordance with the Prompt Payment Act (5 CFR 1315).

- (2) The Department shall reimburse employees for expenses unless:
 - (a) the employee fails to properly itemize an expense; or
 - (b) the employee fails to provide a receipt or other documentation required to support the claim;
or
 - (c) the expense was not authorized.

Should any portion of the travel expense report be disallowed/denied the Department will notify the employee in writing. The undisputed amount shall be paid. Employees may challenge the Department's disallowance/denial by filing a challenge with the program Budget Officer. If the program Budget Officer considers the appeal and the payment is still denied, the employee may appeal to the Chief Financial Officer.

- (3) Travel expense reports shall not be denied or delayed for arbitrary or capricious reasons. If there is a denial or delay in the processing, the supervisor and/or approver shall provide the employee with specific written reasons for the denial and or delay. In the event of death of an employee the Program Budget Officer shall process the expense report. In the event of an emergency where the employee is unable to process the expense report, the Program Budget Officer shall process the expense report or assist the employee in processing the expense report to avoid suspension or cancellation of the card.

Section 23.08 - Reimbursement.

- (1) **Taxis.** Reimbursement shall be authorized and approved for the taxi cab fares, phis tip; for approved official travel.
- (2) **Tips.** Tips which are not included in M&IE shall be determined reasonable if they do-not exceed 15% of the service cost.
- (3) **Baggage Fees.** The Department will reimburse employees actual baggage charges commensurate with the length or other circumstances for official travel, e.g., 1 bag for up to 1 week trip, 2 bags for 2 week trip. Additional baggage may be authorized by the approving official with justification. Receipts for all baggage reimbursement will be required.
- (4) **Receipts.** Employees must submit receipts for any lodging or transportation expenses including car rentals, gas receipts for the rental car, airline tickets, train tickets, and any expense that exceeds \$75.00.
- (5) **Laundry Expenses.** The expenses incurred for laundry, cleaning and pressing of clothing at a TDY location are reimbursable as a miscellaneous travel expense. However, the employee must incur a minimum of 6 consecutive nights lodging on official travel to qualify for this reimbursement.

- (6) Lodging Deposits. Employees will be reimbursed for nonrefundable deposits if the travel is cancelled and the reason for cancellation or the timing of the cancellation was beyond the employee's control, and after steps have been taken to minimize or waive the deposit.
- (7) Lodging. Employees traveling on official business are not required to share a room. Employees shall be given the option of staying at lodging of their choice within the travel area as long as the lodging meets the FEMA Fire Safety Act where available.
- (8) Actual Expenses. When a situation occurs which requires employees to incur actual expenses beyond per diem and lodging allowances, employees will notify their supervisor by entering the information into the current travel system and/or receive written approval to travel. This written approval is the agreement of the Department to pay actual expenses. When the actual expense method is approved, the Department will require receipts for other allowable per diem expenses. Actual expenses reimbursement is warranted when:
 - (a) lodging is procured at a prearranged place such as a hotel where a meeting, conference or training session is held, or lodging cannot be obtained at the per diem lodging rate;
 - (b) costs have escalated because of a special event or disaster;
 - (c) any other reason approved by the Department, in accordance with the Federal Travel Regulations.
- (9) Internet usage. Employees shall be reimbursed for the cost of Internet services, while in a travel status including hookup fees and usage charges for official business, including union representational activities, and may use the services for personal Internet time consistent with applicable Departmental IT Security policies.
- (10) Complementary Meals. If the Department negotiates inclusion of a meal or meals by the hotel in the room rate, employees shall receive notice prior to traveling, and the per diem shall be adjusted to offset the complimentary meal, unless the employee. Submits a justification for the full per diem.
- (11) Local Training. Employees participating in training who reside within the approved local commuting area shall be expected to commute to the training site daily. If the distance to the training site exceeds the approved local commuting area, the employee shall be entitled to mileage from their residence or duty station to the training location. The claim shall be submitted in accordance with local travel procedures.

Section 23.09 - Periodic Return to Duty Station. If a temporary duty assignment requires a traveler to be away for thirty (30) or more calendar days, the employee shall be allowed reimbursement for travel back to the permanent duty station and return back to the temporary duty station twice a month, subject to available funds. Additional home visits may be approved on a case-by-case basis.

Section 23.10 - Constructive Cost. The Department will determine the most cost effective means of travel. If employees choose to deviate from the most cost effective travel method, a cost comparison shall be computed in accordance with the HUD Travel Handbook, Policy and this Agreement. The Department will make the final decision regarding the Method of travel.

Section 23.11 - Illness. Employees who become ill or has a personal emergency situation shall be allowed transportation and subsistence to the extent provided in the FTRs.

Section 23.12 - Use of Telephone during Official Travel.

- (1) An employee may make personal calls to their residence, family or the general vicinity of their duty location.
- (2) Upon submission of a justification and proof of the origin and destination of the communication, payment for official business calls, telegrams, cablegrams, radiograms, electronic mail, electronic communication or standard mail and express delivery, or any other form of telephonic communication necessary to conduct HUD business shall be allowed and reimbursed.
- (3) Telephones within a HUD office are to be made available to employees on official travel.
- (4) The total cost of the call averaged over the duration of the trip is limited to seven dollars (\$7.00) per day. Receipts or proof of calls using hotel phones, cell phones or other means are required; and the travel voucher must identify the cost, and the date(s) of each call.
- (5) Where accepted, the Government charge card may be used to pay for telephone calls made in connection with official travel while away from the employee's permanent duty station, consistent with this article and the provisions above.

Section 23.13 - Travel Bonuses, Frequent Flyer miles, awards, hotel awards, and promotional materials received by employees as a result of official travel shall be retained by employees. The employee may use these benefits for personal use, including upgrading to a higher class of service. Use of such benefits must not interfere with their official assignments.

Section 23.14 - Denied Boarding Compensation. Employees are not entitled to payment offered for involuntarily denied boarding. Employees may retain compensation received for voluntarily vacating an airline seat provided the employee incurs no additional travel expenses beyond those which they would have normally incurred and vacating their seat does not interfere with the performance of official duties. To the extent an employee's travel is delayed during official duty hours by voluntarily vacating an airline seat, the employee shall be charged annual leave for the additional hours and may not earn travel compensatory time for any additional time in a travel status as a result of the voluntary action.

Section 23.15 - Travel by Union Officials. When the Department authorizes Union official(s) to travel for representational purposes they will be reimbursed in accordance with the FTR and this Agreement.

Section 23.16 - Authorization to Travel.

- (1) If the Department does not timely approve the employee's request for travel authorization and there is no ticket for the travel, it will not have a negative effect upon the assessment of the employee's performance or conduct.
- (2) Employees should submit a travel authorization estimate that is as close as possible to actual costs. An approved travel authorization allows employees to travel and obligates the Department to pay the allowable reimbursable costs associated with the estimated cost approved in the travel authorization.
- (3) All local travel shall be authorized either in writing or verbally. Employees who regularly perform local travel shall submit expenses for reimbursement through the current travel system when the amount of reimbursement reaches an appropriate amount but typically \$50 and not less than once a month. For the calculation of mileage if the employee lives outside of the approved local commuting area it will be calculated from the duty station to the location where the duty is performed.

Section 23.17 - Fed Traveler System. All employees authorized to travel by the Department's designated travel system are required to use the system or its successor to obtain travel authorization and submit travel vouchers.

- (1) A travel system tutorial and/or Help desk information will be accessible through the HUD Web site and available to assist employees with technical questions regarding the system.
- (2) If the travel system is not available or the approval process is not complete before the employee must depart on travel the approving official shall provide a written approval (can be as simple as an e-mail with a written estimate of expenses) to document authorization for the travel.
- (3) If the system is not available or Management instructs the employee not to use the travel system, any applicable penalties in the FTR will not be assessed against the employee.

Section 23.18 - Accommodating Special Needs. Consistent with its obligations under applicable laws, rules, regulations, and the provisions of this Agreement, the Department shall comply with its obligations relating to reasonable accommodations to employees with disabilities.

Employee with special needs not covered under the reasonable accommodation process will be addressed on a case by case basis. Employees with special travel needs shall self-identify and provide supporting documentation, when appropriate, in advance of any

travel. The employee's supervisor has the authority to approve special needs requests consistent with law, rule and/or regulation and respond to the employee through memo or e-mail. The certifier shall not request additional documentation or delay travel payment.

The Department shall make the final determination on the appropriate method to address special needs, taking costs under consideration. Examples of methods to address special needs include but are not limited to:

- (1) Transportation and per diem expenses incurred by an attendant who must travel with the employee to make the trip. possible;
- (2) Transportation to, from, and/or at TDY duty locations or local travel locations based on the traveler's needs;
- (3) Assistance provided by a common carrier to accommodate employees' special needs;
- (4) Costs for handling baggage and/or additional baggage that is a direct result of employees' special needs;
- (5) Renting and/or transporting a wheelchair/scooter; and
- (6) Premium-class accommodations when necessary to accommodate employees' special needs,

Section 23.19 - Travel Compensatory Time. Compensatory travel time shall be earned by employees for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable, in accordance with applicable regulations. The Department will maintain current regulations affecting compensatory time and examples of how to calculate compensatory time for travel on the HUD internal web site. Travel compensatory time is covered in Article 15.

Section 23.20 - Travel Savings and Awards Program. The Department may consider establishing a Travel Savings and Awards Program. If a decision is made to propose implementing a program, notice will be issued to the Union in accordance with Article 49 of this Agreement.

Section 23.21 - Government Charge Card Program for Official Travel. The Government employee individual charge card program provides a service to HUD employees traveling on official Government business away from their permanent duty station. The contract for-the government credit card is between the employee and the government credit card contracted company.

Employees with a government charge card shall be required to comply with -the terms and conditions of the government charge card contract.

The Department shall provide appropriate training to travel charge card holders on the applicable travel charge card terms and conditions and applicable agency regulations.

As a result of the implementation of the individual charge card program bargaining unit.

employees shall not be required to waive their constitutional rights and rights, which include but are not limited those provided by the Privacy Act, laws, and federal statutes.

The Department shall take all reasonable steps to assure that bargaining unit employees are protected from any adverse impact caused by their use of the Government Travel Contractor (GTC) Charge Card for official travel purposes, consistent with applicable regulations and the terms of this Agreement. The terms of the government travel charge card are not established by the Department, but are issued by the vendor and the responsible government agency. The travel charge card has the following terms, including but not limited to:

- (a) The GTC will not disclose any credit information to the public, but may report delinquent payments to credit bureaus and third party collection agencies;
- (b) Employees will not be required to pay any part of any disputed billing to the contractor pending resolution of that dispute; and
- (c) As long as the employee reports the loss of their credit card within 48 hours, of their discovery of such loss, the employee will incur no charges associated with that loss.
- (d) Government charge card delinquencies may be subject to salary offset.
- (e) Upon request by the Union, a copy of the contract between GSA and the GTC contractors shall be provided to the Union.
- (f) Upon request by the Union, the Department shall provide the Union with transaction reports.

Section 23.22 - Required use and exceptions. In accordance with the Federal Travel Regulations at 41 CFR § 301-70.700, employees must use a Government Travel Charge Card for hotel, air fare, and rental car expenses, unless an exception is approved by the agency head or designee, in accordance with 41 CFR § 301-70.701. Employees are not required to use their Government Travel Charge Card for all other expenses identified in 41 CFR § 301-70.304. Employees who do not have a travel card may request a travel cash advance or that their transportation and lodging charges be centrally billed. There will be no adverse impact on employees based on their approval for an exception to use personal funds, a non-government credit card, or travel advance in lieu of a Government Travel Charge Card in accordance with 41 CFR § 301-70.701.

Section 23.23 - Card Issuance.

- (1) The Government Travel Charge cards will be issued to HUD employees who, are required to travel four (4) or more, trips a year. If it is reasonably anticipated that an employee will travel for work fewer than four (4) trips per year, the employee may use a personal credit card, receive cash advances through electronic funds transfer,

or utilize Central billing. Employees who travel less than four (4) times a year may request the use of a government travel card. If the electronic travel system split or direct payment options are implemented, employees required to have. Government Travel Charge Cards shall have the travel card payments issued directly to the travel card-issuing bank for credit to the employee's individual travel charge card account by the Department.

- (2) An employee's credit history and worthiness (i.e., credit report) will be reviewed prior to the issuance of a Government Travel Charge Card, and periodically reviewed thereafter, in accordance with the Government Travel Charge Card Program. If cash or credit reports are adversely affected by the Credit history checks or periodic reviews for the government travel charge card, management shall bargain with the Union Over appropriate arrangements.
- (3) When an employee cannot obtain a government travel charge card because of a lack of credit history; has had their government credit card suspended; or because they are found to have an unsatisfactory credit history, the employee's travel will be paid through suitable alternate methods available to the Department. Such alternates may include, but not limited to, issuance of restricted-credit-limit, restricted-use, declining balance, controlled-spend, or stored value card, electronic fund transfer of cash advance, or use the centrally billed accounts.
- (4) No adverse performance or misconduct action shall be taken against an employee, whose travel was delayed for actions outside of their control due to the GTC's failure to issue an employee a credit card and the Department's failure to provide an alternative method of payment as listed in 3 above.

Section 23.24 - Late Payment. The Department will not consider charge card payments past due if the late payment of the bill results from an untimely reimbursement by the Department of an employee's properly completed claim that was submitted on time, or if the employee was unable to complete the claim on time due to inability to access the system. The Department will reimburse the employee for any costs associated with late payment beyond the employee's control. If the employee requests, the Department will issue a letter to the employee that they may use for credit card companies, credit bureaus etc. explaining the late payment. In the event of an emergency and the employee is unable to file a claim for reimbursement within thirty (30) days after returning from the trip, the Program Coordinator shall assist the employee in avoiding suspension/cancellation of the card. The Department may issue payment reminders to employees. Employees will be reimbursed for travel debts they are owed.

Section 23.25 - Out-of-Pocket Expenses. Out-of-pocket expenses are those expenses which cannot be charged to the card and must be paid by the traveler and are reimbursable by the Department. The employee will be informed in advance Of travel of out-of-pocket expenses that may be charged to the card and those that may not be charged to the card.

Section 23.26 - Emergencies. Emergency circumstances, such as an official government vehicle breakdown, may justify the use of the charge card for food, lodging; and other expenses covered under

the Federal Travel Regulations while the employee is away from their permanent duty station in an official travel status.

Section 23.27 - Card Use Information. Monthly charge card reports are considered highly confidential material, subject to the Privacy Act, and must be secured from observation by any party other than persons who have a need to know.

Section 23.28 - Card Security. Each participant in the contractor-issued charge card program is responsible for safeguarding his/her card. This does not preclude the cardholder from securing the card at his/her work stations. No disciplinary or adverse action shall be taken against an employee whose card is lost or stolen at no fault of the employee.

Section 23.29 - Cumulative Reports. Cumulative charge activity reports will be utilized for the purposes of determining whether or not employees meet program eligibility criteria, the level of participation, and for establishing budget estimates for travel.

Section 23.30 - Union Information. The Department will provide the Union with a link to the HUD@work page containing the HUD Notice regarding the Government 'charge card program for official travel expenses.

Section 23.31 - Suspension/Cancellation of Credit Card.

- (1) **Suspension.** The account is considered delinquent if payment for the undisputed principal amount has not been received 45 calendar days from the closing date on the billing statement in which the charge appeared. The employee will receive information from the GTC requesting payment of the undisputed past due amount. If payment has not been received 55 calendar days from the closing date, the Department and the employee will be notified that the suspension process will be initiated. The Department and the employee will be notified of a point of contact to assist in resolving the past due account. If payment of the undisputed principal amount has not been received 61 calendar days from the closing date, the employee account will be suspended unless otherwise directed by the Department, The Department or the GSA contracting officer has the right to suspend the employee's account for any reason. Upon payment of the undisputed principal amount to the GTC, the account will be reinstated.
- (2) **Cancellation.** The employee's card/account may be cancelled if:
 - (a) The card is used for unauthorized purposes and the GTC has the Department's permission to cancel;
 - (b) The account is past due for the undisputed amounts 120 calendar days past the closing date and all suspension procedures have been met by the GTC;
 - (c) The account has been suspended two (2) times during a twelve (12) month period for undisputed amounts and is past due again. The Department and the employee will be notified that the cancellation process will be initiated. If payment for the undisputed amount has not been received 126 calendar days from the closing dated, the account will be canceled unless otherwise directed by the Department; or

- (d) The account has been paid with checks returned by the employee's financial institution for insufficient funds two (2) or more times in a twelve (12) month period. In this event, the account is subject to immediate cancellation.

In the event of cancellation, the employee understands that they must pay all undisputed amounts due to the FTC under the, agreement. The employee understands that the account information may be reported to credit reporting agencies if the account is cancelled. The employee will surrender the credit card upon request of the Department. The employee understands that the use of the card after its cancellation will be considered fraudulent and may cause the GTC to take legal action against the employee.

Section 23.32 - Debt Collection of Delinquencies. The Department has authority through salary offset to collect delinquent debts on behalf of the GTC. In accordance with 41 CFR § 301-54.1 and 301-76 of the Federal Travel Regulations, management may collect undisputed delinquent amounts from an employee's disposable pay. The Department is responsible for ensuring that all due process and legal requirements have been met before authorizing a salary offset. The maximum amount management may deduct from the employee's disposable pay is 15 percent a pay period, unless the employee agrees in writing to a larger percentage. The employee may request from management a lower salary offset amount than the 15 percent maximum per pay period. The salary offset deducted each pay period or month shall not be so high as to create a hardship for the employee's household income.

Section 23.33 - Collection of Advances Payable to the Department. If an employee is determined to be monetarily liable, the indebtedness must be paid. If the employee does not or cannot liquidate the debt, the amount of indebtedness may be collected in bi-weekly installments, or at officially established pay intervals, by deduction from the employee's salary. The amount deducted shall not exceed fifteen (15) percent of disposable pay except with the affected employee's written consent. The employee may request from management a lower salary offset amount than the 15 percent maximum per pay period. The salary offset deducted each pay period or month shall not be so high as to create a hardship for the employee's household income.

Section 23.34 - Personal Property Claims: Employees may file claims related to an employee's personal property which was lost or damaged during official travel with the Department, including but not limited to loss of checked baggage or out of pocket expenses due to accidents while using a POV. To file a claim, employees must notify their supervisor and file the claim with the HUD Federal Torts Claim Center. The Statute of limitations for submitting such a claim is two (2) years however; employees should advise and consult with their supervisor upon knowledge of any incident which may make rise to a claim. If the employee files a claim with a provider (i.e. airlines for lost luggage) they should also report the claim with the HUD Federal Torts Claim Center.

Section 23.35 - Fleet Management:

- (1) Utilization of Resources: Management shall provide a listing of Fleet Coordinator Personnel (FCP) by Region, City, and name on HUD intranet web site (i.e.,HUD@work).

- (2) Administrative, Corrective Actions: It is understood that corrective action may be taken in accordance with Article 12, Discipline, based on the nature and severity of any GFV related incidents. A traffic citation for a moving violation during official duty time does not necessarily constitute misconduct. The nature of the offense and the totality of the circumstances must be taken into consideration.
- (3) Fleet. Management Email box: Employees may utilize the Fleet Management Email box. to provide information regarding fleet management issues, for instance safety, maintenance, or hazards. GFVs will be maintained per GSA regulations to provide safe and reliable transportation. Employees who discover that the GFV is inoperable or unsafe shall contact their supervisor (or in the absence thereof another- supervisor in the chain of command) and/or the- FCP to report these conditions,
- (4) Emergency Contacts: GSA required publications, such as the "Motor Vehicle Accident Reporting Kit" and "Guide to your GSA Fleet Vehicle," shall be included in the vehicle information package located in each. GFV. Employee shall call the number provided with the vehicle.
- (5) Unmarked GFVs: Only the Secretary of HUD or designee may authorize the use of an unmarked vehicle. Current approval unless reversed will remain in place. Employee shall utilize HUD's certification process to request use of unmarked GFVs. The certification must state that identifying the motor vehicle would endanger the security of the vehicle occupants or otherwise compromise the agency mission. The certification may last from one day up to 3 years, and then must be re-certified for continued exemption. This process is regarded as a pertinent topic for training.
- (6) GFV Maintenance: Employees who operate GFVs are not required to provide maintenance on GFVs. Employees shall report any required maintenance or safety-related concerns, including missing GSA publications specified in the Emergency Contacts provision above, to the Fleet Control Personnel (FCP) so that GFVs are maintained in good working order. Management may assign the employee with another GFV, authorize use of a rental vehicle, or permit the use, if requested by the employee, of a Privately Owned Vehicle (POV) to accomplish the program-related travel.
- (7) Driver's License:
 - (a) Employees will not be required to provide greater evidence of a valid driver's license than that required by GSA regulations, state laws, and United States statutes.
 - (b) Upon request of the FCP or designee, employees shall show their valid driver's license in order to use a GFV.
 - (c) An employee's driver's license information is private information and must be safeguarded in accordance with the Privacy Act. Local field office records concerning driver's license information are subject to the provisions of the Privacy Act.
- (8) Vehicle Operator Responsibilities:

- (a) Vehicle operators are personally responsible for any violations of Federal, State or local traffic laws.
 - (b) Employees who use GFVs are responsible for the reasonable safekeeping of the vehicle, .
 - (c) Employees shall not be required or expected to travel in or operate a GFV under conditions that are determined unsafe.
 - (d) Fuel Purchases: Employees shall purchase fuel from commercial gas stations using a government issued fleet charge card located in the vehicle travel package unless extenuating circumstances exist. If personal funds are used, reimbursement will be according to the Department's current reimbursement policy.
 - (e) Self-Serve Pump: Employees must use self-service fuel pumps to the extent possible. Management recognizes that state laws may require employees to utilize full service pumps as well as need for employee safety.
 - (f) Any reported complaints (such as through GSA's HOWSMYDRIVING Email site) regarding HUD G.FV's, shall be reviewed by the Fleet Manager or designee. As part of additional fact finding employees are .generally contacted for information- regarding the reported complaint.
 - (g) Daily Vehicle Utilization Reports: Employees utilizing a GFV shall incorporate the Daily Vehicle Utilization Report, HUD Form 21016, or any other information for the agency regarding the use of the GFV. Completion of this form or other information is performed during the course of ditty.
 - (h) Seat Belts: Employees (drivers and occupants) utilizing a GFV shall wear safety belts whenever the vehicle is in operation. The vehicle operator should advise all vehicle occupants to wear their safety belts prior to operating the vehicle. (41 CFR 101-39.300(c))
 - (i) Electronic Devices: Employees shall comply with the E.O, 13513 regarding use of electronic devices while operating a GFV as well as adhere to state and local laws that may be more restrictive when operating a GFV.
 - (j) GFV Usage: GFV shall not be taken home unless approved under the Home to Work Transportation Program based on operational considerations, as defined in this Article.
- (9) If the use of a car is required and no government vehicles are available the Department can authorize through the travel system a rental car or other appropriate transportation. The non-availability of a vehicle or appropriate transportation will not have a negative effect upon the assessment of the employee's performance.
- (10) Rental Vehicle Approval when in Travel Status: Employees shall refer to applicable Federal Travel Regulations, HUD's Travel Handbook, and this Agreement. Compact/economy cars must be used to the extent reasonable and available. Exceptions must be approved in advance.
- (11) Privately Owned Vehicles (POV): Employees may choose to use. a POV at the

appropriate FTR mileage rate. The use of a POV is authorized when it is advantageous to the Government. A Government Furnished Vehicle (GFV) is the first resource when a vehicle is required for official travel performed locally or within commuting distance of an employee's designated duty station. If a GFV is Unavailable, employees may request to use a Government contract rental vehicle. The authorization to use a POV outside the employee's official duty station must be approved in advance through the FedTraveler Authorization process, or its successor.

- (a) No employee shall be required to use their privately-owned vehicle (POV) in the course of business unless such use was made a formal condition of employment when they accepted their current position. If an employee is-unwilling or unable to use their POV for official government business, it is the Department's responsibility to provide transportation, unless such use was made formal condition of employment when they accepted their current position.
 - (b) Should an employee experience an accident when authorized to use a POV on official government travel, any claim will be addressed in accordance with the Federal Tort Claims Act.
 - (c) Employees using POV are not required to transport other employee(s) on official business. If an employee voluntarily accepts an employee as passenger (s) when authorized to use a POV on official government travel, any claims against the owner of the POV by the passenger(s) for damages will be settled in accordance with the Federal Tort Claims Act.
 - (d) In the event of emergency repairs to a vehicle on official authorized travel, the employee will remain in official status, and time will be assessed as appropriate. In such situations, the employee will, as soon as practicable provide the supervisor with an appraisal of the situation and obtain appropriate instructions.
- (12) **Vehicle Accidents:** Employees' first priority in case of vehicle accident is their own safety and the safety of other passengers. Employees who have been involved in an accident with their GFV shall furnish all known information as outlined in Section 7-1 of the Handbook. Employees shall be provided duty time to complete all reporting requirements and be reimbursed for any costs related to the reporting process.
- (13) **Accident Investigations:** The responsibility for accident investigations rests with the Department's Safety and Health Officer for accidents involving Headquarter employees-operators and with designated Safety Representatives for field office employee-operators. Employees are to refer to Article 37, Safety and Health, of the Agreement.
- (14) **Accident Reports:** Employees involved in vehicle accidents who cannot complete the appropriate paperwork (SF 91 and SF 94) due to their injuries shall not be responsible for its accuracy if the report is prepared and signed for by the employee's supervisor. Employees shall provide their signed report to their supervisor as soon as they report to work.
- (15) **Retention of Accident Reports:** SF 91 and SF 94 will be maintained according to 1-1UD7s records management schedule. Any Tort claim against the United States that arises as a result of vehicle accidents shall be forever barred unless it is presented in writing to HUD in accordance

with time requirements of the Federal Tort Claims Act. Destruction of forms shall be in accordance with standard records disposition requirements/schedule.

- (16) **Accessibility of Handbook Information:** The Handbook, referenced forms, and governing documents contained in this Supplement will be made available on the HUD web site (i.e. HUD@work).

ARTICLE 24
MERIT PROMOTION AND INTERNAL PLACEMENT

Section 24.01 - General. This Article sets forth the merit promotion and placement policy and procedures to be followed in staffing positions within the bargaining unit. The parties agree that the provisions of this Article shall be administered by the parties to ensure that employees are evaluated and selected solely on the basis of merit in accordance with valid job-related criteria. The Department agrees that it is desirable to develop or utilize programs that facilitate the career development of the Department's employees. To that end, the Department shall consider filling positions from within the Department and developing bridge and/or upward mobility positions, where feasible, to help promote the internal advancement of employees.

Section 24.02 - Equal Employment Opportunity. The parties agree that the principles in Article 9 (EEO) apply to this Article.

Section 24.03 - Definitions. The following words and phrases shall have the meanings indicated for the purposes of the application of this Article:

- (1) **Applicant Notification Touch Points.** A Hiring Reform initiative designed to increase applicant satisfaction with the Federal government hiring process, by initiating and maintaining contact with applicants at specific times during the recruitment process. Human Resources must correspond with the applicant at the following points of the recruitment process:
 - (a) Acknowledgement of receipt of application submission;
 - (b) Applicant rating determination;
 - (c) Issuance of referral list; and, if qualified
 - (d) Final disposition of vacancy, if referred.
- (2) **Area of Consideration.** The geographic area, organization, or group of organizations in which a search is eligible applicants to fill vacancies.
- (3) **Assessment Tool.** A method created to measure an applicant's qualifications, both minimum and quality rating, and/or eligibility for employment, such as: occupational questionnaires (OQs), structured interviews, and work product samples.
- (4) **Best Qualified Candidates.** Those applicants who possess and can demonstrate a higher level of knowledge, skills, and abilities, or competencies in relation to the other applicants for an individual vacancy.
- (5) **Candidate Evaluation Panel.** Upon a demonstrated business need for an alternative method for rating and ranking candidates, the Department may convene a Candidate Evaluation Panel. The Panel will consist of 3-5 members, including the servicing HR Specialist and members at the

same or higher grade familiar with the duties of the position who shall independently evaluate, in detail, the candidate's approach, experience, technical competency, and commitment. The Panel shall determine the Referral Certificates.

- (6) **Career Ladder.** The range of grades for an advertised position in an occupational series or specialization, starting with the lowest level at which an employee can be hired, up to and including the full performance level of the position.
- (7) **Career Transition Assistance Plan (CTAP).** An agency's Career Transition Assistance Plan (CTAP) provides intra-agency selection priority for the agency's eligible surplus and displaced employees. Subpart F of 5 CFR 330 sets forth minimum requirements for agency plans and requirements for CTAP selection priority.
- (8) **Competitive Placement Procedures.** The procedures for merit promotion and internal placement as set forth in this Article.
- (9) **Conditions of Employment.** Solely in the Merit Staffing Policy, Conditions of Employment refers to requirements of a position specific to the environment in which it operates. An employee must possess and/or be able to meet those requirements within the first ninety (90) days of employment, and agree to maintain those that are critical to the success of the position. Without them, the employee would be unable to execute the duties of the position, such as, security clearances, etc.
- (10) **Change to Lower Grade.** The change of an employee, while serving continuously within the Department:
 - (a) To a lower grade when both the old and the new positions are under the General Schedule or under the Wage Grade Schedules; or
 - (b) To a position with a lower rate of pay when both the old and the new positions are under the same type wage schedules, or in different pay method categories.
- (11) **Delegated Examining Candidate.** A person applying for a vacancy that is announced under authority that the Office of Personnel Management (OPM) has delegated to the Department to examine applications from applicants who are outside the Federal government or are non-status Federal employees. However, status candidates may also apply for these positions and should refer to OPM's definition of Delegated Examining Vacancy.
- (12) **Detail.** A detail is the temporary assignment of an employee to a different position or to a different set of duties for a specified period, with the employee returning to their regular duties at the end of the detail, as the employee continues to be the incumbent of the position from which detailed.
- (13) **Evaluation Criteria.** The knowledge, skills, and abilities or competencies (KSACs), derived from the job analysis, which are needed for successful performance in the position to be filled and are used to determine the best qualified applicants for the position.

- (14) **Full Performance Level (FPL).** The highest grade or known promotion potential of a given position. In the recruitment process, FPL indicates the highest targeted grade level without further competition.
- (15) **Interagency Career Transition Assistance Plan (ICTAP).** The Interagency Career Transition Assistance Plan (ICTAP) provides eligible displaced bargaining unit employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective permanent competitive service workforces.
- (16) **Job Analysis.** The systematic procedure for gathering, documenting, and analyzing information about the content, context, and requirements of a job. The process identifies the basic duties and responsibilities, KSACs, and selective placement factors essential to perform the duties of the position, and provides the foundation for the development of all assessment tools.
- (17) **Known Promotion Potential.** The projected full-performance level of a position to which an employee may be non-competitively promoted based on a prior selection through competitive procedures.
- (18) **Non-Competitive Promotion.** A promotion without current competition when:
- The employee was previously appointed or competitively selected for an assignment intended to prepare the employee for the position currently being filled.
 - The employee's position is reclassified to a higher grade because of additional duties and responsibilities.
 - The employee's position is upgraded without significant change in its duties and responsibilities due to issuance of a new classification standard or the correction of a prior classification error.
- (19) **Position Change.** A promotion, change to lower grade, or reassignment made during an employee's continuous service within the Department.
- (20) **Promotion.** The change of an employee, while serving continuously within the Department:
- To a higher grade when both the old and new positions are under the General Schedule or under the Wage Grade Schedule; or
 - To a position with a higher rate of pay when both the old and the new positions are under the same type wage schedule, or in different pay method categories.
- (21) **Qualified Candidates.** Those candidates who meet the minimum qualifications standards in the Office of Personnel Management (OPM) Qualification Standards Handbook or approved by OPM and any appropriate selective placement factors for the position.

- (22) **Reassignment.** The change of an employee from one position to another, within the Department, without promotion or demotion.
- (23) **Selective Placement Factor.** Selective factors are knowledge, skills, abilities, or special qualifications that are in addition to the minimum requirements in a qualification standard, but are determined to be essential to perform the duties and responsibilities of a particular position. Applicants who do not meet a selective factor are ineligible for further consideration. An example of an appropriate selective factor could include the ability to speak, read, and/or write a language other than English.
- (24) **Merit Promotion Certificate.** A list of the best qualified candidates, identified through competitive placement procedures, for use by a selecting official in filling a vacancy.
- (25) **Subject Matter Expert (SME).** An individual who is a bona fide expert with comprehensive knowledge of the duties and responsibilities necessary to perform a specific job. The role and responsibility of the SME is to provide a recommendation based upon their expertise in regards to relevant information needed during the recruitment process. The SME must be a neutral party and does not anticipate applying for consideration for the position being advertised. A SME may serve individually or with other experts on an ad-hoc basis. At no time should the SME be the selecting official.

Section 24.04 - Notification to Union of Staff Vacancies. Upon request, but no more than quarterly, the Department shall provide the Union with a list of approved (funded) positions by program office and a bargaining unit report with employee names, job titles and their locations. It is understood by the parties that the positions listed may not be filled. The parties also acknowledge the separation list does not constitute vacancies in the Department. As vacancy announcements open, are modified, or are canceled, the Department will notify the designated representative of the Council via e-mail.

Section 24.05 - Simultaneous Consideration in Filling Unit Vacancies.

- (1) The Department agrees that vacancies open to Delegated Examining candidates will be advertised separately to status candidates, and the Department will separately rate, rank, and assess, as applicable, both internal and external candidates for such vacancies.
- (2) For vacancies open to Delegated Examining and status candidates, Merit Promotion Certificates will be issued to the selecting official at the same time or prior to DEU certificates.
- (3) When advertising term or temporary vacancies or promotions exceeding 120 days, the Department will advertise the vacancy as a temporary promotion for internal applicants, and a term or temporary vacancy for external applicants, unless doing so is a violation of law, rule, or regulation. Upon request, the Department shall provide the Union with a written explanation as to why a vacancy could not be advertised as a temporary promotion for internal applicants.
- (4) Positions with promotion potential shall be advertised internally up to and including the Full Performance Level.

Section 24.06 - Actions Covered by Competitive Procedures. Competitive placement procedures shall apply to the following types of personnel actions concerning bargaining unit positions, unless excluded by Section 13.07:

- (1) Promotions;
- (2) Temporary promotions exceeding one hundred and twenty (120) days;
- (3) Details to higher graded positions or to positions with known promotion potential for more than one hundred and twenty (120) days;
- (4) Selection for training which is given primarily to prepare an employee for advancement and is required for promotion;
- (5) Reassignment or demotion to a position with more promotion potential than the employee's current position;
- (6) Transfer from another Federal agency to a higher graded position; and
- (7) Reinstatement or promotion to a permanent or temporary position at a higher grade than the highest non-temporary position held in the competitive service from which the employee was not demoted for cause or performance.

Section 24.07 - Actions Not Covered by Competitive Procedures. Nothing in this Agreement shall preclude the selection or placement of a person entitled to a higher order of consideration by law or Government-wide rule or regulation. In addition, the following actions are specifically excluded from coverage of the competitive placement procedures of this Agreement.

- (1) **Appointments.**
 - (a) Appointment from an Office of Personnel Management register or a register under the Department's delegated examining and/or Schedule B appointment authority;
 - (b) Reinstatement to a grade or position previously held by an employee under a non-temporary appointment from which the employee was not demoted for cause or performance, and meets the qualification standards;
 - (c) Reinstatement from the Department's Reemployment Priority List (RPL) for a position at a higher grade than the one last held in the competitive service;
 - (d) Transfer from another Federal agency to a grade or position previously held by an employee under a non-temporary appointment from which the employee was not demoted for cause or performance, and meets the qualification standards;
 - (e) Conversion to competitive appointment of an employee who has successfully satisfied

the specific requirements of a special employment program. Examples of such programs include:

- Veterans' Recruitment Appointment; and
- Pathways Program.

- (f) Action to fill a position which has no greater promotion potential than GS-5 in Headquarters; GS-4 in the Field.

(2) Position Changes - Permanent.

- (a) Reassignment or demotion to a position with no greater promotion potential than the employee's current position; including to a position that might require a training plan and/or qualifications waiver;
- (b) Promotion resulting from the upgrading of a position without significant changes in the duties and responsibilities due to issuance of a new classification standard or the correction of an initial classification error;
- (c) Promotion resulting from an employee's position being reclassified at a higher grade because of additional duties and responsibilities;
- (d) Career promotion without current competition when an employee was previously appointed or competitively selected for an assignment intended to prepare the employee for the position to be filled;
- (e) Repromotion to a grade or position previously held by an employee under a non-temporary appointment, and from which the employee was not demoted for cause or performance, and meets the qualification standards;
- (f) Promotion resulting from priority consideration granted because of failure in the past to receive proper placement consideration;
- (g) Promotion through career ladders after employees are converted from a special employment program to career or career-conditional;
- (h) A position change permitted by reduction-in-force regulations;
- (i) Placement of an employee who failed to satisfactorily complete a supervisory/managerial probationary period; and
- (j) Permanent promotion of an employee competitively selected for temporary assignment, provided the initial announcement stated that a permanent promotion could result.

(3) Position Changes - Temporary.

- (a) Temporary promotions of one hundred twenty (120) days or less; and

- (b) Details of one hundred twenty (120) days or less to higher-graded positions or to positions with known promotion potential.
- (4) Excepted service appointments under the authority of 5 CFR 213 are not covered by competitive service procedures under 5 CFR 335. Nevertheless, post-appointment, excepted service bargaining unit employees shall be included in the **merit promotion program**.

Section 24.08 - Locating Candidates and Publicizing Vacancies. Vacancies in the bargaining unit which are to be filled by competitive placement procedures shall be announced on USAJOBS. The procedures described below shall be followed.

- (1) **Minimum Area of Consideration.** Except under limited circumstances the minimum area of consideration shall be HUD-wide. The minimum area of consideration may be limited to an organizational unit if budgeting or staffing allocation constraints will not allow consideration of applicants from other sources. Regardless, CTAP employees will be eligible for HUD-wide consideration. When these conditions exist, the Selecting Official and HR must justify that the position needs to be filled and that current or anticipated resources preclude filling the position from outside the unit. This justification shall be made available to the Union, upon request.
- (2) **Vacancy Announcements.** Vacancy announcements shall include at a minimum the following information:
 - (a) Announcement number and opening and closing dates;
 - (b) Title, series and grade of the position;
 - (c) Number of vacancies to be filled;
 - (d) Geographic and organizational location;
 - (e) Summary statement of the principal duties and responsibilities;
 - (f) Minimum Office of Personnel Management (OPM) qualifications and eligibility requirements for each grade level;
 - (g) All selective placement factors;
 - (h) Summary statement of the evaluation method and criteria, including relative weights, to be used to rate and rank candidates. The criteria shall be expressed in terms of knowledge, skills, abilities and other competencies (KSACs);
 - (i) Description of known promotion potential, if any;
 - (j) Permanent or temporary nature and, if temporary, the duration and whether the assignment can be made permanent;

- (k) The area of consideration;
- (l) Coverage of position under the Fair Labor Standards Act (FLSA);
- (m) Whether or not position is in the bargaining unit;
- (n) Where additional information may be secured;
- (o) What constitutes an appropriate application;
- (p) A statement on Equal Employment Opportunity;
- (q) Instructions on how to apply, including information on alternative methods and the deadline for submission of complete application package;
- (r) Description of recruitment, retention or relocation incentives being offered (if applicable);
- (s) Statement regarding whether relocations Will, Will Not, or May be Paid;
- (t) Probationary period requirement;
- (u) Background investigational requirements;
- (v) Time in Grade requirements;
- (w) Accreditation of education statement;
- (x) Qualification requirements must be met within 30 days of announcement closing date; and
- (y) Benefits, including HUD-specific, such as options for teleworking, flexible work schedules, etc.;

(3) **Posting Periods.**

- (a) The number of days that a vacancy announcement is open shall be determined by the level of difficulty in recruiting qualified candidates. The opening and closing dates shall be specified on the vacancy announcement. All vacancy announcements shall be open a minimum of ten (10) business days.
- (b) When solicitation for the normal posting period and area would be clearly impractical because of extenuating and unique circumstances (e.g., budgetary limitations, FTE

limitations), the posting period may be shortened to a minimum of five (5) business days. The merit staffing record must contain complete documentation explaining the circumstances.

- (4) **Reposting, Extension and Cancellation.** If a vacancy announcement has been posted and any changes or corrections are necessary, an amended announcement shall be posted citing the change(s). Posting periods may be extended. Changes or corrections will not require original applicants to reapply or submit additional documentation in order to be considered. For cancellations, applicants will receive a notification that the announcement has been cancelled and applicants will be required to reapply to any subsequent announcements.
- (5) **Affirmative Marketing.** The Department will employ affirmative marketing and outreach methods to achieve a diverse workforce consistent with Article 9 of this Agreement and in accordance with the Federal Equal Opportunity Recruitment Program and hiring policies described in its MD-715 reports. Furthermore, the Department will meet its obligation to affirmatively hire, place, and advance veterans with disabilities.

Section 24.09 - Employee Applications.

- (1) **Filing an Application.** To be considered for a vacancy, an employee must file an appropriate application (as specified in the announcement).
- (2) **Full and Complete Information.** An employee is responsible for providing full and complete information as follows:
 - (a) The employee should identify the announcement number and position title.
 - (b) The employee may submit a resume or any other form as permitted by OPM.
 - (c) The employee's resume should reflect the relevant work experience and qualifications that the applicant possesses.
 - (d) The employee may describe any training or outside activities related to the vacancy.
 - (e) All pages of the most recent performance appraisal shall be submitted. In the event a performance appraisal for the most recent year is unavailable or there has not been an appraisal within the past twelve (12) months, applicants must use the most recent performance appraisal available. Along with the most recent performance appraisal available, the applicant must provide a statement in the application package that the current year performance appraisal of record is not available. Provided a performance appraisal and statement is submitted, the employee will not be deemed ineligible.
 - (f) Other information required by the announcement.

- (3) **Failure to Provide Information.** Failure to provide any necessary and relevant information required by the vacancy announcement shall be disqualifying.
- (4) **Electronic Application.** In accordance with this Agreement, the Department will give employees access to Department computers to complete automated applications under this article, provided that this is done in moderation with respect to time and costs, and does not interfere with the performance of official duties. The Department agrees that appropriate limited personal use for completing electronic applications during regular duty hours does not constitute a misuse or violations of the Limited Personal Use Policy.
- (5) **Time Limits.** Applications submitted to individual announcements shall be accepted if they are received by 11:59 p.m. ET of the last open day of the announcement.
- (6) **Upward Mobility Forms.** If an Appraisal of Potential HUD-832 form is required to be completed by a HUD evaluator for an application and there is a delay in that rater completing the form, the employee can have another supervisor, associate, etc. complete the form.

Section 24.10 - Candidate Evaluations.

- (1) **Job Analysis/Development of Assessment Criteria.** Job Analysis is the systematic procedure for gathering, documenting, and analyzing information about the content, context, and requirements of a job. The process identifies the basic duties and responsibilities, KSACs, and selective placement factors essential to perform the duties of the position, and provides the foundation for the development of all assessment tools. The analysis must be conducted prior to each vacancy announcement. This analysis will be conducted by the Department based upon the position description and classification standards.
 - (a) All assessment tools for the purpose of rating and ranking, including the occupational questionnaire, will be based on a job analysis, and written in plain language and will not contain government-specific acronyms or terminology. In addition, the questions and/or the terminology used in the Occupational Questionnaire cannot be tailored to the Area of Consideration of the vacancy.
 - (b) The assessment tools shall be reviewed to ensure the following: qualifications are properly assessed; competencies and tasks are job-relevant; and criteria and rating scales reflect the major duties in the position description. Assessment tools shall make meaningful distinctions among applicants.
- (2) **Determining Minimum Qualifications.**
 - (a) The minimum qualification standards prescribed by the Office of Personnel Management and, in addition, selective placement factors, if any, identified as essential to satisfactory job performance, shall be used to determine basic eligibility of candidates for competitive placement consideration.

- (b) Minimally Qualified candidates are determined based on their self-assessment of their experience based on the specialized experience as identified in the vacancy announcement and on the Occupational Questionnaire. Additionally, selective placement factors must also be met in order to be minimally qualified.
- (c) To be eligible for promotion or placement, candidates shall meet the minimum qualification standards prescribed or approved by the Office of Personnel Management (OPM) and selective placement factors identified as essential for successful performance within thirty (30) days after the closing date of the announcement or thirty (30) days from the cutoff date for Open Continuous announcements.
- (d) Applicants shall be notified upon determination of failure to meet minimum qualifications.
- (e) The Department requires that an employee certify that all the information provided in the application is true, to the best of their knowledge.
- (f) The employee's application must generally demonstrate the accuracy of the minimum qualifications included in the questionnaire or assessment tool.

(3) **Rating and Ranking of Candidates and Merit Promotion Certificates.**

- (a) Rating is the process of evaluating minimally qualified applicants against predetermined job related criteria.
- (b) Qualified candidates shall be rated through their responses to assessment tools to determine their KSACs. KSACs must be demonstrated by the answers provided in the assessment tool.
- (c) Ranking is another step in the candidate evaluation process involving the comparison of QUALIFIED candidates based on rating with each other to determine if there is a natural break. The employees with the top scores are considered to be the BEST QUALIFIED.
- (d) All qualified candidates shall be rated and ranked against the criteria in an assessment tool and the top 10 candidates will be validated by a Human Resources Specialist or merit staffing Candidate Evaluation panel. When there are ten (10) or fewer qualified candidates at any one grade level, all candidates may be referred to the selecting official. The certificate sent to the selecting official shall be in alphabetical order.
- (e) Determination of the number of BEST QUALIFIED candidates referred shall be based on the natural break between the relative ranking of QUALIFIED candidates, not to exceed ten (10) names. The lowest ranking candidate above the break should be able to perform the job with substantially equal success as all candidates with higher scores. In case of ties, candidates with the same numerical ranking shall be considered as one referral and

all such candidates shall be referred. Only in these circumstances can the Merit Staffing Certificate contain more than ten (10) candidates.

- (f) Applicants are sorted and referred to the selecting official by areas of consideration/appointment types, and grade, as appropriate.

(4) **Candidate Evaluation Panel.**

- (a) The Department may convene a candidate evaluation panel to rate applicants that have been determined minimally qualified by an HR Specialist. Prior to convening the panel, a demonstrated business need for the alternate evaluation method must be justified in writing and kept in the vacancy case file.
- (b) The Candidate Evaluation Panel should consist of three (3) to five (5) members including:
 - i. The servicing HR Specialist who convenes and leads the panel as a non-voting technical advisor. The HR Specialist has the responsibility to ensure the evaluation process adheres to Merit System Principles and avoids Prohibited Personnel Practices.
 - ii. The voting members will be SMEs at the same or higher level grade as the full performance level in the announcement.
 - iii. A staff member from ODEEO may be requested to serve as a panel member to ensure the Department's EEO and diversity goals are upheld. In absence of an ODEEO staff member, the servicing HR Specialist will assume this role.
 - iv. A candidate evaluation panel will not be convened to settle rating disputes between the selecting official and HR.
 - v. In absence of a consensus among panel members, HR retains the right to make final qualifications determinations.

- (5) **Extending the Search.** If it is determined that there are not twenty (20) applicants the closing date may be extended.

- (6) **Validity and Reuse of Merit Promotion Certificate.** Selections can be made from a previously issued referral certificate for a period of 120 days after the certificate issue date as long as all the qualifications and eligibilities remain the same. A new list will not be issued for the same position within a period of 120 days, unless all the candidates on the current/previous list have within a period of 120 days, unless all the candidates on the current/previous list have been exhausted.

Section 24.11 - Selection Consideration. The Department shall ensure that the evaluation of candidates complies with this Agreement and shall forward the Merit Promotion Certificate to the selecting official.

- (1) **Action by Selecting Official.** The selecting official is entitled to select, or not select, any of the candidates on the Merit Promotion Certificate. The selecting official is expected to make a selection normally within fifteen (15) days following receipt of the certificate. With justification from the Selecting Official, Human Resources may grant a fifteen (15) day extension. Any additional extensions must be approved by the CHCO or designee.
- (2) **Interviewing Candidates.**
 - (a) The selecting official has the discretion to interview any number of candidates on a certificate, unless there are three (3) or fewer candidates. If there are three (3) or fewer candidates, the selecting official or designee must either interview all or none of the candidates.
 - (b) Telephone interviews are acceptable for candidates located outside of the local commuting area or if the candidate is unable to attend an in-person interview.
 - (c) Supervisors shall release employees for such interviews for the necessary length of time.
 - (d) Interview questions and interviewing rating criteria will be objective and relate to the knowledge, skills, abilities and characteristics of the vacancy announcement and position description.
 - (e) When a structured panel is utilized for interviewing purposes, all interview notes will be retained in the Vacancy Case File for three (3) years. In cases where there is an individual interviewing official and interview notes are taken, they will be retained by the interviewing official for three (3) years.
- (3) **Notification to Candidates.** When a selection is made, the employee shall be notified and a release date arranged by the Department. Candidates who were certified but not selected shall be promptly advised of their non-selection by the Department, but no later than fourteen (14) days after a final offer is accepted by the successful applicant.
- (4) **Effective Dates of Actions.**
 - (a) An employee selected for a position shall be released from the former position at the earliest practicable date after selection, but not later than thirty (30) days from the date of selection.
 - (b) When an employee is competitively promoted, and the effective date of the promotion shall normally be no later than the beginning of the second complete pay period following the date of selection.

- (5) **Promotion Pay Rates.** Bargaining unit employees promoted to a position in a higher grade shall be paid in accordance with OPM Pay Setting Regulations.

Section 24.12 - Priority Consideration.

- (1) **Definition.** Priority Consideration is a special placement consideration for an appropriate vacancy given to an employee who did not receive proper consideration in a prior competitive placement case due to a documented procedural, regulatory, or program violation.
- (2) **Appropriate Vacancy.** An appropriate vacancy is the next available position for which the employee is interested and fully qualified and which has the same or less promotion potential as the one for which proper consideration was not given.
- (3) **Entitlement.** An employee is entitled to only one (1) Priority Consideration for non-competitive placement for each instance in which they were previously denied proper consideration. An employee shall exercise their entitlement to Priority Consideration for a specific, advertised vacancy by written request to the servicing personnel office staffing the vacancy. If not exercised within two (2) years from official notification, an employee's entitlement to Priority Consideration shall expire.
- (4) **Processing.** The procedures for processing Priority Consideration(s) shall be:
- (a) Before referring a Merit Promotion Certificate to the selecting official, the Department shall provide the selecting official with a list of employees interested and eligible for Priority Consideration.
 - (b) The selecting official shall interview and give bona fide consideration to those employees on the Priority Consideration list.
 - (c) The Department shall notify the employee of non-selection under Priority Consideration. Non-selection under this Section shall not preclude an employee from subsequent selection from a Merit Promotion Certificate for the same position provided that the employee has submitted all the required application documents, supplemental statements and performance appraisals.
 - (d) Upon request, the employee shall be provided the reasons for non-selection.

Section 24.13 - Career Ladder Promotion. Through regular interaction between the supervisor and employee, the employee shall further develop the skills and knowledge to perform at the next higher grade level for a career ladder position.

- (1) Employees in career ladder positions shall be promoted upon:
- (a) Having a current rating of record that is Fully Successful or higher. No employee may receive a career ladder promotion who has a rating below Fully Successful on a critical element that is also critical to performance at the next higher grade of the career ladder.

For purposes of a career ladder promotion, the employee's mid-year rating of less than fully successful on a critical element is grounds to hold up a career ladder; such a rating is grievable and resolution of the grievance will determine whether the employee should have received the career ladder and whether back pay and a back dated promotion is appropriate;

- (b) One year of experience at a level of difficulty and responsibility equivalent to the grade directly below the level of promotion; and
 - (c) A current rating of record that is "Fully Successful" (level 3) or higher, including a rating of "Fully Successful" (level 3) or higher on critical elements that are also critical to performance at the next higher grade of the career ladder.
- (2) Throughout the time in grade eligibility period, employees are encouraged to request feedback from their supervisor on their performance towards their career ladder promotion. The Department has until sixty (60) days prior to the anniversary date to notify the employee if a promotion shall or shall not be recommended, and if not, provide a written explanation. For situations that are beyond the Department's control, e.g. government shutdown or furlough, this provision does not mandate automatic promotion. This notice shall contain an explanation of those aspects of the employee's performance which failed to meet the Fully Successful level of current performance or performance below Fully Successful on a critical element that is also critical to performance at the next higher grade of the career ladder. The notice will include a statement that if the employee demonstrates Fully Successful or higher performance within the next sixty (60) days, the career ladder promotion shall be granted at that time. Failure to provide notice does not overcome the requirement that an employee's performance be fully successful to receive a career ladder promotion. If the employee is Fully Successful but the supervisor doubts the ability of the employee to perform at the next level, the supervisor may advise the employee of their specific doubts.

Section 24.14 - Information.

- (1) **Information on Merit Promotion Certificates.** Upon request, the Union shall have access to information on the Merit Promotion Certificate not prohibited from disclosure by law, Government-wide regulation, and the Privacy Act.
- (2) **Information on Selection.** Upon request, a list of persons selected, reassigned or promoted to positions through competitive procedures within the preceding quarter shall be given to the Union.

Section 24.15 - Union-Management Review of Competitive Placement Actions. The Merit Promotion case file will be retained in accordance with applicable record retention policies, laws, rules, and regulations. This file, to be known as the Vacancy Case File, sufficient to all for reconstruction of the competitive action will be kept for a minimum of three (3) years, unless there is a grievance or complaint pending on the particular action, in which case the file will be kept pending final decision of the grievance or complaint.

Upon request, appropriate Union and Department representatives shall review any closed vacancy case file pertaining to bargaining unit employee positions. The Union is entitled to receive information necessary for the representation of bargaining unit employees. The information provided will not include Social Security Numbers, home addresses, birthdays, or any other similar protected information. The disclosure of such information shall be in accordance with Government-wide rule, regulation, the law, and the Privacy Act. Reviews shall take place within ten (10) days, after the Department has received a formal request from the Union following the competitive placement action.

Section 24.16 - Corrective Action. If a violation of the competitive placement procedures of this Agreement is officially determined to have occurred, the Department shall take prompt action to rectify the situation. The nature and extent of the corrective action(s) to be taken shall be determined on the basis of all the facts in a case, to the equitable and legal rights of the parties concerned, and to the interest of the Government.

Section 24.17 - Internal Placement with Relocation Allowances.

- (1) The parties agree that if a vacancy announcement has been issued stating that relocation allowances are not authorized and the Authorizing Official makes a determination that authorization of the allowances is in the best interest of the Government, the vacancy announcement will be amended consistent with this article to provide applicants no less than a period of five (5) business days.
- (2) When a vacancy announcement is advertised both internally and externally, the relocation expenses determination will be identical for both.
- (3) The Department agrees that when vacancies with the same grade, series, location, office, KSACs, and position description are advertised at the same time, the relocation expenses determination will be identical for such vacancies.
- (4) The determination whether or not to authorize relocation allowances remain at the discretion of the Department, except where such allowances are mandatory.

Section 24.18 - CTAP and ICTAP for Bargaining Unit Employees.

- (1) **CTAP.** The Department will afford a selection priority to CTAP-eligible bargaining unit employees who apply for Department positions and are determined to be well qualified for the specific vacancy. The Department will issue an Article 49 notice upon completion of the new CTAP/ICTAP policy with the Union. In the event of mid-term negotiations regarding a proposed Reduction in Force or Reorganization, CTAP procedures and appropriate arrangements are subject to bargaining.
- (2) **ICTAP.** The Department will provide the appropriate documentation to ICTAP eligible bargaining unit employees for their use in exercising any ICTAP-eligibility. Employees applying for positions outside of the Department may use the ICTAP selection priority program and are bound by the procedures of that agency.

ARTICLE 25 POSITION CLASSIFICATION

Section 25.01 - General. The rights and obligations of the employees, Union and Department are contained in 5 CFR Part 511 and Public Law 95-454, Title 8, Subchapter 6. Position descriptions will be classified based on OPM's classification standards.

Section 25.02 - Position Descriptions. All employees are entitled to a complete and accurate position description, which clearly and concisely states the major and grade-controlling duties, responsibilities, and supervisory relationships to the position. This will be provided to the employee at the time of assignment and upon request.

The phrase "other duties as assigned" and other phrases having similar meaning, as used in position descriptions, means duties related to the duties of the position. "Other duties as assigned" are not intended to become grade controlling.

Upon request, the Union will be provided the opportunity to review, make recommendations and present evidence concerning a change in a position description.

When the accuracy of the official position description is questioned by the employee, the employee and/or their representative is encouraged to discuss the issue with the supervisor or other Departmental officials. The supervisor may decide to have the position reviewed and reevaluated if it is determined that the position description is inaccurate. If the matter cannot be resolved and the employee wishes to pursue the matter further, the employee or their representative may file a grievance as provided for in this Article.

Section 25.03 - First Level Appeals/Desk Audits. A desk audit is a review of a position description by a Human Resources Specialist (within the Department or OPM) to ensure the position's title, series and grade is properly classified in accordance with the appropriate classification standards. Desk audits do not address the accuracy of a position description. Desk audits may be requested by the employee in the position, or the supervisor. An employee may request a desk audit by notifying the immediate supervisor, the appropriate Human Resource Specialist or their Administrative Officer. The request must be in writing and include:

- Your name, mailing address, and commercial office telephone number;
- The present classification of your position and the requested classification;
- The name of the department and the office in which you work;
- The city where you are employed and the installation's mailing address;
- A copy of your official position description and either a statement affirming that it is accurate or a detailed explanation of the inaccuracies and an explanation of the efforts made to correct the position description;
- Any additional information about the position that will aid in understanding it; and
- Arguments supporting the requested classification by referencing the appropriate classification standards.

The official should submit the employee's request to the Office of Human Capital Services (HCS) within 3 business days. Upon receipt of notification, HCS will acknowledge receipt of the request to the employee, or the employees designated Union representative, within 5 business days. The audit shall be performed within 60 days of the request. The employee is entitled to Union Representation. HCS will complete the analysis and render a decision within 45 days to the employee or the employees designated Union representative. This timeframe may be extended by mutual consent. The Union shall receive a copy of all final decisions with personal information redacted. Whenever a desk audit is to be conducted, the employee or the employee's designated Union representative will receive a minimum of 7 business days notice. Desk audits will be performed on site or may be performed by telephone.

When a classification audit is in process, the Department will not reassign duties if the purpose of the reassignment is to avoid reclassification of the position.

Section 25.04 - Departmental Classification and Position Management Reviews.

1. Management shall advise the Union of the Department's position classification and position management reviews, activities and objectives. Additionally, The Department will within 10 days notify the Union in writing of any changes to be made in the duties and responsibilities of positions held by bargaining unit employees due to reorganization, or
2. When changes in position classification standards result in classification changes.
3. If the Department initiates a desk audit, the Department will provide at least a 30 day notice of the desk audit to the Union and the employee prior to commencing such action. The notices will identify the position, the reason the audit is being conducted, and a proposed time for the audit.

Section 25.05 - Second level Classification Appeal. Upon receiving the classification decision of a desk audit, an employee, or the employee's designated representative, may appeal the classification decision to the Department or they may appeal directly to the Office of Personnel Management (OPM). This request must also be in writing within 45 days of the initial decision and must contain the same information required above. However, if the appeal is made to OPM, the employee may not appeal to the Department and OPM's findings are final. Upon receiving a written request for a formal classification appeal from the employee, the Department will give the employee a minimum of 7 days notice prior to the review. The employee has a right to Union representation and may notify the union representative in order to assist in the preparation and presentation of the audit.

The employee or the employee's designated Union representative will receive a written decision of the findings, including an analysis of their position within 45 days from the completion of the audit.

The Department will not reduce pay or grade while an appeal is pending.

Section 25.06 - Classification Changes: Classification changes that result in any changes in grade or pay shall be in accordance with 5 CFR 511.703. A promotion resulting from a

desk audit/appeal should be effected no later than the beginning of the second pay period following a management decision to promote the employee(s).

Section 25.07 - Preparation Time: Employees preparing for a desk audit will be granted a reasonable amount of preparation time, not to exceed eight (8) hours.

ARTICLE 26
DETAILS AND TEMPORARY PROMOTIONS

Section 26.01 - Definitions.

- Detail - A detail is the temporary assignment of an employee to a different position or a different set of duties for a specified period, with the employee returning to his/her regular duties at the end of the detail, as the employee continues to be the incumbent of the position from which detailed.
- Temporary Promotion - A temporary promotion is a temporary assignment to a different position or a different set of duties for a specified period at a higher grade with higher pay than that of the employee's permanent position.

Section 26.02 - Documentation. Details in excess of thirty (30) days shall be documented and maintained as a permanent record in the employee's Official Personnel Folder (OPF). In order for an employee to be recognized for the work they perform, the employee's performance in a detail or temporary promotion should be considered in the employee's annual performance assessment in accordance with performance regulations and guidance.

Section 26.03 - Appropriate Use of Detail or Temporary Promotion. Details or temporary promotions shall be used to meet temporary needs of the Department's work program when necessary services cannot be obtained by other means. This includes, but is not limited to:

- (1) Meeting unusual workload demands;
- (2) Special projects or studies;
- (3) Change in mission or organization;
- (4) Employee absences;
- (5) Cross-training or other skill-training objectives;
- (6) Succession planning; and
- (7) Emergency response or preparedness

Management shall consider employees who indicate an interest in a detail. Where Management determines that a detail may best be accomplished by utilizing volunteers, it shall announce the detail by electronic notice and consider those who express an interest.

Section 26.04 - Details to Higher Grade Positions. A detail exceeding one hundred twenty (120) days to a higher grade position or to a position with known promotion potential shall be made under competitive placement procedures as provided by law.

Section 26.05 - Temporary Promotions. When qualified bargaining unit employees are placed temporarily in a higher grade for a period in excess of sixty (60) consecutive days, the assignment will be made via temporary promotion. Employees who are temporarily promoted must meet all qualifications for the promotion and for the position. If the detail exceeds one hundred twenty (120) days, it shall be done via competitive placement procedures.

Section 26.06 - Union Officials: Legitimate business reasons must exist for the Department to detail or temporarily promote a union official to another position when it creates a conflict with their official representational duties.

ARTICLE 27 LATERAL MOVEMENT

Section 27.01 – General. The Parties recognize the value of implementing a program that will facilitate succession planning, improve workforce flexibility, and create a positive relationship between management and employees. The parties agree that flexibility, which may result in changing duties of employees through rotations, details, or permanent reassignments, further accomplishes the Department's mission. The Department and the Union recognize that lateral movement may be used as one option to facilitate resolution of workplace disputes.

Section 27.02 – Rotational Assignments. The Department shall permit employees to take temporary assignments that provide them an opportunity to rotate through different positions for the sake of employee development, and cross-training in accordance with Departmental policy and procedure. The Department will administer a rotational assignment program.

Section 27.03 – Internal Announcements. Prior to a Merit Staffing announcement, the Department may choose to advertise positions within the Department which could result in the lateral reassignment of employees to positions with no greater promotion potential than the employee currently holds. This program is not to be confused with the Merit Staffing Handbook requirements. The assignments covered by this article are lateral assignments that do not require competition and do not lead to promotions, except promotions as permitted by law.

Section 27.04 – Employee Referrals. The Department shall refer to hiring supervisors each employee who responds to a specific announcement as long as the employee meets the stated minimum qualifications without rating and ranking. Employees may not be limited based solely on their occupational series as long as they otherwise meet all requirements. An employee cannot be placed in a different interval series, from a single grade series to a two-grade interval series unless allowed by law, rule or regulation. Employees may be detailed or temporarily assigned to another position at a higher grade in accordance with statutes, laws, regulations, Departmental policies, and the collective bargaining agreement.

Section 27.05 – Effective Date of Reassignments. Supervisors and managers may delay the effective date of a reassignment so that the selected employee may complete previously assigned work, and may not veto a permanent reassignment. Delays for reassignments shall not exceed 30 days from the date of selection. Employees will obtain the approval of their supervisor prior to applying for a rotational assignment. Managers will not unreasonably withhold approval of these requests.

Section 27.06 – Limitations on Lateral Movements. There shall be no limitation, other than the employee's qualifications, on reassignments to different program offices. A supervisor may not hinder an employee's permanent placement.

Section 27.07 – No Adverse Actions. There shall be no adverse actions taken against employees on the basis of their participation or expressed interest in any aspect of lateral movement activities.

Section 27.08 – Work Schedules. Employees who are reassigned through lateral movement shall have the same rights to telework and alternative work schedules as other employees in their new office.

Section 27.09 – Implementation. The Department shall provide the Union with proposed guidance for implementing and administering lateral movements, including rotational assignments, within 45 days of the execution of this Agreement. The guidance will be consistent with the terms of the Agreement. Management will solicit comments on the proposed guidance from the Union and incorporate as appropriate.

- (1) Management in partnership with the Union shall market the program in a manner that ensures that all employees and supervisors are aware of its existence.
- (2) Management shall provide guidance about participating in the program as an employee or hiring supervisor accessible through the HUD@Work site and any successor websites, including under the OCHCO and A-Z Tools pages.
- (3) The Department shall encourage and enlist supervisory participation in the lateral movement program, including rotational assignments.

Section 27.10 – Reports. The Department shall provide participation reports to the union regarding programs governed by this article.

ARTICLE 28
MANAGEMENT DIRECTED REASSIGNMENTS TO NEW LOCATION

Section 28.01 – General. This Article sets forth the guidelines for the implementation of management directed reassignments of bargaining unit employees to locations outside of their commuting area. This is not applicable to reductions in force (RIFs). All relocations shall be effected in accordance with law, rule, regulation, and the current collective bargaining agreement.

Section 28.02 – Employee Rights. This Article shall not diminish or waive any rights that bargaining unit employees have under the current collective bargaining agreement, law, rule or regulation. The Department shall not impose any prohibitions or limitations on employee rights, entitlements, or benefits unless expressly prohibited or limited under law or government-wide regulations.

Section 28.03 – Union Notification. Prior to issuing notices to employees of a management directed reassignment to a location outside of the commuting area covered in this article, management will provide the Union a copy of present and planned organizational charts showing the actual employees' relocation, including but not limited to organizational assignment, current position title, new position title, current position pay grade, new position pay grade, and current and planned geographic location of the employees' office(s). The Department shall provide notice according to Article 49 for impact and implementation negotiations for matters not directly addressed in this article.

Section 28.04 – Regulatory Governance and Financial Policies. The Department will notify the Union of any changes to the provisions of this article required by applicable statutes. The following shall include, but not limited to the following entitlements:

- (1) In addition to relocation allowances required under the Federal Travel Regulations (FTR), the Department will also approve the following up to the maximum allowed by the FTR:
 - (a) House-hunting per diem and transportation for the employee and spouse;
 - (b) Temporary quarters subsistence expense;
 - (c) Shipment of up to two (2) privately owned vehicles, if determined to be cost effective in accordance with FTR 302-9.301 and 302.
- (2) The Department will approve all relocation allowances required under the FTR up to the maximum allowed under the regulations. The Department is not obligated to hire relocation services companies, home marketing and property management services. The Department may negotiate with the Union regarding these services in the future.
- (3) The Department recognizes that affected employees may be “under water” on their mortgages (i.e., owe more on a mortgage than the value of the residence at the time of sale). The Department agrees that employees shall suffer no adverse employment impact within the Department, including but not limited to systems access, official travel access, or ethics/conduct for activities outside of the workplace related to the employee’s failure to meet his/her mortgage obligation.

- (4) Service agreements shall not exceed twelve (12) months.

Section 28.05 – Timing of Relocations; Retirement

- (1) Any employee being reassigned to a duty station greater than 50 miles from their current duty station will be provided at least 60 days' notice before being required to report for duty at the new location. If the Department determines that there is a need to relocate an employee in a lesser period of time, then they will renegotiate the employee notice timeframe with the Union.
- (2) Retirement in lieu of acceptance of a directed reassignment to a location outside of the commuting area.
- (a) The Department agrees that if an employee requests and is eligible for retirement within 60 days of the report to duty date to another location, the employee will receive a directed reassignment report date for 61 days after the notice. The subject employee may work from his/her current duty station, or telework in accordance with the current telework policy and CBA, until the report date provided in the notice.
- (b) The Department agrees that if an employee is eligible for retirement within 60 days of a reassignment to another location/report-to-duty date, the employee may use their accrued and earned leave to extend their report date for an additional 30 days.
- (c) Upon request, the Department shall notify all affected employees if they are retirement eligible and their options if they receive notice of a reassignment.
- (d) The Department will consider reasonable requests for relocation extensions from employees who are soon to be retirement eligible.

Section 28.06 – Relocation Delays. The Department shall not require any employee to relocate while the employee is on annual or sick leave, whether short-term or extended, including any leave used under the Family and Medical Leave Act. Leave requests shall be approved following normal procedures.

Section 28.07 – Hardship Reassignments. Affected bargaining unit employees' hardship reassignment requests shall be processed in accordance with the Hardship Reassignment Article. Hardship Requests will be prioritized for a response and all hardship processing shall be completed prior to any employee being relocated.

Section 28.08 – Alternative Work Schedules, Telework, and Reasonable Accommodations

- (1) Relocating employees will keep previously approved alternative work schedules unless a work-related need to change the schedule is established. Any changes to a relocating employee's alternative work schedule shall be in accordance with the current collective bargaining agreement.

- (2) Relocating employees reporting to a new location shall keep their existing telework agreements. Any change in an employee's telework agreement shall be in accordance with the current collective bargaining agreement and if applicable, the HUD Telework Policy.
- (3) 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.
- (4) Approved reasonable accommodations will remain in effect based on continual interactive process, including discussions, when an employee relocates to their duty 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.

Section 28.09 – Miscellaneous.

- (1) The Department agrees that employees who are relocating to a non-AFGE-affiliated office will retain their bargaining unit affiliation with AFGE and their current AFGE Local until the effective date of reassignment. AFGE bargaining unit employees will be granted all provisions subsequently negotiated into and including the actual physical report date to the non-AFGE-affiliated office.
- (2) If an employee is relocating to a non-AFGE affiliated office, the Department will discontinue deduction of union dues from employee paychecks on the date the employee is reassigned to another office, including for employees who are members for less than one year, in accordance with Article 5 (Dues Withholding) of the HUD/AFGE Agreement.
- (3) For each employee who is notified of a directed reassignment to a new location outside the commuting area, the Department will identify the appropriate specialist who will assist them through the steps of the relevant process.
- (4) The Department agrees that errors in locality pay are beyond an employee's control. However, it is the responsibility of the employees to review their Personnel Actions and earnings and leave statements. The Department will take immediate and appropriate action to resolve/correct errors. The Department will notify the employee of any applicable waiver process.

Section 28.10 – No Adverse Impact. There shall be no adverse impact on existing EEO settlement agreements or grievance awards as a result of this article.

ARTICLE 29
TRAINING AND CAREER DEVELOPMENT

Section 29.01 - General.

- (1) It is recognized that training and development of employees is a matter of importance and is clearly in the public interest. The Department agrees to provide the opportunity for and to consider the views of the Union in order to maintain progressive, effective policies and programs designed to:
 - (a) Aid employees in improving performance in their current positions;
 - (b) Provide career mobility and advancement opportunity within the Department;
 - (c) Establish and continue training programs that are supportive of the Equal Employment Opportunity and Affirmative Employment Programs of the Department; and
 - (d) Provide re-training and cross-training to support and maintain Departmental programs and initiatives.
- (2) The Department is responsible for ensuring that all employees receive the training necessary for the performance of their assigned duties.
- (3) The Department shall advise the Council President of the Department's overall training plans and goals, appropriations and allocation to each office no later than 60 days after the appropriations and allocation are received.
- (4) The Department shall consider providing government and non-government sponsored training to employees, upon request.
- (5) Employees training and development will be administered in accordance with all applicable laws, rules, regulations, and the provisions of this Agreement.
- (6) The nomination and/or selection of employees to participate in training and career development programs and courses shall be nondiscriminatory, conducted in a fair and equitable manner and shall not exclude employees due to Union membership or activity.
- (7) The Department shall maintain up to date information about training courses, programs, and seminars conducted or sponsored by the Department as it becomes aware of such opportunities. For training opportunities that are not announced through HUD LEARN or HUD Virtual University, this information shall be made available in such a way as to provide advance notice through HUD@work, Listserv, etc. to all employees in the program area(s). If Management notifies one employee of a training opportunity, Management shall notify all employees in the program area in the same series and grade of the training opportunity. However, Management makes the final determination regarding training assignments.

- (8) Employees will be notified briefly in writing (e.g. email) if their training request or nomination is approved or denied. If denied, upon request the notification will reflect the reason(s) for the denial. To the extent feasible the notice will be provided to the employee prior to the start date of the training.
- (9) When positions are abolished or re-engineered as a result of reorganization, change in mission, budget priorities, work elimination, introduction of new duties, transfer of work, or implementation of new technology, management agrees to provide appropriate training.
- (10) If appropriate based on work volume and the amount of time the employee is participating in training, deadlines and goals in performance elements and standards shall be adjusted to account for the amount of time employees will be participating in training and/or career development programs.
- (11) Participation in training activities or programs does not guarantee employees' eligibility or qualification for a promotion.
- (12) Employees are encouraged to request and discuss training opportunities and needs with their supervisors throughout the year.
- (13) The Department shall encourage training opportunities for employees in positions with no career ladder potential to enhance their careers to the maximum extent feasible. When available, management shall give serious consideration to allow such employees to audit training opportunities offered to higher graded employees if attendance does not require additional funds from the Department and does not negatively affect the mission of the Department.
- (14) Continuing education classes for mission or position qualifications are eligible for departmental training opportunities.

Section 29.02 - Upward Mobility. The Department's Upward Mobility policy/program is established and implemented in accordance with HUD Handbook 951.1 dated December 11, 1998, and this Agreement.

- (1) The Department shall provide training programs in support of employees selected for the Upward Mobility program through the Merit Staffing Procedures outlined in Article 24 of this Agreement. This training shall be directed toward providing the knowledge and skills required by the targeted positions.
- (2) The implementation and effectiveness of the Upward Mobility training program may be reviewed at the local level by the Labor Management Forum(s) and may be discussed, as well, in the local and National Labor Management Forums. Management shall consider

the Union's recommendations concerning improving the effectiveness of the Upward Mobility Program.

- (3) Recognizing the Department's commitment to establish and maintain a well-trained and productive workforce, the Department will continue efforts to implement an effective Upward Mobility Program which contains credible goals or target number of positions for each Program/Support Area.

Section 29.03 - Development Programs. The current policies and procedure for Development programs such as, the Emerging Professional Program (EPP), Emerging Leaders Program (ELP), and Leadership Development Program (LDP) are no longer in effect. The parties agree to bargain the programs or successor program(s), including policies and procedures prior to implementation under the provisions of Article 49. Employees who are current or former participants in these programs are still subject to the provisions of the existing programs.

Section 29.04 - Training Committee. In accordance with Article 3 of this Agreement the Labor Management Forum(s) shall serve as the training committee or may be a subcommittee to the applicable LMF.

Section 29.05 - Training Criteria.

- (1) The Department may provide training to non-temporary employees that in certain instances may lead to promotion. The Department will follow its merit staffing procedures when selecting a non-temporary employee for such training when selecting non-temporary employees for training that permits non-competitive promotion after successful completion of the training.
- (2) Unless specified or negotiated otherwise all training requests shall be processed in accordance with applicable Departmental policy, government-wide regulations, and the Government Employee Training Act of 1958, as amended. The Department may use the following criteria. The criteria shall be explained upon request, to employees when developing an Individual Development Plan (IDP) and when approving or developing a training request:
 - (a) Availability of funds;
 - (b) Relationship of the training to the employee's ability to meet or exceed required standards of performance for the employee's current job or for the job which the employee has been selected to fill;
 - (c) Potential use of the training for readily foreseeable developments or events in the Department's programs;
 - (d) Consistency with plans for the employee's career development;
 - (e) Equitable distribution of training opportunities; and

- (f) Expectation that the training could help the employee correct a deficiency in performance.
- (3) The Department, in conjunction with the Union, may develop additional criteria in accordance with government-wide regulations.

Section 29.06 - Individual Development Plans.

- (1) Each employee shall be entitled to voluntarily establish an Individual Development Plan (IDP) to be used as a roadmap for the employee's professional and career development. The IDP shall be submitted to and approved by the employee's supervisor. The IDP is responsive to the needs of the organization and the employee. An IDP may include on-the-job developmental assignments. Self-directed training or development activities may be conducted during duty time upon supervisory approval, if such activities are related to the employees current or prospective job duties.
- (2) The IDP is a working document, which may be updated as necessary. They may seek assistance from managers, HR Specialists, Employee Development Specialists, Administrative Officers and Regional Support Managers. Supervisors may provide advice and additional information on assignments, developmental activities, and training. Employees will not be penalized via the performance evaluation process for not completing or not implementing an IDP.
- (3) IDPs shall be implemented within resources available, and take into consideration workload demands. Training opportunities will follow the provisions of Section 29.05, Training Criteria.
- (4) The Departmental IDP Workbook provides guidance on the IDP planning process and on preparing the IDP Form (HUD Form 8059) which is located in the workbook as well as in the Career Development and Training Bulletin Board on the HUD@Work web site.
- (5) An IDP shall be required of employees in a formal training program, such as the upward mobility, Presidential Management Fellow or intern programs. The Department shall initiate this type of IDP.
- (6) IDP's are not mandatory and employees will not be penalized via the performance evaluation process for not completing or not having an IDP. Any training assessment tool used by Management to determine an employee's training needs shall not in and of itself be used to adversely affect the employee's performance rating, qualifications for the position, or promotion consideration. Any self-assessment is voluntary. Nothing in this paragraph precludes management from exercising its right to address performance issues through management-directed training.

- (7) Employees' performance ratings will not be used as a basis for approval or denial of training opportunities.

Section 29.07 - Training Records. The Department shall maintain training data which shall include an analysis of the training, broken down into the categories of sex, minority grouping, and grade range. The Department shall make available to the Council (upon request and no more than twice a year) a copy of the report containing this data. A copy of the Department's centrally managed Training Schedule shall be provided to the Council President upon request and as soon as it is available.

The Department will record in HUD Virtual University (HVU) or its successor all approved and completed training. Employees may record any training and educational achievements completed outside the Department in HIHRTS.

Section 29.08 - Accommodation for Training. Employees may be granted variations within the normal workweek, including leave without pay and absence without charge to leave, for training when the primary objective of the training is to improve the employees' work related skills, knowledge, and abilities or career growth. The Department shall, to the maximum extent practical, ensure the scheduling of training (over which the Department has administrative control) so that it occurs during the normal work week, including travel to and from training. When an employee's normal work schedule is different from the hours of training, i.e., Alternative Work Schedule (AWS), the employee's AWS may be temporarily suspended as acknowledged by the signature of the supervisor and employee on the training form, i.e., SF-182.

Section 29.09 - Membership in Organizations. Employees are encouraged to join and participate in organizations which are related to their work.

Section 29.10 - Orientation Sessions.

- (1) The Department shall provide the Union with the opportunity to meet with new employees during the first week of their employment. In addition, The Department shall provide the Union reasonable advance notice of the date, time, and location of any orientation meeting that may be held for groups of new employees. This notice shall include a general identification of who shall be in attendance. The local Union shall be afforded the opportunity at such meetings to explain and/or hand out material on the role of the Union, including identifying Union representatives.
- (2) The Department shall distribute an electronic copy of this Agreement and all supplements to each employee, along with a statement of where to locate the Agreement and Supplements on the HUD website.
- (3) The Department will provide information relating to the Thrift Saving Plan (TSP) during new employee orientation sessions. Additional information is available on the HUD internal web site.

Section 29.11 - Continuation of Service Agreement. Continued Service Agreement (CSA) is an agreement by the employee to continue in service upon completion of the training over 80

training hours. The period of service obligation will begin on the day following the 80 training hour of reimbursed training. The duration of the additional service is equal in duration to not more than three times the length of the reimbursed training in excess of 80 training hours.

An employee participating in training that requires a CSA shall agree in writing with the Department before participating in the training that they will:

- (1) Continue in the service of the Federal Government after the end of the training period for a period at least equal to three times the length of the training period unless they are involuntarily separated; and
- (2) Repay the amount of the expenses incurred by the Department in connection with the training if they voluntarily separate from the service of the Federal Government before the end of the service agreement.
- (3) The Department may pro-rate service in connection with the training if the employee is voluntarily separated from the service of the government before the end of the period for which the employee has agreed to continue in the service of the government.
- (4) The Department's right to recover the expenses of training may be waived, in whole or in part, only if one or more of the following conditions exists:
 - (a) The employee has completed most, but not all, of the required period of service;
 - (b) The employee resigned because of his or her own illness or the serious illness of a member of his or her immediate family; or
 - (c) The employee is unable to make payment because of severe financial hardship.
- (5) A waiver of the Service Agreement must be requested in writing and submitted to the Chief Human Capital Officer or his/her designee.

Section 29.12 - Mentoring Program. The Department recognizes the benefits of a mentoring program and encourages the use of the program.

- (1) The purpose of the HUD Mentoring Program is to assist all HUD staff from entry level to Executive level - to succeed in achieving their career goals and to increase their proficiency on the job.
- (2) The Mentoring Program will provide an opportunity for experienced HUD staff (Mentors) to help and guide other HUD staff (Mentees). With supervisory approval, mentors and mentees may be allowed appropriate time to meet. Mentoring relationships may be terminated at anytime by either the mentor or mentee. However, the Mentoring Program Coordinator must be notified if the relationship is terminated.

- (3) A Mentoring Program Coordinator is designated to oversee the planning and implementation of the Program. Training of mentor/mentee pairs will be provided before mentors and mentees begin to work together.

Section 29.13 - Retirement Planning Training. The Department will provide a retirement planning training session at least once a year. Employees shall be allowed to attend on duty time once per year, with supervisory approval. The training shall be free of charge. This training shall include information on financial and investment opportunities through the Thrift Savings Plan (TSP).

Section 29.14 - Training and Career Development Expenses

- (1) Where there are authorized training expenses incurred by the employee, the Department shall pay the expenses as soon as practicable but no more than 30 days after submission.
- (2) Employees will not incur costs for Department-required training necessary for the performance of their assigned duties.
- (3) When a change in qualifications for a position mandates an additional requirement for an employee already holding that position the Department will pay for the training needed for the employee to meet the new qualification in their position and grade level unless the employee is grandfathered in, as allowed by applicable laws and regulations and if funding is available. If the additional requirement is a degree and the Department will pay for the degree, competitive procedures must be followed in accordance with law and regulation.
- (4) The Department may pay employees' expenses for attending conferences and meetings authorized by 5 U.S.C. Section 4110 when the following criteria are met as provided in 5 CFR 410.404:
 - (a) the announced purpose of the conference is educational or instructional;
 - (b) the content of the conference is germane to improving individual and/or organizational performance;
 - (c) more than half of the time in the conference is scheduled for planned, organized exchanges of information between presenters and audience which meets the definition of training in Section 4101 of title 5 U.S.C.; and
- (5) Developmental benefits will be derived through the employee's attendance. When employees are in an academic degree programs, the Department may reimburse employees for appropriate costs, subject to the availability of funds, and in the following circumstances subject to the provisions of 5 USC § 4107 1) when it is necessary to assist in the recruitment or retention of employees in occupations in which the Government has or anticipates a shortage of qualified personnel; and 2) to address the government's human capital management and strategic plan. Selection for such training is subject to the merit staffing procedures in Article 24.

- (6) At the beginning of the fourth quarter of each fiscal year, program/support offices will review the office's unobligated training funds against any pending and denied 182s/training requests/employees' training needs, and the Department will fairly allocate the funds in accordance with the office's training priorities.
- (7) When training resources are limited, approval for training funds will be based on the Department's and individual employee's developmental needs.

Section 29.15 - Training Time. Workloads shall be adjusted as appropriate based on work volume and the amount of time the employee is participating in approved training or career development; however, employees and their supervisors should use sound judgment and time management to insure that the mission of the Department is performed.

ARTICLE 30
PERFORMANCE APPRAISAL

Section 30.01 - Performance Appraisal System. The Department shall implement a performance appraisal system which conforms to Chapter 43 of Title 5, United States Code and Part 430 of the Code of Federal Regulations. The purpose of performance appraisal is to establish and apply objective, reasonable, and relevant standards of work performance. A performance appraisal system works best when senior management, supervisors, and employees contribute to standards, communicate regularly on the status and quality of actual performance against the standards, and collaborate on the means to improve and achieve excellence in performance. The Department recognizes that employees possess particular technical knowledge about their positions and annual performance goals. The Union recognizes that it is the Department's responsibility to appraise employee performance. The Department will notify the Union of OPM approval of changes in the performance appraisal system or certify that OPM approval is not needed for the changes.

Section 30.02 - Definitions.

- (1) For this article, the following terms are defined in 5 CFR 430.203:
- (a) Appraisal means the process under which performance is reviewed and evaluated.
 - (b) Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared.
 - (c) Appraisal system means a framework of policies and parameters established by an Agency as defined at 5 USC 4301 (1) for the administration of performance appraisal programs under subchapter (i) of Chapter 43 of Title 5 USC in this subpart.
 - (d) Critical Element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.
 - (e) Non-critical Element means a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.
 - (f) Performance means accomplishment of work assignments or responsibilities.

- (g) Performance Plan means all of the written or otherwise recorded, performance. Elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.
- (h) Performance Rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and noncritical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in 5 CFR § 430.208(d)).
- (i) Performance Standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance. Performance Review means communicating with the employee about performance compared to the performance standards of critical and non-critical elements.
- (j) Rating of Record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in 5 CFR §430.208(d)), or (2) in accordance with 5 CFR §531.404(a)(1). These constitute official ratings of record.

- (2) **Rating Official:** The Rating Official is usually the immediate supervisor.
- (3) **Reviewing Official:** The Reviewing Official is normally one (1) level above the Rating Official.
- (4) **Performance Improvement Plan/Opportunity To Improve:** A PIP or OIP is outlined in the Unacceptable Performance Article in this Agreement.

Section 30.03 - Function of the Appraisal System. The appraisal system shall:

- (1) Provide for periodic appraisals of job performance of employees to achieve accountability at all levels;
- (2) Encourage and/or involve employee participation in establishing performance standards including the performance planning process that develops critical elements and standards tailored to the individual employee's role in accomplishing actual job performance which addresses the Department's goals;
- (3) Assess employee contributions to the achievement of Departmental requirements, goals, and priorities;
- (4) Strengthen communication between employees and supervisors;

- (5) Communicate and integrate Departmental goals, priorities and strategies to all levels of employees; and
- (6) Use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

Section 30.04 - Components of the Appraisal System. The appraisal system shall require that each employee be covered by an appropriate written and recorded performance plan based on work assignments, responsibilities, and standards as defined below. The performance appraisal system shall consist of:

- (1) **Critical Elements:** Consistent with HUD Handbook 430, Chapter 2-12, the Department agrees that only critical elements will be used in performance plans. To the maximum extent practicable, the Department shall have no less than three (3) and no more than seven (7) critical elements. Critical elements will be based on major duties in an employee's position description.
- (2) **Performance Plans:** To the maximum extent feasible, performance plans shall permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system. Employee behavior may be appropriate in performance plans provided that it is consistent with an employee's position description. Performance plans are specific descriptions of relevant work activities, assignments, and responsibilities. In the application of elements and standards, the qualitative and quantitative goals and objectives and deadlines must be achievable in the determination of the employee's final performance rating.
- (3) **Communication of Plans:** Performance plans will be communicated to each employee at the beginning of the appraisal period. Barring exceptional circumstances, performance plans will be finalized within thirty (30) days of each appraisal period.
- (4) **Continual Feedback:** In order to achieve optimal performance, the Department recognizes that continual feedback is necessary. Upon request, employees may receive informal feedback on their performance at other times during the performance year. Therefore, supervisors are encouraged to provide informal feedback at any time during the performance period. The Department agrees feedback shall occur more often than the mid-year and final performance ratings.
- (5) **Evaluation:** Each employee will be evaluated during the appraisal period on performance elements and standards. An employee shall be evaluated based on work assigned during the appraisal period.

- (6) Recognition and Reward: The performance system will provide for recognition and rewarding employees whose performance so warrants.
- (7) Assistance: Employees will be offered assistance in improving unacceptable performance.
- (8) Reassignment, reduction in grade, or removal: Employees who continue to have unacceptable performance may be reassigned, reduced in grade, or removed from service, but only after an opportunity to demonstrate acceptable performance.
- (9) Written justification: The rating of each element rated other than Level 3 (fully successful) on the annual rating of record will include written justification.
- (10) In-Service days: It is understood that managers will exercise consideration in scheduling meetings with their employees by providing adequate notice and not designating telework days or scheduled leave days as meeting dates as much as possible. Meetings with employees do not have to take place on in-service days.

Section 30.05 - Appraisal Period.

- (1) Generally, the appraisal period begins October 1 and ends the following September 30. The minimum appraisal period is ninety (90) days.
- (2) The Department reserves the right to change the dates of the appraisal period. Any change shall maintain uniform appraisal periods Department-wide. The adverse impact of changes in dates is subject to bargaining.

Section 30.06 - Performance Planning Process.

- (1) **Development of SMART Standards and Elements:**
 - (a) Supervisors/managers or employees may develop draft standards, or supervisors/managers may secure examples of draft standards prepared by Headquarters, Hubs, or field offices, which may be modified.
 - (b) Prior to the communication of performance plans, supervisors/managers shall:
 - i. hold performance planning meetings with employees either in groups of similarly situated employees, or individually. (Participation is voluntary but highly recommended);
 - ii. provide information necessary to determine performance parameters and necessary to enable the Union to engage in full and proper discussions; and

- iii. notify the Union of performance planning meetings in accordance with Section 4.04 and provide a meaningful opportunity to participate. To the maximum extent possible, management and union officials will coordinate and plan the meetings in advance to maximize union participation in performance planning meetings. When the Department directs a substantive change in the performance appraisal elements and standards, it will provide additional official time to local union representatives who do not have sufficient official time to attend the performance planning meetings.
 - (c) With consideration given to input from the performance planning meeting, supervisors/managers shall enter the critical elements and standards into the performance management system for each employee supervised.
 - (d) Once the elements and standards have been entered into the performance management system, employees will then be provided seven (7) days to review and comment on the elements and standards based upon their unique circumstances (i.e. collateral duties, particular workload, etc.).
 - (e) After consideration of individual employees' input, the supervisor will finalize the elements and standards, and communicate them to employees. Where possible, communication will be done face-to-face; however, at a minimum, communication will be done over the phone, except in extenuating circumstances. Supervisors are responsible for communicating and clarifying:
 - i. Specific tasks and projects to be accomplished;
 - ii. Performance expectations;
 - iii. Critical elements;
 - iv. Performance standards; and
 - v. How their plan is linked to the organization's goals and objectives and the Department's strategic plan.
- (2) **Applicability of SMART Standards at All Rating Levels.** Standards that are written to SMART methodology must include SMART criteria for each defined rating level, i.e., 5, 3, and 1.
- (3) **SMART Standards Methodology:** Critical elements and standards in ePerformance shall be applied in a fair and equitable manner. Supervisors shall comply with the SMART Standards methodology when developing employee performance plans. The Department agrees to implement the SMART standards methodology, as defined below:

- (a) **Specific**: The elements in the employee's performance plan need to clearly identify what needs to be accomplished - that is, the results that the employee is aiming towards should be the central focus of each critical element (i.e., if the goal is to complete reports, the standard should specify what milestones need to be achieved to count the report as complete).
 - (b) **Measurable**: Elements should have clearly defined measures (quality, quantity, timeliness or cost-effectiveness), which will allow both the employee and the supervisor to know that the requirement has been achieved. The supervisor will communicate to the employee how the results will be determined. To maximize the value of performance measures, they must reflect accomplishments that are meaningful and important.
 - (c) **Attainable**: All elements and standards must be achievable. The employee and the supervisor will discuss the work relating to the critical elements to establish a clear expectation of what must be done to achieve the results expected. In the discussion, consideration will be given to the time, tools, training, support or other resources and control factors that are necessary for the employee to perform at the required level. The supervisor should create a situation where the employee has a reasonable expectation of achieving his/her goal given the necessary resources (training, time, support) to perform at the required level.
 - (d) **Relevant**: Critical elements and performance standards are to be aligned with the goals of the Department and the mission of the employee's organization. Critical elements must be based on major duties in an employee's position description and the employee's organization's Management Plan/Annual Performance Plan. Supervisors will communicate to employees how their role contributes to the success of the organization and how their critical elements support that contribution. If the employee does not have a position description, the Department shall prepare one within sixty (60) days of the establishment of the employee's performance plan, and the employee will have five (5) work days to review the new position description and recommend further revisions to the performance standards consistent with major duties in the position description.
 - (e) **Time-bound**: The employee will be made aware of when the expected result is to be achieved. Critical elements should include milestones, or a schedule, and all dates should be clearly communicated so that the employee will have an understanding of what is expected and by when it is expected.
 - (f) **Prohibition of Absolute Standards**: Performance standards should avoid the appearance of requiring perfection rather than excellence. Standards should not be absolute, allowing no room for error.
- (4) **Equitable Goals**: The goals of an individual or group of employees will not be inflated in order to allow another individual or group to receive a higher rating.

- (5) **Performance Plan Disputes:** Employees may bring disputes concerning their Performance Plans to the attention of the Reviewing Official. The Reviewing Official may exercise authority to change the disputed portion of the Performance Plan after discussion with the Rating Official.
- (6) **Supervisory Notice:** The Department will notify employees of the names of their rating and reviewing officials at the beginning of each performance period. Generally the reviewing official will be the employee's second line supervisor.

Section 30.07 - Appraisal Process.

- (1) The Department agrees not to adversely affect employees in their performance appraisal ratings for the period when they were working without finalized, written elements and standards. The rating period for new or modified elements will begin at the time they are issued. Any modified or additional elements shall not be applied retroactively in an adverse manner. Standards implemented after the beginning of the rating period shall be achievable by the end of the rating period.
- (2) Performance on each critical element shall be appraised according to performance standards.
- (3) Provided the employee has been working under a performance plan for ninety (90) days, the employee shall have one (1) progress review meeting by the midpoint, barring exceptional circumstances. If the appraisal period begins on October 1, then the midpoint shall be April. The supervisor will provide at least three (3) work days' notice for scheduling the meeting. Any performance appraisal of less than fully successful must be accompanied by written feedback from the employee's rating and/or reviewing officials. The meeting shall be face to face if the employee and supervisor are located in the same office, otherwise the meeting will be conducted telephonically.
- (4) The employee may submit self-assessments to the supervisor at any time during the performance period (e.g. monthly, quarterly, mid-year, etc.). The employee's self-assessment shall be voluntary. The Department shall provide guidance or training to the employee on preparing self-assessments and using the system. The Department shall not alter an employee's self-assessment. The Department shall provide employees no less than seven (7) days to insert their self-assessment for mid-year and final approvals. Employees who submit a self-assessment should expect that it will be seriously considered and, upon request, may meet with their supervisor prior to proposing the initial rating. The self-assessment does not relieve the rating official of the responsibility for preparing a fair and thorough performance assessment. The rating official should be aware of the accomplishments of the employee throughout the performance period.
- (5) In applying performance element(s) and standards, an employee's performance appraisal shall take into account all of the job functions the employee is expected to perform and the actual amount of time available (or not available) to perform those functions. Factors beyond an employee's control may include, but are not limited to, unusual or extenuating circumstances such as availability of resources, delays attributable to others, unanticipated additional work assignments, changing priorities or high volume workloads. Deadlines and quantitative goals should be extended or adjusted by management as conditions warrant.

- (6) The Department will communicate the rating to the employee within 45 days following the end of the rating period, barring exceptional circumstances.
- (7) Throughout the year, supervisors will inform employees of performance errors prior to providing a rating.
- (8) The rating official shall give the employee an opportunity to comment in writing through a self-assessment, prepare a proposed appraisal, and then discuss the appraisal with the rating and/or reviewing official. Employees shall have access to the rating and reviewing official's written comments, assessments, and ratings in HIHRTS or successor system. There shall be no quota system or predetermined percentages regarding how many employees within a program office can receive Level 5, Level 4, or Level 3 rating. If any management official changes, influences or advises a rating or reviewing official to lower or raise an employee's rating for any element, that management official shall base his or her assessment on a review and analysis of documentation on the employee's performance.
- (9) At the employee's request, the reviewing official will meet with the employee to discuss the rating.
- (10) If during the performance cycle, the employee's summary rating is rated at Level 2, a written Performance Improvement Plan (PIP) shall be prepared.
- (11) If an employee is put on a Performance Improvement Plan (PIP), supervisors shall identify the critical elements that are at Level 2 and ways the employee may improve performance. Supervisors also are encouraged to provide continual feedback, technical assistance or training to assist the employee in improving performance. The supervisor shall meet with an employee and explain and document performance deficiencies once the employee's performance is at Level 2; the employee will be provided with summary and illustrative examples of the performance deficiencies and ways to improve. The employee will be placed on a PIP as soon as possible after the explanatory meeting. The supervisor will regularly meet with the employee to provide assistance, which may include training (formal, on-the-job, etc.), and/or technical assistance during the PIP period to assist the employee to achieve fully successful/Level 3 performance. The mere assignment of outstanding, pending or new work shall not be construed as constituting training or technical assistance in a Performance Improvement Plan (PIP). A PIP must provide at least thirty (30) days to improve performance prior to the end of the appraisal year. The purpose of the PIP is to improve performance and not to be a predetermined step to impose a performance-based adverse action.
- (12) Upon written request from the employee, the supervisor shall provide in writing the employee's current status on the performance improvement plan as well as the employee's current level of performance.
- (13) The rating is considered official when it is:
 - (a) Signed by the Rating Official and the Reviewing Official;

- (b) Signed by the employee or held by the employee for the five (5) workdays comment period without being signed (the employee may request additional time); and
 - (c) Placed in the Employee's Performance File System of Records.
- (14) After supervisors communicate the final rating, employees have five (5) work days to comment on their final performance ratings. Supervisors shall consider the availability of the employee when communicating the rating. If the employee is not afforded five (5) work days to comment prior to approved leave, then upon the employee's return, they will be given five (5) work days to comment, unless the employee agrees to waive the comment time. If an employee is not available during the five (5) work day comment period or is on approved leave, supervisors shall not acknowledge or approve performance ratings in the automated performance rating system until the five (5) work days have passed.
- (15) The performance plan expires at the end of the appraisal period, unless the rating is delayed in accordance with the Agreement.
- (16) Performance appraisals superseded through an administrative or judicial proceeding, or pursuant to a mutual agreement and/or settlement, will be changed or destroyed.

Section 30.08 - Changes Occurring During the Appraisal Cycle

- (1) Reassessment of SMART Elements and Standards During the Rating Year: At any time during the appraisal period, employees may raise any issues concerning the critical elements and standards in the performance plan to the supervisor. Employees may bring disputes concerning their Performance Plan to the attention of the Reviewing Official. The Reviewing Official may exercise authority to change the disputed portion of the Performance Plan after discussion with the Rating Official. If a substantive adjustment is made which adversely impacts the employee, the employee must have at least ninety (90) days to perform under the revised critical element and standards in the revised plan.
- (2) Employees who occupy more than one (1) position during an entire rating period due to reassignment, promotion, temporary promotion, or demotion, and that were under elements and standards for at least ninety (90) days, will be rated based on the interim rating(s) and the current position of record to arrive at the final (combined) summary rating. Specifically:
- (a) Upon leaving a position of record the employee will receive an interim rating within thirty (30) days and in writing.
 - (b) The interim rating will be forwarded to the new supervisor of rating.
 - (c) All interim ratings will be combined (scored, as stipulated in this agreement) to arrive at the final summary rating.

An interim rating will be clearly identified as an interim rating.

An interim rating is not considered an official rating of record, unless the interim rating is the only rating given during the performance period. Further, if the employee separates from the Department before the end of the rating period, the interim rating will become the rating of record.

- (3) Employees who are detailed within the Department for ninety (90) days or longer must have written performance plans communicated within the first thirty (30) days of the detail or as soon as possible after the beginning of the detail.
 - (a) If the employee returns to the permanent position of record at the end of the rating period, the temporary supervisor will communicate all element ratings to the supervisor of record and if the employee has spent at least ninety (90) days in the permanent position, the supervisor of record will combine the ratings of the temporary and permanent positions.
 - (b) If, however, the employee is still on the detail at the end of the rating period, the permanent supervisor will prepare an interim rating, and it is the responsibility of the temporary supervisor to prepare the combined rating if applicable (meaning the employee worked at least ninety (90) days in the permanent position).
- (4) All ratings for non-supervisory positions issued during the official rating period shall be combined to arrive at the annual rating of record, regardless of bargaining unit status.
- (5) If an employee is demoted or reassigned due to Level 1 performance (unacceptable) prior to the completion of the end of the appraisal period, the rating of record is unacceptable. The employee will be rated again after the employee has worked at least ninety (90) days under new performance standards. If less than ninety (90) days remain in the performance period, the rating will be delayed. The new rating of record will be based on the performance plan of the new position.

Section 30.09 - Rating Levels.

- (1) Each critical element shall be rated according to one of the following five performance levels: Level 5 (Outstanding), Level 4 (Excellent/Highly Successful), Level 3 (Fully Successful), Level 2 (Marginally Successful), and Level 1 (Unacceptable). Performance standards shall be written for the Level 5 (Outstanding), Level 3 (Fully Successful) and Level 1 (Unacceptable) levels. The definitions for each rating level are as follows:
 - (a) Level 5 (Outstanding): Job performance meets the performance standards established for the Level 5 (Outstanding) level.
 - (b) Level 4 (Excellent/Highly Successful): Job performance exceeds the performance standards established for the Level 3 (Fully Successful) performance level, but does not meet the performance standards for the Level 5 (Outstanding) level.
 - (c) Level 3 (Fully Successful): Job performance meets the performance standards established for the Level 3 (Fully Successful) level.

- (d) Level 2 (Marginally Successful): Job performance exceeds the performance standards established for the Level 1 (Unacceptable) level, but does not meet the performance standards for the Level 3 (Fully Successful) level.
- (e) Level 1 (Unacceptable): Job performance meets the performance standards established for the Level 1 (Unacceptable) level.

Section 30.10 - Rating Delays.

The reason for a delay of performance ratings is limited to one or more of the following five (5) reasons:

- (1) The employee has not worked under elements and standards for at least ninety (90) days.
- (2) Sufficient performance information does not exist for a new supervisor who has not supervised an employee for at least ninety (90) days or for a Reviewing Official to make a rating. In this case, the rating is delayed for ninety (90) days.
- (3) If the employee is working under an Opportunity to Improve Plan (OIP). The rating is given after a decision is made on the OIP.
- (4) The employee's overall performance is temporarily Level 1 or Level 2 because of illness, alcoholism, drug abuse, or another similar reason when the supervisor expects the performance to become fully successful in the near future because the employee is expected to recover, has entered a rehabilitation program, or gives other indications of resolving the problem which led to the Level 1 or Level 2 performance.
- (5) The employee has been performing at the Level 1 or Level 2 and has been reassigned or demoted to another position within ninety (90) days of the end of the appraisal period. The employee shall receive a delayed rating in his/her current position.

Section 30.11 - Summary Ratings. The procedures for converting individual element ratings to an overall (summary) rating are as follows:

- (1) If one or more critical elements are rated Level 1 (Unacceptable), the summary rating shall be Level 1 (Unacceptable).
- (2) If no critical elements are rated Level 1 (Unacceptable), and two or more critical elements are rated Level 2 (Marginally Successful), the summary rating shall be Level 2 (Marginally Successful).
- (3) If one critical element is rated Level 2 (Marginally Successful) and all remaining elements are rated Level 3 (Fully Successful) or above, the summary rating shall be Level 3 (Fully Successful).

(4) If no critical element is rated Level 1 or Level 2 (Unacceptable or Marginally Successful), the summary rating shall be computed using the following procedure:

3 points for each critical element rated Level 5 (Outstanding)

2 points for each critical element rated Level 4 (Excellent)

1 point for each critical element rated Level 3 (Fully Successful)

The total points are divided by the number of Critical Elements to yield an average. The average is computed to two decimal places and should always be rounded up.

(5) Summary ratings are as follows:

2.75 or higher -Level 5 (Outstanding)

1.80 to 2.74 -Level 4 (Excellent)

1.79 or lower -Level 3 (Fully Successful)

(6) If work has not been assigned under a Critical Element, then there will be no rating under that Critical Element and that Critical Element will not be considered in the computation of the summary rating. If work has not been assigned under a particular performance standard, the rating will be based on the remaining performance standards under the Critical Element. If a fully successful performance rating is based on a given number of completed items, and less than that number of items has been assigned, the performance standard will be adjusted downward accordingly.

Section 30.12 - Constructed Performance Ratings for Reduction-In-Force Purposes. (See section 33.24 of the Article on RIF in this Agreement.) In addition, grievances on performance appraisals prior to the RIF must be resolved (and on an expedited basis) and, if applicable, the revised rating will be used in the RIF process.

Section 30.13 - Analysis of the Aggregate Rating Data. Upon request, the Union shall be provided with summary rating data for each appraisal period.

Section 30.14 - Training. The Department will provide formal training and guidance to all employees on the performance appraisal system, as required by 5 CFR 430.209.

Section 30.15 - Policy and Guidance. Any differences between Departmental policy and guidance and this Agreement on the subject of performance appraisal will be resolved in favor of this Agreement.

Section 30.16 - Performance Appraisal System Evaluation. When the Department begins any evaluation or other assessment of the performance appraisal system, the Union will be given a fifteen (15) days' notice and provided a copy of the proposed assessment and methodology. When the Department compiles the results, the Union will be given a copy of the report.

**ARTICLE 31
INCENTIVE AWARDS PROGRAM**

Section 31.01 - General. The parties agree that substantial benefits and enhanced productivity accrue to the Department when an Incentive Awards Program is developed and maintained to recognize the achievements of Departmental employees. The Department shall conduct an Incentive Awards Program, in accordance with this Agreement and HUD Handbook 2195.1, dated May, 2007. The purpose of the program is to recognize those employees whose performance or contribution is in excess of normal expectations for the positions that they occupy. Where the provisions of the Handbook conflict with this Agreement, this Agreement shall prevail.

Section 31.02 - Incentive Awards. Performance awards (that are monetary awards earned as a result of an employee's annual performance rating); Quality Step Increases (QSI); Time Off Awards; Special Act Awards, Spot (monetary and informal) Awards, Honorary Awards; and Peer to Peer Awards are granted by the Department on the basis of merit, and within applicable budget limitations, to individuals or groups.

- (1) Each year the Department establishes budgets for employee awards, it will allocate the determined amount for bargaining unit employees. The Department will notify the Union once a decision is made on the budgets and the amounts to be allocated.
- (2) The Department will proactively seek to recognize achievements of bargaining unit employees throughout the year using all available means.

Section 31.03 - Awards for Overall Performance.

- (1) Each year Management shall determine whether said awards including time off awards shall be granted and the amount thereof. The Parties agree that performance awards are a valuable tool toward building morale. Following this stated philosophy, it is agreed that when the Department determines the award amounts for non-bargaining unit employees, the Department will provide the Union with this information. Then, the Department and the Union shall meet to discuss the award amounts for bargaining unit employees. The Union can use the non-bargaining unit award determinations as a basis for discussion. The Department shall formulate the annual performance awards for employees fairly. Fairly does not guarantee, nor does it preclude, equality of awards among employees.
- (2) Management shall process the award granted within three (3) pay periods of the date of the decision to make the awards or the appraisal, whichever is later.
- (3) All employees who have received a summary Level 5/Outstanding performance rating for the year shall be eligible for the following. Management shall consider employee preference in selecting the award method. Final determination of the award type is made by Management.
 - (a) A quality step increase; or a cash award as referenced in 31.02 above.
 - (b) A time off award may be granted in lieu of (a) above. The time off award does not have to be equivalent to the amount of cash award that would have been received.

- (c) The Department shall identify the number of hours of the time off award or the amount of the proposed cash award.
- (4) All employees who have received a summary Level 4/Excellent performance rating for the year may be eligible for:
 - (a) A cash award as referenced in 31.02 above.
 - (b) A time off award may be granted in lieu of (a) above. The time off award does not have to be equivalent to the amount of cash award that would have been received.
 - (c) The Department shall identify the number of hours of the time off award and the amount of the proposed cash award.
- (5) All employees who have received a summary Level 3/Fully Satisfactory performance rating for the year may be eligible for (no critical element marginal ratings):
 - (a) A cash award as referenced in 31.02 above.

Section 31.04 - Awards of an Honorary Nature. Honorary Awards are non-monetary awards intended to recognize contributions of lesser scope or significance that might otherwise go unrecognized. A specific contribution must form the basis for the recognition. The award may be given to recognize an individual team or group accomplishment. The value of the award shall be commensurate with the contribution being recognized. The award should also symbolize the employer/employee relationship (e.g. by affixing the agency seal to the award).

Section 31.05 - Time Off Awards. Time off awards are excused absence from the office, in recognition of an employee's superior accomplishment or other personal efforts that contribute to the quality, efficiency, or economy of government operations.

- (1) The minimum time off award is one workday based on the work schedule of the employee when the award is made.
- (2) Time off awards shall be used within 12 months of posting the award in the employee's WebTA page.
- (3) With appropriate justification on a case-by-case basis, the Department agrees to extend the one-year restriction on the use of Time Off awards for a period not to exceed six (6) months.
- (4) Time off awards that are granted for group activities, e.g. safety, CFC, shall be granted across program lines.
- (5) Time off awards may be used in quarter hour increments.
- (6) Time off awards may not exceed 80 hours in a calendar year.

Section 31.06 - Special Acts or Service Awards.

- (1) The Special Acts or Service Award is intended to recognize an individual or group accomplishment in the form of a suggestion, invention or special act or service which contributes to the efficiency, economy, or other improvement to the Departments operation. This includes a special project, assignment, act or task, or who have done a superior job with regard to the quality or quantity of the work performed, may be considered by Management for an award for special acts of service.
- (2) Each award shall be a minimum of \$250.00.

Section 31.07 - Monetary - Spot Awards ("Spot Awards").

- (1) Spot awards provide immediate feedback and special recognition of employees who make an extra effort to perform their duties in an exemplary manner. (Spot Awards are not a substitute for performance awards.)
- (2) An employee or group may be recognized with a Spot Award within two (2) weeks of the achievement
- (3) Individual employees and group awards may be granted ranging from \$50.00 to \$300.00 per employee,
- (4) An employee may not receive more than three (3) spot awards in the same fiscal year.

Section 31.08 - Awards for Employees with Bilingual Skills. Employees may receive an on-the-spot, special act or time off award for utilizing bilingual skills on a regular basis or for a special project. In lieu of issuing an on-the-spot, special act or time off award, management may utilize other methods of recognition such as emails, certificates, etc.

Section 31.09 - Peer-To-Peer Awards. Peer to Peer awards are intended to recognize employees for outstanding short-term achievements related to the Department's goals. The award may be given for fostering teamwork between or within the Department, and for promoting or demonstrating exemplary customer service. The awards may be honorary in nature, time off awards, or range from \$100.00 to \$500.00. The nominations shall be submitted to the immediate supervisor of the nominated employee.

Section 31.10 - Employee of the Month Award. Employee of the Month Awards may be made at the Local or National level to recognize excellence or extraordinary achievements that are key to the Department's goals. The awards may be honorary in nature, time off awards or range from \$100.00 to \$500.00.

Section 31.11 - Methodology for Granting Awards. The methodology used by Management to establish and give awards under this Article shall be developed and applied in a fair and equitable manner. The Department's Awards Policies will be published on HUD's internal webpage. Use of annual or sick leave shall not be a consideration in assessing employee qualifications for an award.

Section 31.12 - Prompt Presentation of Award. Recognizing that awards are most effective when presented as promptly as possible after the performance or act that is being recognized, the Department agrees to make awards as promptly as possible after the decision is made by the Department to grant an award. The Department does not use gift cards or gift certificates as part of the awards process.

Section 31.13 - Information.

- (1) Upon request, the Union shall be provided with statistical data and budget information that management routinely prepares and maintains concerning the awards program and additional information that is reasonably available and the disclosure of which is not prohibited by law. Such information shall include data on awards made to bargaining unit employees, other non-supervisory employees, and supervisory employees.
- (2) Union officials at the local level shall be notified when employee recognition events occur.

Section 31.14 - Publicity. In order to recognize the value and importance of the awards, offices are encouraged to hold annual special recognition events at which awards shall be distributed.

An SF-50 or certificate of award shall document the award. Management agrees to publicize the recipients of Departmental awards in each local office by posting on bulletin boards and/or through Management memoranda or notices to all employees. Employees who do not want their awards posted on the bulletin boards or the electronic equivalent must notify their supervisor of their choice on an annual basis. The notification shall be done not less than semiannually and shall include the names of the award recipients and a description of each award.

Section 31.15 - Awards Committee. If the Secretary appoints a Departmental Awards Committee for the review of award recommendations for bargaining unit employees, Management agrees to include a member of AFGE Council of HUD Locals 222 on that committee.

- (1) If an Awards Committee is appointed, the Awards Committee will be responsible for evaluating and voting on nominees for incentive awards and will serve the interests of both the Department and the employees by functioning as a continuing link regarding matters involving incentive awards.
- (2) The roles and responsibilities of the Committee may include but are not limited to:
 - (a) identifying and bringing to the Department's attention any trends, problems, issues or circumstances regarding the incentive awards program;
 - (b) focusing the Department's attention on any management practices or problems with the incentive awards program that could produce dissension and dissatisfaction among employees; and
 - (c) promoting and communicating the efforts of the Department to achieve and maintain an effective incentive awards program.

Section 31.16 - Consistent Criteria for Awards.

- (1) The Department will make a good faith effort to ensure consistent criteria for approval of all awards.
- (2) The fact that an employee is the subject of a conduct investigation or has been the subject of a disciplinary action during the rating period will not preclude a performance award that would otherwise be granted unless such preclusion is necessary to protect the integrity of the Federal service.

**ARTICLE 32
WITHIN-GRADE PAY INCREASES**

Section 32.01 - General. Within-grade increases (WGI) are granted in accordance with applicable law and regulations which provide that the employee's supervisor determines that the employee's work is of an "acceptable level of performance," as demonstrated by an overall performance rating of fully successful or higher and the employee has completed the required waiting period.

Section 32.02 - Performance Rating of Record. If the decision to grant, a within-grade increase is not supported by the most recent performance rating of record, the employee shall receive a Special Rating. A rating of fully successful or higher must be recorded to support the WGI approval. Special ratings must be documented in HIHRTS or its successor system.

Section 32.03 - Notification of Intent. At least sixty (60) days prior to the date that an employee is eligible to receive a within-grade increase, the employee's supervisor shall notify the employee as to their performance. During the most recent progress review, as described in Article 30, Performance Management, if management communicates performance of below Fully Successful, it is understood that the employee's subsequent WGI may be denied. If the employee's level of performance has not been acceptable, the agency shall notify the employee, (opportunity to improve notice or performance improvement plan), in writing, as to the following:

- (1) Those critical elements and standards of the employee's performance in which the employee is not performing at an acceptable level and the measurable and demonstrable extent of the performance level;
- (2) That assistance shall be offered to enable the employee to improve their performance to meet the requirements specified for the position; and
- (3) That the employee's within-grade increase may be denied unless an acceptable level of performance is shown within the sixty (60) days established above. (If the agency does not give sixty (60) days advance notice and the within-grade increase is denied, the agency shall make a redetermination of the employee's acceptable level of performance within sixty (60) days. If the redetermination indicates that the employee's performance is at an acceptable level of performance or higher, the within-grade increase is granted effective the first day of the first pay period beginning on or after the redetermination.)

Section 32.04 - Delay of Within-Grade Increase. If at the end of the sixty (60) day period provided in Section 32.03, the employee's performance is not at an acceptable level of performance for the purpose of approving the within-grade increase, the employee shall be given a written notice which contains the following:

- (1) The fact that the decision of their within-grade increase is being postponed;
- (2) The reason for the postponement;
- (3) The date the determination will be made;
- (4) The fact that when the decision is made, it will be retroactive to the date it was originally due;

- (5) The specific requirements for performance at an acceptable level of performance. If the employee does not have a performance plan, they shall be given a plan; and
- (6) Advise that if a subsequent determination is made that the employee's performance is at an acceptable level of performance, the within-grade increase shall be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

Section 32.05 - Denial of Within-Grade (Negative Determination).

- (1) If at the end of the sixty (60) day period provided in Section 32.03, the employee's performance is not at an acceptable level of performance for the purpose of approving the within-grade increase, the employee shall be given a written notice which contains the following:
 - (a) A statement of denial of a within-grade increase including the reason(s) for the negative determination;
 - (b) A statement that the employee's work has been reviewed and determined not to be at an acceptable level of performance;
 - (c) A statement which identifies the performance elements in which the employee's performance was not at an acceptable level of performance;
 - (d) An explanation as to how the employee's performance was not at an acceptable level for that particular performance element;
 - (e) A statement that the employee has the right to request, in writing, a reconsideration of the negative determination, provided the request is made within 15 workdays of the employee's receipt of the negative determination;
 - (f) The name and title of the reconsideration official to whom the employee may submit a request;
 - (g) A statement that the employee may have a Union representative or other representative other than the exclusive representative, of the employee's own choosing in presenting a request to the reconsideration official;
 - (h) A statement that the employee and the representative, if designated, may appeal the basis for the negative determination in person and/or in writing;
 - (i) A statement that the employee may have a reasonable amount of official time to review, prepare and present a response; and
 - (j) An explanation that the employee may be considered for a WGI at any time if the employee demonstrates an acceptable level of performance.

- (2) Denial of a WGI is not to be used as a punitive measure or for an act of misconduct in lieu of appropriate disciplinary actions.
- (3) A notice of a proposed adverse/disciplinary action that is not based on performance is not a bar against a favorable determination of acceptable level of performance for purposes of WGI.

Section 32.06 - Reconsideration of Negative Determination. When an employee files a written request for reconsideration within 15 work days after receiving notice of the negative determination, Management shall respond within 15 work days, unless the parties mutually agree to an extension. The reconsideration official shall establish a reconsideration file to include copies of:

- (1) Written negative determination and supporting documents;
- (2) Employee's request for reconsideration;
- (3) Report of investigation if one was made;
- (4) Written summary or transcript of any personal presentation; and
- (5) Decision of the reconsideration official.

The file shall be retained and made available to the employee and their representative.

Section 32.07 - Waiver Of Requirement For Determination. An acceptable level of performance determination shall be waived and a within-grade increase granted when an employee has not served in any position for 90 days during the final 52 calendar weeks of the waiting period for one of the following reasons including but not limited to:

- (1) Because of absences that are creditable service in the computation of the waiting period under 5 CFR §531.406;
- (2) Because of paid leave;
- (3) Because the employee received service credit under the back pay provisions of 5 CFR part 550;
- (4) Because of details to another agency or employer for which no rating has been prepared;
- (5) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under 5 CFR part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization under chapter 71 of title 5, United States Code); or
- (6) Because of long-term training.

Section 32.08 - Effective Dates.

- (1) A WGI is effective on the first day of the first pay period beginning on or after the completion of the required waiting period.
- (2) After a WGI has been withheld, the Agency may grant the WGI at any time after it determines that the employee has demonstrated performance at an acceptable level. In such cases, the WGI will become effective the first day of the first pay period after the acceptable determination is made.
- (3) A within-grade increase reconsideration favorable to the employee shall be made retroactive to the date it was originally due and all records relating to the negative determination shall be destroyed.
- (4) If a within-grade increase is delayed due to insufficient information, e.g., has not had standards and elements for ninety (90) days and the employee subsequently achieves an acceptable level of performance or better, the within-grade increase shall be granted retroactively to the date it was originally due.

Section 32.09 - Application of Article 51 and Article 13. The negative reconsideration procedure as set forth in this article substitutes for and, is in lieu of, the grievance procedure, Article 51. However, if a denial of a WGI is coupled with any performance based action, the provisions of Article 13 are applicable.

Section 32.10 - Arbitration. If an employee's negative determination is sustained after reconsideration, the Union may invoke arbitration within twenty-five (25) calendar days of the employee's receipt of the reconsideration decision.

Section 32.11 - Waiting Periods for WGI. The length of waiting periods shall be in compliance with 5 CFR 531.405.

ARTICLE 33
REDUCTION-IN-FORCE AND/OR TRANSFER OF FUNCTION

Section 33.01 - Reference. The policy, procedures, and terminology established in this Article are in conformance with:

- (1) 5 U.S.C. 3501-3504
- (2) 5 CFR Part 351

A reduction in force (RIF) will comply with all government-wide regulations in effect as of the effective date of this Agreement, and the provisions of this Agreement.

Section 33.02 - Policy. Nothing in this Article shall diminish the rights of employees which are specifically provided by law. Where a provision of this Article conflicts with a provision of law which provides greater legal rights for employees than that provided by this Article, the provision of law shall apply.

Section 33.03 - Definitions.

- (1) **Reduction- In-Force (RIF)** - The release of an employee from their competitive level by:
 - (a) separation,
 - (b) demotion,
 - (c) furlough for more than thirty (30) days, or
 - (d) reassignment requiring displacement

When the release is required because of:

- (e) lack of work or shortage of funds,
 - (f) insufficient personnel ceiling,
 - (g) reorganization,
 - (h) reclassification due to an erosion of duties only if action shall take affect after the RIF has been formally announced in the employee's competitive area and when the RIF shall take effect within one hundred eighty (180) days, or
 - (i) the need to replace a person exercising reemployment or restoration rights requires Management to release the employee from their competitive level.
- (2) **Transfer of Function** - The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected. A TOF is also the movement of the competitive area in which the function is performed to another commuting area. In a transfer of function, the function must cease in the losing competitive area and continue in an identical form in the gaining competitive area.

- (3) Excepted Service Employee - An employee whose position is excepted from the competitive service. These persons are appointed in the Federal personnel system under various authorities including: "Schedule A," "Schedule B," and "Schedule C", as defined in 5 CFR 213.
- (4) Undue Interruption - A degree of interruption that would prevent the completion of required work by the employee 90 days after the employee has been placed in a different position under the provisions of 5 CFR 351.203. The 90 day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if an employee needed more than 90 days after the RIF to perform the optimum quality or quantity of work. The 90 day standard may be extended if placement is made under the regulation to a low priority program or to a vacant position.
- (5) Order of Release - The groups will be determined based on 5 CFR 351.501, Order of Retention-Competitive Service and applicable OPM guidance.
- (6) Competitive Level - A competitive level consists of all the positions in a competitive area that are in the same grade or occupational level and classification series and which are similar enough in qualification requirements, duties, pay schedule, and working conditions, so that the agency may reassign the incumbent of one position to any of the other positions in the level without undue interruption, in accordance with 5 CFR 351.403. All actions which impact employees as a result of establishing a competitive level shall be uniformly and consistently applied.
- (7) Competitive Area -The Department shall establish competitive areas in which employees compete for retention under 5 CFR 351.402. The Department will establish competitive areas in accordance with law and regulation.
- (8) Employee Placement and Career Transitional Programs. The following programs are available to those employees adversely affected by a RIF.
 - (a) The Reemployment Priority List (RPL) is a required component of the Department's placement programs to assist its current and former competitive service employees who will be or were separated by a RIF, or who have recovered from a compensable work-related injury after more than 1 year. In filling vacancies, an agency must give its RPL registrants placement priority for most competitive service vacancies before hiring someone from outside its own permanent competitive service workforce. An agency may choose to consider RPL placement priority candidates before other agency permanent competitive service employees under its Career Transition Assistance Plan (CTAP), after fulfilling agency obligations to its CTAP selection priority candidates.
 - (b) The Career Transition Assistance Plan (CTAP) provides intra-agency selection priority for the agency's eligible surplus and displaced employees.
 - (c) The Interagency Transition Assistance Plan (ICTAP) provides eligible displaced Federal employees with interagency selection priority for vacancies in agencies that are filling positions from outside their respective permanent competitive service workforces. The

ICTAP selection priority does not apply in the ICTAP eligible's current or former agency and it does not prohibit movement of permanent competitive service employees within an agency.

Section 33.04 - Alternative Considerations. To the extent that is practicable and not prohibited by law, and without interfering with the accomplishment of the Department mission, the Department will seriously consider other alternative means of reducing costs before conducting a RIF; e.g. furloughs, limited hiring, attrition. Upon request, Management will provide to the Union a summary of all actions considered or adopted prior to deciding to conduct a RIF and the reasons why the action was adopted or rejected.

Section 33.05 - Union Notification.

- (1) When it is determined that any of the actions stated in this Article are necessary and the scope of the action affects locals in more than one (1) geographic area, Management shall inform the Union President at the National level, the Regional Vice President(s) and the affected office representative(s). If only one (1) local is affected in a geographic area, Management shall notify the designated Local Union representative(s). The Union shall apprise Management of the names and locations of all Union officials, as well as any subsequent changes.
- (2) The Department shall provide the President of HUD Council 222 a copy of the Department's competitive area and competitive level for the purpose of a RIF as detailed in 5 CFR §351.402 and 351.403 within 10 days of approval by OPM.
- (3) The Department will conduct pre-decisional meetings with the President of the Council of HUD Locals, or the designee, as soon as practicable when it is contemplating a RIF, or TOF in accordance with this Article.
- (4) Written notification shall be given to the appropriate Union representatives identified in item 1 above at least fifteen (15) days in advance of the specific notice to the employee. The written notice shall provide the Union with specific information concerning the matter. Any negotiations shall be conducted in accordance with Article 49 Mid-Term Bargaining of this Agreement. The following information shall be provided in the notice:
 - (a) The reasons for the RIF or TOF or in accordance with this Article;
 - (b) The number and work location of employees involved;
 - (c) A reminder of the competitive areas and the competitive levels approved by OPM;
 - (d) The criteria for developing the retention registers that were created for the RIF; and
 - (e) The proposed effective date of the action.

- (5) The parties understand on-going communications between the parties is vital and they will share information as it becomes available including, but not limited to, additional positions affected, the names of affected employees, revised dates, and listings of job offers made.

Section 33.06 - Employee RIF Notification. An individual employee who is adversely affected by a RIF shall, as a minimum, be given specific notice not less than sixty (60) days in advance of the effective date. Such notices shall contain the information required by law and regulations, in addition to that required by this Agreement.

(1) **Content of Specific Notices.** The specific RIF notice shall include the following information and those specified at 5 CFR 351.802:

- (a) The specific RIF and personnel action to be taken with respect to the employee involved;
- (b) The reason(s) and effective date of the action;
- (c) The employee's competitive area, competitive level, subgroup and service date, and annual performance ratings of record received during the last four (4) years;
- (d) The place where the employees may inspect the regulations and records pertinent to their cases;
- (e) The employee's ranking relative to other competing employees;
- (f) A description specifically showing how the employee's ranking relative to other competing employees was determined;
- (g) The justification for retaining a lower standing employee in the same competitive level because of a temporary or continuing exception;
- (h) Grade and pay retention information;
- (i) A description of the employee's grievance or appeal right; and
- (j) Reemployment rights.

Section 33.07 - Additional Employee Information.

(1) Within five (5) business days of when specific written RIF notices are distributed, the Department will provide a briefing(s) for the affected employees to explain the RIF process. In the meeting, a representative of the Department will explain how RIF retention is determined, the scope of the particular reduction in force, how to access their electronic Official Personnel Folder (eOPF), employee placement opportunities, severance pay computations, RPL, CTAP and ICTAP provisions and services to employees who are designated for separation in the RIF. A representative of the Department will take employee

questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all employees who were invited to the briefing. In addition, the Department will designate someone who will receive and respond to additional employee questions. A representative of the Union will be invited to attend these briefings, and will be given thirty (30) minutes at the conclusion of the briefing to speak with the employees.

- (2) If early retirement or buy-out opportunities are offered to employees in connection with a RIF, the Department will provide a briefing(s) for employees. Eligibility requirements, and the application processes will be explained. The effects of a buyout or early retirement on severance pay, reemployment, and continued health insurance coverage will be presented. A representative of the Department will take employee questions and attempt to provide immediate answers. If immediate answers cannot be provided, then answers to those questions will be distributed via e-mail to all employees who were invited to the briefing.

Section 33.08 - Employee Verification.

As far in advance as possible of an anticipated RIF, the Department will notify employees of the need to review their personnel records and ensure that these records are complete and accurate. This notice will advise employees to ensure that their records are up to date concerning:

- (a) Veterans preference;
- (b) Three most recent performance ratings of record received during the previous four-year period;
- (c) All periods of federal civilian and military service;
- (d) Completed training;
- (e) Current licenses and certifications;
- (f) Experience gained outside Federal service.

The Department will expeditiously resolve any discrepancies raised by the employee.

Section 33.09 - Competitive Level. An employee is assigned to a position in a competitive level in accordance with regulations at 5 CFR 351.403. Factors considered in the establishing of competitive levels are as follows:

- (1) A competitive level consists of all the positions in a competitive area that are in the same grade or occupational level and classification series and which are similar enough in qualification requirements, duties, pay schedule, and working conditions, so that the Department may reassign the incumbent of one position to any of the other positions in the level without undue interruption.

- (2) **Qualification Considerations.** When Management considers the effect of qualifications on the composition of a competitive level, the concern is not with the qualifications an employee possesses but with the qualifications required by the duties and responsibilities of the position as stated in the Official Position Description. Separate levels may be indicated because the knowledge, technique, and know-how acquired on the job may be distinctive enough to keep the Department from readily moving employees from one job to another. Separate levels shall not be so narrowly defined as to favor or disfavor an employee or group of employees with respect to RIF actions.
- (3) **Separate Competitive Levels Prohibited.** Management may not assign a position to a separate competitive level based only on:
- (a) The employee's sex, except for a position for which OPM has found that restricting the certification of eligible by sex is justified;
 - (b) The fact that the employee is serving a probationary period required by 5 CFR 315, Subpart I, upon initial assignment to a supervisory or managerial position; and
 - (c) Differences in work schedules among other than full-time employees who would otherwise be assigned to the same competitive level.
- (4) **Separate Competitive Levels Required.**
- (a) In accordance with applicable OPM regulations, the Department establishes separate competitive levels for positions according to the following categories:
 - 1. **By Service.** Separate levels shall be established for positions in the competitive service and the excepted service;
 - 2. **By Appointment Authority.** Separate levels shall be established for excepted service positions filled under different appointment authorities;
 - 3. **By Pay Schedule;**
 - 4. **By Work Schedule.** Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis;
 - 5. **By Supervisory or Nonsupervisory Status.** Separate levels shall be established for positions filled by a supervisor or Management official as defined in 5 U.S.C. 7103(a)(10) and (11); and
 - 6. **By Trainee Status.** Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all the characteristics covered in paragraph 4-6a of FPM Chapter 351.

Section 33.10 - Use of Vacancies to Satisfy Assignment Right. In order to minimize displacement actions that would result from a reduction in force, the Department will make a good faith effort to

search for vacancies and offering lateral assignments to vacant positions that the Department otherwise intends to fill to employees who would otherwise be released from their competitive level.

- (1) **Within the Competitive Area.** Consistent with the needs of the Department, Management will make every effort to use vacancies to satisfy an employee's assignment right.
- (2) **Outside the Competitive Area.** If a bargaining unit employee's assignment right determined in accordance with law, regulation, and this Agreement results in an offer at a lower grade or if the bargaining unit employee has no assignment right and is identified for separation, Management will make every effort to utilize available positions in areas outside the employee's competitive area if such an offer is in the best interest of the Department and the offer shall not adversely affect the assignment rights of bargaining unit employees in the other competitive area. If such an offer is accepted, a bargaining unit employee shall be entitled to a reasonable amount of duty time in order to obtain housing and to facilitate other aspects of their relocation.
- (3) The Department shall consider the employees who have received RIF notices and who are otherwise qualified for vacant positions, prior to selection of external candidates, in accordance with CTAP procedures.
- (4) If the Department considers an employee who has received a RIF notice for a vacant position, they shall be considered in accordance with Merit System Principles.

Section 33.11 - Waiver of Qualifications. The Department may exercise discretion granted by law and regulation to waive non-mandatory qualifications in order to place employees who are affected by the RIF in continuing positions.

After consultation with the appropriate Union representative, Management may assign an employee without regard to OPM's standards and requirements for the position if:

- (1) The employee meets any minimum education requirement for the position; and
- (2) The employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

All waivers of qualification(s) must be properly documented and justified; this documentation must be maintained by the servicing Human Resources office subject to Union review.

Section 33.12 - Training for Displaced Employees. If Management waives qualification standards to place an employee into a vacant position under RIF, then Management shall develop a training plan and assure training is provided in accordance with the plan.

Section 33.13 - Exceptions to the Order of Release.

- (1) Temporary Exceptions. In accordance with 5 CFR 351.608:

(a) After consultation with the appropriate Union Representatives, Management may allow temporary exceptions, not to exceed ninety (90) days, to the RIF order of release to continue an employee on duties that a higher standing employee cannot take over within ninety (90) days:

- i. Without undue interruption to the Department.
- ii. To satisfy Management's obligation to the retained employee; for example, to delay the effective date of the employee's release long enough to allow the specific notice period required by this Article, as when they are absent from their duty station on leave and cannot receive their notice the same day as a higher ranking employee.
- iii. To help an employee administratively when the temporary exception does not adversely affect the rights of any other employee released ahead of the excepted employee.

(2) Continuing Exceptions. In accordance with 5 CFR 351.607: After consultation with the appropriate Union Representatives, Management may allow continuing exceptions to the RIF order of release to continue an employee in duties at a higher standing employee cannot take over within ninety (90) days without undue interruption to the Department.

(3) Employee Representation. Employee representatives designated pursuant to Article 47 of the HUD/AFGE Agreement, who are scheduled for separation due to a RIF, may be temporarily excepted from the RIF order of release for up to ninety (90) days upon the notification by the Council President provided that the affected employee has been a designated employee representative for the three (3) months preceding the scheduled separation. Regardless of their RIF their status, the Union representative(s) will have access to the Union office and network capabilities until another representative is named, under the following conditions. If the offices are accessible and RIFd union officials are allowed access, it will be solely for the purpose of performing voluntary unpaid representational functions (i.e., they could not be working on official time or in any other way incurring obligations that would require subsequent agency payment).

(4) Documentation. All exceptions to the RIF order of release shall be justified and the documentation of such justification shall be maintained with other required RIF records. Justification of continuing exceptions must clearly demonstrate that no higher standing employee could take over the duties of the position without undue disruption to the Department and must explain the consequences of not permitting the exception. The reasons should be consistent with the criteria for justifying a temporary exception and the reasons why a temporary exception not to exceed ninety (90) days is not sufficient, must also be included.

Section 33.14 - Tie Breaking. It is possible, in releasing an employee from a competitive level, to reach two (2) employees with identical retention standing. In such cases, the decision to retain one or the other employee in the competitive level shall be made on the basis of the following criteria in the following order:

First: Employees most recent entry on duty (EOD) date with the Department;

Second: Employees time in grade; and

Third: Comparative number of RIF displacements resulting from release.

The decision must be documented in writing and retained with RIF files. The Union shall be notified, in writing, of the names of such employees with identical retention standing, the decision as to which employee to retain, and the criteria that were used to make such a decision.

Section 33.15 - Offer of Assignment.

- (1) When an employee is released from their competitive level, the operating human resources office must determine whether that employee is entitled to a job offer and, if so, at what grade level. It is possible that a released employee may be qualified and able to displace (by bump or retreat) several other employees at the grade level of entitlement. This offer shall be made on the basis of the following criteria in the following order:
 - (a) The comparative overall performance rating of the vulnerable employee;
 - (b) Qualification match; and
 - (c) Comparative RIF disruption.
- (2) In order to minimize displacement resulting from a reduction in force the Department will assist employees in their search for vacancies, and may offer lateral reassignments to vacant positions that the Department otherwise intends to fill.
- (3) Employees who receive job offers will be given reasonable time to consider and respond as to whether they will accept or decline the offer.
- (4) Employees may volunteer to relocate to another location under a RIF and may volunteer to pay for their own relocation expenses.
- (5) Employees who receive an offer of assignment to a different commuting area will be allowed up to 90 calendar days as necessary, to complete the move and report to work. Upon demonstrated need, additional time may be granted.
- (6) The Department will utilize the Reemployment Priority List when filling vacancies subject to a RIF.
- (7) The decision shall be fully documented and this documentation shall be made available to the Union.

Section 33.16 - Excepted Service. In a RIF, employees in the excepted service shall compete within competitive levels, in order of retention standing, on a separate retention register from competitive positions as specified in OPM regulation. The Department shall provide for bumping or retreat rights for its excepted service employees when they cannot be retained in their competitive levels using the same methodology as that used for competitive service employees.

Section 33.17 - Other Provisions.

- (1) Management may, at its election:
 - (a) Use subgroup priority in displacing tenure Group III employees.
 - (b) Allow employees in the same subgroup with more service to displace those with less service in order to make a better assignment offer.
- (2) Written justification of these actions shall be made available to the Union.

Section 33.18 - Counseling and Benefits Assistance.

- (1) In the event of a RIF effecting separation of employees, Management shall determine from the appropriate State employment service or other appropriate assistance program whether any of the affected employees may be eligible for training or benefits at Government expense, and, if so, shall inform the employees how to apply for such training and benefits.
- (2) In order to expedite implementation of this Section, the Department shall transfer necessary data, in keeping with the Privacy Act, to the Office of Personnel Management and appropriate State employment and benefits agencies. Employees shall be provided an opportunity to waive privacy rights to aid in this transfer of data.
- (3) Management agrees to assist and refer any Group I or II displaced employees to the Office of Personnel Management (OPM) for consideration for employment under the Displaced Employee Program (DEP).
- (4) **Unemployment Compensation.** The Department and the Union may collaborate in arranging to have representatives of the Unemployment Insurance Agencies from all states in which employees would file claims come to the Department and make presentations regarding benefits, eligibility requirements, and application procedures.
- (5) **Severance Pay.** The Department will notify all employees who are separated in a RIF of their rights to receive severance pay under law and regulation. Those who are eligible to receive severance pay will get an estimate of the amount of severance pay that they will receive, and information on how these payments will be made.

(6) Employment outside the Department.

- (a) If resources are available, for employees who cannot be placed within the Department, the Department may provide assistance in finding employment outside the Department, whether in another Federal agency, a State or local government, or the private sector. This assistance may include, but not be limited to:
- i. Resume writing;
 - ii. Coaching in job search and interview techniques;
 - iii. Reasonable Amount of time to visit local job fairs or attend local job interviews.
- (b) For a reasonable amount of time and to the extent permitted under law, regulation, and the availability of resources, the Department will continue to extend the services of subsections above to employees after the date of the employee's separation.

Section 33.19 - Personnel Files. Bargaining unit employees have access to their electronic Official Personnel File, and may forward it to the Union if they reasonably believe that the information used to place them on the retention register is inaccurate, incomplete, or not in accordance with law, rule, regulation, and provisions of this Agreement.

Section 33.20 - Records. Management shall maintain all lists, records, and information pertaining to the RIF for at least one (1) year from the date a specific RIF notice is issued in accordance with applicable rules and regulations.

Section 33.21 - Retention Register. Management shall certify the accuracy of all retention registers which are to be used to conduct a RIF. A copy of the certified retention registers shall be made available to the Union immediately upon its completion. Upon request, the Union shall have the right to review any subsequent changes to the uncertified and certified retention registers. When the Department discovers an error in the determination in an employee's retention standing, it must correct the errors and adjust erroneous RIF actions in accordance with the employee's actual retention standing.

Section 33.22 - Training for Union Representatives. Management shall provide opportunity to all Union representatives in each office for RIF training prior to the briefing of the employees. Management sponsored training shall be equivalent to the training provided to supervisors.

Section 33.23 - Early Retirement Authorization. Management shall request from OPM authorization for early optional retirement for any segment or component of the Department when the minimum eligibility requirements established by regulation are met.

Section 33.24 - Performance Appraisals. In a RIF, all employees shall be entitled to additional service credit for performance in conformity with the regulations at 5 CFR 351.504. Annual performance

appraisals shall be frozen prior to issuance of the specific RIF notice and shall be the evaluations used to determine eligibility for additional credit toward an employee's service computation date.

Prior to freezing performance appraisals, Management will ensure that all employees have current performance ratings of record.

An employee who has not received any rating of record during the four (4) year period shall receive credit for performance based on the modal rating (as defined in 5 CFR 351.203) for the summary level pattern that applies to the employee's official position of record at the time of the RIF.

An employee who has received at least one (1) but fewer than three (3) ratings of record during the four (4) year period shall receive credit for performance based on the value of the actual rating(s) of record divided by the number of actual ratings received. If an employee has received only two (2) actual ratings of record for the period, the value of the rating is added together and divided by two (2) and rounded to the next higher whole number to determine the amount of additional retention service credit. If the employee has received only one (1) actual rating of record, its value is the amount of additional retention service credit provided.

Section 33.25 - Grade and Pay Retention. Grade and pay retention for affected employees shall be in accordance with applicable law and regulations at 5 CFR Part 536.

Section 33.26 - Details. RIF determinations will be based on the permanent position of record and not the detail.

Section 33.27 - Transfer of Function. When the Department determines that a TOF is necessary, the Department will inform the Union as far in advance as practicable, giving the reason for the action, the approximate numbers, types, and geographic location of the positions to be affected, and the approximate date of the action. At that time, Management will issue a notice in accordance with Article 49, as appropriate.

- (1) The Department will identify which positions will transfer with the function in accordance with Office of Personnel Management regulations.

Section 33.28 - New Organization. In anticipation of a RIF, Management shall not create new or different organizational components or subcomponents to favor or disfavor an employee or group of employees.

Section 33.29 - Additional Negotiations. Nothing in this section shall waive, limit or impair the statutory or legal rights of employees or their representatives.

Section 33.30 - Appeals and Grievances. The employee may not appeal to MSPB if they have grieved the alleged action.

ARTICLE 34
FURLOUGHS FOR THIRTY (30) DAYS OR LESS

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

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

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

Section 34.02 - Furlough Employee/Position Designations.

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

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

Section 34.03 - Notification to Union and Impact Bargaining.

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

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

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

Section 34.04 - Scheduling Planned Furlough Days.

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

Section 34.05 - Notice to Employees for Planned Furloughs.

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

Section 34.06 - Employee Benefits During Planned or Emergency Furloughs.

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

Section 34.07 - Employee Compensation During an Emergency Furlough.

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

Section 34.08 - Employee Leave During an Emergency Furlough.

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

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

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

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

ARTICLE 35 CONTRACTING OUT

Section 35.01 - General. The provisions of this Article concern any contracting out of work performed by employees as of the effective date of this Agreement.

Internal reorganizations, transfers of function, realignments. Reductions in Force, Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive program (VSIP) as a result of any contracting out process shall be conducted in accordance with law, rule, regulation and the terms of the Agreement.

The Department shall comply with its own policies and other applicable government-wide rules and regulations in all aspects of the contracting out process. Any process, procedure, or issue appealable under the OMB Circular A-76 appeals process is excluded from the negotiated grievance procedures and arbitration process. This is not intended to take away any management or employee rights under the federal labor relations statute, OMB Circular A-76 or other statutes or regulations.

Section 35.02 - OMB Circular A-76 Process

Information Sharing and Notice.

- (1) The Union and potentially affected employees will be notified in writing in accordance with the OMB Circular A-76 process. Upon request, the Department shall inform the Union of the web site(s) where the mandatory Fair Act Inventory data and public notices will be available.
- (2) The Department shall provide the Union weekly reports, upon request, during preliminary planning (when management has decided to utilize the A-76 process), the duration of the competition, and the post-competition transition phase. If there has been no change since the last report, the Department will so advise the Union. If an item is prohibited from release by the Federal Acquisition Regulation, or other applicable rules or regulations, it will be excluded from release to the Union. After the weekly report is issued, if there are questions or concerns, briefings shall be provided at the request of the union. Such status reports and briefings will include but not be limited to:
 - (a) Status updates, to include planned actions and next steps;
 - (b) Tentative schedule for the entire A-76 process;
 - (c) Provision of all relevant documents, including any communication sent out to the group of prospective and/or real bidders.
- (3) The Department shall provide the Union with copies of all notifications sent to Congress or OMB as soon as it is permissible.
- (4) Copies of additions, changes, deletions, and supplements to Department level procurement regulations and policies; Department level regulations and policies concerning the

implementation of OMB Circular A-76 will be posted on the OCPO HUD@work web site.

- (5) Copies of official Departmental requests to OMB required by OMB Circular A-76, and OMB official responses, excluding any confidential information and information whose disclosure is prohibited by OMB Circular A-76 or fair bidding requirements.
- (6) If a lessons learned analysis is performed and documented relating to the contracting out activity, copies of such documentation best practices and lessons learned will be provided to the Union (post-competition) with the exception of any documentation that is privileged and exempt from disclosure.
- (7) During the OMB Circular A-76 competition, the Department will directly interface with Union representatives and the affected employees from the date of the public announcement until full implementation of the performance decision.

Competition Process.

- (8) The Department will provide the Union and all affected employees written notification of formal announcements of the start date of each OMB Circular A-76 competition at the same time as the public announcement. The notification will include all information contained in the formal public announcement, if not explicitly prohibited by A-76 rules.
- (9) By no later than the formal public announcement date of each OMB Circular A-76 competition, the Department shall provide the Union the final preliminary list of affected bargaining unit employees with the following information about each: job title, grade, step, work unit, and work location.
- (10) When a decision is made to conduct an OMB Circular A-76 competition on an area, the Department shall conduct an informational briefing with the Union and affected employees to discuss the process and the rights of competition, and answer any questions regarding the A-76 process. The briefing will include information on competition contests. At the briefing, attendees will be provided either a cite or copies of the applicable laws, rules and regulations governing contracting out.
- (11) The Union may appoint a representative to serve on either the PWS or MEO team formed under OMB Circular A-76. The same representative may not serve on both teams. The Department will train PWS and MEO team participants concerning their duties and obligations under all laws, rules, and regulations. The Union's representative assigned to these teams will sign the same non-disclosure agreement and be bound by the same obligations to protect confidential information regarding the contracting out process as all other members.

- (12) Upon request by the Union, the Department shall release to the Union the certified Standard Competition Form (SCF), Department tender, and public reimbursable tenders after the expiration of the time for filing a contest or upon resolution of a contest, in accordance with A-76.
- (13) If there is adverse impact to bargaining unit employees resulting from making government property available to prospective and selected providers, it shall notify the Union under Article 49 procedures.
- (14) The Department will provide the Union and all affected employees written notification of formal announcements of the completion end date of each OMB Circular A-76 competition simultaneously with the public announcement. The notification will include all information contained in the formal public announcement.
- (15) The Department shall offer debriefings required by OMB Circular A-76, Attachment B, Paragraph D6d, with the Union and all affected employees as soon as is practicable after the end of each OMB Circular A-76 competition.

Competition Cancellation.

- (16) The Department will provide the Union and all affected employees written notification of formal announcements of the cancellation date of each OMB Circular A-76 competition as soon as is practicable after the public announcement. The notification will include all information contained in the formal public announcement.

Competition Challenges and Appeals.

- (17) Without regard to whether the Union is an interested party and unless otherwise prohibited by law, rule, or regulation, the Department will inform the Union of all contests and appeals filed by interested parties at the same time as the Department provides notice to other interested parties.

Section 35.03 - Contracting Outside of OMB A-76 Process.

- (l) Information that is generally available to the Public will be provided to the Union upon request.

Immediately upon publication of a solicitation to contract out work covered by this Article, the Department will make its best effort to notify the Union of the solicitation and provide a link to the solicitation. The Union has the right to raise concerns directly with the Chief Procurement Officer (CPO) regarding any solicitation of work covered by this Article. The CPO will give full consideration to the concerns raised by the Union in advance of the end of the solicitation period. The CPO may make changes to the solicitation, time permitting. Upon request, the CPO, or designee, will conduct a conference call with the Union to discuss the consideration given to the concerns raised by the Union, up to once per quarter. If there is more than one solicitation during the same time period, they will be grouped together to be discussed together on the same call. If a cost analysis, estimate, or projection is available, all

such information shall be provided to the Union upon request unless prohibited by law or regulation.

- (2) For those contracting out decisions falling outside of the A-76 process, Management will issue an Article 49 notice to the Union if the change will result in a duty to bargain.

Section 35.04 - Contract Out Decision/Reduction in Force. If a decision is made to contract out work, which results in a reduction in force, or if a decision results in an in-house win but includes a reduction in force, the Department will comply with all provisions of Article 33, Reduction in Force.

The Department will provide the Union with any changes to the list of the employees affected by the performance decision. If required by law, rule or regulation, the Department will include contractors' obligations to grant to eligible employees the right of first refusal in all contracts executed with contractors. Refusing the right of first refusal because of displacement due to contracting out shall not deny a bargaining unit employee of any rights they might otherwise have under this Agreement for applicable RIF procedures or any other personnel procedures.

Section 35.05 - Inventory of Contracts and Contractors. Upon request, management shall provide to the Local President annually, a list of contractors who are occupying space in HUD buildings. The FAIR Act Inventory and information on challenging Fair Act inventory decisions shall be published in accordance with OMB requirements, including the list of inherently governmental functions required by A-76 on the same day that the FAIR Act Inventory is made available to the public.

Section 35.06 - Minimizing Adverse Impact. Management agrees, wherever practicable, to minimize adverse actions and reduce separations of employees affected by a contracting out decision.

Section 35.07 - Supervision. Management agrees that applicable regulations prohibit bargaining unit employees being supervised by consultants and contractor personnel. Management agrees to issue an Article 49 notice and an opportunity to bargain the impact and implementation of any regulatory changes regarding the supervision of bargaining unit employees by consultants and contractors.

Section 35.08 - Space Allocations for Contractors. Space and equipment provided to contract employees will not conflict with HUD policy and GSA guidelines for government employees. In any allocation of space occurring after the effective date of this Agreement, Management will give HUD employees preference over contract employees in allocating space. This provision does not change negotiated floor plans and seating arrangements currently in effect.

**ARTICLE 36
VERA/VSIP (BUYOUTS)**

Section 36.01 – General.

- (1) Voluntary Separation Incentive Payments (VSIP) and Voluntary Early Retirement Authority (VERA) are two (2) provisions authorized by OPM that an agency may request for the purpose of: VERA - substantial restructuring, reshaping, downsizing, transfer of function or reorganization of an agency to temporarily lower the age and service requirements in order to increase the number of employees who are eligible to retire; VSIP - provides a lump sum payment of up to \$25,000 to employees as an incentive to voluntarily separate from federal service.
- (2) Buyouts are voluntary. No adverse action will be taken against an employee for not accepting a buyout offer. The identity of any employee applying for a buyout will be held confidential. The Office of Human Resources (OHR) is the only office authorized to have access to the buyout applications and the identity of any employee requesting a buyout. The employee's identity will be released to Management, only after the employee has submitted a retirement package to OHR, Payroll, Benefits, and Retirement Division (PBRD).

Section 36.02 - Application Process.

- (a) **Announcement:** All employees being offered the buyout within the specific program area will receive simultaneous electronic notification, which includes the buyout plan that will outline the parameters of eligibility and the process for application.
- (b) **Application Window:** The application window will be no less than fourteen (14) calendar days, unless extended by the Agency.
- (c) **Submission:** Employees may submit buyout applications by either of two transmission methods: electronic mail or facsimile. All applications must be submitted within the appropriate consideration period, irrespective of the transmission method. Applicants are authorized to use an appropriate amount of time and government equipment to prepare and submit the application.
- (d) **Notification of Receipt:** Employees will receive notification of receipt of the application by OHR within one (1) business day by electronic mail.
- (e) **Application Corrections:** Employees will be notified by electronic mail within two (2) business days if their application can be processed. If the application is incorrect and/or incomplete, the employee will be notified of the reason(s), and will be given an opportunity to submit a corrected application.
- (f) **Approval Period:** Within five (5) business days after receipt of the application, Management will advise each applicant if: a) the application is approved or disapproved and the reason(s); or b) application will be temporarily deferred, upon the determination of other eligible employees applying for the buyout and the approval of a buyout.

- (g) **Competing Applicants:** In the event that more than one eligible employee applies for a single buyout, the employee with the earliest service computation date (SCD) will receive the buyout. In the event that two or more employees have the same SCD, the employee with the earliest entrance-on-duty (EOD) date with the Department will be used. In the instance where an additional tiebreaker is needed, the largest digit of the last digit of the employee social security number will be offered the buyout. The date and time of application submission will not be a factor in the selection process.
- (h) **Approved Applicants:** Approved applicants have the right to change their departure date, provided the date is within the established buyout separation window.
- (i) **Employee Decision Period:** Employees will have three (3) business days to accept or reject a buyout offer. The exception would be that employees might have less than three (3) business days to accept or reject the buyout offer to meet the required separation date stated in the buyout plan.
- (j) **Acceptance of Buyout/Rescission Process:** Employees may rescind their application/decision for a buyout at any time prior to the effective date of separation stated in the buyout plan.

Section 36.03 - Employee Rights and Notification:

- (a) **Non-Discrimination:** All decisions regarding the buyout application process will not be based on any discriminatory factors or other violation of law, rule, regulation, or the HUD/AFGE Agreement.
- (b) **Telecommuting:** This agreement will have no adverse impact on any telecommuting arrangement(s).
- (c) **Work at home:** This agreement will have no adverse impact on an employee's Reasonable Accommodation.
- (d) **Waiver of Agency Restrictions:** The Agency agrees to consider each waiver request independently. Each waiver request shall meet the required statutory and/or regulatory waiver standards.

Section 36.04 - Union Rights: The parties agree that this agreement does not constitute a waiver of any union rights under the HUD/AFGE Agreement, law, rule, or regulation.

- (a) **Local Negotiations:** The Agency agrees to provide the union notification and the opportunity to bargain, as appropriate, of any subsequent changes to the bargaining unit employees' working condition, i.e., moves, details, and reassignments that may occur as a result of buyouts.
- (b) **Clearance Process:** The Agency agrees that bargaining unit members accepting a voluntary buyout will be required to obtain initials from the AFGE Local during the agency clearance process.

Section 36.05 - Retirement Benefits Questions: Employees will be notified of a specific contact person assigned to provide retirement benefit assistance. The contact person will be available to discuss: eligibility for a retirement/buyout, calculated estimated annuity, buyout/severance payment amounts, other personal considerations as appropriate, and questions about the retirement or buyout application.

ARTICLE 37 SAFETY AND HEALTH

Section 37.01 - General. The Department shall furnish to each employee a place of employment that is free from hazards that cause, or are likely to cause, accident, injury, or illness and that promotes a healthy work environment. The Department's Occupational Safety and Health Program shall comply with requirements of Executive Order 12196 and the basic program elements of the Department of Labor regulations (29 CFR 1960) and Occupational Safety and Health Act of 1970, as amended. In circumstances where there is no regulatory safety or health standard, nationally recognized sources of health and safety criteria will be utilized, as required. The source of the criteria will be identified in the Occupational Safety and Health program description on HUD at Work and other Departmental documents. The sources are, but not limited to: Center for Disease Control, National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health (NIOSH), and the U.S. Department of Energy, etc.). Management will post in conspicuous locations the OSHA poster regarding the rights of employees for reporting unsafe or unhealthy working conditions.

Section 37.02 - Dissemination of Occupational Safety and Health Program Information. Each HUD facility will post the following information: 1) the name and contact information for the Agency's Local Safety and Health Representative and 2) a list of the Safety Committee members and their contact information in a location available to all employees.

Section 37.03 - Employee Training.

- (1) The Department agrees to provide timely appropriate training to employees who are required to perform duties which involve potential hazards to safety and health.
- (2) The Department agrees to allow employees to attend with supervisory approval, on duty time, training it provides for safety and health.
- (3) The Department agrees that all designated safety representatives will receive safety and health training. Sources of training may include OSHA or National Safety Council.

Section 37.04 - Safety Equipment. The Department shall provide, at no cost to employees, all necessary personal protective equipment and other devices and procedures as defined by OSHA guidelines to protect themselves from hazards on the job. Employees shall be provided with appropriate training in the use of the equipment.

Section 37.05 - Freedom from Reprisal. Employees shall be guaranteed protection from any restraint, interference, coercion, discrimination, or reprisal for inspecting or filing a report of an unsafe or unhealthful condition, or for any other participation in the safety program.

Section 37.06 - Management Safety and Health Representatives. The Department will notify the Local Union representative of the name and location of Management's local committee representatives annually. The safety and health representative shall provide counseling and general information to employees and the Union upon request.

Section 37.07 - Safety and Health Committees.

- (1) The parties agree to Safety and Health Committees with equal numbers of Management and Union representatives in Headquarters and each local office with more than fifty (50) employees. The parties in the individual offices will decide the number of persons on the committee. In offices with fewer than fifty (50) employees, safety and health matters shall be addressed at Local Labor-Management Forums. The Union has the right to select their representatives on the committee. Management may select subject matter experts from the bargaining unit to serve on this committee as their representatives.
- (2) The Safety and Health Committee is an advisory committee to the Department. However, the Department is responsible for the safety and health of its employees and the workplace.
- (3) Safety and Health Committee functions may include, but are not limited to the following:
 - (a) Monitoring the operation of the local safety and health program and making recommendations to the official in charge for improvement.
 - (b) Monitoring findings and reports of workplace inspections.
 - (c) Participating in inspections of the office at least annually.
 - (d) Reviewing plans for abating hazards and preventative maintenance.
 - (e) Reviewing responses to reports concerned with allegations of hazardous conditions, alleged safety and health program deficiencies, and allegations of related discrimination. If half ($1/2$) of the members of record on the Committee are not substantially satisfied with a response, they may request an appropriate investigation to be conducted by the Occupational Safety and Health Administration (OSHA).
 - (f) Reviewing procedures for handling safety and health suggestions and recommendations from employees.
 - (g) Reviewing reports of unsafe and unhealthful conditions.
 - (h) When issues arise regarding building maintenance and security concerns that affect the safety and health of MID employees, Management will arrange a meeting with the owner/lessor and the Safety and Health Committee.

Section 37.08 - Training for Safety and Health Committee members. Consistent with Executive Order 12196 and 29 CFR 196.59, the Department shall provide training as necessary within 6 months of appointment to the committee. Training can include occupational safety and health training, including introductory and specialized courses and materials that will enable Union representatives to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health

inspections. Union representatives will receive duty time to attend training and related activities. When necessary, HUD shall pay for all costs for travel per diem for committee members.

Section 37.09 - Reporting and Correction/Abatement of Unsafe and Unhealthy Working Conditions.

- (1) The Department agrees to make a timely response to employee reports of unsafe and/or unhealthy working conditions.
- (2) Employees are encouraged to report unsafe or unhealthy conditions to their immediate supervisor, the local designated Safety & Health officer, or the Chairperson of the Safety and Health Committee. While the Department strives to respond immediately to reports of unsafe or unhealthy conditions, at a minimum, the Department will inspect within 24 hours if the conditions pose an imminent danger, within 3 working days for potentially serious conditions, and within 20 days for other than serious safety and health conditions.
- (3) Where the designated Departments' safety representative determines that an unsafe or unhealthy condition exists, the Department shall post notices prominently at or near the location until the cited condition has been corrected and shall make reasonable efforts toward prompt abatement. The Union will be notified of significant conditions warranting postings.
- (4) Whenever the Department cannot remedy a safety and health condition within 30 calendar days, the Department will develop a plan, in conjunction with the responsible parties, with a timetable including a schedule and summary of interim corrective steps. When abatement is dependent upon the General Services Administration (GSA), the plan shall be prepared in conjunction with them. Employees exposed to such conditions shall be informed of the abatement plan and advised as to measures which should be taken to safeguard their health.
- (5) The Department will address with GSA any hazardous conditions affecting walkways and sidewalks.
- (6) The Department will provide to the Union the results of any and all health and safety testing, within a timely manner but no later than thirty (30) days of receipt of the testing.

Section 37.10 - Imminent Danger Situations and Threats to Safety and Health.

- (1) In the case of imminent danger situations, the persons reporting such situations shall make the reports in the most expeditious manner available. The Department recognizes that employees have a right to decline to perform their assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm, and that there is insufficient time to effectively seek corrective action through normal hazard reporting and abatement procedures. The Department agrees to make every effort to ensure an appropriate response to imminent danger situations.
- (2) Immediately upon identifying any condition that could reasonably be expected to cause death or serious physical harm, the Department shall immediately inform all employees at risk and where necessary, evacuate staff.

Section 37.11 - Emergency Information. The Department shall use the HUD Emergency Information Hotline (866-463-6483) to provide employees with instructions for reporting to duty during an emergency and to find out the status of their individual offices. The Emergency Hotline shall be used in the event of any incident causing the disruption of HUD operations, office closures or delayed arrivals. The Department shall provide emergency information through other appropriate means, including HUD's internal Web site (HUD@Work), e-mail notices, radio/television announcements, or text messages.

Section 37.12 - First Aid. The Department shall ensure that there is reasonable access to adequate first aid kit(s) for each local office. The kit(s) shall be maintained in designated areas and replenished by the Department. Contents must have current expiration dates.

Section 37.13 - Safety and Health Records. The Department shall provide the Union access to records maintained under the Occupational Safety and Health Act, consistent with the Privacy Act. The Department shall make available to the National Council President, or designee, a copy of the Department's annual reports to OSHA, including the accident and illness report logs as required by 29 CFR Part 1960.

Section 37.14 - Inspections. Where the Department is aware that an inspection is to be conducted by an outside authority, the Union will be notified at least 48 hours in advance where possible. The Local President or his/her designee is entitled to accompany any inspector conducting inspections of HUD controlled space. During the course of any inspection, any employee may bring to the attention of the inspector or the participating representative any unsafe working conditions. If necessary, safety equipment will be provided to the Union representative during the inspection.

Section 37.15 - Union Notification. The Department shall notify the Union of the report of any job-related injury or illness, subject to privacy constraints, by forwarding a copy of all appropriate reports, such as form 795 to the Union within three (3) days of receipt by the Department. Upon request, the Department shall provide to the Union available appropriate safety data regarding chemicals that are used at the work site.

ARTICLE 38 WELLNESS

Section 38.01 - General. The Parties agree that promoting employee wellness, health, and fitness, may benefit HUD in terms of improved productivity, reduced health care costs, and reduced use of leave. Management will support a variety of programs that promote employee health, fitness and wellness, consistent with law, rule, and/or regulation.

Section 38.02 - Committees. A function of the Local Labor Management Forums, referred to in Article 3 of this Agreement, is to encourage wellness programs. The Local forum shall form a subcommittee to address wellness issues. This committee is encouraged to develop/sponsor educational programs, conduct surveys to assess the needs and interests of the employees, promote healthy food choices in the cafeterias and vending machines, and pursue health club discounts. The committee may also explore partnerships with other agencies for fitness and wellness opportunities.

Section 38.03 - Education programs. The Department will provide access to and encourage employees to participate in educational programs such as but not limited to: nutrition, weight reduction, stress reduction, smoking cessation, heart health, and cancer prevention to educate employees on how they may achieve optimal health. The Department shall also provide training programs, where available, related to first aid, cardio-pulmonary resuscitation (CPR) and the use of automatic external defibrillators (AEDs).

Section 38.04 - Immunization Programs. The Department will provide immunizations, where available, through its existing Health Unit or Public Health Service facilities.

When the Department provides immunizations for contagious diseases such as the flu or H I N I, employees not located at a participating facility may use a reasonable amount of administrative time, up to two (2) hours, to secure vaccination for these contagious diseases.

Section 38.05 - Health Examinations. Subject to available funds, health examinations shall be offered to bargaining unit employees within the prorated allocation, if any, made available by the Department within that office. Management shall advise the Union in advance of such examinations and the local committee shall establish criteria to be used for selection.

Section 38.06 – Facilities. Local Wellness Committees may explore the possibility of using existing space in HUD facilities for exercise classes, yoga, and/or other low impact physical fitness activities during employee non-duty hours. The details of such programs and procedures for utilization of space will be a topic of discussion for the Local Wellness Committee irrespective of scheduled fitness activities, the business needs of the Department shall always take precedence.

Section 38.07 - Fitness. Subject to available funds, Management may provide a subsidy for gym, health club, or fitness center memberships, either at an on-site fitness center located in a HUD facility, or, when no on-site facility is available, for local gyms, health clubs, or fitness centers.

If subsidies become available, the National LMF committee will make recommendations regarding the program under applicable law, rule, or regulation.

Local LMF wellness committees are encouraged to make recommendations that support employee fitness efforts.

Section 38.08 - Voluntary Participation. Employee participation in any health program, including but not limited to education programs, immunization programs, health examinations, and fitness programs, shall be voluntary.

- (1) Employees will not be penalized on the basis of their choosing to participate or not participate in such programs, nor will any distinction shall be made among employees on the basis of the hours of participation.
- (2) If the Department tracks program outcomes, the Department shall track only total or general results of the program. Program outcome information will be shared at the national Labor Management Forum. The Department shall not identify individual participants, or use identifying information in any way.

Section 38.09 - Vending. Where vending is available, the Department will make a good faith effort to ensure that healthy choices are available to employees such as: fruits and vegetables, fruit juices, unsweetened waters, low calorie, and other healthy choices.

ARTICLE 39
SMOKE FREE ENVIRONMENT

Section 39.01 - Purpose. This Article supports the Department smoke free environment policy and recognizes the Agency's responsibility to maintain a smoke-free environment.

Section 39.02 - Definition. Smoking is defined as a lighted cigar, cigarette, pipe or any other lit tobacco product.

Section 39.03 - Scope. This policy shall apply to all HUD occupied and controlled space.

Section 39.04 - Policy. Smoking is prohibited in HUD occupied and controlled space. In addition, all designated smoking areas in such space shall be in compliance with GSA regulation.

Section 39.05 - Smoke Free Environment. For public and employee recognition, the Agency shall designate that HUD is a smoke-free environment through posting of appropriate no-smoking signs.

Section 39.06 - Smoking While on Government Travel. Smoking shall be prohibited in GSA owned or leased vehicles. In such situations, periodic smoke breaks outside the vehicle shall be authorized as necessary.

ARTICLE 40
DRUG-FREE WORKPLACE PROGRAM

Section 40.01 - General. Management agrees that the establishment and administration of its Drug-Free Workplace Program will be done in accordance with Executive Order (E.O.) 12564, the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs, and any Government wide regulations. For the purposes of this agreement, the term "rules or regulations" shall mean those rules or regulations of authorities outside the agency, such as the Office of Personnel Management, HHS, and other Government wide regulations. Any subsequent proposed changes to these procedures that impact bargaining unit employees will be implemented subject to the procedures contained in applicable law and this agreement. The parties recognize that the Union is not authorized to waive and does not waive any legal challenge or Constitutional or legal rights employees may have regarding any facet of drug testing.

Section 40.02 - Employees Subject to Testing. Testing will be conducted in accordance with laws, rules and regulations. E.O. 12564 provides for the following types of drug testing:

- (1) Random testing for the use of illegal drugs by employees in designated testing positions;
- (2) Voluntary employee drug testing;
- (3) Reasonable Suspicion testing;
- (4) Accident and unsafe practice testing;
- (5) Follow-up to counseling or rehabilitation or illegal drug use through the Employee Assistance Program (EAP);
- (6) Applicant testing; and
- (7) An employee who voluntarily identifies himself as a user of illegal drugs.

Section 40.03 - Testing-Designated Position (TDP)

- (1) The designation of testing positions will be done in accordance with applicable laws, rules and regulations. Executive Order 12564 states that "the head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.
- (2) Management will provide the appropriate local Union President with any amendments to

Appendix A of the Plan (Positions Subject to Random Testing). The Amendments contain the justification in support of the position designation. The appropriate local Union President will also be provided a copy of the position description. If the position is encumbered at the time of notification, the appropriate local Union President will be provided the name and duty station of the employee in the position. This information will be sent to the appropriate local Union President at the same time it is sent to the employee. The Union will provide Management with the names and addresses of all local Union Presidents.

- (3) Employees encumbering designated testing positions will be notified in writing of the designation in the vacancy announcement or if the designation changes. Management will post on HUD@work a reminder that some employees may be designated for random testing and if they are unsure, they should check with their supervisor or their servicing HR Specialist.
- (4) The Department will not schedule random drug tests during an employee's approved leave schedule.
- (5) The Department will reimburse employees for costs associated to address false positive test results.

Section 40.04 - Reasonable Suspicion.

- (1) Reasonable suspicion is an articulable belief that an employee uses illegal drugs drawn from specific and particularized facts and reasonable inferences from those facts. Mere hunches are not sufficient to meet this standard.
- (2) Reasonable suspicion testing will be conducted in accordance with applicable laws, rules and regulations.
- (3) Prior to directing an employee to testing based on a reasonable suspicion that the employee uses illegal drugs, official ordering such testing will receive concurrence from a higher level official or authorized management official. A written statement will be prepared that will document the concurrence and articulate the reasons for such testing including but not limited to the date and time of the determination factors.
- (4) Employees encumbering a designated testing position may be ordered to undergo a drug test if there is a reasonable suspicion of illegal drug use whether on or off duty.
- (5) Employees who are not in designated testing positions are only subject to drug testing if the reasonable suspicion is based on on-duty illegal drug use or impairment.

Section 40.05 - Accident or Unsafe Practice Testing. Management is committed to providing a work environment that is safe and secure. Employees involved in accidents while operating agency motor vehicles, or who engage in unsafe practices that are job-related and that pose a danger to staff, the public, or to the overall operation of the organization may be subject to drug testing under the provisions of E.O. 12564. This testing will be conducted in accordance with applicable laws, rules, or regulations.

Section 40.06 - Volunteer Testing. Management will not coerce or require employees to participate in voluntary programs established under Section 3(b) of E.O. 12564, or any other voluntary program. Participation or non-participation in these programs will neither advantage nor disadvantage employees in any aspect of their employment. To the extent that random testing may be conducted on volunteers, it must be conducted in accordance with applicable laws, rules and regulations.

Section 40.07 - Notification to Employees.

- (1) Management agrees to make every effort to fully inform employees about the goals, objectives, policies and procedures of any drug testing plan.
- (2) An annual staff bulletin will be issued to provide updates to employees on the status of the Drug-Free Workplace Program.
- (3) On the day of drug testing, the employee to be tested shall receive in writing the information set forth below. If the testing is to take place at a location other than the employee's duty station, the information shall be given prior to leaving the duty station. Otherwise, the information shall be given to the employee prior to the scheduled collection time. Inadvertent failure to provide this information will not invalidate the results of an employee's drug test. The time an employee requires to provide a specimen including travel time shall be considered duty time.
 - (a) Whether the test is voluntary or mandatory;
 - (b) The reasons for ordering the drug test;
 - (c) How the employee was selected for the test;
 - (d) The consequences of a positive result or refusal to cooperate, including adverse action;
 - (e) What drug(s) or class of drugs they are being tested for;
 - (f) The Medical Review Officer (MRO) process as set forth by the HHS guidelines, including the procedures relating to the submission of information to justify a positive result caused by prescription medication, non-prescription medication or other substance;
 - (g) The location of drug abuse counseling and referral services available through the EAP to which he/she can submit prior to testing. (However, the test will not be delayed to allow the employee to seek assistance);
 - (h) The fact that the employee has a right to Union representation only as provided in this Agreement or the Federal Labor-Management Relations Statute;
 - (i) The right to a split sample and a test of the split sample;

- (j) That employees may contact their Health Plan Representative to obtain information about possible cost reimbursement associated with a split sample test;
- (k) The consequences should they refuse counseling or rehabilitation; and
- (l) Notification that employees shall have access to test results and associated documents.

Section 40.08 - Methods and Procedures for Testing.

- (1) The parties agree that methods and equipment used to test for abuse of drugs yield the best results when the most reliable are used. Therefore, Management agrees to review the Federal Register to ensure that its contractor remains an HHS certified laboratory. In the event that the contractor is decertified in accordance with HHS guidelines, Management shall order the cessation of any further testing at the decertified laboratory. Management agrees to cease further collections until an HHS certified laboratory is available to accept Agency specimens.
- (2) Management agrees that the following procedures will be utilized subject to applicable laws, rules or regulations, to assure drug testing is reliable and employee concerns are recognized:
 - (a) The collection, handling, and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures, other HHS requirements, and any other pertinent laboratory requirements.
 - (b) The individual may provide their specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy in accordance with the Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). Management will make every reasonable effort to ensure that the specimen will be provided in a sanitary area.
 - (c) At the employee's request, the urine sample will be split at the time of collection in accordance with procedures set forth in the Mandatory Guidelines. Upon notification of a positive confirmatory test, the MRO will notify the employee and he/she will have the opportunity to provide any/all relevant information that will assist the MRO in determining whether the positive test result is justified. At the employee's request, the MRO will notify the Laboratory to conduct a confirmatory test on the retained split sample. The cost of the confirmatory test will be billed to the employee by the agency if the results do not refute the results of the original test. Should the employee-requested confirmatory test refute the original test conducted, the original test result will be negated and the Department will assume the cost of the laboratory test in addition to the other aforementioned costs.
 - (d) If sufficient volume of urine is not able to be provided within a reasonable period of time in accordance with the Mandatory Guidelines, the collection site person will contact an appropriate Management official. Normally, "a reasonable period of time" should not extend beyond the employee's scheduled work day. Consideration will be given to re-scheduling the employee for testing at a later date.

- (e) The authorized collection agent will collect all drug testing specimens. Management agrees to monitor the collection contract to assure compliance with the Mandatory Guidelines.
- (f) Employees will not be required to reveal legitimate use of legal or prescription drugs at the time of collection. Employees may, however, provide this information if they so desire. This information is confidential and will only be released to the MRO.
- (g) Any employee who tests positive will be afforded an opportunity to justify the test results in accordance with I-IHS guidelines, including the opportunity to present evidence of the legitimate use of prescription medication, non-prescription medication, or other substance.
- (h) If the test is positive and the employee provides evidence that Management concludes demonstrates a disabling drug dependency, Management may provide any appropriate reasonable accommodations in accordance with applicable laws, rules and regulations. Follow up testing conducted on employees who successfully complete a rehabilitation program will comply with applicable laws, rules and regulations.
- (i) Upon receipt of a positive test result resulting from the Gas Chromatography/Mass Spectrometry (GC/MS, i.e., confirmatory test), or successor technology, conducted by the HHS certified laboratory, the MRO, in accordance with HI-IS guidelines, will examine alternate medical explanations for the test results. If the MRO concludes that the employee's medical documentation does not provide a legitimate medical explanation for the positive test result, the MRO must explain the basis for his/her rejection of the documentation in writing for the benefit of the employee. If the MRO determines there is a legitimate medical explanation for the positive test result, he/she shall determine that the result is consistent with legal drug use and will take no further action. The test result reported back to the agency would be "negative."
- (j) When requesting that collection times be scheduled for drug testing under Reasonable Suspicion tests and Accident or Unsafe Practices testing, where appropriate, the Authorizing Management Official will take into consideration leave and travel plans which have been scheduled and approved by the employee's supervisor. Management retains the right to cancel leave or travel orders as the circumstances warrant.

Section 40.09 - Confidentiality and Safeguarding of Information. The parties recognize the responsibility to protect the confidentiality of employees under any drug testing plan. This process shall include the following:

- (1) The collection, handling, and transportation of all specimens will be strictly in accordance with HHS Chain of Custody Procedures, and other HHS requirements. Confidentiality and safeguarding of information will be handled in accordance with Section 48.08 (2)(a).

- (2) Employees will be assured confidentiality in all matters relating to drug testing. Information will only be released in accordance with applicable laws, rules or regulations.
- (3) The Department shall destroy all Departmental records concerning non-confirmed or justified test results as required by applicable laws, rules, or regulations.
- (4) In accordance with applicable laws, rules, regulations, Mandatory Guidelines, and subsequent changes thereto, the employee who was subject to a drug test shall, upon written request, have copies of all records relating to his or her drug test within the control of the Department.

Section 40.10 - Counseling and Rehabilitation.

- (1) Employees whose tests have been confirmed positive will be referred to an Employee Assistance Program Counselor for counseling and/or referral assistance for appropriate treatment and rehabilitation.
- (2) To the extent feasible and to the extent of available Management resources, counseling and rehabilitation services will be offered to employees and their family members with substance abuse problems, and also to employees who have family members with substance abuse problems.
- (3) If an employee voluntarily reports to management illegal drug use and/or addiction, that employee shall be referred to the Employee Assistance Program for treatment by a health care professional and will not be disciplined for the conditions reported. It is understood that employees are responsible for their conduct regardless of conditions reported. Subsequent use of illegal drugs may result in disciplinary action once the employee's due process rights are met.
- (4) After successful completion of rehabilitation, Management will return the employee to the same or similar position, or a position at the same grade as the one occupied before the drug problem was identified.

Section 40.11 - Acknowledgement Forms. No employee shall be required to sign any document stating that he or she agrees with a drug testing program. Employees' signatures on any acknowledgement documents will merely signify notice of the terms of the document.

Section 40.12 - Employee Rights.

- (1) Employees may grieve disputes or conflicts as provided in this Agreement.
- (2) Any travel and/or per diem required in connection with drug testing will be provided in accordance with Federal Travel Regulations and Management's current travel policy.

Section 40.13 - Union Rights. Upon request, Management shall timely provide the Union copies of all statistical data pertaining to drug testing, sanitized copies of reasonable suspicion determination notices to employees, and pertinent parts of its annual report to Congress which

pertain to the Drug-Free Workplace Program. The reasonable suspicion notice to the employee will be sanitized to guarantee total anonymity of the employee.

Section 40.14 - Savings Clause. To the extent that any of the provisions of this article are inconsistent with the HHS Mandatory Guidelines, or any subsequent amendments thereto, such Mandatory Guidelines or amendments shall supersede this article.

ARTICLE 41
OCCUPANT EMERGENCY, PANDEMIC EVENTS AND CONTINUITY OF OPERATIONS PLANS

Section 41.01 - General. HUD Headquarters and each field office maintain a range of plans for safeguarding lives and ensuring continuation of essential services in the event of an emergency in accordance with Federal guidance and requirements. This would include natural disasters, security incidents and other events such as pandemic influenza. During an emergency event, both parties recognize that the Department may be operating under emergency conditions as outlined under Section 7106 of the statute.

Occupant Emergency Plans (OEP) ensure the entire building workforce is safe and accounted for in the event of an emergency, such as a fire during normal business hours. These plans shall be made available to all employees and include procedures for quick and safe evacuation of employees. HUD also has Continuity of Operations Plans that ensures the Department continues to perform essential functions when events beyond the Department's control disrupt day to day operations. To activate Continuity Plans, decision-makers make a distinction between situations that only require evacuation and a severe emergency that renders the facility unusable for a longer period and may impact the ability of that office to perform its mission. When an emergency exists, the Department shall continuously review the situation, provide information to employees, and make immediate decisions so that employees know what actions to take until a final determination has been made regarding whether or not a COOP is to be declared. These may include Shelter-in-Place or evacuations.

Section 41.02 - Occupant Emergency Plans (OEP). Workforce safety during emergencies is addressed by Occupant Emergency Plans (OEP). These plans are sets of procedures designed to protect life and property in federally occupied space under defined emergency conditions. These plans outline the process for building announcements, evacuation, and instructions on what actions to take, as well as how to prepare for events, including exercises. Plans may be used for a wide range of emergencies, such as fire, explosion, discovery of an explosive device, actual or potential exposure to hazardous substances, severe weather, a natural disaster such as a hurricane or an earthquake, chemical, biological or radiological threat or exposure, workplace violence, hostage takeover, or physical threat to the building occupants or visitors. OEP's will include the following:

- A. **Department Official for Occupant Emergency Plans.** The Department will identify an official at each worksite to provide employee direction when an emergency occurs during scheduled office hours. A coordinator for communications will be designated if the worksite is not accessible.
- B. **CPR AED.** The names of those people certified to administer CPR and AED machines shall be provided to employees.
- C. **Persons with Disabilities or Functional Needs.** Provisions will be made to ensure the safety of employees with disabilities and other persons with functional needs for assistance during an emergency. A list will be maintained of those employees who self-identify as needing additional assistance in the event of an emergency. To the extent possible, assistance will be provided to the self-identified employees until first responders arrive. Assistance may include escorting the employee, moving assistive equipment, transporting service animals, or carrying medical equipment or medicines.

D. **Floor Wardens.** Provision for the recruitment of a cadre of employees who agree to be Floor Wardens that will assist in the evacuation of or Shelter in Place at the worksite during an emergency. Acting as a Floor Warden does not diminish the employee's regulatory or contractual rights. Floor Warden Responsibilities will not be included in an employee's job description.

E. **Shelter-In-Place.** Shelter-In-Place protocols contained in the OEP will be used if a Shelter-In-Place event occurs. Shelter-in-Place is a voluntary action, unless mandated otherwise by law enforcement or public health officials. Management shall provide food and water in anticipation of a sustained shelter in place.

F. **Safety Kits.** Appropriate hydration, nutrition, first aid, flashlights, and other items in personal safety kits to keep at work will include nutritional items that meet dietary restrictions, such as sugar-free/gluten free versions of any food products. These supplies shall be maintained and updated on a regular schedule. The Department shall provide annual notice to employees on the hud@work website on necessary supplies they might need in preparation of a Shelter-In-Place event, including but not limited to prescription medications, adequate footwear and personal hygiene items. Employees are encouraged to visit and review information on the Ready.gov website for additional information.

G. **Dissemination of Plans/Instructions.** Emergency worksite evacuation plans specific to each worksite that direct the employee to their rally/meeting off site location.

H. **Drills.** Evacuation and Shelter-in-Place drills will be conducted at Headquarters in accordance with Headquarters' OEP. Evacuation and Shelter-in-Place drills in field offices will be conducted in accordance with GSA or OCHCO guidance.

I. **Facility Security Assessments.** If a facility security assessment is conducted, results and a schedule of improvements which affect employee working conditions, excluding information that may compromise security.

J. **Emergency Relocation Sites.** Designated list of Continuity of Operations (COOP) emergency relocation sites away from the current HUD office and identification of employees who will staff the facility during the emergency. The sites will be used for essential work by the Department during the emergency.

Headquarters and Field Offices will conduct regular, but not less than annual, practice drills to ensure the telephone cascades, telework arrangements and alternate operating facilities are functional in the instance a pandemic event and/or COOP event is declared.

Section 41.03 - Continuity of Operations. Severe emergencies may damage or otherwise make facilities unusable for long periods of time, which could impact the ability of the Department to perform its mission. To ensure continuation of essential functions, all Federal departments and agencies are required to have Continuity of Operations Plans under National Security Presidential Directive 51/Homeland Security Presidential Directive 20 (May 4, 2007), Federal Continuity Directive-1 (February 2008), and Federal Continuity Directive-2 (February 2008). HUD's

Continuity of Operations Plans provides the policy and guidance for the continuation of the Department's Mission Essential Functions in these circumstances. Key issues are discussed below:

A. **Definition of Essential Functions.** Mission Essential Functions are those functions that enable the Department to provide vital services, exercise civil authority, maintain the safety of the public, and sustain the industrial/economic base during a disruption of normal operations. Mission Essential Functions must be mandated by statute, Executive Order, or regulation, and have been identified in accordance with Federal Continuity Directive- 1 (updated April 2, 2013), Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process, February 2008.

B. **Continuity Plans and Distribution.** Continuity Plans are developed for and provided to those who serve in Emergency Relocation Groups (CERG). Plans include a list of mission essential functions, IT systems, records, alternate locations, and other items team members require to perform essential functions. The Union President can obtain a copy of the local HUD office Continuity Plan and agrees that these plans are designated as "For Official Use Only," and cannot be redistributed by the union.

C. **Participation on Continuity Teams.** Participation in the CERG is voluntary. Bargaining unit members who accept the responsibility to serve on a Continuity Team are required to provide off-duty contact information. This information will be kept securely and only be utilized by Departmental employees to implement COOP procedures and shall not be provided to the public or to the media. Employees who serve on a team will be provided information related to their emergency duties. Team members will not suffer a loss of leave or pay, and will be reimbursed for travel expenses. All alternate work locations, commonly referred to as the Emergency Relocation Site, will be safe and secure for HUD employees.

Section 41.04 - Cross-cutting Issues. Below are cross cutting issues that are supported through the Office of the Chief Human Capital Officer, including related human resources practices and policies related to facility closures.

A. **Telework.** The Department will encourage all employees to be prepared for telework in the event of an emergency. In the event of an emergency, telework is an important tool to maintain operations. Situational and/or Emergency Telework shall be implemented in accordance with the Telework Article of this Agreement. (OPM refers to this as unscheduled telework.) Telework may be performed at home or at an alternate site. If an employee has an approved telework agreement in place, and the office or Federal government is closed, the employee is expected to continue to work from home or alternate work place, if feasible.

B. **Information on Facility Closures.** Information on facility closures will be provided to employees upon notification provided by local and Federal authorities. The HUD Emergency Information Hotline (1-866-463-6483) is the official communication tool the Department uses to convey the operational status

of HUD offices during emergencies. Office closures and emergency dismissal procedures will be maintained on the Department's Internet and Intranet sites.

C. **Union Notification and Availability.** The union will be notified in a timely manner of changes in working conditions as they occur. The parties shall bargain changes in working conditions, as practicable. OCHCO/ Employee Labor Relations will make the notification at Headquarters. Notification in the field will be made by the designated official for each regional office and field office. During an emergency event, the Union will provide Management with contact information. An emergency event is defined as a condition threatening life or property or an event that limits the essential functions of the Agency. If the emergency event is significant in scope, Management agrees to make the local representative's contact information available to bargaining unit employees. If feasible, Management will provide the Union with private space and equipment for Union activities under reconstitution efforts by the Department. While Union operations are not considered a Mission Essential Function based on the legal requirements for Continuity of Operations, the Department agrees that there is a need for communication with the Union during an emergency event.

D. **Pay and Leave.** During an emergency event, the Department will make available leave flexibilities and pay entitlements allowed under current law and regulation (i.e. administrative leave and evacuation payments). Employee benefits will remain unchanged during emergency situations. To the extent it is available for use, the electronic time and attendance system will be used to report duty hours and leave during an emergency event. During an emergency the employee shall contact their supervisor, designated agency official, or if management is unavailable, the HUD Emergency Hotline regarding their leave or pay status. If a voice mail message is left, the employee must leave a contact number where he/she can be reached. Fair Labor Standards Act (FLSA) statutes apply.

E. **Employee Assistance Program (EAP).** EAP is an important benefit to assist employees. HUD should take steps to assure the availability of EAP after an emergency event. The contact number for the EAP shall be provided to employees.

F. **Supplies and Cleaning.** The Department shall ensure that employees have available personal protective equipment (i.e. antiviral agents, cleansers, tissues, gloves, masks, and other supplies) as directed by the OPM. After an emergency event, the Department will engage commercial cleaning contractors to clean each affected HUD office, if required.

G. **Dismissal or Closure Procedures.** Headquarters follows the "Washington, D.C. Area Dismissal or Closure Procedures" guidance from the OPM when various types of emergencies prevent large numbers of employees from reporting to work on time or which require Headquarters to close the office. Field Offices will follow local procedures for early dismissals or closures.

ARTICLE 42
HEALTH BENEFITS WHEN IN A NON PAY STATUS

Section 42.01 - General. In accordance with government-wide regulations, employees may be in a non-pay status for three hundred sixty-five (365) days and remain enrolled in the Federal Employee Health Benefits (FEHB) Program with the Government continuing to pay its share, provided the employee pays his/ her share of the premium costs. The requirement to pay the employee's share of premiums while in a non-pay status shall be announced once a year to all employees. Employees may seek the advice of their Local Union representative.

Section 42.02 - Counseling of Employee. Prior to entering a non-pay status, the employee shall have the right to request and receive counseling from their servicing personnel office. The counseling shall include:

- (1) An explanation of the regulations;
- (2) An outline of the payment options available to the employee;
- (3) Estimation of the premium and employee share and
- (4) An opportunity for the employee to continue or cancel health benefits coverage.

Section 42.03 - Notice. Employees who enter a non-pay status shall be notified by certified mail, returned receipt requested, immediately following the pay period in which there is insufficient salary to cover FEHB premiums.

Section 42.04 - Notice Requirements. The notice to employees regarding FEHB entitlements while in an LWOP status shall contain the following:

- (1) The individual employee's name and the date of the notice;
- (2) An explanation of the purpose of the notice, including actions required by the Office of Personnel Management;
- (3) A clear statement of the employee's responsibility to choose to continue or cancel FEHB coverage;
- (4) If coverage is to be continued, a statement that the premiums may be paid while the employee is in a leave without pay status or through payroll withholdings after the employee returns to a pay status;
- (5) If coverage is to be continued, a clear statement that, upon return to a pay status, the employee shall contact the payroll office to establish a biweekly withholding amount. If no contact is made, an amount not to exceed twenty-five (25) percent of the employee's net pay shall be deducted;
- (6) If coverage is to be canceled, an explanation of the consequences of cancellation of benefits;
- (7) A statement that the employee may request and receive more information before making an election to continue or cancel benefits; and
- (8) A designated space for the employee to make an election to continue or cancel FEHB benefits and a space for the employee's signature and date of decision.

ARTICLE 43 WORKERS COMPENSATION

Section 43.01 - General. If an employee is injured while on duty or becomes ill as a result of the workplace environment, the employee may be entitled to workers' compensation benefits in accordance with the Federal Employees Compensation Act (FECA). Unless otherwise specified in this Article, the Agency will process claims for and provide Office of Workers Compensation Program (OWCP) benefits in accordance with FECA.

While the Agency may use a third party to administer OWCP, to ensure proper functioning of the program, it is the responsibility of the Agency to take the following actions in a timely fashion: advise employees, or their representative(s), of their rights under OWCP; assist employees in filling out forms or refer employees to the appropriate resource, act on forms that require agency or supervisory action; follow up with designated third parties if appropriate and requested; and prominently display, and maintain links to current OWCP policies and procedures on the internal HUD web site.

Section 43.02 - Reporting. When an employee suffers an illness or injury in the performance of their official duties, they or their representative must:

Notify the employee's supervisor as soon as practical.

Submit the appropriate claims forms in a timely manner to the supervisor.

Submit documentation requested by OWCP.

If the injury has caused the employee to miss work, notify the employee's supervisor of the date the employee expects to return to work.

If applicable, employees may use an appropriate amount of time and government equipment to complete workers compensation claims.

An employee who files a false report to obtain OWCP benefits is subject to criminal prosecution and/or agency disciplinary action.

Section 43.03 - Leave/Continuation of Pay. An employee who suffers a traumatic injury while on duty may be granted up to 45 days of Continuation of Pay (COP) after filing a form CA-1, if requested and in accordance with OWCP rules and regulations. Employees should review the OWCP area of HUD's web site for leave and COP options. COP does not apply when filing a CA-2 for Occupational illnesses or diseases.

Once the Department of Labor approves an employee's claim for compensation, an employee may request a re-credit of leave used during recovery from a job-related injury. If and/or when the Department of Labor (DOL) approves the request for the re-credit of leave or has waived the repayment, and once the employee repays the Agency for the leave that has been used, the Agency shall process the change into the payroll system within two (2) pay periods from the receipt of the payment.

Section 43.04 -Return to Duty. Employees returning to duty from an approved Workers' Compensation injury or illness will be restored in accordance with applicable OWCP Rules and Regulations.

Section 43.05 - Review of Documents. Employees shall be permitted to review documents in the possession of the Agency that OWCP has authorized to be made available. Employees may be accompanied by their designated representative.

ARTICLE 44
MEDICAL QUALIFICATION DETERMINATIONS

Section 44.01 - Medical Examinations. Management may only direct an employee to undergo a medical examination consistent with 5 CFR 339.

Section 44.02 - Representation. Employees shall be advised that they have a right to have a Union representative present during proceedings for medical determination examination.

Section 44.03 - Examination Procedures. When Management orders or offers a medical examination under this Article it shall inform the employee in writing of its reasons for doing so and the consequences of failure to cooperate. (A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this Article.) Any examination required by the Department to determine an employee's fitness for duty shall be covered under administrative leave provisions.

Management shall designate the examining physician or other appropriate practitioner, but shall not preclude the employee an opportunity to submit medical documentation from his or her personal physician or practitioner at any time during the review process. The Department must review all such documentation supplied by the individual's personal physician or practitioner.

Section 44.04 - Waiver of Standards. Agencies must waive a medical standard or physical requirement when there is sufficient evidence that an applicant or employee, with or without a reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

Section 44.05 - Payment for Examination. Management shall pay for all examinations ordered or offered under this Article, whether conducted by Management's physician or the employee's physician. The employee must pay for a medical examination conducted by a private physician (or practitioner) where the purpose of the examination is to secure a benefit sought by the employee.

Section 44.06 - Records, Reports, and Release of Information.

Management shall receive and maintain all medical documentation obtained under this Article in accordance with 5 CFR 293. The release of medical documentation to the employee or their representatives shall be in accordance with OPM regulation 5 CFR 297 and any applicable provisions of the Privacy Act.

Section 44.07 - Disability Retirement. Management shall assist an employee in filing an application for disability retirement if the employee requests such assistance while employed with the Department.

ARTICLE 45
REASONABLE ACCOMMODATION

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

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

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

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

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

Section 45.02 – Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 46 HARDSHIP REASSIGNMENT

Section 46.01 - General. The Department and the Union recognize that there are situations that arise during an employee's career where a personal hardship exists that could be alleviated if the employee relocated to another office and/or program area. A Hardship Reassignment is not an employee entitlement and is at the discretion of management. However, if an employee requests a hardship reassignment, the Department will consider a change of duty station which may include a change of the work assignment. The employee must demonstrate a hardship that can be relieved by a relocation of duty station.

It is incumbent upon the employee to search for positions in locations that meet their hardship needs, and not rely on these provisions alone. Management will work with the employee to identify available positions that meet an employee's hardship needs.

Section 46.02 - Purpose. These procedures are intended to accommodate the employee, if possible, due to family difficulties and issues which would necessitate the permanent relocation of the employee. These procedures do not impede the program office's ability to make employee assignments.

Section 46.03 - Definitions.

- (1) **Hardship:** Serious health condition or circumstance that affects the health and/or welfare of the employee and/or a family member, and requires the employee to permanently relocate to a vacant position in another geographical area.
- (2) **Vacant Position:** A position in which management has an interest and an authorization to fill. A position is considered vacant even if management has not posted a notice or announcement seeking applications for that position.
- (3) **Family Member:** An individual with any of the following relationships to the employee:
 - (a) **Spouse or domestic partner:** A domestic partner is considered a partner for which the employee is in a committed (same sex or opposite sex) relationship.
 - (b) **Sons and daughters.** This includes biological, adoptive, step or any child for which the employee, spouse or domestic partner raised under a foster care or legal guardian situation.
 - (c) **Parents, grandparents and grandchildren.** This includes biological, adoptive, step or foster parents, or legal guardian of the employee, spouse or domestic partner.
 - (d) **Brothers and Sisters.** This includes biological, adoptive, step or foster brothers or sisters of the employee, spouse, or domestic partner.
 - (e) **Aunts, Uncles or any other blood relation for whom a close bond may exist of the employee, spouse, or domestic partner.** Living with an Aunt or Uncle could be considered as an example of a close bond.

Section 46.04 - Examples of Hardship -Examples of hardship situations or circumstances may include, but not be limited to:

- (1) The employee's family member is unable to care for him/herself and permanent relocation is needed to assist in routine daily care and assistance.
- (2) The employee's family member who is under the care of the employee requires specialized care for a disability or illness in another location.
- (3) The employee demonstrates that their current location creates a burden due to the relocation of a spouse or domestic partner.
- (4) The medical condition of the employee or the employee's family member residing in the employee's household requires relocation to a geographical area deemed medically necessary to improve or maintain health or receive health services.
- (5) Access to a medical care facility that specializes in treatment of a specific life threatening disease or condition would qualify as a hardship, even though there is a general medical care facility in the employee's current location.
- (6) The employee is endangered due to personal issues (e.g., domestic violence, divorce, etc.).

Section 46.05 - Procedures for Hardship Reassignment Request.

The Department will consider all requests to non-competitively reassign employees to a vacant position in another location due to hardship. The Department will review and process requests for hardship reassignments in a fair and expeditious manner. Any employee may request consideration for reassignment due to personal hardship. Employees shall be treated fairly and equitably in considering hardship reassignments. These negotiated Departmental hardship reassignment procedures do not guarantee placement. Employees will follow the procedures of the Departmental policy dated July 2010 on Hardship Reassignment, except in those instances where the provisions of the Departmental policy on Hardship Reassignment are inconsistent with this Agreement, in which case this Agreement will govern.

If a hardship reassignment cannot be accomplished by the employee's assigned program area, the employee may utilize the Department's established procedures to allow the employee to apply for vacant positions within the Department and if qualified, their application will be considered under a noncompetitive referral process.

- (1) Employees Hardship Reassignment Request. The Employee's request for Hardship Reassignment shall be submitted on HUD 25060, Hardship Reassignment Application and Agreement", and include the following:
 - (a) An attached letter which explains the need for a permanent reassignment to a vacant position in another geographical location, and describes the hardship. It also includes a summary of his/her attempts to alleviate the hardship without permanently relocating to another geographical location.

- (b) A current resume, no standard format required.
 - (c) Other documentation that supports the request. Requests based on a serious health condition of a family member will require medical documentation from a health care professional which includes, at a minimum, the medical reasons why the requested permanent reassignment to another duty station is expected to resolve or alleviate the hardship. Employees shall be permitted to use the Department's Hardship Policy to seek relocation to another duty station to address issues that cannot be covered under the Reasonable Accommodation Policy.
- (2) If Management requests additional information or documentation, the employee will be advised in writing of the specific information needed.

The Department must obtain a release signed by the employee and/or the employee's family member before contacting appropriate sources, when such release is required by law and/or the Privacy Act, for the purpose of clarifying any supplied documentation.

Section 46.06 - Time Frames For Processing Hardship Request.

- (1) Absent exigent circumstances, the immediate supervisor will ensure all appropriate documents are included and forward the request to the Assistant Secretary or equivalent, or designee within five (5) days.
- (2) The Assistant Secretary or designee shall review the request and approve/disapprove within ten (10) work days. If additional information is required, the employee will be advised in writing and will have at least seven (7) days absent exigent circumstances to obtain and submit the additional information. If not submitted, the Hardship request will be disapproved and the decision will be provided to the employee.
- (3) Upon approval the Assistant Secretary or designee shall determine if there is a vacancy in the requested geographical location for which the employee is requesting a reassignment. If there is such a vacant position, the employee will have seven (7) days or a mutually agreed upon timeframe to accept or decline the offered reassignment to a vacant position. If the employee declines the placement, further consideration under hardship is forfeited. Upon declination of a position, the approved hardship application is forfeited and the employee will not receive consideration for any other positions within the program office under the Hardship Reassignment policy. Reapplication can only be considered for changes in conditions or the expiration date of one (1) year.
- (4) If the hardship is approved but a vacant position does not exist in the program area, their application will be considered under the non-competitive referral process, as described in Hardship Policy and Procedures Handbook 650.1. .

Section 46.07 - Disapproval. If there is a final decision of disapproval the employee shall be notified within ten (10) days of the decision and a copy of the decision with an explanation will be provided to the employee. Should circumstances change, the employee may reapply.

- (1) If a hardship is approved but the reassignment cannot be accommodated, Management may consider valid options including, but not limited to, the possibility of out-stationing.

- (2) In the event of a final decision of denial, Management shall consider the possibility of a detail with a mutually agreed upon term. If a detail is approved, Management shall periodically review the circumstances of the denial to determine if permanent reassignment or if another option is possible. Extension of the detail may be done on a case by case basis. Examples include:
- (a) Within the program office. Offer the employee a 120 day detail to the appropriate office as an interim measure.
 - (b) To other program offices. Offer the employee a 120 day detail to the appropriate office as an interim measure, on a reimbursable basis.
 - (c) A temporary reassignment or temporary change-to-lower grade for non-competitive short-term organizational needs, and the duration is less than one year within the program office. These assignments are accomplished through a noncompetitive process outside of this policy.
 - (d) If a final decision is not provided within 90 days, the Department will notify the employee and provide them a reasonable time to relocate.

Section 46.08 - Voluntary Change to Lower Grade. In the event the offered position results in a voluntary change to lower grade, a signed statement from the employee will be required acknowledging the agreement. Hardship reassignments shall not involve the loss of grade unless voluntarily requested by the employee.

The Department has determined that employees who accept a voluntary change to lower grade in order to receive a hardship reassignment will be assigned work commensurate with their grade level in the new position. A reasonable effort shall be made to reassign the employee to the same grade, series and rate of pay that the employee holds upon approval of the hardship reassignment. In the event a like position at the same grade is not available, and the employee agrees to accept a voluntary change to lower grade, the employee's pay will be set using the highest previous rate rule as outlined in 5 CFR 531.

Section 46.09 - Position Description and Performance Standards. An employee who is reassigned due to a hardship will be provided a position description of the newly assigned position. New performance standards will be provided to match the employee's duties in the new position.

Section 46.10 - Training for Newly Assigned Position. When appropriate, the employee will be given a reasonable training period in which to become proficient in performing the new duties. A reasonable amount of training time will be determined on a case-by-case basis.

Section 46.11 - Travel and Relocation Expenses. Where the decision to effect a hardship reassignment is based upon an employee's application for a vacancy announcement and the position announcement states that relocation funds will be provided, the employee will not be denied relocation funds based upon the hardship reassignment.

If management requests to meet the hardship reassignment employee in person, the Department will pay all costs associated with the meeting.

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

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

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

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

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

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

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

ARTICLE 47
UNION REPRESENTATION AND OFFICIAL TIME

Section 47.01 - Representational Functions.

(1) Official time allocated under this Agreement is authorized for:

- a. Attending investigatory interviews;
- b. Meetings with the Department representatives, except as noted below;
- c. Meeting with employees to resolve complaints and grievances;
- d. Attending grievance meetings with managers and employees;
- e. Attending formal discussions;
- f. Participating as a representative of the Union at an arbitration;
- g. Attending a meeting with the Federal Labor Relations Authority (FLRA) Field Agent or Attorney, pursuant to an Unfair Labor Practice charge or complaint;
- h. Completing business required by the Department of Labor;
- i. Participating as the representative of the Union at an arbitration or unfair labor practice hearing related to the AFGE/HUD unit;
- j. Communicating with Congress in their capacity as Union representatives regarding matters concerning bargaining unit working conditions, except when prohibited by federal statute; and
- k. Other representational functions permitted by law.

(2) Time spent on the following representational activities is not counted against the allocation of official time in this Agreement:

- a. Collective bargaining with the Department including mediation, impasse resolution, and reasonable preparation; and
- b. Meetings with the Union requested by Management that do not include employees.

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

- a. Time granted under the regulations of the Equal Employment Opportunity Commission (EEOC);
- b. Time granted to participate in Merit Systems Protection Board (MSPB) matters;
- c. Time granted in connection with an Office of Special Counsel (OSC) matters;
- d. Time granted in connection with an Office of Workers' Compensation Program (OWCP) claim;
- e. Time granted in connection with a matter before the Employee Compensation Appeals Board (ECAB); and
- f. Time granted during Occupational Safety and Health Administration (OSHA) visits.

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

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

Section 47.03 - Representatives and Amounts of Official Time.

- (1) **Allocation of Official Time.** Both parties recognize that an organization's effectiveness depends on its ability to assign work as it deems necessary and appropriate among the members of the organization. Therefore, just as the Union shall respect Management's right to assign work among its employees, Management shall not in any way control how the Union allocates duties among its representatives. Management recognizes that it is an internal Union function to determine the number of representatives needed at full-time or part-time levels to carry out its responsibilities. The only restriction on the Union's allocation of official time is the maximum amount of official time that may be allocated each quarter, which shall be as stated below.
- a. Time shall be allotted on a quarterly basis. Quarters shall begin on the first day of January, April, July, and October.
 - b. Allocations shall be provided in four pools: National, Regional Vice Presidents, Headquarters and Field Offices.
 - c. Two weeks prior to the beginning of the quarter, the Council President shall provide in writing via e-mail, fax, hard copy, or other written means to the appropriate Headquarters official any changes to the current pool allocations. Failure to provide a timely quarterly allocation in writing to the Headquarters official designated by Management shall result in the use of the designations and allocations from the previous quarter. Notifications of transfers from one pool to another pool will be provided by the Council President or designee.
 - d. Management shall be responsible for notifying the relevant supervisors of current allocations in a timely manner upon receipt of the National, Regional, or Local president's allocation of time to designated Union representatives. The Union shall not be responsible for such notification, nor shall any representative's assumption of Union responsibilities be delayed due to the lack of timely notice to a supervisor.
 - e. A representative may receive official time from more than one pool. This may result in individual field offices being allocated more official time than shown below.
 - f. Nothing precludes the Union from requesting or the Department from granting additional official time as reasonable, necessary and in the public interest.
 - g. Unused allocated hours may not be rolled over from one quarter to another.

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

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

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

Section 47.06 - Procedure.

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

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

Section 47.08 - Leave of Absence for Union Officials.

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

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

ARTICLE 48
UNION'S USE OF OFFICIAL FACILITIES

Section 48.01 - Union Office Space. The Department shall continue to provide the Union a private office in Headquarters for the Council President and Local President. The Department shall also continue to provide the Union a private office for each Local President and at those field locations that currently provide private office space for local representatives. The parties recognize the need for private space for employee representational duties. The Department and the Union may discuss, at the National or local office levels, the need for additional or decreasing office space for the purpose of providing the Union official(s) with adequate privacy or more meeting, storage, and file space. Any proposal to change Union office space is subject to Article 49 of this Agreement. Unless there is an office configuration change which affects the Union office, there is no intention of reducing the current Union office space.

- (1) The Department will provide the Union with designated office space that is of sufficient size to allow the Union to effectively perform its representational functions, including maintaining its files and conducting private conversations with employees. Space shall be sufficient to allow for a table and chairs.
 - (a) The designated office space will be conveniently located to allow employees easy access.
 - (b) The HUD Council of Locals 222 shall be granted sufficient designated space in the Headquarters building regardless of where their official duty station is located.
 - (c) Separate union offices may be provided for RVPs and local presidents at the same field location.
- (2) Location of the Union office space shall be negotiated locally or nationally. However, the office shall be private, and shall have floor to ceiling walls and a lockable door.
- (3) While the Union office is recognized as government space, it is clearly understood that the Union office space shall be treated as private space. Except for in the case of health, safety, or security needs, prior notice must be given to the Union representative before entry into a Union office unless prior arrangements have been made between the Parties.
- (4) Employees may need to make contact at a union representative's program office work station for representational purposes, provided it is not unduly disruptive to the workplace.
- (5) Union representatives shall be provided access to the Union and HUD office space commensurate to that provided to supervisors and employees. However, unless there is an unreasonable cost prohibition to the Department, the Union shall have access to their records and files at the designated office location for representational work, provided that the general space is otherwise accessible. Access to facilities may be restricted based on reasonable funding issues, security or other issues.

Section 48.02 - Meeting Space. Upon request and when available, the Department shall provide the Union with the use of suitable space for membership meetings and other such Union business during non-duty hours (such as lunch periods). This may include food being served in space where it is permitted. Such requests should be made reasonably in advance to the designated Management

representative at each location. However, where such notice is not given and space is available, such space shall be provided to the Union.

Section 48.03 - Telephone Usage.

- (1) Union representatives may use available telephones at their individual work sites or Union offices for calls while performing representational functions.
- (2) Phones with teleconference capability shall be provided to each National, Regional, and Local Union representative. Teleconference service shall be available in the same manner accessible to all HUD employees to conduct representational duties.
- (3) All telephone usage shall be in compliance with applicable laws, regulations and Departmental policies.
- (4) Should Management believe that the telephone services provided in this Article are not being utilized in accordance with the intent and procedures of this Article, the appropriate Union representative shall be notified and corrective action on the part of the Union shall be requested. If the matter cannot be resolved appropriately between Management and Union, it shall be referred to the grievance procedure for resolution.
- (5) The Department may consider providing communication devices to Council officials for representational purposes based on Departmental needs.

Section 48.04 - Display and Distribution of Union Material.

- (1) The Department shall provide lockable bulletin boards, if requested or Union space on designated bulletin boards for Union purposes in each building having bargaining unit employees. Bulletin boards shall be so located as to be accessible to employees. The number, size, appearance (glass enclosed, etc.), and location of bulletin boards shall be determined locally by agreement between Management and Union officials. The Union shall maintain its bulletin boards in an orderly manner at all times. The Department and the Union may negotiate Union information space on the Department's Intranet and/or social network.
- (2) The Department shall permit Union officials to distribute Union sponsored information in work areas to individual employees before and after the regularly scheduled office hours (generally, 8:00-4:30) and in non-work areas. Union representatives may distribute information off duty or while on official time.
- (3) Notices placed on bulletin boards or distributed by the Union shall be clearly identified as having been prepared by the Union and are not Departmental issuances. All material placed on the board shall be on its face clearly identified as belonging to the Union. Notices and posters prepared and posted by the Union shall not indicate the Department has sponsored or endorsed a position unless such action has been agreed to by an appropriate Management official. Notices and posters shall not contain material that is pornographic, racist, bigoted, sexist, libelous, or in violation of the Hatch Act.

- (4) No other organization or affinity group may be given more latitude to post information than the Union unless negotiated. The Department will make every effort to discourage the posting of notices outside of authorized locations (i.e., in hallways, bathrooms, elevators, and other public places).
- (5) Each local should have a designated location for receipt of mail provided by the Department. All Union mail addressed and received by HUD shall be placed in the appropriate location for the Union's retrieval. All Union mail should be delivered unopened.

Section 48.05 - Office Equipment and Services.

- (1) The Department shall provide one (1) computer per Union local office with the standard operating system and software per HUD standards and access to a printer with scanning and facsimile capabilities. Existing Union office computers will remain in place unless there is no further need. The Union will be provided with the ability for secure printing, faxing, and scanning options. Where multifunctional devices are not available, Union office printers, fax machines, and scanners shall be provided upon request, if Management has them available. Existing Union office stand-alone printers, fax machines and scanners machines will remain in place. The Union may submit justification to the servicing Employee and Labor Relations office if an additional computer is requested. Computers in the Union local offices will be refreshed on the same office schedule and be part of the Department's maintenance/service contract. New technology shall be made available to the Union as it becomes available to the Department. Union requests to move computers from a program office shall be submitted to the servicing Employee and Labor Relations office for consideration. Management and the Union recognize that use of and access to such equipment should not be disruptive to operations or the work flow of an office.
- (2) For each office the Department shall, upon request by the Local Union official, furnish the Union a lockable file cabinet and suitable space for placing a file cabinet in the Union office. An additional file cabinet shall be provided to the Council President, Vice President, Treasurer, and Secretary if they work from a local Union office in the field. Additional file cabinets may be requested by local union officials.
- (3) The Department shall make available to the Union, other office equipment and services, such as supplies and cleaning services routinely available to the Department. The Union is responsible for ensuring accessibility to its space during normal cleaning and maintenance schedules.
- (4) Photocopying equipment shall be made available to the Union only for representational purposes. Where appropriate, private Union multi-functional devices may be necessary and may be approved by Management in accordance with government-wide rules on IT security. The Office of Chief Information Officer (OCIO) management approval is required when private equipment is connected to the Local Area Network (LAN). The Department is not responsible for maintenance of private Union equipment.
- (5) Each space designated in 8.01 of this Agreement shall be equipped with, at a minimum work surface(s), chair(s), a lockable file cabinet, and a bookcase.

- (6) There will be no charge to the Union for space, furnishings, or equipment.
- (7) Access to the Internet/intranet through HUDMobile or its successor system(s) will be available to the Union. Security access will be provided, such as, passwords or security cards, as necessary for Union representatives.
- (8) Union representatives who are no longer HUD employees would need to request IT security clearance and obtain access approval in order to use the Department's computer system.
- (9) The Department will provide one encrypted thumb drive for the Council and one for each local. Additional thumb drives may be requested and provided, if available, up to a maximum of 85 thumb drives.

Section 48.06 - Access to Federal Personnel Guidance. The Department shall provide the Union with access to Office of Personnel Management, GSA, and EEOC regulations and GAO decisions. The Department agrees to pay for and provide the Union ten (10) user accounts for CyberFeds or the successor personnel case law research service subscribed to by HUD. If HUD increases its CyberFeds contract by at least 10 subscriptions, then the Union will be provided fourteen (14) CyberFeds accounts in total. The Union may request additional CyberFeds accounts from the Department. Unused CyberFeds accounts may be directed to the Union upon request. The Union and Management recognize that the use of or access to this service is of mutual benefit. As long as management has access to this or a successor service, a user account will be provided to the Union. The Union shall notify the Department when representatives are not eligible to use CyberFeds because they are no longer in representational positions. The union shall notify the Department of the newly elected representatives that should have access to CyberFeds.

Section 48.07 - Electronic Mail (E-Mail) Local Area Network (LAN).

- (1) Union representatives shall be allowed use of E-Mail/LAN for representational purposes and for routine Union business involving communication with the Department and other government agencies (such as but not limited to the Department of Labor and IRS).
- (2) E-mail may be used by union representatives to communicate directly with Management concerning representational matters; to communicate with other union representatives and shall have access to the LAN; and to communicate with bargaining unit employees concerning appropriate representational matters, as set out in Article 47 of this Agreement. The Union may notify employees of representational Union meetings.
- (3) E-mail may not be used to communicate concerning internal union business, including but not limited to election campaigns, soliciting membership, and other unauthorized activities, or those activities prohibited by the Hatch Act. Notification of Union election results is permissible via e-mail.

ARTICLE 49
MID-TERM BARGAINING

Section 49.01 - General. The rights and obligations of the parties regarding Mid-term Bargaining shall be in accordance with 5 USC Chapter 71 and this Agreement. The purpose of this Article is to prescribe the criteria and procedures by which the Union and the Department (the parties) shall engage in negotiations during the term of the Agreement. The parties agree that it is in the interest of the Government, the public, and the parties to negotiate in good faith in order to facilitate negotiations.

- (1) The parties are encouraged to engage in pre-decisional involvement prior to formal presentation of proposals for changes to personnel policies, practices, and/or working conditions under this Article.
- (2) Nothing in this Agreement shall be deemed to waive either party's statutory rights.

Section 49.02 - Mid-Term Changes. During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article. Any notice sent after 4:00 p.m. shall be deemed to be received on the next business day. If feasible, management will provide advance written notice at least 30 days prior to the proposed implementation date, of any change affecting conditions of employment. Management may implement as soon as the bargaining obligations are satisfied, even if the 30 day timeframe has not been exhausted.

Section 49.03 - Information to the Union on Mid-Term Changes. The following information, if available, shall be included in the notices of proposed Management mid-term changes. Any requests for further information by the Union shall not delay the commencement of negotiations. Once negotiations begin, the parties may modify their initial proposals and/or submit counter-proposals upon receipt of previously unavailable information related to the scope of the negotiations.

- (1) For proposed changes that affect headquarters and all regions, the notice of proposed changes shall be sent to the Council President, their designee(s) and all Regional Vice Presidents electronically. The Union shall annually notify Management of the names and email addresses of the current designees(s) and Regional Vice Presidents. Receipt of the proposed changes by the Council President, or by the Council President's designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.
- (2) For proposed changes that do not affect every region but impact more than one (1) Union local, the notice of proposed changes shall be sent to the Council President, their designee(s) and the Regional Vice Presidents in the affected regions. Receipt of the proposed changes by the Council President, or by the Council President's designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.
- (3) If the proposed change only affects one (1) local office, the notice will be sent to the

applicable Local President or designee. Receipt of the proposed changes by the applicable officer above shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.

(4) Change in a Policy or Past Practice.

- (a) Copy or statement of the current policy or past practice;
- (b) The nature, scope, and rationale for the proposed change;
- (c) A copy or statement of the proposed new policy or practice; and
- (d) The proposed implementation date.

(5) Moves.

- (a) Projected date of move and duration of stay in new location.
- (b) Name, room numbers, grade, title, and series of all affected bargaining unit employees.
- (c) If applicable, new address, floor number, room number, and work station number for each affected bargaining unit employee.
- (d) Current floor plan (with work space assignments showing names, average number of square feet per employee, and total number of square feet for the office being moved).
- (e) New floor plan (with same information as above).
- (f) Name and phone number of the move coordinator.
- (g) Whether employees will be able to keep their current office furniture, telephone extension, computer equipment and other equipment.
- (h) Description of any construction, repair or other physical improvement plans to include, but not limited to installing modular furniture, moving/installing filing cabinets, laying or shampooing carpet, installing partitions, painting walls, exterminating, installing network computer/printer cables, moving phone jacks or electrical outlets, or taking out or installing walls. If any such activity is planned, when the activity will take place and how the employees will be affected and, what arrangements will be made for affected employees, if necessary.
- (i) If required by the nature of the refurbish or move, plans and arrangements for accessibility under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and local standards-in addition to arrangements under reasonable accommodations.
- (j) Applicable emergency and safety plan(s), and modifications to such plans.
- (k) Estimated cost.

(6) Reorganizations.

- (a) Name, grade, title, and series of affected bargaining unit employees.
- (b) Impact, if any, upon upward mobility and/or career ladder positions.
- (c) Employees who will have a different first or second line supervisor as a result of the reorganization.
- (d) Impact, if any, upon employee's receipt of performance ratings.

- (e) Copies of position descriptions for new positions if different from current position.
- (f) Names of any employees detailed in connection with the reorganization.
- (g) Any new positions created as a result of the reorganization.
- (h) Names of any employees who will be downgraded or separated as a result of the reorganization.
- (i) Names of any employees who will be moved as a result of the reorganization.
- (j) Copy of before and after organization charts.

(7) Conversion to Contract Performance.

- (a) The invitation for bid (IFB) or request for proposal (RFP).
- (b) The abstract of bids or proposals after contract award.
- (c) All correspondence from higher authority directing the cost comparison study.
- (d) The official Department of Labor documentation supporting the wage rates applicable to the function being considered for contracting out.
- (e) The performance work statement.
- (f) The "Milestone" chart or similar document setting forth the estimated dates for the contracting out process.
- (g) All changes to the performance work statement.
- (h) All bidder questions and the Department's answers related to the performance of work statement.
- (i) Copy of the retention register.
- (j) Impact upon bargaining unit employees.

(8) Reduction-In-Force (RIF), Furloughs, or Transfer of Function.

The content of the notice will reflect the requirements in Articles 33 and 34.

Section 49.04 - Response to Proposed Changes.

- (1) Upon receipt of Management's notice of proposed change(s), the Union may submit a demand to bargain over the change(s) within fifteen (15) days by submitting preliminary proposals. All proposals shall be related to the impact of the proposed change(s). If no proposals are submitted within fifteen (15) days, bargaining shall be deemed to have been waived.
- (2) Upon timely request for negotiations from the Union, the negotiations shall begin within ten (10) days from the Union's submission of its bargaining proposals, unless changed by mutual consent.

Section 49.05 - Venue; Number of Negotiators; Travel Costs. The Union shall be authorized at least the same number of negotiators as Management at the table, but no fewer than the number authorized below.

- (1) National Negotiations shall be conducted in HQ or in one of the affected regions, and local negotiations should take place in the affected location or field office, unless another venue/geographic location is mutually agreed upon by the parties. Where all negotiation team

members are not co-located, the parties may mutually agree to conduct negotiations by telephone or telecast.

- (2) The parties will identify their chief negotiators and may authorize up to four (4) additional negotiators for national negotiations, and up to three (3) additional negotiators for local negotiations. All but one member of the Union negotiation team must be designated Union representatives under Article 47 of this Agreement. If there are fewer than two (2) Union representatives in an office where the negotiations are taking place, the Union may have up to two (2) Union negotiators who are not designated Union representatives under Article 47. Management shall pay travel and per diem in accordance with the Federal Travel Regulations for all four (4) Union negotiators for national negotiations and shall pay for one (1) Union negotiator for local negotiations in appropriate circumstances. The number of negotiators may be changed by mutual consent of the parties. Each party may have one technical expert at a time, for the limited purpose of discussing a particular subject. The parties agree to video/telephonic bargaining in some negotiations subject to mutual agreement.
- (3) Union negotiators shall receive official time for negotiations; however, this time does not count against the official time allocated under Article 47 of this Agreement. The Union negotiators will be on duty time for all time spent participating in negotiations, including participation in impasse proceedings, and for other related duties during negotiations, such as preparation time spent developing and drafting proposals.

Section 49.06 - Ground Rules for Mid-Term Negotiations. The following ground rules apply to all mid-term bargaining.

- (a) In order to expedite negotiations either party may request a briefing session to explore or explain the change and its impact on bargaining unit employees. This session may be scheduled in advance of the start of negotiations, or as a part of the time allotted for bargaining.
- (b) Facilities for negotiations shall be provided in accordance with Article 48. Negotiations shall be held in a suitable meeting room provided by the Department at a mutually agreed upon site. The Department will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room. Alternatively, by mutual agreement, the Union may accept the negotiating room as a caucus room provided that Management's representatives excuse themselves during Union caucuses.
- (c) The Department will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet and printing access, telephone(s), desks and/or table, chairs, office supplies and access to a secure photocopier.
- (d) Dates and times for negotiation sessions shall be mutually agreed to by the parties; however, once negotiations begin, the parties shall continue negotiating until agreement, impasse, or as mutually agreed. Negotiations shall normally begin at 9:00 a.m. and last at least until 4:00 p.m. This schedule may be altered by mutual consent. There shall be a one (1) hour break for lunch.

- (e) Either party may caucus at any time during negotiations. If a caucus shall last more than fifteen (15) minutes, the party not in caucus shall be advised at least once an hour of the estimated duration of the caucus.
- (f) Each party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.
- (g) Neither party may substitute negotiating team members, except by mutual consent.
- (h) Observers shall be permitted in negotiating sessions only by the mutual consent of the parties.
- (i) Either party may submit new proposals on the first day of negotiations. Parties may submit new proposals based on new or modified information provided by the other party. Once negotiations begin, a party shall not submit new proposals but may modify its initial proposals and/or submit counter-proposals until agreement has been reached.

Parties may submit new proposals at any time by mutual agreement in the interest of reaching an agreement.

- (j) Upon reaching agreement on each item, the Chief Negotiators shall signify tentative agreement by initialing the agreed upon item. This shall not preclude the parties from reconsidering or revising the agreed upon items until final agreement is reached on all items. Upon completing the negotiations, the parties shall review and edit for consistency and make mutually agreed upon changes.
- (k) Changes that are negotiated or agreed to pursuant to this Section shall be duly executed by the parties. Supplements shall become an integral part of this Agreement and subject to all of its terms and conditions.
- (l) Either party may take written notes of the bargaining sessions but the parties agree that there will be no taping of negotiations.
- (m) The time limits set forth in this Section may be extended by mutual consent.
- (n) The product of mid-term bargaining is enforceable upon signature at the completion of negotiations.
- (o) Nothing in this Section is intended to discourage the resolution of mid-term bargaining issues through informal methods.
- (p) Further requests for information shall be responded to in accordance with the Labor Management Statute (5 USC 7114 (b)(4)).

Section 49.07 - Negotiability Disputes. Negotiability determinations may be requested by the Union if management alleges non-negotiability regarding a proposal. Where a matter is alleged to be inappropriate for bargaining on the sole basis that it is covered by the Master Agreement, the matter may be resolved under the arbitration provisions of this Agreement or referred to the Federal Labor Relations Authority (FLRA) for resolution. Matters involving allegations of non-negotiability shall be referred to the Federal Labor Relations Authority (FLRA) for resolution.

- (1) If there are negotiability disputes, only the agreed-upon terms may be implemented by management.
- (2) The parties will resume negotiations on proposals determined to be negotiable within 15 days of the determination, or a period mutually agreed upon by the parties.

Section 49.08 - Bargaining Impasse Procedures. Impasse means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement after making efforts to do so by direct negotiations. If either party determines that they are at impasse of a proposal(s), that party shall promptly request mediation from the Federal Mediation Conciliation Service (FMCS).

- (1) If impasse is reached and declared by the FMCS mediator, either party may request consideration of the impasse by the Federal Service Impasses Panel (FSIP). Proposed changes may not be implemented until final agreement is reached or FSIP issues their decision. If the Union fails to request consideration of an impasse by the FSIP in accordance with the procedures in 5 CFR 2470 within 10 days of its receipt of Management's notice of intent to implement its last offer, Management may implement its last offer.
- (2) If the parties reach impasse, only the agreed upon terms may be implemented by mutual consent. Impasse resolutions shall be implemented expeditiously.

ARTICLE 50 LOCAL SUPPLEMENTS

Section 50.01 – General. The parties agree that any supplements to this Agreement shall not delete, modify, or otherwise nullify any provision, policy, or procedure in this Agreement; nor shall any provision in a supplement be in conflict with or duplicate any provision of this Agreement, Statute or regulation of the Department, Government-wide regulation, or outside authority binding on Management. All supplements shall be a part of and subject to the terms and control of this Agreement and shall simultaneously terminate with this Agreement.

Section 50.02 - Ground Rules. The ground rules for negotiations contained in Article 47 apply. However, the number of participants may be increased by mutual agreement.

Section 50.03 - Resolution of Bargaining Disputes. If the parties at the Local level disagree as to whether a subject is to be included in the supplement, or if they fail to reach agreement on a local issue, the parties shall refer the matter to the Federal Mediation and Conciliation Service (FMCS). If agreement cannot be reached through FMCS, the issues may be referred to the Federal Services Impasse Panel (FSIP). Disputes regarding negotiability may be referred to the Federal Labor Relations Authority (FLRA). When one of the options above is chosen, the contested issue shall be suspended pending resolution.

Section 50.04 - Dates and Distribution. Local Supplements may contain effective and terminations dates, but may not terminate later than this contract. Distribution will be addressed in the Local Supplement.

Section 50.05 - Enforcement. An alleged violation of the terms of a supplement to this Agreement shall be subject to resolution under the appropriate contractual, regulatory, or statutory procedures.

**ARTICLE 51
GRIEVANCE PROCEDURES**

Section 51.01- Definition and Scope. This Article constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining unit and between the parties. These procedures replace Management's administrative procedure for employees in the bargaining unit only to the extent of those matters which are grievable and arbitrable under this negotiated Agreement. A grievance means any complaint by:

- (1) Any employee concerning any matter relating to his/her employment; or
- (2) The Union concerning any matter relating to the employment of any employee; or
- (3) Any employee, the Union, or Management concerning:
 - (a) The effect or interpretation, or a claim of breach of this collective bargaining agreement; or
 - (b) Any claimed violation, misinterpretation or misapplication of any law, rule, or regulation affecting conditions of employment.

Section 51.02 - Statutory Appeals. Adverse Actions consist of:

- (1) Reduction in grade or removal for unacceptable performance;
- (2) Removals for misconduct;
- (3) Suspensions for more than fourteen (14) days; and
- (4) Furloughs for thirty (30) days or less.

Adverse actions may, in the discretion of the aggrieved employee, be raised under either:

- The appropriate statutory procedures; or
- Under the negotiated grievance procedure, but not both.

Specific procedures for grieving adverse actions are found in Article 12, Discipline, and Article 13, Unacceptable Performance.

Section 51.03 - Discriminatory Prohibited Personnel Practice. Prohibited personnel practices include the discrimination for or against any employee on the basis of: Race; Color; Sex; Religion; Age; National Origin; Disability; Sexual Orientation; and Genetic Information.

Section 51.04 - Choosing an Appeals Procedure. Nothing in this procedure shall prejudice the right of the employee to appeal to the Merit Systems Protection Board or the Equal Employment Opportunity Commission pursuant to Section 7121 of the Statute, or file an unfair labor practice or other appeal under the rules of the Federal Labor Relations Authority.

Any employee shall have exercised his/her choice to raise a matter under an applicable statutory procedure or the negotiated procedure when the employee:

- (1) Timely files a notice of appeal under the applicable statutory procedure or elects to use the statutory Equal Employment Opportunity complaint process.
- (2) Timely files a grievance in writing, whichever occurs first.

An employee shall have exercised his/her option concerning EEO discrimination matters at such time as he/she timely files a grievance in writing or files a formal written complaint under the statutory EEO complaint procedure, whichever occurs first. Discussions with an EEO counselor in no way precludes the filing of a grievance that is otherwise timely.

Section 51.05 - Exclusions. Excepted from these negotiated procedures coverage are the following:

- (1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating to prohibited political activities);
- (2) Retirement, life insurance, or health insurance;
- (3) A suspension or removal under Section 7532 of Title 5 (relating to national security matters);
- (4) Any examination, certification, or appointment;
- (5) The classification of any position which does not result in the reduction in grade or pay of an employee;
- (6) Where there is no allegation of a violation of this Agreement, law, or regulation, the non-selection for a promotion from a group of properly ranked and certified candidates;
- (7) The separation of a probationary employee as defined by applicable law;
- (8) Where there is no allegation of a violation of this Agreement, law, or regulation, the termination of a temporary promotion;
- (9) The termination of a temporary appointment where the Standard Form-50 states that the termination was based on a lack of work or lack of funds;
- (10) Complaints by employees with temporary appointments not to exceed one (1) year;
- (11) Verbal counseling;
- (12) Progress reports on employee performance including opportunity to improve notices/performance improvement plans;
- (13) The filling of any position outside the bargaining unit;

- (14) The removal, suspension of more than fourteen (14) days, reduction in grade or furlough of non-preference eligible employee in the excepted service, who has not completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less;
- (15) The filing of a parties grievance which involves the same individual and factual situation as contained in an individual grievance;
- (16) Financial disclosure; and
- (17) The granting of or failure to grant a spot award.

Section 51.06 - Time Limits.

- (1) Time limits for the filing of a grievance under this procedure, is, at a minimum, forty-five (45) calendar days, unless extended. The time period shall begin to run from the next workday after the grievant became aware or should have become aware of the matter being grieved. A continuing violation may be grieved at any time. The date of expiration of a time limit shall be close of business hours the last day of the stated period, unless that day falls on a Saturday, Sunday, or non-workday, in which case the following full workday shall be considered the last day. Either party may grieve a continuing condition at any time. Where a grievant fails to meet a time limit, unless extended by mutual consent, the matter shall be considered resolved according to the last response.

Where the receiving party of a grievance fails to meet a time limit, the grievance shall be advanced to the next step of the grievance procedure. Management shall serve all grievance responses, and all other communications concerning the grievance, upon the Union representative. No time limit for responding or appealing shall begin to run until the union representative has received the Management response or communication.

- (2) Management shall send all grievance responses to the appropriate Union representative. The grievance response shall be delivered to the Union office. If there is no Union office, the grievance response shall be delivered to the designated Union e-mail address. Where the response is e-mailed, receipt shall be confirmed by using return receipt requested.
- (3) In the case of non-personal delivery, if Management disputes the date of actual receipt by the employee or the representative, Management shall bear the burden of proving the date of actual receipt. The burden of proof shall be deemed to have been met by production of a signed receipt, a witnessed statement indicating the date and time of delivery or deposit or any other evidence indicating delivery.
- (4) For purposes of timeliness, the grievance shall be considered filed when it is delivered to the appropriate Labor Relations office, an assigned grievance control officer, or the grievance deciding official HUD will accept electronically submitted documents.
- (5) Each grievance should propose a remedy. Minor errors or omissions in completing the grievance form shall not be used as a basis to reject any grievance.

Section 51.07 - Self-Representation. Nothing shall preclude an employee from presenting a grievance to Management without representation by the Union; however, such an employee may not receive any better or worse treatment than other employees who elect Union representation, and any resolution must be consistent with the terms of this Agreement. Employees who elect to represent themselves shall receive a reasonable amount of duty time to prepare and present their grievances. Only the Union can invoke arbitration. If any employee represents himself/herself in a grievance filed under the grievance procedure contained in this Agreement, the Union shall be notified no less than twenty four (24) hours in advance of any meetings between Management and the grievant concerning the grievance. The Union may attend any such meetings as an observer. The Union shall be provided a copy of any grievance decisions that are issued.

Section 51.08 - Right to Representation.

- (1) The Union shall have the right to represent employees at any stage of this procedure and will make every effort to ensure that the time limits of this Article are met. If other forms of communication are not available or appropriate, the Department will pay reasonable travel expenses for the employee or Union to ensure Union representation.
- (2) Once an employee has designated the Union as representative, Management shall not discuss the grievance with the grievant unless the Union is given an opportunity to attend.
- (3) Only the Union, or a person designated in writing by the Union, may represent an employee under this negotiated procedure.

Section 51.09 - Protection of Grievants. The filing of a grievance shall not reflect unfavorably on an employee's good standing, performance, loyalty, or desirability to the Department. All Grievants will be protected from reprisal.

Section 51.10 - Duty Time for Grievants. Management shall grant reasonable duty time for an employee to prepare and present a grievance or appeal, including group grievances and arbitration.

Section 51.11 - Informal Resolution. Many grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort shall be made by the parties to settle disputes at the lowest possible level.

Section 51.12 – Mediation.

In an interest-based attempt to resolve grievances, a mediation process shall be available. Should either party invoke mediation after the last step of the grievance procedure, participation of the parties becomes mandatory. The parties agree to make every effort to reach agreement, however, neither party is obligated to reach Settlement. (see Article 10 for mediation process) Time frames for filing arbitration shall be held in abeyance until the mediation is completed.

Section 51.13 - Employee Grievances.

Step 1

If the dispute is not resolved informally, on or before forty-five (45) days from the date when the employee became aware of or should have become aware of the matter being grieved, the employee or Union shall submit the grievance on an Employee Grievance Form. Management will designate the Deciding Official who will have the full authority to resolve the grievance. A Deciding Official shall be at the same level or higher than the initiating official.

The Deciding Official shall meet with the grievant and representative, if any, within twenty (20) days after receipt of the grievance. Deciding officials outside of the area where the grievant is located may conduct the meeting in person, by telephone or video conferencing. Management shall send the employee(s) and Union representative a written reply within fifteen (15) days of the meeting. The reply shall include the grievance findings, and action(s) taken, if any, to settle the matter.

If the matter is not satisfactorily settled following the deciding official's response, the employee and representative (if any) may, within seven (7) days of the response, advance the grievance to the designated grievance officer.

Step 2

In the Field, the Step 2 Deciding Official shall be the highest level local official in the office, or their designee. In Headquarters, the Step 2 Deciding Official shall be the highest level official in the grievants' Program Area, or their designee. The Deciding Official shall review and take appropriate action to attempt to settle the grievance and issue a final written decision within twenty-five (25) days after receipt of the matter from Step 1. By mutual agreement of the parties, a meeting may be held at Step 2.

The Step 2 Deciding Official shall designate the Management Representative to be notified for the purpose of invoking arbitration and participation in the selection of an arbitrator.

Section 51.14 - Questions of Grievability or Arbitrability. Questions of arbitrability may be raised at any step of the grievance procedure, including the arbitration stage. If the issue of arbitrability is raised at the arbitration stage, then the party raising the issue (if successful) will pay all arbitration costs including travel for all parties, arbitrator fees, etc. Any unresolved question shall be considered as a threshold issue should the grievance go to arbitration. Questions of arbitrability shall be submitted to the arbitrator in writing and be decided prior to any hearing unless mutually agreed otherwise. The moving party bears the burden of demonstrating that the matter is not grievable.

Section 51.15 - Grievance of the Parties.

- (1) Should either party have a grievance over any matter covered by this procedure, it shall inform the designated representative of the other party of the specific nature of

the complaint in writing within forty-five (45) of the date or when the party became aware or should have become aware of the matter being grieved.

- (2) Upon request, the parties shall meet within twenty (20) days to discuss informal resolution of the grievance after notice is given.
- (3) Within thirty (30) days after receipt of the written grievance, the receiving party shall send a written response stating its position regarding the grievance. If the response is not satisfactory, the grieving party may refer the matter to arbitration.

Section 51.16 - Group Grievances. Either party may propose to the other party the combining of grievances which are before the same deciding official and which concern issues so similar that they can be efficiently and effectively treated as a group grievance. If the representatives handling the grievances do not agree as to whether the grievances should be combined, the grievances shall be treated individually through the grievance procedure to arbitration. If arbitration is invoked and either party seeks to combine the grievances, the arbitrator shall be asked to determine, as a threshold issue, whether they can be efficiently and effectively treated as a group grievance.

ARTICLE 52 ARBITRATION

Section 52.01 - General. If a grievance remains unresolved despite efforts to resolve the matter under the negotiated grievance procedure, arbitration may be invoked by the Union or Management. In accordance with applicable provisions of this Agreement, a suspension of 14 days or less, adverse action or unacceptable performance action may be referred directly to arbitration.

Nothing in this article shall be construed to discourage the settlement of the issue prior to the opening of the arbitration hearing or during the arbitration hearing.

The Union may serve as Representative and/or Co-Representative for a grievant in an arbitration.

Section 52.02 - Notice. Either the Union or Management shall notify the other party of its submission of a matter to arbitration by giving written notice within twenty-five (25) days of a final rejection at the last step of the grievance procedure, or Management's final notice of decision in a suspension of 14 days or less, adverse action or unacceptable performance based action. Such notice shall identify the specific grievance, suspension of 14 days or less, adverse action or unacceptable performance action involved and the designated representative(s) who shall handle the case. The party(s) invoking arbitration shall submit the request for arbitrators to FMCS or another mutually agreed upon source of arbitrators with the Notice of Invocation of Arbitration. The hearing will be scheduled within 120 days; however, if the parties are engaged in settlement discussions, the timeframe may be extended by mutual agreement.

Section 52.03 - Selection. Any arbitrator selected must have a Dun and Bradstreet number and either be enrolled in the contractor database utilized by HUD or agree to enroll in the contractor database prior to the completion of the hearing.

The Department and the National Council of HUD Locals 222 and any AFGE HUD local may select an arbitrator from a FMCS listing or may create a panel of arbitrators, and use this panel from which to choose arbitrators. When an established panel is used as the source of arbitrators, the parties shall meet to select an arbitrator within seven (7) days from service of the notice of arbitration.

When an established panel is not utilized, the party requesting arbitration shall request a list of at least seven (7) or other odd number of impartial arbitrators from the FMCS. The source of arbitrators shall be the FMCS unless the parties mutually agree to use a comparable alternate source, which will provide a detailed resume and fee schedule for each arbitrator. Within fifteen (15) days of receipt of the list, the parties will meet and select an arbitrator. If the parties cannot mutually agree upon one (1) of the listed arbitrators, Management and the Union shall each strike one (1) arbitrator's name from the list, and then repeat this procedure until one (1) person remains who shall be the duly selected arbitrator. The party making the first strike shall be determined by the flip of a coin.

Section 52.04 - Arbitration Fees and Expenses. The losing party shall pay the arbitrator's fees and expenses. The arbitrator shall indicate which party is the losing party. If, in the arbitrator's judgment, neither party is the clear losing party, costs shall be shared equally. If fees are assessed by the

arbitrator due to cancellation or postponement, the party responsible for the postponement or cancellation shall pay all attendant costs, unless settlement or other mutual arrangements are made.

The invoking and responding party shall be responsible for their own expenses prior to the decision or settlement, except that the Department will pay the travel and per diem costs, if necessary, for up to three (3) union witnesses duty stationed within the same region as the hearing is held or for national arbitrations. Such witnesses shall not serve as representatives at the hearing. The parties shall endeavor to have off-site witnesses testify via teleconference, videoconference, or other means acceptable to the Arbitrator.

If arbitration is cancelled by mutual agreement, any fees associated with the arbitration shall be split by the parties. If arbitration is cancelled by settlement or other mutual arrangements, any arbitration expenses shall be paid according to the terms of the agreement.

The party or parties responsible for the payment of any associated fees or other expenses shall promptly pay the costs.

The Department will make arrangements for a court reporting service for the hearing or deposition at it's or the Union's request, and the parties shall split the costs. A copy shall be provided to the arbitrator and both parties. Transcripts will be requested at the most reasonable rate available. If either party purchases transcripts it will provide the other party a free copy of the transcripts.

Section 52.05 - Arrangements. Upon selection of an arbitrator in a particular case, the respective representatives shall communicate with the arbitrator and each other in order to finalize arrangements. No ex parte communications with the arbitrator shall be permitted on the merits of the case, but both parties may discuss procedural arrangements as necessary. Any disputes on procedures shall be settled by the arbitrator consistent with this Agreement.

Section 52.06 - Direct Designation. Upon request of the grieving party (i.e., Management or the Union), the Federal Mediation Conciliation Service (FMCS) or other service shall be empowered to make a direct designation of an arbitrator to hear the case in the event:

- (1) Either party refuses to participate in the selection of an arbitrator; or
- (2) Upon inaction or undue delay on the part of either party.

Section 52.07 - Location. Normally, the arbitration hearings shall be held at Management's premises at the grievant's duty station; however, an alternate, mutually acceptable site may be used. National level hearings shall normally be held in Washington, D.C. Management shall pay reasonable travel and per diem for one (1) Union representative and one (1) technical representative for National level hearings. The space for arbitration shall be sufficient to meet the needs of the hearing, sequestration of witnesses, consultation between parties and their representatives, and any other needs.

Section 52.08 - Prehearing Submissions and Conferences. The parties will attempt to develop stipulations and a joint statement of the issue or issues to submit to the arbitrator prior to the

hearing. If the parties fail to agree on a joint submission of the issue for arbitration, each shall submit separate statements and the arbitrator shall determine the issue(s) to be heard and factual matters deemed to be stipulated.

The parties shall exchange and discuss stipulations, proposed exhibits, and proposed settlement no later than seven (7) days prior to the hearing.

At the request of either party, a pre-hearing conference may be held no later than seven (7) days prior to the hearing. The pre-hearing conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator to discuss administrative matters which may include availability of witnesses. Unless the parties agree otherwise, the pre-hearing conference shall be conducted by telephone conference call.

Section 52.09 - Witnesses.

- (1) The parties shall exchange witness lists and also provide them, to the Arbitrator no less than seven (7) days in advance of the hearing, and shall include a brief summary statement of the expected testimony of each witness. Disputes as to the relevancy of a witness or redundant testimony will be resolved by the Arbitrator. These requirements do not pertain to rebuttal witnesses. Parties shall not intimidate or coerce the testimony of witnesses subject to penalty. An opposing party will not contact the other party's witnesses without first providing a minimum two (2) day notice to the opposing party.
- (2) The parties shall exchange witness lists, if known, no less than seven (7) days in advance of the hearing, which includes a summary statement of the expected testimony of each witness. Witnesses not identified in the witness list seven (7) days in advance, shall be permitted to testify or participate in the arbitration, unless excluded by order of the Arbitrator.
- (3) All employees who are called as witnesses are considered to be on duty time to participate in the arbitration process and hearing.
- (4) At the request of either party the arbitrator may order the sequestration of any witness or witnesses during the testimony of other witnesses.
- (5) Witnesses that are part of either party's representational team shall not be sequestered; however, they must provide testimony before any other witnesses are called.

Section 52.10 - Authority of the Arbitrator.

- (1) The parties agree that the jurisdiction and authority of the arbitrator shall be confined to the issue(s) presented in the grievance.
- (2) The arbitrator shall not have authority to add to, subtract from, or modify any of the terms of this Agreement, or any supplement thereto. In the case of a back-pay award the arbitrator may authorize reasonable attorney's fees in accordance with any legal remedy allowed by law, including in

accordance with standards contained in the Back Pay Act as amended by the Civil Service Reform Act of 1978.

- (3) Except for decisions to discipline, an arbitrator shall lack authority to determine the appropriateness of a Management decision to exercise any of the rights set forth in Article 4, Section 4.06, which do not amount to a violation of applicable law, regulation, or this Agreement.
- (4) An arbitrator shall lack authority to determine the legality or regulatory correctness of any Management decision not impacting personnel policies, practices or matters affecting general conditions of employment.
- (5) The arbitrator shall resolve any arbitration disputes consistent with this Agreement.
- (6) The arbitrator's award shall be binding on the parties. An award must be consistent with current law and regulation.
- (7) Payments to the arbitrator shall be immediately paid regardless of whether any exception(s) are filed. Exceptions may include requests for reimbursement of arbitrators' fees.

Section 52.11 - Exceptions. Where exception is taken to an arbitration award and the Federal Labor Relations Authority (FLRA) sets aside all or a portion of the award, the arbitrator shall modify the original award consistent with the requirements of the FLRA decision.

Section 52.12 - Refusal to Participate. Should either party refuse to participate in an arbitration, the arbitrator shall continue to hear the case and base their decision solely on the record. Once arbitration has begun, the non-participating party shall be limited to evidence in the record that it put forward prior to the arbitration hearing.

Section 52.13 - Merit. Where a grievance is taken to arbitration and is found to be patently without merit and/or frivolous, and without any reasonable basis, the arbitrator, notwithstanding any other provision of this Agreement, shall charge all arbitrator's fees and representation fees to the losing party. In all other cases, fees shall be assessed in accordance with Section 52.04.

Section 52.14 - Ninety (90) Day Requirement. Where, due to circumstances beyond the control of the arbitrator and the parties, an arbitrator cannot hear a case within 90 days, the parties may mutually agree to select another arbitrator.

Section 52.15 - Expedited Arbitration Procedures. The parties may mutually agree that certain arbitrations are properly handled more expeditiously. Procedures contained in this Section supplement the arbitration procedures covered elsewhere in this Agreement, and, when in conflict with other procedures, supersede them:

- (1) The Arbitrator selected for an expedited arbitration will be requested to convene a hearing within thirty (30) days after selection, or as soon after that as possible. In any case, the arbitration should be completed within 90 days.
- (2) If the parties mutually conclude at the hearing that the issues are of such complexity or significance as to warrant further consideration, the hearing may be conducted in accordance with regular arbitration procedures. However, the parties may mutually agree to have the same arbitrator hear the grievance and continue the hearing by use of regular procedures.
- (3) Unless requested by the Arbitrator, there shall be no post-hearing briefs. It is understood that the parties may make closing arguments at the hearing. All documents to be considered by this arbitrator shall be filed at the hearing.
- (4) There will be no court reporter or transcripts.
- (5) The parties will endeavor to complete the hearing in one day. Each party shall be allocated a fair amount of time to present their case at the hearing. The arbitrator shall have full authority to limit the parties in the presentation of evidence or witnesses given the time limitation on the hearing.
- (6) The arbitrator will make every effort to render their decision orally (a bench decision) at the hearing. Alternatively, the arbitrator will endeavor to render a written decision within ten (10) days after the date of the hearing.
- (7) The Arbitrator's decision shall be final and binding, unless it is timely appealed to a Federal court or an exception is filed with the Federal Labor Relations Authority under 5 USC Section 7122, whichever is appropriate.

Arbitration costs shall be apportioned as otherwise provided in this Article.

Section 52.16 - Implementation of Decision or Settlement.

Implementation of an arbitration decision or settlement that involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and should be completed in no later than four (4) pay periods, unless exceptions are filed. Implementation of other arbitration decisions or settlements that do not involve back pay, promotions, reassignments, or other personnel actions shall begin within two (2) pay periods, and will be completed in a reasonable timeframe agreed to by the parties, unless exceptions are filed.

Section 52.17 - Appeal. Arbitration decision reversals should be discussed with the affected parties and their representative(s) prior to implementation. Implementation of appealed decisions or settlements shall be processed in accordance with Section 52.16.

Section 52.18 - Extension of Time Limits. Time limits in this Article may be modified by mutual written consent of the parties.

ARTICLE 53
DURATION AND DISTRIBUTION OF THE AGREEMENT

Section 53.01 - Duration. The terms of this Agreement shall remain in effect for three (3) years from the effective date. The provisions of this Agreement shall continue in full force and effect until a new Agreement goes into effect. This Agreement supersedes the previous Agreement (1998) and all Supplements to it (National, Regional, and Local), and all other written Agreements or memoranda of understanding and conflicting past practices, between the parties.

Section 53.02 - Severability. If any provision of this Agreement is invalidated by existing or subsequent laws, decisions of the FLRA, the Comptroller General or Courts of competent jurisdiction, such provision shall be renegotiated for the purpose of an adequate replacement. All other provisions of the Agreement shall remain in full force and effect.

Section 53.03 - Renegotiations.

(1) If either party desires to renegotiate this Agreement, it shall furnish written notice to the other party not less than sixty (60) days but not more than ninety (90) days prior to the expiration date of this Agreement.

(2) In the event notice is given by either party, the parties shall begin ground rules negotiations within thirty (30) days from receipt of that notice. This time frame may be extended by mutual agreement.

Section 53.04 - Renewal. If neither party requests to renegotiate this Agreement within the time frames ascribed in Section 53.03, the Agreement shall be renewed for #one (1) year periods.

Section 53.05 - Reopening Clause. During the term of this agreement, either party may propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only be conducted by mutual agreement of the parties, and in accordance with Article 49 Midterm Bargaining provisions.

Section 53.06 - Amendments. Any amendments to this Agreement shall become a part of this Agreement and subject to expiration on the same date as this Agreement.

Section 53.07 - Distribution.

(1) **Employees.** Management shall distribute an electronic copy of this Agreement and all supplements to each employee by the effective date, along with a statement of where to locate the Agreement and Supplements on the HUD website. New Employees shall be provided a copy within ten (10) days of employment.

(2) **Union.** Management shall provide the Union with five-hundred (500) printed and bound copies of the Agreement and all supplements, to meet its needs, e.g., orientation. Management agrees to provide additional copies upon request.

Section 53.08 - Publication. The expenses for publishing and distributing this Agreement shall be paid by the Department. The Parties shall edit and format the document. Within fifteen (15) days of the conclusion of negotiations, the Union shall be provided with a copy of the Agreement using the latest Departmental standard technology and software.

Section 53.09 - Effective Date. This Agreement shall take effect in accordance with the Labor-Management Relations Statute, Section 7114.

**ARTICLE 54
DAY CARE**

Section 54.01 - General. The parties recognize that employees who have children need reliable and adequate day care services available to them.

Section 54.02 - On Site Centers. When a day care center is established by the Department, the Union will be invited to play an integral role in the governing structure. The Department will ensure that these sites give priority acceptance to the children of HUD employees. When a day care is established at a multi-agency or privately leased space, the Department will propose that the local union is involved in its' governance.

Section 54.03 - Notification. Should the Department decide to participate in a new or existing multi-agency day care center, the Department shall promptly notify the appropriate designated Local Union representative and the Union Council President of that intention. The employees of the Department shall also be given proper and timely notice of such participation by the Department so that they can place themselves on registration and/or waiting lists for the day care slots available.

Section 54.04 - Child Care Subsidies. Employees who meet the income limits specified below are eligible to receive a child care subsidy for their payment of the actual cost of child care or before/after school care for children, legal dependents; foster children; or guardian from birth through age 13 and disabled children. Employees may use any child care provider that is licensed and regulated by State and/or local authorities, whether located at a HUD site or elsewhere. Subject to the availability of funds, the subsidy amount is as follows:

Total Family Income	Maximum Percentage of Actual Child Care that can be Paid by HUD	Maximum Monthly Subsidy for 1 Child
\$0 - \$40,000.99	90%	\$700.00
\$40,001.00 — \$50,000.00	70%	\$550.00
\$50,001.00 — \$60,000.00	50%	\$525.00
\$60,001.00 — \$75,000.00	40%	\$475M0

For one additional child, the subsidy will be increased by \$125.00 per month.

Section 54.05 - Elder Care. The parties understand that at the current time there is no legislation supporting the expenditure of appropriated funds to subsidize elder care. Within 30 days of authorization of such funds the parties agree to negotiate a Supplement to this Agreement.

Section 54.06 - Cost of Living Adjustments. The base maximum monthly payment shall be increased each year by 2.00%.

**ARTICLE 55
PILOT PROGRAMS AND
DEMONSTRATION PROJECTS**

Section 55.01 - Purpose. The parties agree that quality improvement programs, pilot programs and demonstration projects in the personnel management area, may result in more efficient operations, and thereby contribute to more effective accomplishment of the Department's missions.

Section 55.02 - Definitions.

- (1) **Pilot Program** A planned activity or test program which affects work place conditions, policies or procedures which are proposed for a finite period of time, designed to evaluate its effectiveness and being considered for a permanent change.
- (2) **Demonstration Project** - A project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management, as defined in 5 CFR 470.103.
- (3) **Quality Improvement Programs**- A participative process which directly involves employees, at the work level, in the identification, analysis, and solution of product quality and work process problems. It is a joint effort between Management and employees to develop ideas for improving the product of the organizational unit and implementing these improvements once approved by Management and concurred by the Union.

Section 55.03 - Employee Participation and Performance.

- (1) Employee participation in pilot and demonstration programs may be voluntary. Employee participation may be recognized by the Department under the provisions of Article 31 of this agreement.
- (2) It is recognized that activities covered under this article are unique and untested. Employee performance must be evaluated accordingly. Ratings will comply with the performance requirements covered in this agreement.

Section 55.04 - Obligation to Bargain. In accordance with statutory provisions, Management shall not enter into any pilot program, quality improvement program or demonstration project which may affect the working conditions of unit employees without first meeting its obligations under Article 49 of this Agreement.

If recommendations resulting from the above activities require a modification of this Agreement, they shall be subject to the provisions of the Mid-term Bargaining Article of this Agreement.

Section 55.05 - Quality Improvement Program.

- (1) Once Management determines to start a quality improvement program, the program shall be presented to the Union. The Union may recommend employees and participate on any quality improvement program and or planning committees that are established.
- (2) Quality improvement programs shall meet during regular duty hours and on official time. Additional topics or problems for study can be suggested by the Union or employees in the program. Management shall consider these suggestions in determining whether additional efforts should be undertaken.
- (3) When feasible, a portion of any documentable savings which results from the implementation of quality improvement programs recommendations may be utilized for special cash awards to all employee participants of the contributing program.
- (4) Quality improvement programs may be terminated at any time by Management, when the activity continuation is found to be completed, nonproductive or disruptive to the work of the unit with notice to the Union.
- (5) Quality improvement programs, by their nature, create an environment where supervisors or managers interact with their employees on improvements in work processes, organization, and procedures that shall hopefully improve the efficiency and effectiveness of the work unit. The Union may monitor the activities of the program by keeping in touch with bargaining unit employees participating in the program and/or by attending meetings.
- (6) When changes in personnel policies, practices, working conditions, or general conditions of employment result from the quality improvement program activity, the Union shall be given an opportunity to review the results and request impact bargaining where appropriate.

Section 55.06 - Pilot Programs.

- (1) The Department agrees not to enter into any pilot programs affecting bargaining unit employees without first meeting its obligations under Article 49 or of this Agreement.
- (2) If the pilot program or any part of the pilot program is to become permanent the Department agrees not to implement the program without first meeting its obligations under Article 49 of this Agreement.

Section 55.07 - Demonstration Projects.

- (1) The Department agrees not to enter into any demonstration projects affecting bargaining unit employees without first meeting its obligations under Article 49 of this Agreement.
- (2) Demonstration projects will be carried out in accordance with 5 CFR Part 470.

Section 55.08 -Reports

The Union will be provided copies of any reports generated on demonstration or pilot projects as they are available upon request and provided an opportunity to submit its views in a separate report.

ARTICLE 56
GOVERNMENT PERSONAL PROPERTY MANAGEMENT

Section 56.01 - General. The Department will provide guidance for the security of the Department's personal property against waste, loss, theft, damage, fraud, unauthorized use, and mismanagement.

Except as specified in this Article, the Department's Personal Property Management Handbooks 2200.01, dated December 2000 and 2235.7, dated July 1991 will be followed.

Section 56.02 - Employee Responsibilities for Government or Leased Property Issued for Official Use. Employees must safeguard and maintain the government property assigned to them and use such property in the performance of official duties. Employees must promptly report unused and unneeded property to their supervisors.

- (1) Employees must reasonably safeguard the property assigned for use in the performance of their official duties. Such property may belong to or leased to the Government and may not be converted for personal or private use.
- (2) Employees shall notify their supervisors of the need to replace, repair, or acquire personal property. They shall also notify their supervisors of possible hazards (fire, theft, deterioration, improper or insecure storage) to items issued.
- (3) Employees who are issued Government-owned or leased property that requires a custody receipt shall be instructed by the Department as to that property's proper use, maintenance, security, and disposition. At the time such property is issued, the receiving employee shall be advised how to obtain maintenance services for such items.
- (4) Employees responsible for sensitive property shall be afforded appropriate security arrangements for such property by the Department. They shall also have access to such property in order to perform the duties of their assigned position in conjunction with taking appropriate measures to insure that property is secured.
- (5) Membership in the bargaining unit shall not be a factor in determining the priority of property issuance, repair, or replacement.

Section 56.03 - Management Responsibilities for Government Property Issued for Official Use.

- (1) When property requiring a custody receipt is issued, the Department shall advise the employee as to that property's proper use, maintenance, security, and disposition and how to obtain maintenance services for such items.
- (2) Managers and supervisors who issue sensitive property shall provide the employee appropriate security arrangements for such property. The managers and supervisors shall provide access to the employee of such property in order to perform the duties of their assigned position in conjunction with providing instruction on appropriate measures to insure that property is secured.

- (3) Managers and supervisors shall act promptly (i.e. notifying the Accountable Property Officer) to replace the equipment, once they have been notified by the employee of the need to replace, repair, or acquire personal property or possible hazards (fire, theft, deterioration, improper or insecure storage) to government or leased items.
- (4) The Department shall ensure that the HUD acquisition, repair, and/or replacement process for remedial equipment and devices for qualified employees with disabilities shall be accomplished without undue delay.
- (5) The Department shall ensure that forms for reporting loss, theft, or damage to Government-owned personal property, as well as forms needed to identify and remove privately-owned personal property from the premises, shall be readily available to employees through administrative offices.
- (6) The Department shall annually notify the Union of the month and location for all scheduled property inventories.
- (7) The Department agrees to issue an annual staff bulletin to all employees regarding Government Personal Property Management Responsibilities. This bulletin shall enumerate Management and employee responsibilities for complying with this article and Handbook 2235.7 REV, Personal Property Management.

Section 56.04 - Privately-Owned Property Placed in Official Use.

- (1) Use of privately-owned personal property for Official Use must be approved by the Department.
 - (a) **Equipment.** Employees are not required to use privately-owned equipment while conducting official business. If an employee chooses to use their own equipment, they shall request approval from the Office of Facilities Management Division in Headquarters, or Office of Field Support in the Field or their designees. For all computer equipment, the request must be approved by Office of Chief Information Officer (OCIO). If an employee chooses not to obtain approval from the Department, it will be at their own risk and the Department will not be held liable for any loss or damage.
 - (b) **Supplies/Services.** Supplies and services required for the proper functioning of privately-owned personal property may be obtained at government expense, as long as and to the extent that such property is being used in an officially-approved capacity. This policy does not apply to motor vehicles.
 - (c) **Loss, Theft, or Damage of Privately-Owned Property Officially Approved for Use.** Claims may be filed against the government for loss, theft, or damage of privately-owned property officially approved for use. See Claims Against Government Under Federal Tort Claims Act (24 CFR Part 17, Subpart A) and Claims Under the Military Personnel and Civilian Employees Claims Act of 1964 (24 CFR, Part 17, Subpart B).

Section 56.05 - Credit Cards Issued for Small Purchases by HUD.

- (1) **Non-approved Purchases.** Small purchase credit cardholders shall not be held responsible for non-approved purchases unless such purchases are made knowingly and willfully in violation of the regulations.
- (2) **False, Fictitious, and Fraudulent Purchases.** The cardholder is prohibited through use of the card, from making any purchase knowing such purchase to be false, fictitious, or fraudulent. If the cardholder knowingly and willfully makes a false, fictitious, or fraudulent claim, he or she shall be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment of not more than five (5) years, or both.
- (3) **Lost or Stolen Cards.** The cardholder may be responsible to the Federal Government for charges on a lost or stolen card only if the cardholder knowingly and willfully fails to report it in accordance with procedures outlined in Instructions for Use of U.S. Government Bankcard for the Cardholder. These procedures shall be explained to all new bankcard holders prior to the issuance of the card. The cardholder shall not be held financially responsible for charges on a lost or stolen card unless the Government is held accountable by the card issuer.
- (4) **Departmental Agency Review.** Any determination as to financial liability based upon these provisions shall be made jointly by the proposing official and Office of the Chief Human Capital Officer as appropriate. The Union will be notified of the determination from a Departmental agency review.
- (5) **Card Security.** Upon request, cardholder shall be provided a secure place to safeguard the card.
- (6) **Card Destruct Notice.** Cardholders no longer authorized to use the card shall cut the card in half and shall return the card with the completed card destruct notice to his/her approving official.

Section 56.06 - Surplus of Government Personal Property. In accordance with GSA regulations, surplus property may not be purchased directly from the Department. Employees interested in acquiring surplus Government property may purchase such property at public GSA auctions.

Section 56.07 - Property Survey Board Investigations and Appeals. Loss, theft, damage, destruction, or other condition adversely affecting the use of Departmental personal property will be investigated by Department. Restitution to the government will be sought in those cases where an employee is determined to be negligent or deliberately destructive in failing to safeguard and properly use government property.

Employees who are subject to inquiry or investigation by the Department shall be allowed to be represented by the Union.

The right to a copy of all documents relating to the inquiry or investigation to the extent such disclosure is not inconsistent with law and existing Government-wide regulations.

(1) **Loss or Damage of Government Equipment.** When the reviewing official determines that an employee is liable for loss of, or damage to, Government property, they shall send a notice to the employee stating the following:

- i. The date upon which the loss of, or damage to, Government property was discovered;
- ii. The estimated cost of repair or replacement with substantially equivalent or identical Government property;
- iii. The specific reasons why the employee is believed to be liable for the loss of, or damage to, Government property; and
- iv. A statement that the employee shall have the right to appeal any decision made for loss of, or damage to, Government property by both internal review and the negotiated arbitration procedure.

Section 56.08 - Liability. In order for the Department to find an employee pecuniary (monetarily) liable for any loss of, or damage to, Government property, it must prove the loss of, or damage to, Government property was caused by the employee's negligence in safeguarding or the deliberate destruction of property or equipment.

- (1) If the employee is determined to be pecuniary (monetarily) liable, and the employee does not or cannot liquidate the debt, the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the employee's salary. The amount deducted shall not exceed fifteen (15) percent of disposable pay except with the affected employee's written consent. If arbitration is invoked over the indebtedness, the payment will be held in abeyance until a final decision is determined.
- (2) Any collections under this Article shall be done under the procedures set forth in the Delinquent Debt Collection Handbook, 1900.25 Rev, and 4 CFR 102.2, 102.3, and 102.11.

Section 56.09 - Setting The Value Of Lost, Stolen, Or Damaged Government Property. Employees who have been found pecuniary (monetarily) liable for lost, stolen, or damaged Government property, shall be charged the depreciated value of the property or, in cases of damage, actual repair costs.

- (1) The depreciation will be based on industry-standard or market resale value.
- (2) Where applicable, the servicing property office will obtain at least two (2) estimates of repair costs for use in the determinations.

Section 56.10 - Physical Inventory. All HUD-owned and rented reportable property must be inventoried once every two years, at a minimum. HUD Employees are responsible for having property on personal charge available for verification and counting during inventories and for identifying privately-owned property to those conducting the inventory.

(1) **Notice to Employees.** Prior to scheduled inventories, employees will be notified of:

- (a) Inventory starting and completion dates.
- (b) Property on personal charge must be available for verification and counting.
- (c) Privately-owned property must be labeled as privately owned. Sensitive and portable items normally secured and/or not visible must be available. If scheduled inventory is conducted during non-working hours, Accountable Property Officers must arrange to inventory sensitive, portable, and other secured equipment.

ARTICLE 57 SPACE MANAGEMENT

Section 57.01 - General. Unless otherwise specified, the Department's plans and Union proposals on matters covered in this article are subject to notice and bargaining in accordance with Article 49 of this Agreement. The provisions of this Article are supplemental to the HUD Administrative Services Handbook, Handbook 2200.1 ("Handbook" or "Administrative Services Handbook 2200.1"), applicable federal property management regulations, all Executive Orders, and other federal requirements and the Randolph-Sheppard Act regulating the operation and placement of vending machines and concessions in Federally owned or leased space, in effect on the effective date of this Agreement.

Existing offices will be allowed to maintain their current configurations until the office is reconfigured or relocates to a new location in the field or a designated area in Headquarters at which time the below provisions will apply.

- (1) When federal space management requirements are revised, including but not limited to, Administrative Services Handbook 2200.1 or any successor, the Department shall issue an Article 5 notice to the Union when required.
- (2) Where there is a conflict between this Agreement and the Administrative Services Handbook 2200.1, this Agreement will prevail.

Section 57.02 - Notification to Union of Space Change. When Management makes a decision to acquire or alter space, it shall notify and negotiate with the Union at the local level in accordance with Article 49 of the HUD/AFGE Agreement. The Union shall be advised of the implementation schedule and any other plan for the implementation of the change. The Union shall be advised throughout the planning and implementation process after a decision has been made.

- (1) **Space Alterations.** The Local Union shall be consulted and included in the overall planning process of any space alterations -in advance of any changes and, to the extent possible, in advance of formal notification of alterations per Article 49 of this Agreement, so that all space needs can be known.
- (2) **Local Bargaining.** Impact and implementation will be negotiated at the Local level in accordance with Articles 49 and 50 of the HUD/AFGE Agreement.
- (3) **Planning Process.** The Local Union shall be consulted and given the opportunity to provide input in the development of the plans. Management will provide a copy of the plan.
- (4) **Advance Consultation.** Management agrees that the Local Union shall be consulted and included in the overall space planning process.
- (5) **Floorplans and Workspace Assignments.** Employee specific seating assignments shall be determined at the local office level in accordance with existing Memorandum of Understandings on this topic in effect at the date of this agreement. Upon an office relocation

or space realignment, all Memoranda of Understanding and Supplements related to the change may continue or may be renegotiated.

- (6) **Post-alteration Walk Through.** For space moves, the local Union will be given the opportunities to participate in walk-throughs during the alterations process, as permitted by GSA.
- (7) **Pre-Occupancy and Post-Occupancy Review.** A pre-occupancy and post-occupancy review of the facility will be conducted by the appropriate HUD representative and the local Union.

Section 57.03 - Provisions for Employees With Disabilities.

- (1) **General.** The Department agrees to provide appropriate reasonable accommodations for any employee with a disability requiring assistance in accordance with Article 45 of this Agreement.
- (2) **Accessibility Standards.** All HUD space designs and alterations shall comply with applicable accessible design standards under the Americans for Disabilities Act, Section 504 of the Rehabilitation Act and, the Architectural Barriers Act.
- (3) **Accessibility of Electronic Communications (Section 508).** HUD shall make its electronic and information technology (EIT) accessible to persons with disabilities, including but not limited to its intranet website for employees. The Agency and Union shall meet at least once annually to discuss ways of developing technology to meet the goals of Section 508 of the Rehabilitation Act and to review the accessibility of new and enhanced EIT.
- (4) **Reporting Accessibility Concerns.** Upon receipt of any concerns from employees or the Union regarding the accessibility of the office space, the Department agrees to examine the office space for compliance with applicable accessibility standards, and will address such concerns, as appropriate, in a timely fashion.

Section 57.04 - Office Space.

- (1) **Selection of Site.** When HUD offices are not located in a government-owned building, the Department shall coordinate with GSA to assure that Government leased buildings are provided within the designated Central Business District with access to public transportation and public parking to provide the maximum access to employees and the public. Site Selection will conform to GSA space policies; and Executive Orders and Presidential Memoranda concerning real property, energy, environmental issues, and all required security including what the Department considers necessary.
- (2) **Floorplans.** Existing offices will be allowed to maintain their current configuration until the office is reconfigured or relocates to a new location in the field or a designated area in Headquarters, at which time the below principles will apply. Space shall be calculated for all allocated positions. Part-time and temporary employees shall be counted in the program of requirements and work space will be provided in accordance with work space percentages in this Article.

Floor plans must include the following aspects:

- (a) **Sustainability:** Floor plans must account for all current and amended regulations and requirements concerning a sustainable workplace as directed by GSA, -Executive Orders, and Presidential Memoranda.
 - (b) **Telework:** Floor plans may include efficiencies to be gained through the use of Telework.
 - (c) **Work Stations:** Floor plans for new or renovated space will allow for a mix of workstation sizes and types based on job function and actual occupancy. Sustainability issues will conform to the size and quantity of workstations on a floor plan. Workstations should be designed to take advantage of collaboration and available technology. Workstations may include shared collaborative spaces and other innovative space on a floor plan that allows individuals, groups, and distance workers either in the office or working remotely, to achieve the Department's business.
 - (d) Employees outstationed from Headquarters or other Field Offices will be provided space that conforms to the office standard where the employee is physically located.
 - (e) Management agrees that HUD employees shall have preferences in space, workstation location over contracted employees.
 - (f) All enclosed office space must have at a minimum one (1) direct air vent.
- (3) **Allocation of Space.** Management shall consider the Department's organizational mission and the functions necessary to perform that mission efficiently when determining space allocations for work and common areas. Management agrees to provide, as necessary, sufficient space and furnishings, such as file cabinets, work surface, bookcases, etc., to adequately maintain an efficient work environment and for employees to perform the organizational mission.
- (a) The Department and Union agree that if an open office configuration for work units within Headquarters or an entire office in a regional or field location is used, it must be based on the balance of needs for a collaborative workplace and the needs for private and/or confidential communications.
 - (b) The utilization rate for office space including conference rooms, break rooms, etc., shall be 175 square feet or the maximum allowed by GSA. The amount of workspace for employees shall be approximately 30-35% of the utilization rate. If a bargaining unit employee requires privacy as an essential part of their position, private office space will be provided.
 - (c) Employees who do not have private offices shall be afforded temporary access within a reasonable timeframe, to private space as needed for communications of a private or confidential nature, and when open space office configurations do not afford a quiet working environment. Also, closed offices, meeting rooms, or interview rooms will be

provided to assure employee privacy and confidentiality e.g., in equal employment opportunity, employee assistance, and reasonable accommodations activities.

- (4) **Public Access to Work Areas.** Consideration to limit public access to open work areas shall be given when office layouts are developed.
- (5) **Moveable Partitions.** Employees located in open space areas may have free-standing acoustic screens (area dividers) used to:
 - (a) Partition large areas;
 - (b) Provide a degree of visual privacy;
 - (c) Reduce noise levels; and
 - (d) Regulate traffic.

The number, type, and location of screens shall be determined by the parties at the local level. Where job related requirements are a factor, workflow and work assignments shall be the major criteria in determining the placement of acoustic screens. Management may propose alternative means of providing privacy and sound-proofing. Partition cleaning may be determined at the local level.

- (6) **Existing Walls.** Full consideration shall be given to the costs of renovations and the adverse impact on working conditions, in determining the prospective benefits of eliminating or moving existing floor to ceiling partitions.
- (7) **Decorations.** Employees with individual workstations have the right to decorate their interior working areas with such items, but not limited to, prints, photographs, awards, posters, and artistic or symbolic representations appropriate to the working environment. The display of these items must not be inconsistent with governing regulations or laws. Both the employee and Management have a responsibility not to deface Government property or impair its function.
- (8) **Wireless Capability.** The impact and implementation of wireless capability in offices may be bargained, in accordance with Article 49.
- (9) **Conference Rooms.** Changes in workload and in the mission of the Department may create a need for adjustments in space allocations. This may require the conversion of conference rooms to office space or vice versa. The conversion of conference rooms to office space shall be consistent with the needs and requirements of the organization.
- (10) **Furnishings.**
 - (a) Ergonomic furniture may be bargained at the local level.
 - (b) To ensure systems furniture workstations are equitable, when it has been determined that an office will receive new systems furniture; the typical workstation interior

components shall be negotiated at the local level from the options provided to the Department from the vendor. The Department will provide the Union typicals as they are updated.

- (11) **File and Other Storage.** The Department shall provide employees with sufficient physical file and other storage space to store materials essential to job functions. Files and other storage units shall be located conveniently to the employees who use them. All storage devices shall provide adequate security to protect the material stored from improper access. The Department will comply with all Executive Orders and regulations concerning electronic records management. The Department will conform with National Archives and Records Administration (NARA) mandates for records management retention retrieval and destruction.
- (12) **Appliances.** The Department will comply with lessor's mandatory requirements regarding personal appliances.
- (13) **Name Plates and Other Signage.** Management shall provide signage to indicate offices, divisions, bureaus, and other work units, and shall provide name plates or signs for all employees.

Section 57.05 - Parking.

- (1) **Existing Carpool Parking.** Existing carpool spaces under the Department's control shall be retained as long as there are qualified and interested employees, and the HUD office remains at its present location.
- (2) **Release of Carpool Parking.** If the work force at a given office decreases, the Department will assess parking needs and, if it determines there is excess parking space, it may release excess parking spaces subject to local bargaining.
- (3) **Bicycle Facilities.** The Department will provide, where available, bicycle and other non-motorized vehicle parking. Local bargaining may take place on space for two wheeled vehicles.

Section 57.06 - Maintenance and Environment. Buildings that house Departmental office space should adhere to all mandatory, legal GSA leasing requirements.

- (1) **Heating, Ventilation, and Air Conditioning (HVAC).** The Department shall coordinate with GSA in providing an adequate HVAC system and in maintaining HVAC at an acceptable working environment within the temperature and ventilation range outlined in GSA regulations and specifications in offices under GSA's jurisdiction.
- (2) **Compliance with Building Codes.** The Department shall coordinate with GSA to assure that:
 - (1) office space, whether leased or Government-owned, complies with the Government's fire and building codes, as determined by GSA;
 - (2) lease agreements require compliance with applicable Government building and fire codes, as determined by GSA;
 - (3) the lessor is to comply with State and local codes and ordinances, as appropriate, applicable to the ownership and operation of the building in which the leased space is situated.

- (3) **Lighting.** Lighting shall be adequate for its intended purpose in accordance with Government regulations. The access to natural light shall be maximized in the space occupied by employees.
- (4) **Routine Maintenance.** Management shall request from GSA a copy of its routine and scheduled maintenance schedule and upon receipt, a copy of the schedule shall be posted on Management's bulletin board. Management shall carefully monitor the landlord's compliance with the provision of routine and scheduled maintenance services in accordance with the GSA schedule. If scheduled services are not provided, Management shall bring it to GSA's attention and request that GSA take corrective action.

Section 57.07 - Moving of Employee Work Stations. Space adjustments shall be implemented in such a way as to minimize disruption to employees. Relocation of or major adjustments to modular work stations will be treated as any other move under Article 49, Mid-term Bargaining.

Section 57.08 - Information Requested by the Union. Upon written request, management shall provide the Union with:

- (1) Copies of the Building Lease Agreement and all Addenda, if available.
- (2) HUD's Request for Space, Forms SF-81, and floor plans with detailed specifications.
- (3) A copy of the Quarterly Building Services Report and the Consolidated Geographic Area Report on Building Services. These reports shall be provided to the Union's Principal Geographic Area representatives, rather than to each Local.
- (4) Any other material necessary to provide the Union with complete information on a space move.

Section 57.09 - Temporary Office Space. Temporary or swing space may be provided and may be contingent upon GSA's procurement and availability. Employees will be provided temporary office space during any transition, or other arrangements will be made for them. Temporary office space shall be subject to notice and negotiation, if requested, under Article 49 of this Agreement.

Section 57.10 - Demonstrations. The Department or Union may recommend space management related demonstrations and experiments. Notice, negotiation, and implementation of the proposals will follow procedures under Article 49 of this Agreement. Plans and arrangements under a demonstration or experiment must be evaluated prior to broader implementation.

ARTICLE 58
ADMINISTRATIVE ELECTRONIC MAIL & SOCIAL MEDIA

58.01 - General. Electronic mail/social media is an integral part of doing business in HUD, enabling more rapid delivery of vital programs, services, and information. Increasing dependence on and use of email results in compelling need to protect these critical resources through constant and improved monitoring, administration, user training, and awareness.

The primary purpose of the email system is to enable users to exchange brief, informal, work-related communications, exchange of ideas related to government business, coordination of meetings and appointments, and any other communications that are in pursuit of the Department's mission.

Social media is a tool for the Department to share information with employees and the communities it serves. As social media usage has grown amongst our employees and constituents, the Department use of social media, such as, blogs, forums, clouds, mash-ups, podcasts, RSS Feed, social networking services, wild, etc., is important in order to pursue HUD's mission.

58.02 - Policy. The Agreement prevails in any conflicts between this Article and the HUD Electronic Mail Policy which includes the Recommended Executive Branch Policy/Guidance on "Limited Personal Use" of Government Office Equipment including Information Technology dated May 19, 1999 referred to in HUD Handbook 2400.1 Rev-1 Chg-3, June 2003/Social Media Policy posted on HUD@work on April 20, 2012. The Department will post the Electronic Mail/Social Media Policy, Procedures, and any other policy, procedures, guidance or regulations regarding Administrative Electronic Mail on HUD@work.

58.03 - Training and Orientation. The Department will provide training and orientation to employees regarding Electronic Mail/Social Media Policy and Procedures any subsequent policy, procedures, guidance, or regulations regarding Administrative Electronic Mail/Social Media within 30 days of the implementation of these policies. The Department will provide orientation to new employees within 30 days of their start date with the Department.

The Department agrees to provide access to training for all employees on electronic mail/social media topics, such as, but not limited to, archiving email messages and accessing archived email messages, use of electronic mail/social media tools, such as calendars, attachments, appointments, and tasks.

The Department agrees to provide access to training for all employees on the use of social media, such as, but not limited to, the use of Social Media intranet platforms, guidelines for Social Media use, responsible use of Social Media, and personal use of Social Media Sites.

The Department will post the Office of Special Counsel's "Frequently Asked Questions Regarding Social Media and the Hatch Act" on its intranet site, and provide employees with periodic reminders to consult that advice and will approve appropriate requests for official time for a union officer or steward to attend a union or Office of Special Counsel training on the Hatch Act.

58.04 - Archiving of Electronic Mail/Social Media. Messages over 60 days old will be automatically archived, but accessible to users. The Department agrees that the word "archive" will be used in lieu of the word "purge".

58.05 - Electronic Mail/Social Media Maintenance. The Department agrees to keep the size of each user's mail database at a manageable level, no less than 100-megabyte. Email users will be given advance notification prior to reaching their limitation, providing the user with the opportunity to correct the size of their mail files.

58.06 - Electronic Mail Social Media Addresses. The Department agrees that employees will not be required to change their email address as a result of the implementation of new electronic policy or procedures.

58.07 - Email Rights. Email messages will be treated like hard copy documents. Employees will be provided email access through Outlook Express or its successor as well as through the Virtual Private Network/HUDMobile or its successor. Authorized telework users will be provided with access to their HUD electronic mail/social media. Management agrees to apply the procedures of the Electronic Mail/Social Media Policy or any subsequent policy, procedures, or regulations fairly and equitably to all employees. The Department agrees that the Electronic Mail/Social Media Policy will not affect any statutory, regulatory, contractual, or any rights of the employees.

58.08 - Personal Use. The Department agrees that appropriate limited personal use of email/social media during regular duty hours does not constitute a misuse or violations of the Electronic Mail Rev-1 Chg-3, June 2003/Social Media Policy posted on HUD@work April 20, 2012, and the Limited Personal Use Policy Rev-1 Chg-2, March 2002. Employees are not permitted to use government computers in a manner that violates any law, including the Hatch Act.

58.09 - Large Attachments. Employees may request a temporary waiver from OCIO Management if they are required to send email message with attachments that exceeds the maximum file size. The necessity to store such email messages or the necessity to keep internal social media platforms will be determined by OCIO Management.

58.10 - Unauthorized use. Unauthorized use of HUD's electronic mail/social media system includes, but is not limited to, the sending of email messages or file attachments that contain illegal, inappropriate, or offensive messages to fellow employees or the public. Such activities include, but are not limited to: hate speech, or material that is patently offensive on the basis of race, creed, religion, color, sex, disability, national origin, or sexual orientation.

58.11 - Email Access Restrictions. The Department agrees to notify the employee, but reserves the right to temporarily deny access to email or internal social media in order to protect the Information Technology infrastructure. The Department agrees that denying an employee access to email is not an adverse action. During the time of a temporary restriction, the employee will be instructed as to alternative means of completing work assignments, and when necessary the employee's performance standards will be adjusted.

58.12 - Discipline. The Department agrees that any disciplinary action taken to correct an employee's misuse or unauthorized use of email/HUD social media platforms will be in accordance with the HUD/AFGE Agreement.

58.13 - Monitoring Email. The Department agrees that no employee's email will be monitored or reviewed without establishment of cause.

58.14 - Receipt of Messages. The Department agrees that recipients of email messages are not responsible for the content, attachments, or other mailing list recipients, and shall not be held liable for simple receipt of the message.

58.15 - Virus. The Department agrees that employees will not be responsible for unknowingly opening an email/social media containing a virus, script, or agent that the Department fails to detect or any content of shared social media messages.

58.16 - Union Email. The Department agrees that the Union is authorized the use of email to conduct representational activities, in accordance with the HUD/AFGE Agreement, Article 48. In no way will the Electronic Mail/Social Media Policy or any subsequent policy, procedures, guidance, or regulations adversely affect the Union's abilities to perform all activities in accordance with the Statute.

Union representational emails and its contents will be treated as confidential, private and union-privileged communication. Union representational emails will not be monitored or used by the Department except in extreme circumstances.

58.17 - Freedom of Information. The use of the government email system is not considered private. HUD's electronic mail and internal social media platforms may be subject to discovery and Freedom of Information Act requests. The Department will follow relevant FOIA case law, statutes, and regulations as it relates to Union emails. Upon receipt of a FOIA request involving Union representational emails, the Department will notify the Union and allow 5 days for the Union to file any comments to the Department.

SOCIAL MEDIA

58.18 -Department Social Media Sites. Employees who are assigned to post material on the Department's social media sites must have any material to be posted approved by a supervisor or management official prior to its being posted. Therefore, employees may not be disciplined or have performance ratings affected where a supervisor has not approved the timely posting of material to a social media site

58.19 - Receipt of Social Media. The Department agrees that recipients of any type of social media are not responsible for the content, images, links, attachments, entries, comments, other recipients, etc., and shall not be held liable for simple receipt of the social media.

58.20 -Employees' Personal Social Media Sites. The Department will not require employees to provide passwords or other access to an employee's personal social media sites.

If employees state their place of employment and/or official title on social media, then the following disclaimer is suggested: "Any opinions expressed are my own, and do not reflect the official positions of the Department of Housing and Urban Development or the United States Government."

Provided employees do not use their official position/title, employees are free to engage alone or with others in personal activities and make personal comments about the operations of the Government in general and the Department, so long as such comments are otherwise lawful.

If the Department becomes aware of any postings on an employee's social media site that are a violation of this section or any other rule, regulation, law, or policy, the Department will bring that to the employee's attention immediately in writing and provide a reasonable amount of time after receipt of the written request to remove the offending post. Management will consider voluntary removal of any such posting a mitigating factor in any disciplinary action.

58.21 - Union Use of Social Media. The Department agrees that the Union is authorized the use of social media platforms to conduct representational activities, in accordance with the HUD/AFGE Agreement. Any changes in social media access will be bargained as appropriate, in accordance with Article 49.

Union officials, when acting in their capacity as Union representatives using HUD facilities, are entitled to the latitude in speech and action in accordance with prevailing case law. Postings using government equipment shall not contain material that is pornographic, racist, bigoted, sexist, libelous, or in violation of the Hatch Act. If the Department becomes aware of any posting on the Union's social media pages that exceeds the boundary of protected activity, it will contact the Union and the Parties will discuss the Agency's concerns.

If the Department becomes aware of any postings on the Union's social media site that are a violation of this section or any other rule, regulation, law, or policy, the Department will bring that to the Union's attention immediately and provide a reasonable amount of official time after receipt of the written request to remove the offending post. This official time will be over and above any grant of official time provided elsewhere in this agreement.

ARTICLE 59
WORKPLACE OF THE FUTURE

Section 59.01 - General. The Workplace of the Future shall consist of a diverse workforce and a modern work environment that supports the Department's current and future business requirements in a more productive, efficient, humane, and cost effective manner. The Department should endeavor to incorporate new ideas, innovation, and technologies to meet the needs of HUD's evolving workforce. The success of the Department in the future hinges on how effectively it can restructure its cost profile, streamline business practices, and more effectively utilize limited resources.

The ultimate goals of the Workplace of the Future are:

- (1) Improve employee morale and productivity.
- (2) Better alignment of technology investments.
- (3) Lower physical and technology infrastructure costs.
- (4) Improving the work environment.
- (5) Reducing carbon footprint.
- (6) Enhancing the ability to meet business needs.
- (7) Improve job training and career opportunities.

Section 59.02 - Diverse Workforce. The Workplace of the Future will have a diverse workforce. The Department should endeavor to make its workforce reflective of the population that we serve at HUD. Workforce diversity is about acknowledging and adapting differences and work practices to create an inclusive and encouraging environment with diverse skills, perspectives, and backgrounds.

Section 59.03 - Morale/Quality of Work Life. The Department and the Union recognize an important goal is to improve the morale and quality of work life for all employees and this goal is important for the success of the Department in the future. In order to facilitate, the

Department and the Union will endeavor to work together to improve the following:

- (1) Consistency in high quality communication and civility among employees and between employees and managers.
- (2) A high degree of positivity and dedication to mission.
- (3) Improvement in working methods, training, procedures, conditions, and productivity.
- (4) Demonstrated appreciation for the employee's accomplishments and innovation.
- (5) Respect for persons and property.
- (6) A commitment to human and administrative services for the benefit of employees.

Section 59.04 - Workplace of the Future Committee. Committee representatives need to be identified and included in the committee's activities from the onset. This committee may be part of the LMF (Labor-Management Forum) upon mutual agreement. This inclusion of all employees will ensure the success of any pilot or program that is created with the workplace of the future in mind.

- (1) If not part of the LMF, the parties agree to the creation of a Workplace of the Future committee which will include two (2) representatives from both management and HUD AFGE Council 222.
- (2) The committee will meet at least quarterly to discuss technological and societal changes that may impact the strategic plans of HUD. Meetings may be by teleconference or other available technological methods.
- (3) The committee will make recommendations, on new ways or avenues of doing business that have a beneficial effect on our customers, our employees, or both.
- (4) Initiatives. The Department and the Union support initiatives that improve morale, job satisfaction, internal and external work products, and provide enhanced service to our customers. The best resource for many of these initiative ideas are our current employees. In order to ensure all employees participate in the creation and innovation of the Workplace of the Future, the Department will create a mechanism, such as a website link or mailbox, in order for the employee to communicate their ideas to the Workplace of the Future Committee.
- (5) Preservation of Privacy. The Department will ensure that changes in technology and other workplace conditions preserve privacy in general, as well as conform to privacy and confidentiality laws, such as the Privacy Act. When new automated and administrative systems are developed, the requirements, deliverables, operating and use policies, and training will incorporate employee privacy.
- (6) The committee through current internal evaluation systems will assess the Department's activities in improving the quality of work life.

APPENDIX A

The Statute: § 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

APPENDIX B

STATUS OF OFFICE RECOGNITION AND COVERAGE

AFGE NATIONAL COUNCIL OF HUD LOCALS 222

HEADQUARTERS-Professionals and Nonprofessionals

Region I

Hartford Field Office-Professionals and Nonprofessionals

Bangor Field- Nonprofessionals

Boston Regional Office-Professionals and Nonprofessionals

Manchester Field Office-Professionals and Nonprofessionals

Providence Field Office-Professionals and Nonprofessionals

Region II

Albany Field Office-Professionals and Nonprofessionals

Buffalo Field Office-Professionals and Nonprofessionals

Newark Field Office-Professionals and Nonprofessionals

New York Regional Office-Professionals and Nonprofessionals

Region III

Wilmington Field Office-Professionals and Nonprofessionals

District of Columbia Field Office-Professionals and Nonprofessionals

Baltimore Field Office-Nonprofessionals

Philadelphia Regional Office-Professionals and Nonprofessionals

Pittsburgh Field Office-Professionals and Nonprofessionals

Richmond Field Office-Professionals and Nonprofessionals

Charleston Field Office-Professionals and Nonprofessionals

Region IV

Birmingham Field Office-Professionals and Nonprofessionals

San Juan Field Office-Professionals and Nonprofessionals

Miami Field Office-Professionals and Nonprofessionals

Atlanta Regional Office-Professionals and Nonprofessionals

Jacksonville Field Office-Professionals and Nonprofessionals

Louisville Field Office-Professionals and Nonprofessionals

Jackson Field Office-Nonprofessionals

Greensboro Field Office-Professionals and Nonprofessionals

Columbia Field Office-Professionals and Nonprofessionals

Nashville Field Office-Nonprofessionals

Knoxville Field Office-Nonprofessionals

Region V

Cleveland Field Office-Professionals and Nonprofessionals

Chicago Regional Office-Professionals and Nonprofessionals

Indianapolis Field Office-Professionals and Nonprofessionals

Minneapolis Field Office-Professionals and Nonprofessionals

Columbus Field Office-Nonprofessionals

Milwaukee Field Office-Professionals and Nonprofessionals

Region VI

Little Rock Field Office-Nonprofessionals

Houston Field Office-Nonprofessionals

New Orleans Field Office-Nonprofessionals

Oklahoma City Field Office-Nonprofessionals

San Antonio Field Office-Professionals and Nonprofessionals

Ft. Worth Regional Office-Nonprofessionals

Tulsa Field Office-Nonprofessionals

Region VII

Des Moines Regional Office-Professionals and Nonprofessionals

Kansas City Regional Office-Professionals and Nonprofessionals

Omaha Field Office-Nonprofessionals

St. Louis Field Office-Professionals and Nonprofessionals

Region VIII

Denver Regional Office-Professionals and Nonprofessionals

Helena Field Office-Nonprofessionals

Salt Lake City Field Office-Nonprofessionals

Casper Field Office-Nonprofessionals

Fargo Field Office-Nonprofessionals

Region IX

Honolulu Field Office-Professionals and Nonprofessionals

Region X

Anchorage Field Office-Nonprofessionals

Boise Field Office-Nonprofessionals

Portland Field Office-Professionals and Nonprofessionals

Seattle Regional Office-Professionals and Nonprofessionals

Supplemental Agreement
between
U.S. Department of Housing and Urban Development
and
American Federation of Government Employees National Council 222
on Retention of National Supplements to the March 30, 1998 Agreement between
U.S. Department Of Housing And Urban Development and
American Federation of Government Employees AFL-CIO

The parties agree that national supplements to the 1998 collective bargaining agreement between the parties, Memoranda of Agreement, and Memoranda of Understanding will be retained as supplements to the succeeding collective bargaining agreement as indicated below. The national supplements and memoranda of understanding listed as being retained are carried over as part of the new collective bargaining agreement that succeeds the 1998 agreement. All agreements, including supplements and memoranda, negotiated after the ones listed below through the time a new collective bargaining agreement takes effect will also be retained.

Supp #	Name	Keep
1	Elimination of Sign-In Sign-Out Establishment of Flexitour	No
2	HUD Enforcement Center	No
3	Telework	No
4	Establishment of 4-10 Work Schedule	No
5	Administration Transformation Plan	No
6	Reorganization of Contracting Functions	No
7	Implementation Automated Teller Machine (ATM) Cash	No
8	Reorganization Office of Das For Single Family	No
9	Reorganization Field Economists Policy Dev and Research	No
10	2020 Reorganization of Office of Native American Programs	No
11	Reorganization of the Office of Administration	No
12	Business Cards	No
13	HHTMS	No
14	Handbook 0432.01 Performance Based Reduction in Grade	No
15	Handbook 0752.02 Adverse Action	No
16	CFO Reorganization of Field Account Center	No
17	Handbook 2400.24 Information Security Program	No
18	Telephone System in Homeownership Centers	No
19	Payment by HTMS	No
20	Payment for Travel	No
21	Reorganization Single Family Loss Mitigation	No

Supplemental Agreement on Retention of National
Supplements to the March 30, 1998 Agreement

Supp #	Name	Keep
22	Sr. Cb To Supervise Single Family Employees W/No On-Site Supervisor	No
23	2000	No
24	Limited Personal Use of Computers	No
25	REAC and Pill Income Verification Center	No
26	Reorganization CPO NY And Philadelphia	No
27	Payment of Imprest Funds	No
28	Multifamily Accelerated Processing	No
29	Advance in Pay	No
30	Realignment - Office of Labor Relations	No
31	Alternative Dispute Resolution (ADR) Program	No
32	Office of Administration Field Reorganization	No
33	HUD Handbook 2200.01, Administrative Services Policy	No
33A	HUD Handbook 2200.01, Administrative Services Policy – Chapter 12	No
34	Restructuring Office of Assistant Secretary for Administration	No
35	Field Policy Management	No
36	TEAM	No
37	Travel Bonus While on Official Travel	No
38	Realignment Office of DAs/CFO And PAHD	No
39	Operating Protocols	No
40	HUD Field Environment Staff	No
41	Reasonable Accommodations	No
42	Windows XP	No
43	Electronic Mail Policy	No
44	Restructuring of OTAR/TARC to PIH	No
45	Relocation Allowance Policy	No
46	Pilot Program 6:00 AM Arrival Time	No
47	Implementation of Continuity of Operations (COOP) Handbook	No
48	Reorganization/Realignment OGC/DEC	No
49	Single Family Point of Contact	No
50	Entry Proc Inq & Correction Sys (EPIC) & Sys For Time/Attendance Report (STAR) Web	No
51	Interim Supplement Concerning Implementation of Information Technology Service (HITS) Contract	No
52	HUD Information Technology (HITS) Contract	No
53	CPD (Office Of Community Planning & Development) Reorg/Realignment	No

Supplemental Agreement on Retention of National
Supplements to the March 30, 1998 Agreement

Supp #	Name	Keep
54	Buyouts	No
55	Student Loan Repayment Program	No
56	Child Care Subsidy Program	No
57	Reorganization/Realignment Office of Native American Programs (ONAP)	No
58	Establishment of Quality Assurance and Program Support Divisions with the Office of Public And Indian Housing (PIN)	No
59	Office of Fair Housing and Equal Opportunity (FHEO) Realignment	No
60	Establishment of the Office of Affordable Housing Preservation	No
61	Office of Fair Housing and Equal Opportunity (FHEO) Reassignment of Bargaining Unit Employees	No
62	Reassignment of Customer Service Employees	No
63	Department of Housing and Urban Development Continuity of Operations (COOP) Handbook/Policy (replaces Supplement 47)	No
64	Office of Field Policy and Management (FPM) Voluntary Separation Incentive Program (Buyout)	No
65	Implementation of the HUD Integrated Human Resources Tracking System (HIHRTS)	No
66	FedTraveler System (e-Travel)	No
67	Implementation of the Nationwide 6:00 A.M. Arrival Time Program	No
67A	Nationwide 6:00 A.M. Arrival Time Program Amended	No
68	IT Buyouts	No
69	HUD Handbook 2200.01, Chapter 13 - Space Management	No
70	Realignment of Office of the Chief Information Officer (OCIO)	No
70	Sidebar Statement Interim Ratings/New Critical Elements and Standards	No
71	Voluntary Separation Incentive Payments (Buyouts) for Employees in the Office of Housing	No
72	Information Technology Security Policy - Handbook 2400.25, Rev 1	No
73	Voluntary Separation Incentive Payments (Buyouts) for Employees in the Office of Administration	No
74	Reorganization of the Office of the Chief Procurement Office (OCPO)	No
75	Change in Limitation on Permitted Times to Work Credit Hours covered by Section 17,04(2)(a)3 of the HUD/AFGE Agreement and Supplement 67, Section 7	No
76	Right Now Technologies System	No
77	No Supplement	

Supplemental Agreement on Retention of National
Supplements to the March 30, 1998 Agreement

Supp #	Name	Keep
78	The OCIO IT Modernization Initiative for Fiscal Year 2006	No
79	The HUD Emergency Information Hotline (Emergency Hotline)	No
80	Employee's Mandatory Entry of Information into the Emergency Contact Information Component of HIRTS	No
81	Implementation of ePerformance at HUD	No
82	Pandemic Influenza Outbreak Guidance	No
83	Recruitment, Relocation and Retention Incentives Handbook	No
84	Homeland Security Presidential Directive 12	Yes
85	HUD Handbook Incentive Awards 2195.1	No
86	New FPM Operating Protocols	Na
87	Service Level Agreements (SLAs) Pilot Program	No
88	VSIPs (Buyout) for AFGE BUEs in Field Policy and Management (FPM) and the Office of the Chief Information Officer (OCIO)	No
89	USA Staffing/eRecruit	No
90	Automated SF-50 Notice of Personnel Action	No
91	Implementation of ePerformance at HUD	No
92	Detail Exchange Program	No
93	Handbook on Pay, Leave and Other Benefits during Emergency Disaster Situations	No
94	Office of Administration Reorganization	No
95	Reassignment of employees of the Office of Field Policy and Management (FPM)	No
96	FHEO Transfer of Section 3 Responsibilities from Headquarters to the Field	No
97	Service Level Agreements (SLA)	No
98	Transfer & Realign Financial Mgmt Ctr (FMC) from PIH to Housing	No
99	Pandemic Planning and Response Guidance	No
100	New Federal ID Credential	Yes
101	Implementation of webTA System	No
102	Implementation of Supervisory Changes in the Quality Assurance Division (QAD) of the Office of Public and Indian Housing	No
103	Implementation of the Asset Management Approach to the Agency's Public Housing (low rent) Program	No
104	OM Information Technology (IT) Desktop Office Automation (OA) Enhancements (IT OA Enhancements)	No
105	HUD Handbook 2400.25, Rev-2 - Information Technology Security Policy	No

Supplemental Agreement on Retention of National
Supplements to the March 30, 1998 Agreement

Supp #	Name	Keep
106	Transfer of function 232 Mortgage Insurance Program for Residential Care Facilities	No
107	Pay, Benefits and Retirement Center (PBRC)	No
108	Transfer of Department Staff to the Federal Housing Finance Agency (FHFA)	No
109	Reassignment of Office of Field Policy and Management (FPM) GS-0303	No
110	Departmental Telework Policy	No
111	6:00 a.m. Arrival Time Program and Flexitour Credit Hours	No
111A	Nationwide 6:00 a.m. Arrival Time Program	No
112	Student Loan Repayment Program	No
113	General Service Administration (GSA) Smoking Policy	No
114	Creation of the Office of Healthcare Programs	No
115	Proposed Transformation - Office of Administration	No
116	The Transfer of the PIV Function to GSA.	Yes
117	Fleet Management Handbook 2300,4, Revision 4	No
118	Emerging Professionals Program (EPP)	No
119	Nationwide 6:00 a.m. Arrival Time Program	No
119A	Nationwide 6:00 a.m. Arrival Time Program and Flexitour Credit Hours	No
121	Bank of Official Time Interim Agreement - (This supplement has been recalled by the parties.)	No
122	Establishment of the Office of Housing Counseling (OHC)	Yes
123	HUD Rotational Assignment Program (RAP) Pilot Handbook 655.1	No
123A	HUD Rotational Assignment Program (RAP) Pilot Handbook 655.1 - Temporary Extension	No
124	Union Representation and Official Time	No
125	Performance Appraisal	No
126	Human Resources End-to-End (HR E2E) Initiative	Yes
127	Nationwide 6:00 a.m. Arrival Time Program and Flexitour Credit Hours	No
129	HUD's Nepotism Policy	Yes
131	Hardship Reassignment	No
132	Reorganization of the Office of Departmental Operations and Coordination (ODOC), Transfer of the Office of Labor Relations (OLR) and Non-OLR Headquarters Staff to the Office of Field Policy and Management (FPM), and Abolishment of ODOC	Yes
133	HUDMobile - CITRIX Upgrade	Yes
134	Career Transitions Program Policy (CTAP)	Yes
135	Multifamily Reorganization/Transformation	Yes
136	Nationwide 6:00 am Arrival Time and Flexitour Credit Hours	No
137	Implementation of the Rotational Assignment Program	Yes

Supplemental Agreement on Retention of National Supplements to the March 30, 1998 Agreement

138	Implementation of Concur Travel and Relocations System	Yes
139	Lateral Movement of Bargaining Unit Employees with the Department of Housing and Urban Development	No
140	Implementation of Department of Treasury's Bureau of Fiscal Service/Administrative Resource Center (BFS/ARC) webTA System	Yes
141	The Establishment of a National Pathways Program for the Department of Housing and Urban Development	Yes
142	Implementation of Standing Desk Pilot Program (SDPP)	Yes
143	The Office of Administration Reorganization	Yes
144	Nationwide 6:00 am Arrival Time and Flexitour Credit Hours	No
145	HUD's Transition to Office 365	Yes
146	Implementation of New National HUD Workplace and Domestic Violence Prevention and Response Policy Handbook of 2015	Yes
147	Nationwide 6:00 a.m. Arrival Time Program and Flexitour Credit Hours	No
149	Office of Public and Indian Housing (PIH) Nationwide Employee Enrichment Pilot Program (EEPP)	Yes
150	Implementation of Personal Identification Verification (PIV) Memoranda of Understanding	Yes
MOU	Laptop Computer Upgrade	Yes
MOU	Student Loan Program FY 2014	Yes
MOU	Planned Closure of 11 Small Field Offices Within the Council's Jurisdiction	No
MOU	Department-Wide Administrative Furloughs of Less than 30 Days	No
MOU	Office of Housing, Multifamily Asset Management, Implementation of New Business Processes and Procedures: "Sustaining Our Investment" Project Management by Risk	Yes
MOU	Career Ladder Promotions During FY 2012 Continuing Resolution	No
MOU	Analysis of Asset Management Functions in the Office of Housing and the Office of Public and Indian Housing	No
MOU	Survey of Multifamily Staff	No
MOU	The Office of Housing Plans to Survey Its Operational Staff	No
MOU	Multifamily Implementation of "Breaking Ground: Delivering Results" Playbook	Yes
MOU	Office of Single Family Housing's Reassignment of the Account Liaisons	No
MOU	Administrative Leave for Nonprofit Volunteers	No
MOU	GSA Smoking Policy	Yes
MOU	Office of Chief Information Officer - Modernization of HUD Correspondence Tracking Report	No

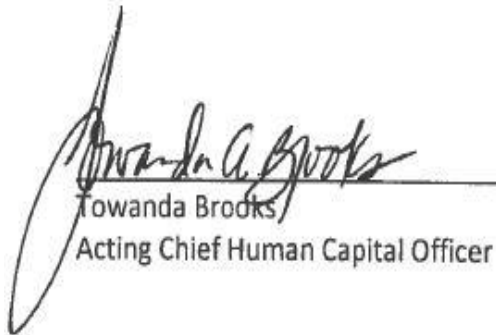
Supplemental Agreement on Retention of National
Supplements to the March 30, 1998 Agreement

MOU	Voluntary Separation Incentive Payments (Buyout) for AFGE Bargaining Unit Employees in the Office of Administration	No
MOU	Fiscal Year 2010 VSIP & VERA for AFGE Bargaining Unit Employees in OGC	No
MOU	Department's Solicitation of Volunteers for Strong Cities, Strong Communities (SC2) Initiative	No
MOU	Reg IV Pilot Program-New VPN Client, Two-Step Remote	No
MOU	Workload Sharing Pilot in Multifamily Housing	No
MOU	FY 2013 Buyout in the Office of Healthy Homes and Lead Hazard Control	No
MOU	FPM/ODOC Buyout Memorandum of Understanding	No
MOU	Bank of Official Time	No
MOU	Career Ladder Promotions Memorandum of Understanding	No

APPROVAL OF AGREEMENT


MANAGEMENT



Mark Zaltman
Chief Negotiator


Towanda Brooks
Acting Chief Human Capital Officer


Nani Coloretti
Deputy Secretary

AFGE


Salvatore Viola
Executive Vice-President,
National Council 222
of HUD Locals


Holly K. Salamido
President, National Council 222
of HUD Locals

Date Signed: July 23, 2015

EXHIBIT 6

Doran, Jodi E

From: Chief of Staff <chiefofstaff@public.govdelivery.com>
Sent: Friday, January 24, 2025 3:48 PM
To: Doran, Jodi E
Subject: Return to In-Office Work



HUD Colleagues,

The Presidential Memorandum titled ***Return to In-Office Work*** states:

“Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary.”

In accordance with this directive, all employees will be expected to begin reporting to a HUD office full-time unless approved for an exemption. This modification is being made to comply with the in-office work requirements ordered by the President to increase the efficiency and accountability of the federal workforce because virtually unrestricted telework has led to poorer government services and made it more difficult to supervise and train government workers, as stated in the [Government-wide guidance](#) issued by the U.S. Office of Personnel Management. This requirement will be implemented in a phased approach.

Beginning the week of February 10: All **non-bargaining unit employees who are not on a remote work agreement** must report to their HUD office duty station full-time starting on their first scheduled workday.

Beginning the week of February 24: All bargaining unit employees who are not on a remote work agreement must report to their HUD office duty station full-time starting on their first scheduled workday in accordance with the Return to In-Office Work Presidential Memorandum.

Employees may be excused from this requirement if they have an approved reasonable accommodation based on a disability or a qualifying medical condition. Additionally, mobile workers and employees on approved Domestic Employees Teleworking Overseas (DETO) agreements are exempt from this requirement.

Over the next few days, guidance will be provided for employees on remote work agreements.

You will receive additional information on administrative requirements from the Office of the Chief Human Capital Officer shortly.

Andrew Hughes
Chief of Staff



Questions?
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EXHIBIT 7

Doran, Jodi E

From: HUD Office of the Chief Human Capital Officer <OCHCO@public.govdelivery.com>
Sent: Friday, January 24, 2025 4:02 PM
To: Doran, Jodi E
Subject: Return to In-Office Work



Return to In-Office Work

To All HUD Staff:

Following up on the Chief of Staff's email, all HUD employees will be expected to begin reporting to a HUD office full-time. The return to office will be executed in a phased approach:

Phase 1, beginning the week of February 10, 2025: Non-Bargaining Unit Employees who are not on a Remote Work Agreement

- Non-bargaining unit employees who are not on a remote work agreement are expected to begin reporting to their official HUD office full-time beginning the week of February 10, in accordance with the Return to In-Office Work Presidential Memorandum, starting on their first scheduled workday.
 - Your current Flexiplace Agreement must be modified effective February 10 to reflect your new in-office schedule due to the change in work requirements ordered by the President. Therefore, you must [submit a new Flexiplace Agreement](#) to modify your existing telework agreement and reflect your new in-office schedule and your desire to continue to participate in situational telework, if you choose to do so on an ad-hoc basis, with supervisory approval. with supervisory approval.
 - Failure to comply with these instructions may result in disciplinary action.

Phase 2, beginning the week of February 24, 2025: Bargaining Unit Employees who are not on a Remote Work Agreement

- Bargaining unit employees who are not on a remote work agreement are expected to begin reporting to their official HUD office full-time beginning

the week of February 24, in accordance with the Return to In-Office Work Presidential Memorandum, starting on their first scheduled workday.

- Your current Flexiplace Agreement must be modified effective February 24 to reflect your new in-office schedule due to the change in work requirements ordered by the President. Therefore, you must submit a new [Flexiplace Agreement](#) to modify your existing telework agreement and reflect your new in-office schedule and your desire to continue to participate in situational telework, if you choose to do so on an ad-hoc basis, with supervisory approval.
- Failure to comply with these instructions may result in disciplinary action.

Phase 3: Remote Workers

- Additional instructions will be forthcoming for employees on remote work agreements.

Exclusions

- Mobile workers and employees on Domestic Employees Teleworking Overseas (DETO) agreements are exempt from these requirements and do not need to take any action.
- If you are a bargaining unit or non-bargaining unit employee who is not on a remote work agreement and believe that you are excused from the requirement to report to a HUD office full-time based on an approved reasonable accommodation for a disability, please send an email to RAWork@hud.gov no later than January 31, to include:
 - A copy of your approved reasonable accommodation documentation, including the HUD-1000 form, identifying telework/remote work as an approved accommodation, and
 - Your program office and your current supervisor's name and email address.

Once your documentation has been reviewed, you and your supervisor will receive notification as to whether you are excluded from the in-office requirement.

- Employees in the following HUD offices will be temporarily exempt from this requirement and will continue full-time telework due to construction/repair issues in the HUD office until further notice:
 - New York City Regional Office: Employees on the Federal Office Building side of the 32nd floor of the Javits Building only
 - Program offices in Headquarters buildings whose staff are currently teleworking full time due to ongoing space renovations.

If you have any questions, please contact FlexiplaceQuestions@hud.gov.

Very Respectfully,

**Your Partners in the Office of the
Chief Human Capital Officer**



[Stay Connected with the
HUD Office of the Chief Human Capital Officer](#)



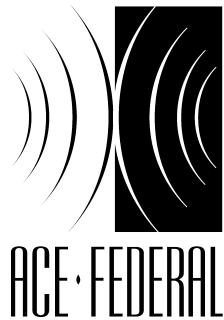
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EXHIBIT 8

Date: September 23, 2025

Case: Arbitration between AFGE HUD Council 222 and U.S. Dept. of
Housing and Urban Development



Ace-Federal Reporters, Inc.
Phone: 202-347-3700
Fax: 202-737-3638
Email: info@acefederal.com
Internet: www.acefederal.com

BEFORE ARBITRATOR MICHAEL LOCONTO

IN THE MATTER OF THE ARBITRATION BETWEEN:

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

HUD COUNCIL 222,

Union,

and

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Agency

FMCS NO. 250409-05235

Washington, DC

Tuesday, September 23, 2025

REPORTED BY:

CARMEN SMITH

1 Arbitration called on Tuesday, September 23,
2 2025, in Washington, DC, at the offices of U.S.
3 Housing and Urban Development, 451 7th Street, SW,
4 Room 9253, Betty Park Hearing Room, at 10:06 a.m.,
5 before CARMEN SMITH, a Notary Public within and for
6 the District of Columbia, when were present on
7 behalf of the respective parties:

8

9 JAVES MYUNG, ESQ.

10 JULIUS A. HALSTEAD, ESQ.

11 ANJU MATHEW, ESQ. (remote)

12 U.S. Department of Housing and Urban

13 Development, Office of the General Counsel

14 451 7th Street, SW, Suite 10286

15 Washington, DC 20410

16 202-402-5364

17 javes.myung@hud.gov

18 On behalf of Agency

19

20

21

22

-- continued --

1 APPEARANCES (Continued):

2

3 MARK VINSON, ESQ.

4 American Federation of Government Employees

5 AFL-CIO

6 80 F Street, NW

7 Washington, DC 20001

8 202-639-6424

9 vinsom@afge.org

10 On behalf of Union

11

12 MICHAEL T. LOCONTO, ESQ.

13 617-331-2112

14 mtl@locontoadr.com

15 Arbitrator

16

17 ALSO PRESENT: VERONICA BOBBITT

18 MESHEA CEASAR

19

20

21

22

1 binder. If I have the numbering correct, it should
2 be behind tab 10.

3 A Got it.

4 Q I believe it's been agreed to already as
5 Exhibit 10. Do you have that document in front of
6 you?

7 A I do.

8 Q Okay. Thank you.

9 So I'd like to ask you to turn to page 3,
10 which is the page numbers are in the bottom
11 right-hand corner. Page 3 of the document, and I
12 guess the third full paragraph where it starts with
13 the words "Flexiplace arrangements." Please let me
14 know when you have that.

15 A I got it.

16 Q Okay. So the sentence that I want to
17 focus your attention on, and I'll just read it
18 directly into the record, it says, "Flexiplace
19 arrangements are not an employee entitlement, and
20 how work is accomplished in an office is always a
21 management decision."

22 Dr. Robinson, did you hear the sentence I

1 just read?

2 A I did.

3 Q Okay. So based on that sentence, HUD
4 employees, which of course include bargaining unit
5 employees, are not entitled to telework; correct?

6 A Correct.

7 Q And under current Agency policy,
8 bargaining unit employees are still able to telework
9 situationally; correct?

10 A Yes.

11 Q And situational telework is a form of
12 telework; correct?

13 A Yes.

14 Q All right. I'd like to direct your
15 attention to another exhibit that you were shown
16 earlier. I believe it should be behind tab number 3
17 in the big binder, should be national Supplement 34.

18 A Yes.

19 Q Okay. Let me know when you have it in
20 front of you, please.

21 A I've got it.

22 Q And I heard you testify earlier on direct

1 that you're familiar with this document; correct,
2 Dr. Robinson?

3 A I am, yes.

4 Q Is there anywhere in this document in
5 Supplement 34 that guarantees routine telework for
6 all bargaining unit employees? I'm sorry, I --

7 A No.

8 Q I just wanted to shift topics a little bit
9 to duty to bargain.

10 I heard you testify earlier generally
11 about the Agency's duty to bargain with the Union
12 over proposed changes.

13 Do you recall that, Dr. Robinson?

14 A Yes.

15 Q The Union never demanded to bargain over
16 the repudiation of Article 18 of the CBA that's the
17 subject of this arbitration; correct?

18 A It was covered by, so no, we did not.

19 Q All right. Next I want to turn your
20 attention to another document. It should be the
21 document behind tab number 8 in your blue binder.

22 A Yes.

1 Q In the middle part, it should be an e-mail
2 dated Friday, January 24, 2025 at 2:54 p.m. from
3 Ginger Burnett to a bunch of people, including you.

4 Do you see that, Dr. Robinson?

5 A Yes, yes.

6 MR. VINSON: I'm sorry, I don't see, where
7 were you at? Tab 8?

8 MR. HALSTEAD: Yes, it should be behind
9 tab 8.

10 MR. VINSON: Okay.

11 MR. HALSTEAD: Do you have it, Mr. Vinson?

12 MR. VINSON: Yes.

13 BY MR. HALSTEAD:

14 Q And, Dr. Robinson, just to confirm, this
15 e-mail was -- you were one of the recipients of this
16 e-mail; correct?

17 A Yes.

18 Q Okay. Sorry, I'm going out of order a
19 little bit, actually. Could I ask you to go to the
20 collective bargaining agreement again.

21 A Yes.

22 Q Specifically, I'd like you to go to

1 Article 18, section 18.06, which is on page 75.

2 A I got it.

3 Q Okay. Great. And focusing in on
4 paragraph -- or section 1 under -- paragraph 1 under
5 section 18.06, I'll just read it into the record
6 just for completeness.

7 It says, "Supervisors must give reasonable
8 advance notice for permanent or long-term
9 modifications to telework agreements, and under
10 normal circumstances no less than one full pay
11 period. The modification must be in writing and
12 provide the reason or reasons for the modification."

13 Do you see that section, Dr. Robinson?

14 A I do.

15 Q Okay. So now I'd like to revert back to
16 tab 8, which is that January 24 e-mail to you.

17 A Got it.

18 Q Specifically, scrolling down to the e-mail
19 that was included underneath what Ms. Burnett sent.

20 A Uh-huh.

21 Q Which is the same as the notification from
22 the chief of staff that you were shown earlier on

1 the Flexiplace or telework agreement is terminated,
2 suspended or modified by the supervisor for one pay
3 period or more.

4 Q Okay. If I can have you now go to number
5 11, which is a grievance decision issued April 8,
6 2025. Are you familiar with this response to the
7 grievance?

8 A Yes, I am.

9 Q And you actually -- weren't you the
10 deciding official?

11 A Yes, I was.

12 ARBITRATOR LOCONTO: This is the grievance
13 answer, March 11, 2025?

14 MR. MYUNG: Grievance -- response to
15 grievance, April 8.

16 MR. HALSTEAD: Tab 5.

17 ARBITRATOR LOCONTO: Tab 5 in the Union
18 booklet, thank you.

19 BY MR. MYUNG:

20 Q Specifically, it's not numbered, but if
21 you can go to page 4. There is a heading titled
22 "Allegations Regarding the Failure to Meet

1 Obligations to Bargain."

2 A Yes.

3 Q Why was the Agency not required to bargain
4 over the modifications to the telework arrangements?

5 A Because we had previously negotiated them
6 with the Union as part of the Flexiplace policy,
7 Article 18, Supplement 33 and Supplement 34.

8 Q I want to -- there's also a reference to,
9 in this section, all the way down at the bottom, a
10 reference to the Flexiplace policy, chapter 1,
11 section 1. And you state that -- essentially that
12 Flexiplace arrangements are not an employee
13 entitlement, and how work is accomplished in an
14 office is always a management decision.

15 Is that reflected in the Flexiplace
16 policy?

17 A Yes, it is, chapter 1, section 1.

18 Q At the bottom of page 4, top of page 5,
19 you reference Flexiplace agreements which employees
20 have to certify?

21 A Yes.

22 Q I'm going to have you next go to a sample

1 Flexiplace agreement, which you can find at tab 5.

2 MR. HALSTEAD: 11 in the Union book.

3 ARBITRATOR LOCONTO: 11, thank you.

4 BY MR. MYUNG:

5 Q I think you went ahead and testified a bit
6 about the Flexiplace agreements and process for
7 entering into Flexiplace agreements previously. So
8 this particular document, is this the Flexiplace
9 application and agreement that needed to be
10 completed?

11 A Yes, it is.

12 Q And in your grievance decision, you
13 indicate that employees are required to, when
14 signing off on the agreement, to certify certain
15 language within the agreement; is that correct?

16 A That is correct.

17 Q Okay. And if I can have you go to the
18 certification itself, which is the fourth page.
19 What are employees, you know, specifically
20 certifying to when they complete a Flexiplace
21 agreement?

22 A So under the employee certification, it

1 states that further, I understand that the
2 Flexiplace arrangements are not an entitlement, and
3 this agreement may be modified or terminated at any
4 time.

5 Q And I think you went ahead and testified
6 to this previously, but just want to go ahead and
7 state it for the record.

8 The Flexiplace agreement not only has to
9 be approved -- or signed by the employee, but it
10 also has to be approved, or disapproved, by the
11 supervisor; is that correct?

12 A That is correct.

13 Q Now if I can have you go back to the
14 grievance decision, and specifically this would be
15 page 5, allegations of statutory violations.

16 So basically, in the Union's grievance,
17 they allege that the Agency committed a ULP or
18 unfair labor practice specifically by repudiating
19 Article 18, in violation of 5 USC 7116(a)(1) and
20 (5). What did you find with respect to this
21 allegation?

22 A I did not agree with the allegation. I do

1 not believe that we violated Article 18. We
2 actually complied with Article 18, which was
3 negotiated between management and the Union.

4 Q And then subsequently in the same section,
5 allegations of statutory violations, the Union also
6 alleged that 5 USC 7116(a)(7) was violated. What
7 did you find with respect to this particular
8 allegation?

9 A That we again did not violate the statute,
10 that we actually complied with the negotiated
11 agreement and supplements with the Union.

12 Q And then going next, same page, there's a
13 section in your grievance response indicating -- or
14 the heading is "Allegations of Violating Article
15 53." What is your understanding of article 53?

16 A So basically, article 53 is the duration
17 clause, and it basically says that things are --
18 negotiated in the collective bargaining agreement
19 are in force for at least three years or until
20 another collective bargaining agreement is
21 negotiated after that three years.

22 Q And then what did you find in response to

1 the allegation that the Agency has violated article
2 53?

3 A That we did not violate article 53 because
4 we complied with negotiated procedures in Article 18
5 and supplements 33 and 34.

6 Q And then going to the next page of your
7 grievance decision, there's a heading "Allegations
8 of Violating the Telework Enhancement Act of 2010."

9 What is your understanding of the Telework
10 Enhancement Act?

11 A Basically, the Telework Enhancement Act of
12 2010 encourages or asks agencies to put in place
13 telework policies, establish telework policies, and
14 to basically encourage participation in the telework
15 program to the fullest -- to the maximum extent
16 possible.

17 Q And what did you find with respect to the
18 allegation that the Agency violated the Telework
19 Enhancement Act?

20 A So I found that we did not violate the
21 Telework Enhancement Act. We do and continue to
22 have our Flexiplace policy, which is our telework

1 policy, in place. We encourage participation in the
2 policy under situational telework to the maximum
3 extent possible, and we currently have over 95
4 percent of our bargaining unit employees, or HUD
5 employees, that do participate in the telework
6 program policy under at least situational with
7 telework.

8 And so we are still encouraging
9 participation in that program to the maximum extent
10 possible.

11 Q And you mentioned previously in your
12 testimony that you were on management's team
13 negotiating Supplement 33 and 34.

14 Was there any sort of discussion about
15 routine telework and also situational telework?

16 A I'm sure there was.

17 Q But there was no agreement that, for
18 example, that the Agency would be required to
19 provide every employee routine telework?

20 A No, there was in agreement that every
21 employee would get routine telework.

22 Q Now, you just mentioned previously that

1 there were a fair number of employees that are
2 telework-eligible or on telework agreements,
3 Flexiplace agreements.

4 With respect to routine telework, are
5 there employees that are currently allowed to
6 routinely telework?

7 A Yes. We currently have about 600
8 employees, about 10 -- a little over 10 percent of
9 the HUD workforce, that do have routine telework
10 agreements in place.

11 Q And with respect to those number of
12 employees, what reason or why are they allowed to
13 routinely telework?

14 A So some of them have reasonable
15 accommodations for some type of telework. Some are
16 military spouses on telework or remote work
17 arrangements. Some have approved DETOs, which is
18 Domestic Employees Teleworking Overseas, if it's a
19 sponsored DETO. And then we also have employees
20 doing routine telework based on space issues.

21 So, for example, in our Atlanta office, I
22 think we have about 300 -- a little over 300, close

1 to 350 employees, that are basically alternating a
2 telework schedule, so some of them come in one week,
3 telework the second week of a pay period, and then
4 they alternate on an A/B schedule, due to space
5 limitations in those offices.

6 Q Is telework or providing or approving
7 telework -- is that an employee right? Are the
8 employees entitled to telework?

9 A No, employees are not entitled to
10 telework.

11 Q Are you aware of any requirement in our
12 agency's policy, the collective bargaining
13 agreement, supplements, any sort of authority
14 statute, that would require not only our agency but
15 other agencies to approve or provide telework to
16 employees?

17 A No, I am not.

18 MR. MYUNG: No further questions.

19 ARBITRATOR LOCONTO: Thank you, Mr. Myung.

20 Mr. Vinson, do you need a few minutes or
21 are you ready to go on cross?

22 MR. VINSON: No, I can go.

C O N T E N T S					
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1	C O N T E N T S				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	ASHAKI ROBINSON				
4	by Mr. Vinson	24		91	
5	by Mr. Halstead		83		93
6	ANTONIO F. GAINES				
7	by Mr. Vinson	98		149	
8	by Mr. Myung		130		
9	SALVATORE VIOLA				
10	by Mr. Vinson	154		175	
11	by Ms. Mathew		168		180
12	LORI MICHALSKI				
13	by Mr. Myung	183			
14	by Mr. Vinson		206		
15					
16	STIPULATIONS: LISTED ON PAGES 235-236				

E X H I B I T S					
	NUMBER		IDENTIFIED	RECEIVED	
17	E X H I B I T S				
18	NUMBER		IDENTIFIED	RECEIVED	
19	Exhibit 17			52	
20	Exhibit 18			69	
21	Exhibit 19			74	
22	Exhibit 20			81	

1 STIPULATIONS:

2 The parties have stipulated to the following facts:

3

4 1. On July 23, 2015, the Department of Housing and
5 Urban Development (HUD) and AFGE National Council
6 222 ("Union") executed the parties' Collective
7 Bargaining Agreement ("CBA").

8

9 2. From January 2022 until April 2022, the parties
10 negotiated and bargained over the CBA Supplements 33
11 and 34 and HUD's Flexiplace Policy, which outlined
12 HUD's expanded workplace flexibilities.

13 3. On April 11, 2022, HUD and the Union executed
14 Supplement 33 to the CBA which implemented HUD's
15 Flexiplace Policy as it relates to remote and mobile
16 work.

17

18 4. On April 11, 2022, HUD and the Union executed
19 Supplement 34 to the CBA which made amendments to
20 Article 18, Telework, in the 2015 CBA.

21

22

-- continued --

1 STIPULATIONS (Continued):

2 5. In May 2022, HUD issued its May 2022 Flexiplace
3 Policy, Handbook 625.1 Rev. 1, which is now HUD's
4 operative telework policy and supersedes any other
5 references to telework in any other Agency policies
6 or guidance dated prior to this policy.

7

8 6. On or about December 18, 2024, the parties
9 agreed to extend the CBA through July 23, 2029.

10

11 7. On January 24, 2025, HUD Chief of Staff Andrew
12 Hughes sent an email stating that all employees
13 would be expected to begin reporting to a HUD office
14 full time, unless approved for an exemption.

15

16 8. On January 24, 2025, the Office of the Chief
17 Human Capital Officer sent an email to staff stating
18 that all BUEs who are not on a remote work agreement
19 are expected to begin reporting to their official
20 HUD office on a full time basis beginning the week
21 of February 24, 2025, and directed BUEs to submit
22 modified Flexiplace Agreements.

1 CERTIFICATE OF NOTARY PUBLIC & REPORTER

2

3 I, CARMEN SMITH, the officer before whom the
4 foregoing deposition was taken, do hereby certify
5 that the witness whose testimony appears in the
6 foregoing deposition was duly sworn; that the
7 testimony of said witness was taken in shorthand and
8 thereafter reduced to typewriting by me or under my
9 direction; that said deposition is a true record of
10 the testimony given by said witness; that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to the action in which this
13 deposition was taken; and, further, that I am not a
14 relative or employee of any attorney or counsel
15 employed by the parties hereto, nor financially or
16 otherwise interested in the outcome of this action.

17

18 CARMEN SMITH

19 Notary Public in and for the

20 District of Columbia

21

22 My Commission Expires: MARCH 31, 2028

EXHIBIT 9

FLEXIPLACE APPLICATION & AGREEMENT

EMPLOYEE NAME	TITLE, SERIES & GRADE
PROGRAM OFFICE	OFFICE/DIVISION/BRANCH
OFFICE PHONE NUMBER	IMMEDIATE SUPERVISOR E-MAIL ADDRESS
CURRENT OFFICIAL DUTY STATION ADDRESS	

TELEWORK OR REMOTE WORKSITE

ADDRESS: _____ TELEPHONE NUMBER: _____

CITY: _____ COUNTY: _____ STATE: _____

TYPE OF FLEXIPLACE ARRANGEMENT

REGULAR TELEWORK - Number of days per pay period _____
 NOTE: If you select Regular Telework, you are automatically approved for Situational Telework.

SITUATIONAL TELEWORK ONLY **COOP TELEWORK ONLY**
 NOTE: If this application is being submitted in order to utilize only Situational or COOP telework in the future, employees must provide start and end dates and a reason/justification by email to the approving official each time telework is to be used and obtain approval in writing.

REMOTE WORK – NEAR HUD OFFICE (within 50 miles of HUD office)

REMOTE WORK – OUTSIDE COMMUTING AREA (more than 50 miles from HUD office)

TOUR OF DUTY

NOTE: For employees on flexitime/flexitour schedules, start times may vary from those indicated within the applicable window.

Work Week 1	Start Time	End Time	LOCATION: HUD Office or Telework/Remote Site	Work Week 2	Start Time	End Time	LOCATION: HUD Office or Telework/Remote Site
Monday	8:30	6:00	HUD Office	Monday	8:30	6:00	HUD Office
Tuesday	8:30	6:00	HUD office	Tuesday	8:30	6:00	HUD Office
Wednesday	8:30	6:00	HUD office	Wednesday	8:30	6:00	HUD office
Thursday	8:30	6:00	HUD office	Thursday	8:30	6:00	HUD office
Friday	8:30	5:00	HUD office	Friday	N/A (Flex/Day)	N/A (Flex/Day)	N/A (Flex/Day)

Identify type of work to be performed at ALTERNATIVE/REMOTE worksite. Use the overflow box on the last page if more space is needed.
 All work/duties OR identify specific tasks below:

EMPLOYEE AGREES TO RETRIEVE VOICE MAIL MESSAGES EVERY _____ HOURS AND TO RESPOND WITHIN _____ HOURS OR

EMPLOYEE WILL USE CALL FORWARDING FROM A HUD PHONE NUMBER OR USE A HUD-ISSUED CELL PHONE

Other Requirements: _____

TECHNOLOGICAL INFORMATION

I have internet access at my alternative/remote worksite. High Speed Other (Explain): _____

I have a HUD-issued laptop.

I use a personal computer at my alternative/remote worksite in accordance with IT Helpdesk instructions because a HUD laptop is not available.

TELEWORK/REMOTE WORKSITE SELF-CERTIFICATION SAFETY CHECKLIST

Participating employees may use the following checklist to assist them in a survey of the overall safety and adequacy of their telework/remote worksite. The following are only recommendations and do not encompass every situation that may be encountered. Employees are encouraged to obtain professional assistance with issues concerning appropriate electrical service and circuit capacity for residential worksites.

- Practice a fire evacuation plan for use in the event of an emergency.
- Check your smoke detectors regularly and replace batteries once a year.
- Always have a working fire extinguisher conveniently located in your home and check the charge regularly.
- Computers can be heavy. Always place them on sturdy, level, well maintained furniture.
- Use a sturdy chair that provides good support and can be adjusted.
- Choose office chairs that provide good supporting backrests and allow adjustments to fit you comfortably.
- Locate your computer to eliminate noticeable glare from windows and lighting. Place computer monitor at height that is comfortable and does not require neck or back strain. Locate computer keyboards at heights that do not require wrist strain or place the keyboard on an adjustable surface.
- Install sufficient lighting in locations that reduce glare at the work surface.
- Arrange file cabinets so that open drawers do not block aisles.
- Be sure to leave aisle space where possible to reduce tripping hazards.
- Always make sure electrical equipment is connected to grounded outlets.
- Avoid fire hazards by never overloading electrical circuits.
- Inspect and repair carpeting with frayed edges or loose seams. Avoid using throw rugs that can cause tripping hazards in your workspace.
- Locate computers, phones and other electrical equipment in a manner that keeps power cords out of walkways.
- Power down computers after the workday is over and always turn off all electrical equipment during thunderstorms.
- Keep your work area clean and avoid clutter, which can cause fire and tripping hazards.
- Do not allow non-government employees to operate or repair government owned equipment.
- Always keep government files and information in a secure place and do not advertise your home office to strangers.
- Always use proper lifting techniques when moving or lifting heavy equipment and furniture.
- Always report accidents and injuries immediately to your supervisor.

RULES OF BEHAVIOR FOR REMOTE ACCESS

What is the Purpose of the Remote Access Rules of Behavior?

The intent of these HUD Remote Access Rules of Behavior is to summarize laws and guidelines from various HUD and other Federal documents, most specifically OMB Circular A-130 and Section 208 of the E-Government Act of 2002. These guidelines should be used by all HUD Program Offices as a basis for their own security plans.

What are Rules of Behavior?

Rules of Behavior are part of a comprehensive program to provide complete information security. These guidelines were established to hold users accountable for their actions and responsible for information security. Rules of Behavior establish

standards of behavior in recognition of the fact that knowledgeable users are the foundation of a successful security program. Users need to understand that taking personal responsibility for the security of their computer and the data it contains is an essential part of their job.

Who is Covered by These Rules?

These rules extend to all HUD personnel and any other persons using HUD IT equipment or accessing HUD systems under formally established agreements. This includes contractors and other federally funded users. All users should be fully aware of, and abide by, HUD security policies as well as related federal policy contained in the Privacy Act, Freedom of Information Act, and HUD Records Management Regulations.

What is Sensitive Data?

Sensitive data is data that must be protected on the basis of its need for protection against loss, disclosure, or alteration because of the risk and magnitude of harm that could result.

What are the Penalties for Non-Compliance?

Users who do not comply with the prescribed Rules of Behavior, are subject to penalties that can be imposed under existing policy and regulations, including official, written reprimands, suspension of system privileges, temporary suspension from duty, removal from current position, termination of employment, and even criminal prosecution. HUD will enforce the use of penalties against any user who willfully violates any HUD or federal system security (and related) policy as appropriate.

These Rules of Behavior are founded on the principles described in the HUD published security policy and other regulatory documents such as the Code of Ethics for Government Employees, Office of Personnel Management regulations, Office of Management and Budget regulations and Standard of Conduct for Federal Employees. Therefore, these Rules of Behavior carry the same responsibility for compliance as the official documents cited above.

Remote Access Users:

- Users must adhere to the HUD Standards of Conduct and behave in an ethical, informed, and trustworthy manner.
- Users will complete annual HUD Information Technology Security Awareness training. Individuals identified as having significant information privacy responsibilities must take Privacy Act training. Contact your Information System Security Officer (ISSO) for details and availability.
- Use only systems, software, and data for which you have authorization and use them only for official government business, in accordance with the most current version of the U.S. Department of Housing and Urban Development Information Technology Security Policy, Handbook 2400.25 (to be referred to as the IT Security Handbook)
- Do not attempt to override technical or management controls (i.e., sensitive data should not be downloaded to any media or removed from HUD control without prior approval, etc.).
- Take precautions to secure government information and information resources. Protect government property, including hard copy documents, from theft, destruction, or misuse.
- Properly safeguard and dispose of media (both hardcopy and electronic) using approved means of destruction in accordance with applicable records management regulations and policies. Contact your ISSO for specific instructions.
- Physically protect laptop computers from theft through the use of locking devices whenever they are not attended. Be particularly aware of the threat of loss during periods of travel.
- Utilize and store sensitive data only on HUD-approved systems or devices.
- Do not copy government information onto personally owned equipment to include personal computers, external hard drives, portable "flash drives", or media players.
- Do not alter the configuration, including installing software or peripherals, on government equipment unless authorized.
- Protect personally identifiable information to ensure that it is not disclosed to unauthorized persons, either intentionally or unintentionally and abide by the most current HUD IT Security Handbook to safeguard information.
- Use or access sensitive data outside of HUD facilities only with prior approval from your supervisor.
- Use only authorized licensed HUD software on government equipment unless authorized to do so.
- Adhere to all provisions or agreements related to off-site work.
- Use virus protection software on off-site systems and keep it up to date.
- Change passwords frequently.

- Protect passwords from access by other individuals, e.g., do not store passwords in login scripts, batch files, or elsewhere on the computer.
- Immediately report security incidents or any incidents of suspected fraud, waste or misuse of HUD systems to appropriate officials. Immediately report incidents in which sensitive information has been potentially lost or compromised to the HUD HITS Help Desk. (At the time of this form's issuance, for items involving phishing, contact Phishing@hud.gov; for IT security incidents, contact CIRT@hud.gov). For example, if you lose a cell phone, laptop, removable or external hard drive, flash drive, or hardcopy documentation that contains HUD information, it should be reported without delay. Refer to the HUD IT Security Policy for additional guidance on protecting sensitive data.

Managers:

- Ensure that staff is given access to, and ample time to complete, the annual HUD Information Security Awareness Training.
- Should review remote access authorizations annually to ensure that a bona fide business need exists.
- Ensure that personnel granted remote access follow established HUD IT security policies, guidelines and procedures.

Specific Privacy Act Requirements:

- Information systems containing personally identifiable information (e.g., SSN, name, photo, and address) must be protected and may be covered by a Privacy Act System of Records (SOR) Notice. This information will have added security controls you must follow.

For more information, review the [IT Security Handbook](#)

EMPLOYEE CERTIFICATION: I certify all information on this application and additional forms are true and correct. I understand and agree to abide by all of the requirements of the Flexiplace Policy as well as the requirements set forth in this document and, for bargaining unit employees, in any negotiated agreements related to the Flexiplace Program. Failure to do so may result in termination from the Flexiplace Program in accordance with the HUD Flexiplace Policy and any applicable negotiated agreements. Where the policy and an applicable negotiated agreement conflict, the negotiated agreement will prevail. I understand that violation of the Rules of Behavior for Remote Access could result in punishment and/or criminal prosecution. I certify that I have read the recommendations listed in the Self Certification Safety Checklist and I understand the elements and importance of safety at my alternative worksite. Further, I understand that flexiplace arrangements are not an entitlement and this agreement may be modified or terminated at any time. I certify that I have uploaded my required training certificate or that I am an AFGE employee who completed required telework training when I previously had an approved HUD telework agreement in place.

 Employee Signature 1/30/2025
Date

APPROVING OFFICIAL: I certify the rules set forth in the Flexiplace Policy will be enforced. Additionally, I am aware of the compensatory and overtime provisions in the Policy. Approval is contingent upon the employee meeting all technological requirements and needs. If this is a remote work request that is being approved, I have obtained this decision from the Assistant Secretary or designee.

APPROVED DISAPPROVED

 Supervisor Signature Date

Title: _____

Reason if disapproved: Use the overflow box on the last page if more space is needed.

FLEXIPLACE PROGRAM COORDINATOR

I certify I have reviewed this application in its entirety and all sections are complete, properly signed and all required forms are attached.

FLEXIPLACE COORDINATOR E-MAIL ADDRESS

SIGNATURE: _____

DATE: _____

ATTACHMENTS

Training Certificate: Please upload your Telework Fundamentals training certificate here before submitting this application. If you are an AFGE bargaining unit employee and you previously had an approved HUD telework agreement in place for which you completed required training in the past, then you do not need to upload anything.

The Telework Fundamentals training currently consists of five lessons, each of which offers a lesson completion certificate. Please ensure that you upload the *final completion certificate for the entire course*, which contains no red text referring to lesson numbers. The final course completion certificate is available only after you have completed all five lessons.

Additional Supporting Documents: Please feel free to add additional supporting documents as needed, but do not upload any medical documents. **Supervisors:** If you add any attachments, please discuss them with your employee first.

Click the paperclip icon below to add attachments.

Employee
click to
attach
certificate
or documents

First Line
Supervisor
click to
attach
documents



ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Admin - Flexiplace (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Admin - Flexiplace:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: DocuSignRequest@hud.gov

To advise Admin - Flexiplace of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at DocuSignRequest@hud.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Admin - Flexiplace

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to DocuSignRequest@hud.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Admin - Flexiplace

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to DocuSignRequest@hud.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Admin - Flexiplace as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Admin - Flexiplace during the course of your relationship with Admin - Flexiplace.

EXHIBIT 10



Antonio Gaines
President

American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3240
Washington, DC 20410

Phone: 678-732-2376
E-mail: Antonio.F.Gaines@hud.gov

March 11, 2025

MEMORANDUM FOR: Lori Michalski, Chief Human Capital Officer
Office of the Chief Human Capital Office

FROM: Veronica Bobbitt, Chief Steward and Regional Vice President /s/
Ashaki Robinson, PhD, Regional Vice President /s/

On BEHALF OF: Antonio Gaines, President /s/
AFGE Council 222

SUBJECT: National Grievance Against the Department of Housing and Urban
Development for Repudiating Article 18 of the Collective
Bargaining Agreement by Issuing the “Return to In-Office Work”
Directive and for Failing to Bargain with the Union Concerning its
Unilateral Termination of Telework.

STATEMENT OF GRIEVANCES

Pursuant to the provisions of Article 51, Section 51.01 of the Collective Bargaining Agreement (“CBA”), the AFGE National Council of HUD Locals 222 (“Union”) is filing this National Grievance against the Department of Housing and Urban Development (“HUD” or “Agency”) for repudiating Article 18 of the CBA when it issued a “Return to In-Office Work” (“RTO”) directive and for failing to bargain in good faith with the Union concerning its unilateral termination of telework and remote work arrangements.

Specifically, the Agency violated and continues to violate, Articles 4, 18, and 53 of the CBA, Federal Service Labor-Management Relations Statute (“Statute”), the Telework Enhancement Act of 2010 (“Act”), and all other relevant articles, laws, regulations, and past practices not herein specified.¹ The Union reserves the right to supplement this National Grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

¹ Article 18 is amended by National Supplements 33 and 34.

FACTS

Between January 20 and February 3, 2025, President Trump and the U.S. Office of Personnel Management (“OPM”) issued various memoranda² in connection with the Administration’s plans to terminate telework/remote work arrangements and require all federal civilian service employees to physically report to a government-owned or operated duty station.

On or about January 24, 2025, the Agency’s Chief of Staff, Andrew Hughes, emailed all bargaining unit employees to notify them of HUD’s decision to unilaterally implement changes to their conditions of employment by prohibiting them from teleworking beginning the week of February 24, 2025.³ Mr. Hughes explained that prohibiting telework was required to be in compliance with President Trump’s January 20, 2025, *Return to In-Person Work*, Presidential Memorandum (“PM”). As a result, he mandated that all employees begin reporting to a HUD office full-time unless approved for an exemption.

Later, the same day, the Agency’s Office of the Chief Human Capital Officer, sent another email ordering bargaining unit employees to modify their current Flexiplace Agreement effective February 24, 2025, to reflect their new full-time in-office schedule; and that failure to comply with the instruction may result in disciplinary action.

These communications unilaterally imposed February 24, 2025, return to office deadlines without regard for collective bargaining obligations. Specifically, the Agency did not give the Union the option to bargain. Here, the notices made clear that the Agency would and did implement its return-to-office plan and eliminate all telework.

In taking these unilateral actions the Agency has effectively repudiated Article 18 of the CBA to comply with the PM. This, even though OPM’s January 22, 2025, guidance indicated compliance with the PM is subject to any collective bargaining obligations.⁴

OPM issued additional guidance concerning telework on February 3, 2025, entitled “Guidance on Collective Bargaining Obligations in Connection with *Return to In-Person Work*.”

² Available at <https://www.whitehouse.gov/presidential-actions/2025/01/return-to-in-person-work/> and <https://www.opm.gov/policy-data-oversight/latest-memos/>, respectively (last accessed: February 26, 2025).

³ Hughes email was sent to all employees but for the purpose of this grievance, only the rights of bargaining unit employees are addressed.

⁴ Though not referenced in the Agency’s January 24, 2025, notice, on January 27, 2025, OPM issued a memorandum regarding “Agency Return to Office Implementation.” Therein, OPM reiterated that in implementing the PM, agencies should “describe the steps the agency will take to bring any relevant Collective Bargaining Agreements (CBAs) into compliance with the new PM, consistent with applicable law, to include an examination of the process by which agencies put new CBAs into place in the last four years.”

Amongst other things, OPM now claims telework levels and eligibility are a managerial right and further suggested bargained-for provisions regarding telework may be unenforceable pursuant to 5 U.S.C. § 7106(a).

1. The Agency's Elimination of Telework Violates Article 18.

As an initial matter, the Parties lawfully entered into an agreement concerning telework in Article 18 consistent with the provisions of 5 U.S.C. Chapter 71.⁵

Article 18, Section 18.01(2) provides in relevant part:

In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for [HUD]. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace Policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligation with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace Policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

Article 49, Section 49.02 governs mid-term changes to the CBA and provides:

During the term of this Agreement, Management shall transmit to the Union its proposed changes relating to personnel policies, practices, and general conditions of employment. Receipt of the proposed changes by the designated Union representatives, or their designee, shall constitute receipt by the Union for the purpose of calculating the deadline for requesting negotiations referred to in this Article.

Article 49, Section 49.03(4) provides that the proposed changes involving Policy or Past Practice shall include:

- (a) Copy or statement of the current policy or past practice;
- (b) The nature, scope, and rationale for the proposed change;
- (c) A copy or statement of the proposed new policy or practice; and
- (d) The proposed implementation date.

The Agency did not issue Article 49 notice to the Union regarding eliminating Flexiplace/Telework. Thus, it violated Article 18 when it eliminated the policy.

2. The Agency's Elimination of Telework Violates Article 53.

⁵ Article 18 is titled Telework; however, the Agency also refers to Telework as Flexiplace.

The Agency's elimination of Telework also violates Article 53 of the CBA. Section 53.01, entitled "Duration of Agreement" provides "this [CBA] shall remain in full force and effect until a new Agreement goes into effect." Moreover, Section 53.05, entitled "Reopening Clause" provides "[d]uring the term of this agreement, either party may propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only be conducted by mutual agreement of the parties, and in accordance with Article 49 Midterm Bargaining provisions." The Union did not receive any proposals from the Agency, nor has it agreed to modify any of the provisions of Article 18.

3. The Agency's Elimination of Telework Violates the Statute.

The Agency's unilateral decision to repudiate Article 18 is an unfair labor practice, in violation of 5 U.S.C. §§7116(a)(1) and (5) of the Statute. Indeed, it is an unfair labor practice for an agency to repudiate a negotiated agreement. *United States Department of Justice, Federal Bureau of Prisons and AFGC Local 3935*, 68 FLRA 125 (2015). Further, it is an unfair labor practice in violation of 5 U.S.C. § 7116(a)(7) to enforce an order, rule, or regulation that conflicts with the terms of a negotiated agreement in effect prior to the issuance of the order, rule, or regulation. *United States Department of Veterans Affairs and AFGC Local 17*, 72 FLRA 55 (2021). The Agency's enforcement of the PM violates the terms of the CBA. Therefore, in repudiating Article 18, the Agency has committed an unfair labor practice. Because the Agency violated 5 U.S.C. §7116, as set forth above, the Agency also failed to comply with Article 4.

4. The Agency's Elimination of Telework Violates the Telework Enhancement Act of 2010.

The Agency's unilateral decision to eliminate all telework violates the Telework Enhancement Act of 2010 ("Act").⁶ The Act requires federal agencies to establish telework policies that allow for employee participation in telework programs to the maximum extent possible.⁷ Telework in the CBA is defined the same as in the Act, specifically "a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee's position...from an approved worksite other than the location from which the employee would otherwise work."⁸ The Act would be rendered meaningless by elimination of routine telework agreements for all employees at HUD. Therefore, the Agency's elimination of all telework violates the Act.

⁶ The Telework Enhancement Act of 2010, 5 U.S.C. §§ 6501-6506 (2010)

⁷ See e.g. 5 U.S.C § 6506 (b)(2)(d)(e) and (5) which requires in relevant part that the agency work with OPM in reporting a goal for increasing participation to the extent practicable or necessary for the next reporting period; determining whether the goal was met; and if not, what steps it would take to meet participation goals.

⁸ Compare 5 U.S.C. § 6501(3) and Article 18.01(1).

5. The Agency's Elimination of Telework Violates Article 4.

Article 4, Section 4.01 of the CBA requires the Agency to comply with applicable federal statutes and regulations in the administration of matters covered by the CBA. As described above, the Agency's elimination of telework violates the Statute and the Act. Because the Agency violates the Statute and the Act, as set forth above, the Agency also fails to comply with Article 4.

Summary of Violations:

By failing to fulfill its obligations, the Agency violated, and continues to violate, the following:

- Article 4, Section 4.01 requiring the Agency to comply with federal law and regulations;
- Article 53, Section 53.01 requiring the Agency to comply with the CBA until a new term agreement is negotiated;
- Article 53, Section 53.05 requiring any negotiations during the term of the agreement be conducted only by mutual consent of the parties;
- Article 18 requiring the Agency to adhere to certain processes and procedures regarding telework;
- 5 U.S.C. §§7116(a)(1), (5), and (7);
- All other relevant articles, laws, regulations, customs, and past practices not herein specified.

Meeting:

The Union is not requesting a meeting with you for resolution pursuant to Section 51.15(2) of the CBA.

Remedies:

1. Return to status quo ante, rescission of the improperly issued notices, and make whole relief for all affected bargaining unit employees;
2. That the Agency fully comply with all terms of the parties' CBA and all laws, rules, regulations, and policies;
3. That the Agency bargain in good faith;
4. A finding that the Agency committed a unfair labor practices by violating 5 U.S.C. §§7116(a)(1), (5), and (7);
5. The Agency shall distribute to all AFGE bargaining unit employees an electronic notice and make conspicuous postings in the bargaining unit employees' places of work that the Agency has committed unfair labor practices, a description of the Agency's violations of the Statute, and a statement that it will cease and desist from committing further violations;
6. Reasonable attorney's fees and costs;
7. Reimbursement of all costs incurred by BUEs directly related to the violations alleged including, but not limited to parking, dependent care, and commute-related costs
8. All other relief deemed appropriate

EXHIBIT 11



U.S. Department of Housing and Urban Development

DATE: April 8, 2025

MEMORANDUM FOR: Antonio Gaines, President, AFGE National Council of HUD Locals 222

Lori A. Michalski

FROM: Lori Michalski, Chief Human Capital Officer

SUBJECT: Response to Grievance of the Parties

In accordance with the HUD/AFGE Collective Bargaining Agreement (“CBA” or “Agreement”), Article 51, Grievance Procedures, this memorandum serves as response to the Grievance of the Parties (“GOP”), that was received March 11, 2025, on behalf of AFGE National Council Locals 222 (“the Union”), regarding a notice sent on January 24, 2025 from the Office of Chief Human Capital Officer that impacts bargaining unit employees (“BUEs”) in the Department of Housing and Urban Development (“HUD” or the “Agency”). The GOP was filed in accordance with Article 51, Section 51.15 of the Agreement.

ALLEGED VIOLATIONS:

The GOP describes the incident causing the grievance as follows:

On or about January 24, 2025, the Agency’s Chief of Staff, Andrew Hughes, emailed all bargaining unit employees to notify them of HUD’s decision to unilaterally implement changes to their conditions of employment by prohibiting them from teleworking beginning the week of February 24, 2025. Mr. Hughes explained that prohibiting telework was required to be in compliance with President Trump’s January 20, 2025, Return to In-Person Work, Presidential Memorandum (“PM”). As a result, he mandated that all employees begin reporting to a HUD office full-time unless approved for an exemption.

Later, the same day, the Agency’s Office of the Chief Human Capital Officer, sent another email ordering bargaining unit employees to modify their current Flexiplace Agreement effective February 24, 2025, to reflect their new full-time in-office schedule; and that failure to comply with the instruction may result in disciplinary action.

The GOP alleges that the Agency’s actions violate provisions of the Agreement and other statutory and regulatory requirements. Specifically, it alleges that the Agency violated Article 4, Section 4.01; Article 53, Sections 53.01 and 53.05; Article 18 as a whole, and specifically, Section 18.01(2); Article 49, Sections 49.02 and 49.03(4); 5 U.S.C. § 7116(a) (1), (5) and (7); the Telework Enhancement Act of 2010; and all other relevant articles, laws, regulations, customs,

and past practices not specified.

REQUESTED REMEDIES:

The Union is requesting the following remedies:

1. Return to status quo ante, rescission of the improperly issued notices, and make whole relief for all affected bargaining unit employees;
2. That the Agency fully comply with all terms of the parties' CBA and all laws, rules, regulations, and policies;
3. That the Agency bargain in good faith;
4. A finding that the Agency committed a unfair labor practices by violating 5 U.S.C. §§7116(a)(1), (5), and (7);
5. The Agency shall distribute to all AFGE bargaining unit employees an electronic notice and make conspicuous postings in the bargaining unit employees' places of work that the Agency has committed unfair labor practices, a description of the Agency's violations of the Statute, and a statement that it will cease and desist from committing further violations;
6. Reasonable attorney's fees and costs;
7. Reimbursement of all costs incurred by BUEs directly related to the violations alleged including, but not limited to parking, dependent care, and commute-related costs;
8. All other relief deemed appropriate.

AGENCY RESPONSE:

In the GOP the Union advised that it was not requesting to meet to discuss informal resolution under Article 51, Section 51.15(2) of the Agreement. Therefore, no meeting was held regarding the instant GOP.

After fully considering all the information provided, I respond to the alleged contractual and regulatory violations cited in the GOP as follows.

The GOP alleges that the Agency's communications noted above:

[U]nilaterally imposed February 24, 2025, return to office deadlines without regard for collective bargaining obligations. Specifically, the Agency did not give the Union the option to bargain. Here, the notices made clear that the Agency would and did implement its return-to-office plan and eliminate all telework.

I will address these allegations separately.

Allegations Regarding the Elimination of Telework

The GOP alleges that the Agency eliminated *all* telework and specifically violated Article 18, Section 18.01(2), which states:

Departmental Policy. In accordance with § 359 of Public Law 106-346, HUD's Flexiplace Policy dated January 10, 2022, provides the telework policy for the Department of Housing and Urban Development. Under these provisions the Department encourages the implementation of telework to the maximum extent possible. No individual office or program area is authorized to establish a telework policy or modify or amend the HUD Flexiplace Policy dated January 10, 2022, without the written approval of the Chief Human Capital Officer and/or the fulfillment of bargaining obligations with HUD AFGE Council 222. If Management makes any changes to the HUD Flexiplace Policy dated January 10, 2022, either before or upon implementing it as a numbered handbook, those changes shall be subject to notice and bargaining obligations under the CBA.

Telework was not eliminated. Other than as bargained and agreed to in National Supplements 33 and 34, the HUD Flexiplace Policy was not modified, amended or terminated and Article 18 and applicable National Supplements related to the HUD Flexiplace Policy remain fully complete and applicable.

On January 24, 2025, BUEs received the above referenced email from the Office of the Chief Human Capital Officer (“OCHCO”) (see Encl. A), which served as notification from Agency management that their telework arrangements were being modified and that they would need to come into the office full-time as scheduled with the option to participate in situational telework, on an ad-hoc basis, with supervisory approval, beginning the week of February 24, 2025.

Agency management notified staff and the Union of the permanent modification and the reasoning for such in accordance with the applicable Article and Sections of the Agreement; Sections 18.03(1)(d), 18.06(1), and 18.06(3) of Article 18 (Telework).

Article 18, Section 18.03(1)(d) states:

The approving official shall . . . [n]otify the Union when the agreement is terminated, suspended or modified by the Supervisor for one pay period or more.

On January 24, 2025 (see Encl. B), the Union was notified via email from Employee and Labor Relations, that the Flexiplace arrangements for AFGE BUEs would be permanently modified.

Article 18, Section 18.06(1) states:

Supervisors must give reasonable advance notice for permanent or long term modifications to telework agreements and, under normal circumstances no less than one full pay period. The modification must be in writing and provide the reason(s) for the modification.

Article 18, Section 18.06(3) states:

A permanent modification to a telework agreement requires a new agreement.

As indicated above, per the OCHCO email, all BUEs were notified on January 24th that their telework arrangements were being modified. This notice also gave all BUEs at least two full pay periods advance notice of the permanent modification to their Flexiplace agreements, which is more than the notification requirement of one full pay period indicated in Article 18, Section 18.06(1) of the Agreement. Additionally, this email advised BUEs that a new Flexiplace agreement had to be completed to reflect the permanent modification per Article 18, Section 18.06(3).

This OCHCO email also referred to the email received from the Chief of Staff earlier that same day, January 24, 2025 (see Encl C). While Article 18, Section 18.06(1) does not require that management provide a business reason for the modification, nonetheless, the Chief of Staff email outlined the business reasons for the modification. Reasons noted include but are not limited to: increase the efficiency and accountability of the federal workforce, improve supervision and training.

Allegations Regarding the Failure to Meet Obligations to Bargain

The GOP alleges that the Agency failed to bargain as required by Article 49, Section 49.02 and failed to provide notice of proposed changes as required by Article 49, Section 49.03(4) of the Agreement.

I do not find merit to these allegations. Between the fall of 2021 and April 2022, the parties bargained over the implementation of the 2022 Flexiplace Policy; which resulted in National Supplement 33 and National Supplement 34. These National Supplements outline the agreed upon procedures in regard to workplace flexibilities, which includes telework and remote work options. The procedures to change and/or terminate these flexibilities were negotiated in these National Supplements. The Agency has followed and abided by these requirements. The Agency is not required to renegotiate or give notice regarding procedures it has already negotiated with the Union.

The Agency has complied with the bargained process and has the ability to exercise its discretion to require BUEs to report to the office more frequently, including up to 5-days per week. Chapter 1, Section 1 of the Flexiplace Policy states, “Flexiplace arrangements are not an employee entitlement, and how work is accomplished in an office is always a management decision.” Furthermore, when signing their Flexiplace agreements, employees certify to

understanding that flexiplace arrangements are not an entitlement and that the agreement may be terminated or modified at any time.

Allegations of Statutory Violations

The GOP alleges that the Agency committed an Unfair Labor Practice (“ULP”) by its “unilateral decision to repudiate Article 18” in violation of 5 U.S.C. § 7116(a) (1) and (5). The Agency denies committing a ULP. As outlined above, the Agency did not repudiate Article 18. The Agency acted within the applicable provision of the Agreement and/or the Agreement as amended by the applicable Supplements.

The GOP further alleges that the Agency violated 5 U.S.C. § 7116(a) (7) by “enforce[ing] an order, rule, or regulation that conflicts with the terms of the negotiated agreement in effect prior to the issuance of the order, rule, or regulation.” Again, as explained above, the Agency exercised its right to modify the flexiplace arrangements of staff, including BUEs. In doing so, the Agency followed and abided by the requirements included in the applicable provisions of the Agreement as amended by the applicable Supplements.

In consideration of the Union’s aforementioned allegations of violations of the Statute, the GOP noted that the Agency thus failed to comply with Article 4, Specifically Section 4.01, which the GOP summarizes as “requires the Agency to comply with applicable federal statues and regulations in the administration of matters covered by the CBA [Agreement]”. As explained, the Agency’s actions did not violate the Statute or regulation.

Accordingly, I find that these allegations lack merit.

Allegations of Violating Article 53

The GOP alleges that the Agency has violated Article 53, Section 53.01 and Section 53.05.

Section 53.01 states:

***Duration.** The terms of this Agreement shall remain in effect for three (3) years from the effective date. The provisions of this Agreement shall continue in full force and effect until a new Agreement goes into effect. This Agreement supersedes the previous Agreement (1998) and all Supplements to it (National, Regional, and Local), and all other written Agreements or memoranda of understanding and conflicting past practices, between the parties.*

Section 53.05 states:

***Reopening Clause.** During the term of this agreement, either party may propose negotiations to re-open, amend, or modify this Agreement. Such negotiations may only be conducted by mutual agreement of the parties, and in accordance with Article 49 Midterm Bargaining provisions.*

The Union bases these allegations on its original allegation that the Agency has eliminated telework; thus, requiring the Agency to issue a notice of the change to the Union in accordance with the midterm bargain provisions of the Agreement and engage in bargaining. As explained above, the Agency has not eliminated telework, the Agency exercised its right to modify the flexiplace arrangements of BUEs in compliance with the applicable provisions of the Agreement as amended by the applicable Supplements. The Agency has no obligation to renegotiate or give notice regarding procedures it has already negotiated with the Union. The GOP fails to provide any other information or documentation regarding a potential violation of these provisions. I do not see where the Agency violated Article 53, Sections 53.01 or 53.05; as such, I find that these allegations lack merit.

Allegations of Violating the Telework Enhancement Act of 2010

Finally, the GOP alleges that the Agency violated the Telework Enhancement Act of 2010 (“The Act”). The Union again relies on its allegation that the Agency has decided to “unilateral[ly] eliminate all telework” and states that “[t]he Act would be rendered meaningless by elimination of routine telework agreements for all employees at HUD”. I disagree with this conclusion. Again, the Agency has not eliminated telework, employees may still execute flexiplace agreements that permit ad hoc situational telework.

As indicated in the GOP:

The Act requires federal agencies to establish telework policies that allow for employee participation in telework programs to the maximum extent possible. Telework in the CBA is defined the same as in the Act, specifically “a work flexibility arrangement under which an employee performs the duties and responsibilities of [the] employee’s position...from an approved worksite other than the location from which the employee would otherwise work.”

The Agency has an established telework policy as required by the Telework Enhancement Act of 2010, this policy (HUD Flexiplace Policy) remains in place and relevant. The Agency has abided by provisions of this established policy and those applicable provisions of the Agreement and/or the Agreement as amended by the applicable Supplements. The Agency has the ability to exercise its discretion to require BUEs to report to the office more frequently, including up to 5-days per week as long as it complies with the bargained process, which as outlined above, it has.

In conclusion, as delineated in my analysis above, I find that the Agency action has been conducted in accordance with the HUD Flexiplace Policy, the Agreement, and the applicable Supplements to the Agreement. Furthermore, I do not find that the Agency’s actions were in violation or contrary to the applicable HUD policies, the Agreement, law or regulation. As such, the grievance and all remedies requested are denied.

If you are dissatisfied with my decision, arbitration may be invoked by the Union in accordance with Article 52 of the Agreement.

Encls.

A – OCHCO Notification (1.24.2025)

B – Union Notification (1.24.2025)

C – Chief of Staff Notification (1.24.2025)

EXHIBIT 12



Antonio Gaines
President

American Federation of Government Employees
National Council of HUD Locals 222

Affiliated with AFL-CIO

451 7th Street, SW, Suite 3240
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Phone: 678-732-2376
E-mail: Antonio.F.Gaines@hud.gov

April 8, 2025

MEMORANDUM FOR: Lori Michalski, Chief Human Capital Officer
Office of the Chief Human Capital Office

FROM: Ashaki Robinson, PhD, Regional Vice President /s/
Veronica Bobbitt, Chief Steward and Regional Vice President /s/

On BEHALF OF: Antonio Gaines, President /s/
AFGE Council 222

SUBJECT: Invocation of Arbitration – Repudiation of Article 18 Grievance

AFGE Council 222 of HUD Locals hereby invokes arbitration on the Agency for the grievance filed on March 11, 2025, regarding the repudiation of Article 18 of the Collective Bargaining Agreement when it issued a “Return to In-Office Work” directive and for failing to bargain with the union concerning its unilateral termination of telework.

The Union’s designated representative will be either from the National Office of AFGE, or outside counsel. Once representation arrangements are finalized, specific contact information will be provided. In the interim, please direct all communications to Ashaki Robinson, Regional Vice President, AFGE Council 222.

EXHIBIT 13

BEFORE THE IMPARTIAL ARBITRATOR MICHAEL LOCONTO

American Federation of Government)
Employees HUD Council 222,)
)
Union,)
)
v.)
)
)
U.S. Department of Housing and)
Urban Development,)
)

Agency.)

FMCS No.: 250409-05235
Date: January 9, 2026

AGENCY’S POST-HEARING BRIEF

Pursuant to Arbitrator Michael Loconto’s (“Arbitrator Loconto”) November 15, 2025, directive, the United States Department of Housing and Urban Development (“HUD” or the “Agency”), by and through its undersigned representatives, hereby submits its post-hearing brief.¹

The Agency did not have a duty to bargain the modification of telework (aka “Flexiplace”) arrangements because the procedures to modify such agreements had previously been bargained for in the Parties’ Collective Bargaining Agreement (“CBA”) and related supplements. The Agency complied with the negotiated procedures when it notified the bargaining unit employees on January 24, 2025, that their telework arrangements would be modified. Contrary to the Union’s assertion, the Agency did not change its telework policy or eliminate telework. Accordingly, Arbitrator Loconto should find that there was no violation of the CBA or any law, deny the Union’s grievance and all requested relief, declare the Union the losing party, and require that it pays all arbitration fees and expenses pursuant to Article 52, Section 52.04 of the CBA.

¹ Arbitrator Loconto’s directive set the date for Friday, January 9, 2026.

I. ISSUE

The sole issue for resolution by Arbitrator Loconto is: did the Agency violate the Parties' CBA, supplements, and other statutes or regulations when it notified bargaining unit employees ("BUE") on January 24, 2025 that they would need to begin reporting to the office on a full-time basis and modify their Flexiplace agreements to reflect their new schedules?

II. STIPULATED AND ADDITIONAL FACTS²

1. On July 23, 2015, the Department of Housing and Urban Development (HUD) and AFGE National Council 222 ("Union") (together with HUD or the Agency, the "Parties") executed the Parties' CBA.

2. From January 2022 until April 2022, the Parties negotiated and bargained over the CBA Supplements 33 and 34 and HUD's Flexiplace Policy, which outlined HUD's expanded workplace flexibilities. Exhibit 2, Supplement 33; Exhibit 3, Supplement 34; Exhibit 10, Flexiplace Policy.

3. On April 11, 2022, the Parties executed Supplement 33 to the CBA, which implemented HUD's Flexiplace Policy as it relates to remote and mobile work. Exhibit 2, Supplement 33.

4. On April 11, 2022, the Parties executed Supplement 34 to the CBA, which made amendments to Article 18, Telework, in the 2015 CBA. Exhibit 3, Supplement 34.

5. In May 2022, HUD issued its May 2022 Flexiplace Policy, Handbook 625.1 Rev. 1, which is now HUD's operative telework policy and supersedes any other references to

² See Hearing Transcript ("Trans.") at 235 – 236.

telework in any other Agency policies or guidance dated prior to this policy. Exhibit 10, Flexiplace Policy.

6. On or about December 18, 2024, the Parties agreed to extend the CBA through July 23, 2029.

7. On January 24, 2025, HUD Chief of Staff Andrew Hughes sent an email stating that all employees would be expected to begin reporting to a HUD office full time, unless approved for an exemption. Exhibit 9, Notification from HUD Chief of Staff.

8. On January 24, 2025, the Office of the Chief Human Capital Officer (“OCHCO”) sent an email to staff stating that all BUEs who are not on a remote work agreement are expected to begin reporting to their official HUD office on a full time basis beginning the week of February 24, 2025, and directed BUEs to submit modified Flexiplace Agreements. Exhibit 7, OCHCO Notification.

ADDITIONAL FACTS

9. Pursuant to the Flexiplace Policy, it is clear that “[f]lexiplace arrangements are not an employee entitlement, and how work is accomplished in an office is *always* a management decision.” Exhibit 10, Flexiplace Policy (*emphasis added*). Trans. 85:3 – 6; 86:4 – 7.

10. Similarly, the Flexiplace Agreements require all teleworking Agency employees to certify their “understand[ing] that flexiplace arrangements are not an entitlement and this agreement may be modified or terminated at any time.” Exhibit 11, Flexiplace Application & Agreement; Trans. 199:17 – 200:4.

11. Agency employees are still permitted to telework situationally. Trans. 85:7 – 10.

12. On or about March 11, 2025, the Union filed a grievance alleging that the Agency “[repudiated] Article 18 of the CBA when it issued a ‘Return to In-Office Work’ (‘RTO’) directive” and “[failed] to bargain in good faith with the Union concerning its unilateral termination of telework and remote work arrangements” thereby violating Articles 4, 18, and 53 of the CBA as well as the Federal Service Labor-Management Relations Statute and Telework Enhancement Act of 2010. Exhibit 4, Grievance of the Parties.

13. The Union requested, among other relief, (1) rescission of the return to in-person work notices, (2) an opportunity to bargain with the Agency, and (3) a finding that the Agency committed an unfair labor practice. Exhibit 4, Grievance of the Parties.

14. On April 8, 2025, the Agency issued its decision on the March 11th grievance, finding that “the Agency action has been conducted in accordance with the HUD Flexiplace Policy, the Agreement, and the applicable Supplements to the [CBA].” Exhibit 5, Response to Grievance of the Parties.

15. The Agency’s decision was based on the facts that telework was not eliminated, and the Agency dutifully engaged in good faith bargaining over Supplements 33 and 34 and subsequently exercised its discretion to require BUEs to report to the office. Exhibit 5, Response to Grievance of the Parties.

16. On April 8, 2025, over two months after being notified, the Union invoked arbitration over the proposed modification to the telework policy. Exhibit 6, Invocation of Arbitration.

III. ARGUMENT

The Agency did not violate the Parties’ CBA, supplements, and other statutes or regulations when it notified BUEs on January 24, 2025 that they would need to begin reporting to the office on

a full-time basis and modify their Flexiplace Agreements to reflect their new schedules. The Agency had no obligation to bargain the modification since it did not change its telework policy or eliminate telework. The modifications to Flexiplace Agreements were made consistent with the negotiated procedures in the CBA and its supplements.

a. **The Agency Had No Duty to Bargain the Modification Because Article 18 in the CBA, Supplement 34, and the Flexiplace Policy Constitute the Agency's Telework Program and Provide the Agreed-Upon Procedures for Modifications.**

The Agency had no duty to bargain because, as explained herein, it simply followed the bargained-for process for modifying telework agreements covered in the CBA and Supplement 34. Therefore, the Union's grievance must be denied. "If a collective bargaining agreement 'covers' a particular subject, then the parties to that agreement 'are absolved of any further duty to bargain about that matter during the term of the agreement.'" *BOP v. FLRA*, 654 F.3d 91, 94 (D.C. Cir. 2011) (citing *Navy v. FLRA*, 962 F.2d 48, 53 (D.C. Cir. 1992)). "Exact congruence" between a contested agency action and an agreement is not required for the "covered by" doctrine to apply. *Id.* Rather, a contested agency action must be found to be covered by an existing agreement if the subject matter of the action is either: (1) expressly contained in the agreement, or (2) "inseparably bound up with, and thus plainly an aspect of, a subject covered by the agreement." *AFGE and DHS*, 73 FLRA 309, 310 (2022); *DHS and AFGE*, 69 FLRA 261, 264 (2016).

The subject matter of this arbitration, telework and the modification of telework agreements, is already expressly contained in the CBA and Agency policy. In April 2022, the Parties negotiated Supplements 33 and 34 which covers the remote work and mobile work components of the Flexiplace Policy and other amendments to Article 18 of the CBA. Exhibit 2, Supplement 33; Exhibit 3, Supplement 34; Trans. 187:11 – 188:6. Article 18 of the CBA covers

telework generally, and, more specifically, Section 18.06 sets forth the requirements to modify telework agreements. Exhibit 1, CBA, Article 18. Just after, in May 2022, the Agency's Flexiplace Policy took effect, which "sets forth the authority, policy, and responsibilities for the administration of the Flexiplace Program" and "supersedes any other references to telework in any other Agency policies or guidance dated prior to [the policy]." Exhibit 10, Flexiplace Policy; Trans. 186:18 – 187:3.

Here, the Union's attempt to argue that the Agency circumvented its duty to bargain by unilaterally terminating telework is unavailing. In reality, the Agency already engaged in bargaining regarding telework, resulting in Article 18 and the related supplements. As explained below, the Agency subsequently followed the modification procedures set forth in Article 18 when it notified BUEs of the change, provided the business reasons for said change, and directed BUEs to submit new telework agreements. No further bargaining was required. *See BOP*, 654 F.3d at 96 ("[b]ecause the parties reached an agreement about how and when management would exercise its right to assign work, the implementation of those procedures, and the resulting impact, do not give rise to a further duty to bargain" because the "[collective bargaining article] covers and preempts challenges to all specific outcomes of the [] process").

In a previous arbitration concerning the Agency's modification of telework agreements for HUD's Multifamily employees in Denver, Arbitrator James A. Lundberg specifically found that increasing office days falls within the scope of management rights and did not require bargaining since the procedures for changing telework had already been negotiated in Article 18 and Supplement 34. *See U.S. Dep't of Housing and Urban Development (Multifamily West Region) and AFGC Local 3972*, FMCS Case No. 241002-02347 ("no bargaining was required because the procedure that was bargained for was followed."). Similarly, the Agency's actions at

issue here complied with Article 18 and Supplement 34 and therefore, HUD had no additional duty to bargain.

b. The Agency Did Not Eliminate Telework or Change its Telework Policy.

HUD's telework policy and bargaining agreements permit BUEs to participate in the telework program subject to management discretion. *See* Exhibit 1, CBA, Article 18; Exhibit 3, Supplement 34; Exhibit 10, Flexiplace Policy. Importantly, the Flexiplace Policy and Telework Agreements make it clear that employees are not entitled to telework, and their arrangement can be modified or terminated at *any* time. Exhibit 10, Flexiplace Policy, p. 3. The Union readily acknowledged that fact at the hearing. Trans. 199:17 – 200:4. BUEs can still telework situationally, which is a type of telework specifically delineated in the Flexiplace Policy. Exhibit 10, Flexiplace Policy, pp. 10 – 11; Trans. 85:7 – 13. Additionally, at least 10% of the workforce maintains a routine telework arrangement. Trans. 205:7 – 10.

c. The Agency's Modification of BUEs' Flexiplace Arrangements Complied With the CBA, Supplement 34, and Agency Policy.

Pursuant to Article 18 of the CBA and Supplement 34, a modification to telework arrangements requires the Agency to (1) notify all employees, including the Union, at least one pay period before the modification is set to take effect, (2) provide the reasons for the modification, and (3) direct employees to complete a new telework agreement. Exhibit 1, CBA, Article 18, §§ 18.03(1)(d), 18.06(1), (3).

Here, there was a valid modification by the Agency. The evidence shows the Agency generously provided over four weeks of advance written notice to each BUE and provided the reasons for the modification, thereby easily satisfying requirements (1) and (2). The Friday, January 24, 2025 email from the Agency's Chief of Staff to all HUD employees, which was

shared and forwarded to the Union that same day, set forth the business reasons for the modification to telework, namely to (1) increase the efficiency and accountability of the federal workforce, (2) increase the quality of services, and (3) improve the supervision and training of Agency employees. Exhibit 9, Notification from HUD Chief of Staff. The same communication also provided that the change would not take effect until the week of Monday, February 24, 2025. *Id.* Finally, requirement (3) was satisfied because, as stated in a separate but related January 24, 2025, email from OCHCO, all Agency employees were required to submit a new Flexiplace Agreement. Exhibit 7, January 24, 2025, OCHCO Notification.; Exhibit 11, Flexiplace Application & Agreement.

The requirements for modification of telework arrangements are mirrored in the Flexiplace Policy, which indicates that management has the right to permanently modify or terminate an employee's telework arrangement, at any time, for business reasons. *See* Exhibit 10, Flexiplace Policy, Ch. 3-4, 3-5. As explained above, the Agency readily fulfilled its obligations by providing written notice explaining the reasons for the modification to telework arrangements over four weeks in advance and directing BUEs to complete a new Flexiplace Agreement. Moreover, Article 18 of the CBA obligates employees to report to the office “*at least* twice per pay period.” Exhibit 1, CBA, Article 18, § 18.04 (*emphasis added*). A plain reading of the provision suggests that the number of days of in-office reporting may be increased, pursuant to a valid modification. Additionally, the Flexiplace Agreement requires employees to certify that “flexiplace arrangements are *not* an entitlement and this agreement may be modified or terminated at any time.” Exhibit 11, Flexiplace Agreement. Therefore, BUEs are aware of the Agency's ability to modify or terminate their agreements in accordance with the negotiated

procedures. Taken together, the Agency validly modified telework arrangements pursuant to already bargained-for procedures.

d. The Arbitrator's Fees and Expenses Should be Paid by the Union.

Per CBA Section 52.04, Arbitrator Loconto must indicate the losing party, who, in turn, must pay his fees and expenses. Article 1, CBA, Article 52, § 52.04. For the reasons set forth above, Arbitrator Loconto should expressly find that Union is the losing party and require it to pay his fees and expenses.

IV. CONCLUSION

As stated above, the Union has plainly failed to meet its burden to establish that the Agency violated the CBA, Supplements, or other statutes and regulations when it modified telework agreements in January 2025. Telework was not eliminated, as the Union argues. BUEs may still telework situationally, and the Agency's telework policy was modified pursuant to bargained-for procedures. The Union's grievance should be denied and it should be declared the losing party and required to pay all arbitration fees and expenses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned Agency Representative certifies that the foregoing Agency Post-Hearing Brief was sent on January 9, 2026, to the following individual:

Arbitrator (via email)

Michael Loonto
mtl@loontoadr.com

/s/ Javes Myung _____
Javes Myung