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September 10, 2026

MEMORANDUM FOR: Daniel Raymond, Branch Chief
Employee and Labor Relations

FROM: Ashaki Robinson, PhD /s/
President
AFGE Council of HUD Locals 222

SUBJECT: Deficient Article 49 Notice – Performance Management
Changes

Council 222 has completed an initial review of the September 1, 2026 Article 49 notice concerning changes to HUD's performance management system and proposed changes to Articles 30, 31, 32, and 51 of the CBA.

On September 1, I asked the Department to clarify which changes are actually required by the new OPM regulations, which changes are HUD policy choices, the authority for any CBA provisions HUD believes are no longer valid, and the status of OPM's review and approval of HUD's new performance management system. Those questions remain outstanding.

After reviewing the notice against the requirements of Article 49, the September 1 Article 49 notice is deficient. It does not provide all of the information management is required to provide under Article 49.03(4).

Article 49.03(4) requires management's notice of a change in policy or past practice to provide four things:

1. A copy or statement of the current policy or past practice;
2. The nature, scope, and rationale for the proposed change;
3. A copy or statement of the proposed new policy or practice; and
4. The proposed implementation date.

These requirements are part of Management's Article 49 notice. They are not information the Council should have to request afterward or piece together from multiple documents. Management must provide a complete Article 49 notice before the parties can meaningfully move forward with bargaining over the affected changes.

1. Current Policy or Past Practice – Article 49.03(4)(a)

HUD did not provide the current performance management policy that it proposes to replace.

The notice repeatedly refers to HUD's "revised Performance Management Policy." HUD provided the revised policy, but the current policy was not included in the September 1 package.

The notice also does not provide a sufficient statement of the current policy and practices for the Council to determine what is changing from the existing system to the proposed system.

The CBA is not a substitute for the current HUD performance management policy. HUD is proposing changes to both its performance management policy and provisions of the CBA. If HUD is revising an existing policy, Article 49.03(4)(a) requires management to provide the current policy or a statement of the current policy or practice.

The September 1 notice is deficient under Article 49.03(4)(a).

2. Nature, Scope, and Rationale – Article 49.03(4)(b)

This is the most significant deficiency in the notice.

Throughout the September 1 package, HUD states that changes are necessary because of both revised 5 C.F.R. Part 430 and HUD's revised Performance Management Policy.

Those are two different things.

Some changes may be specifically required by the new Government-wide regulation. Other changes are choices HUD made in developing its new performance management system. The notice does not adequately distinguish between them.

For example, HUD proposes changes involving the rating structure, standardized rating distribution, Reviewing Officials, performance plans, performance standards, employee participation, ODAPs, progress reviews, awards, QSIs, WGIs, and the negotiated grievance procedure.

For each material change, the notice needs to tell the Council:

- what exactly is changing;
- the scope of the change;
- why HUD is making the change;
- whether the change is required by law or Government-wide regulation and, if so, what provision requires it; or
- whether the change is a HUD policy or implementation decision.

The September 1 notice does not consistently provide those answers.

This distinction is particularly important because HUD is proposing changes to existing CBA provisions. If HUD's position is that a negotiated provision must change because it is no longer valid under law or Government-wide regulation, HUD needs to identify the provision and the authority requiring the change. If HUD wants to change a negotiated provision because HUD has adopted a different policy, that is a different matter.

A general statement that changes are necessary to implement both revised Part 430 and HUD's revised policy does not provide the nature, scope, and rationale for the individual changes being proposed.

The September 1 notice is deficient under Article 49.03(4)(b).

3. Proposed New Policy or Practice – Article 49.03(4)(c)

HUD did provide the proposed Performance Management Policy and proposed changes to Articles 30, 31, 32, and 51. The Council recognizes that.

However, some of the new practices HUD says it will implement are not sufficiently described.

The clearest example is standardized rating distribution. The notice states that standardized distribution will be applied, but does not identify the distribution, the organizational or aggregate level at which it will be applied, how it will operate, or how it will be applied to bargaining-unit employees.

Telling the Council that a new practice will be implemented without telling us what that practice will actually entail does not provide a complete statement of the proposed new practice.

The September 1 notice is therefore deficient under Article 49.03(4)(c) as to those proposed practices that have not been fully identified.

4. Proposed Implementation Date – Article 49.03(4)(d)

HUD identifies October 1, 2026, as the effective date for the new performance management policy and FY2027 performance system.

The notice also states that certain changes will be applied to FY2026 ratings but does not clearly identify when those changes will actually be implemented.

If those changes will occur before October 1, the Council needs the implementation date. If they begin October 1 but will be applied to FY2026 ratings, HUD needs to say that. If any portion of the process has already begun, that also needs to be identified.

The September 1 notice is deficient under Article 49.03(4)(d) as to those changes for which an implementation date has not been clearly provided.

The Council is separately addressing its substantive objections to the Department's stated intention to apply certain changes to the FY2026 appraisal year. Nothing in this memorandum should be understood as agreement that those changes may lawfully or contractually be applied to FY2026.

Council's Bargaining Position

To be clear, Council 222 is not declining to bargain. The Council will timely demand to bargain and submit preliminary proposals concerning those changes for which the Department has a present bargaining obligation.

That does not mean the Council agrees to reopen or renegotiate matters that are already covered by the existing CBA. Articles 30, 31, 32, and 51 remain negotiated provisions of the parties' Agreement. The Department's decision to adopt a revised Performance Management Policy does not, by itself, create an obligation for the Council to renegotiate existing contractual provisions during the term of the Agreement.

Where a matter is already covered by the CBA, the Council's position is that the existing negotiated language continues to govern unless the Department establishes that the provision can no longer lawfully remain in effect or the parties mutually agree to modify it. The Council does not consent through this Article 49 process to reopen Articles 30, 31, 32, or 51, in whole or in part, merely to conform the CBA to policy choices made by HUD.

Likewise, the Council is not demanding to bargain over whether HUD will comply with a specific requirement imposed by law or Government-wide regulation where HUD has no discretion. Where such a requirement results in a change in conditions of employment, the Council will bargain to the extent permitted by law, including over applicable procedures and appropriate arrangements.

The Council will demand to bargain over new or changed conditions of employment that are not already covered by the CBA and for which the Department has a duty to bargain, including negotiable procedures and appropriate arrangements associated with management's implementation of otherwise permissible changes.

This is another reason the deficiencies in the September 1 notice must be corrected before the parties can meaningfully proceed with bargaining. HUD has combined changes it attributes to revised 5 C.F.R. Part 430 with changes arising from HUD's own revised Performance Management Policy without adequately identifying which is which. Without that information, the Council cannot determine whether HUD is identifying a new matter subject to bargaining, a change specifically required by controlling law or Government-wide regulation, or an existing matter already covered by the CBA that HUD is attempting to reopen.

The Council's submission of a demand to bargain or preliminary proposals does not cure the deficient September 1 notice, waive the Council's covered-by position, constitute consent to reopen any provision of the CBA, or waive any other contractual or statutory rights of the Council.

Required Cure Before Bargaining Proceeds

The September 1 Article 49 notice is deficient and must be corrected so the Council can determine the full scope of the Department's bargaining obligation and the parties can meaningfully proceed with bargaining.

Please provide a corrected and complete Article 49 notice that:

1. Provides the current HUD performance management policy and identifies any current practices being changed that are not contained in that policy;
2. Provides the nature, scope, and rationale for each material change, including whether it is required by law or Government-wide regulation or represents a HUD policy or implementation decision;
3. Completely identifies the proposed new practices, including how those practices will operate; and
4. Identifies the proposed implementation date for each change for which that date has not been provided.

The Council's September 1 clarification request also remains outstanding.

HUD must cure these deficiencies before the parties can meaningfully proceed with bargaining over the affected changes. Council 222 is ready to bargain. What we are not prepared to do is bargain from a deficient notice and attempt to reconstruct information that Article 49 requires management to provide in the notice itself.

Until HUD provides a complete Article 49 notice, the Council objects to implementation of the changes that have not been properly noticed. HUD should not provide a deficient notice, allow the contractual bargaining period to run while the Council attempts to obtain information that should have been provided at the outset, and then rely upon the passage of that time to implement.

To protect the Council's bargaining rights, we will still submit our demand to bargain and preliminary proposals within the applicable timeframe. Doing so does not mean that the Council accepts the September 1 notice as sufficient, agrees to bargain matters already covered by the CBA, consents to reopen Articles 30, 31, 32, or 51, or waives any of the deficiencies identified in this memorandum or any rights or remedies available under the CBA.

We are identifying these deficiencies before implementation so HUD has the opportunity to correct its notice and the parties can proceed with a complete understanding of what is actually changing, why it is changing, and what is properly subject to bargaining.

Please provide the corrected Article 49 notice and the information requested in my September 1 email so that the parties can move forward with bargaining.