



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

DATE: March 2, 2026

MEMORANDUM FOR: Antonio Gaines, President, American Federation of Government Employees Council of HUD Locals, Council 222

FROM: Alejandro Hernandez, Executive Director (A), Employee and Labor Relations Department, Office of the Chief Human Capital Officer

SUBJECT: Response to Grievance of the Parties- Departmental Implementation of New Universal Critical Elements (FY 2026 EPPES)

In accordance with HUD/ AFGE Collective Bargaining Agreement (“CBA” or “Agreement”), Article 51, Grievance Procedures, this memorandum serves as response to the Grievance of the Parties (“GOP”), which the Union submitted at 10:32pm on February 4, 2026, and received by management on February 5, 2026, regarding the Agency’s implementation of three new Universal Critical Elements for non-supervisory bargaining-unit employees under the Employee Performance Planning and Evaluation System (EPPES) for the FY26 performance appraisal cycle.

Alleged Violations:

This grievance asserts despite the Council’s cease-and-desist demand dated December 6, 2025, HUD proceeded with implementation of the new Universal Critical Elements on or about January 20, 2026, including but not limited to issuing performance plans incorporating these elements, training supervisors on their use, evaluating employees against them, and/or incorporating them into ongoing appraisals. The Union further asserts this implementation action constitutes a repudiation of the collective bargaining agreement, an unfair labor practice, and violations of government-wide regulations. It has adversely impacted bargaining-unit employees’ conditions of employment, including performance ratings, awards, promotions, job security, and telework rights.

Specific Alleged Violations:

1. Violation of Article 30, Section 30.03 of the HUD/AFGE Agreement – Performance Standards Must Be Objective, Reasonable, Realistic, Attainable, and Measurable:

Article 30, Section 30.03 states: “Performance standards shall, to the maximum extent feasible,

be reasonable, realistic, attainable, objective, measurable, and clearly stated in writing... Performance standards will permit accurate evaluation of job performance on the basis of objective criteria..." All three elements contain subjective, vague, and non-measurable language, including:

- Element 1: "innovative mindset," "served as a model for others," "remarkably extraordinary," "helped the organization achieve results it would not likely have achieved."
- Element 2: "proactively identified risks," "innovative solutions," "demonstrative savings," "extraordinary large workload."
- Element 3: "customers felt valued, respected, and satisfied," "approachability," "active listening," "enhanced organizational reputation," "role model." Such terms do not permit objective evaluation and violate both the CBA and 5 C.F.R. § 430.203, which requires performance standards to be specific, measurable, achievable, relevant, and timed (SMART). FLRA precedent confirms that vague terms like these are unenforceable (e.g., NTEU and IRS, 66 FLRA 528 (2012); AFGE Local 1858 and Army Missile Command, 43 FLRA 1 (1991)).

2. Violation of Article 30, Section 30.04 of the HUD/AFGE Agreement – Standards Must Be Based Solely on the Requirements of the Employee’s Assigned Position Description:

Article 30, Section 30.04 states: "Performance elements and standards shall be based only upon the requirements of the employee’s assigned position description."

- Element 1 raises expected independence and complexity at every GS grade level beyond OPM classification standards (5 C.F.R. Part 511) and HUD position descriptions (e.g., GS-12 expected to "lead moderately complex programs," which is GS-13/14 level work).
- Element 3 imposes universal "customer service," "stakeholder engagement," and "teamwork" duties on employees whose position descriptions lack such requirements (e.g., technical, analytical, or back-office roles like accountants, economists, IT specialists). This de facto alters job duties without classification action, violating the CBA and FLRA case law (e.g., AFGE Local 1923 and HHS, 43 FLRA 977 (1992)).

3. Violation of Article 18 (Telework) and National Supplement 110 of the HUD/AFGE Agreement:

Article 18 and Supplement 110 establish telework as a contractual right, not subject to override by subjective preferences. Element 3 requires employees to offer in-person meetings or face-to-face video engagement whenever a customer, team member, or stakeholder prefers it. This creates a new performance expectation that employees must relinquish telework rights upon request, repudiating the negotiated telework provisions and interfering with conditions of

employment.

4. Violation of the Hatch Act (5 U.S.C. §§ 7321–7326) and 5 U.S.C. § 2302(b)(12) – Prohibited Personnel Practice:

Element 1 rates employees on “alignment with Administration priorities.” Evaluating federal employees based on political alignment with the current Administration is a prohibited personnel practice under 5 U.S.C. § 2302(b)(12) and violates the Hatch Act’s prohibition on political influence in personnel actions.

5. Violation of 5 C.F.R. Part 430 – Government-Wide Performance Appraisal Regulations

- 5 C.F.R. § 430.203 requires standards to be “specific, measurable, aligned with organizational goals, realistic, timely, and challenging” for accurate evaluation. The elements’ vague criteria and overly broad Minimally Successful levels fail this standard.
- 5 C.F.R. § 430.206(b) mandates that performance plans be issued timely (within 30 days of the rating cycle start) and that levels permit distinguishable performance; the elements’ indistinguishable thresholds (e.g., “on occasion” triggering Level 2) violate this.
- Implementation without revision constitutes an unfair labor practice under 5 U.S.C. § 7116(a)(1) and (5), as it changes conditions of employment without fulfilling statutory obligations.

Remedies Requested:

The Union request that the Agency:

1. Immediate rescission of the three universal critical elements and any performance plans, ratings, or actions taken under them for FY 2026.
2. Restoration of the status quo ante, including reversion to prior performance elements and standards.
3. Make-whole relief for any affected employees, including retroactive adjustments to ratings, awards, promotions, or other benefits lost due to these elements.
4. Cease and desist from further violations, with a posting of notice to all employees acknowledging the violations.
5. Attorney fees, costs, and any other relief deemed appropriate under the CBA and law.
6. Expedited arbitration if not resolved at this step.

In accordance with Article 51, Section 51.15, the Union requests a written response within 30 days stating the Agency's position regarding the grievance. If unresolved, the Union reserves the right to advance to arbitration under Article 52.

Agency Response:

A meeting to discuss this GOP was not requested.

In addressing this GOP, I first sought to determine if the Union's GOP was submitted in accordance with the time limits laid out in Article 51, Section 51.15 of the LMA. Per this article/section, the time limit for submitting a grievance of the parties is "*within forty-five (45) calendar days of the date or when the party became aware or should have become aware of the matter being grieved.*" In reviewing your submitted GOP, the Union was informed of the Agency's intent to implement the new Universal Critical Elements for FY2026 on December 5, 2025. The union submitted a Cease-and-Desist notice to Management on December 6, 2026. The Union did not file its GOP until February 5, 2026. The elapsed days between December 6, 2025, and February 5, 2026, is 61 days, therefore I consider your GOP untimely. According to Article 51, Section 51.15(1) of the HUD/AFGE CBA "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.", I am therefore denying this GOP due to being untimely.

Allegation 1 and 5. The Union asserts that all three of the new Universal Performance Elements contain vague and subjective terms (e.g., "innovative mindset," "served as a model for others" "remarkably extraordinary" "helped the organization achieve results it would not likely have achieved), allegedly violating Article 30, Section 30.03 and 5 C.F.R. § 430.203. The Universal Elements are intentionally pre-established to provide standardization across all of HUD while ensuring alignment with Agency goals. The elements—Work Quality, Level of Independence and Accountability; Work Timeliness, Efficiency, and Volume; Customer Service and Stakeholder Engagement—are applied with supervisory guidance to ensure measurable outcomes specific to each program office. The Union was provided with notice and the opportunity to participate in performance planning meetings where supervisors met with employees either individually or in similarly situated groups to ensure clarity of expectations. While management holds the authority/ discretion to establish critical elements and performance standards, the Agency ensures procedural involvement of the Union and employees to communicate expectations and standards, consistent with Article 30 of the CBA. Furthermore, the Federal Labor Relations Authority has long held that the establishment of critical elements and performance standards is among the ways that management supervises employees and determines the quantity, quality, and timeliness of work required of employees and, consequently, that it constitutes an exercise of management's rights to direct employees and assign work and consequently does not fall within the duty to bargain. *See, e.g., AFGE 1164 and*

HHS, SSA, 49 FLRA 1408, 1414 (1994) (SSA, Worcester); NTEU and Treasury, 3 FLRA 769, 775-76 (1980) (Public Debt), aff'd 691 F.2d 553 (D.C. Cir. 1982). The Agency therefore disagrees with the Union's assertion and finds no violation of CBA Article 30, Section 30.03 or 5 C.F.R. Part 430.

Allegation 2. The Union asserts the Agency violated Article 30, Section 30.04 of the HUD/AFGE agreement incorporating Critical Elements and Standards that are not solely based on the requirements of the employees assigned position description (PD). The Universal Elements are intentionally pre-established to provide standardization across HUD while ensuring alignment with Agency goals. Additionally, The elements—Work Quality, Level of Independence and Accountability; Work Timeliness, Efficiency, and Volume; Customer Service and Stakeholder Engagement—are applied with supervisory guidance to ensure, the duties assigned correspond with employees assigned position description. While management can assign tasks not in a PD, it is aware that if those tasks are to be used for performance appraisal, they must be communicated and applied in accordance with the collective bargaining agreement and not in a manner that is arbitrary or capricious. Establishing critical elements and performance standards is an exercise of management rights under 5 U.S.C. § 7106(a)(2)(A) and (B). This includes determining the criteria, structure, and evaluative framework of performance elements, including whether standards adhere to any particular methodology or contain qualitative or behavioral criteria. , FLRA precedent confirms these actions do not constitute a change in working conditions requiring bargaining.. *See, e.g., NTEU, 3 FLRA 769, 775 (1980), aff'd sub nom. NTEU v. FLRA, 691 F.2d 553 (D.C. Cir. 1982); AFGE, Local 1164 v. HHS, SSA, 49 FLRA 1408, 1414 (1994)*.

As such, and in accordance with Article 30, Section 30.306, the Union was provided with notice and the opportunity to participate in performance planning meetings where supervisors met with employees either individually or in similarly situated groups to ensure clarity of expectations. This action ensures employees understand how their job performance relates to the criteria being measured. The Agency therefore disagrees with the Union's assertion and finds no violation of CBA Article 30, Section 30.04.

Allegation 3. The Union asserts that Universal Critical Element 3 conflicts with negotiated telework rights. The language of Element 3 requires employees to maintain effective working relationships and meet expectations within their control. It does not prohibit telework or require employees to repudiate negotiated telework rights. The implementation of this performance element measures work outcomes, not participation in telework. Additionally, there is no evidence that supervisors have restricted telework based on these standards. Accordingly, no violation of the CBA Article 18 or the Flexiplace Supplement occurred.

Allegation 4. The Union asserts that Element 1 violates the Hatch Act and Prohibited Personnel Practices by requiring ratings on “alignment with Administration priorities.” Performance assessments relate solely to programmatic objectives, organizational goals, and supervisory instructions, not employees' political beliefs or activity. Alignment with Administration priorities refers to operational objectives and organizational strategies, not partisan political

activity. As employees in the Executive Branch of the Government, we are expected to complete tasks assigned down through our chain of supervision regardless of which political party is leading the Executive Branch. No evidence indicates that any employee has been coerced to support a political party or candidate. This approach is consistent with 5 U.S.C. § 2301(b)(8) and the Hatch Act. The Union has not provided evidence that Element 1 has been applied in a manner that coerces political activity. Therefore, the allegation is without merit.

Therefore based on the above rationale it is my decision to deny this GOP in its entirety. The Agency considers this matter fully addressed consistent with statutory, regulatory, and contractual obligations, and finds no basis for the requested remedies. If you are dissatisfied with my decision, arbitration may be invoked by the Union in accordance with Article 52 of the HUD/ AFGE Collective Bargaining Agreement.