

MEMORANDUM OF AGREEMENT
Performance Management and Appraisal Program (PMAP)

Section 1.0

The Agency retains the right to determine how much of its budget will be allocated for performance awards. Should the Agency establish budgets for employee awards, it will allocate an amount of its overall budget for bargaining unit employees in an amount not less than the Agency has allocated to any other pay pool. (For example, if the Agency uses 1.5% of its budget for awards for all employees then that same percentage would be allocated for bargaining unit employees. The Agency will notify the Union of award budgets once they are finalized.

When the budget will not permit awards to be granted then other mechanisms will be considered such as time-off awards. The Agency shall promptly notify the Union whenever budget does not permit monetary awards. Employee performance ratings will not be determined by budget.

The parties agree that performance awards shall be:

- Processed in a timely and expeditious manner.
- Conducted in a fair, consistent, equitable, reasonable, and objective manner.
- Granted on the basis of merit.
- The Agency will provide an award recipient a written narrative that clearly articulates the specific reason(s) or justification that the employee received the award.
- Whenever a pay group or salary is not included in the overall awards pool allotted for non-SES and non- T-42 SES equivalent performance and cash awards, it is understood that their award payout will be derived from other sources or award pools.

Criteria

The parties agree, that to the extent possible, award criteria shall be standardized and uniformly applied across the agency and communicated to employees.

Supervisors and managers shall document their award justifications in writing. The intent is to ensure consistency and equity in awards.

Section 1.1

The performance appraisal system will be used to:

1. Communicate organizational goals and objectives to employees;
2. Promote individual and/or team accountability for accomplishing organizational goals;
3. Effectively address the training needs of each employee;
4. Monitor progress and provide employee feedback;
5. Use appropriate, fair, and consistent measures of performance as the basis for recognizing and rewarding individual accomplishments;
6. Use the results as a basis for appropriate personnel actions; and
7. Assess and improve individual and organizational performance.

Section 1.2

The performance appraisal system will not:

1. Be used solely as a disciplinary tool;
2. Foster individual competition;
3. Be based on numerical goals and/or numerical performance levels not clearly communicated to the employee
4. Be punitive, adversarial or overly labor-intensive;
5. Apply absolute performance standards except where they are crucial to the mission; and
6. Be based on expectations or requirements that are unrealistic and unattainable by most employees working under normal conditions.

Section 2.0

Performance awards for bargaining unit employees will be allocated and distributed in accordance with this MOA, CBA, and 2012 HHS PMAP policy.

Section 2.1

All awards recommended under this Article shall be subject to review and approval in accordance with 5 CFR 451. Such approval shall not be withheld unless the decision is based on criteria that are uniformly applied to all employees. Notices of disapproval must be in writing and explain the reason(s) for the disapproval.

Section 2.2

Performance awards for bargaining unit employees will be allocated and distributed in a fair, consistent, and equitable manner.

Section 2.3

Subject to funds availability, the following scale for determining awards based upon the level of the annual performance rating will be established as follows:

- Achieved Outstanding (AO) Results (or equivalent) up to 5%
- Achieved More (AM) than Expected (or equivalent) up to 4%
- Achieved Expected (AE) up to 3%

When funds are available, employees at the AO level will be paid first, then AM, then AE. An employee rated AO shall be given an award up to 5% of salary, including locality. This can be in the form of cash and/or a time off award or they may receive a QSI. There is no minimum percentage but the percentage awarded for an AM may not equal or exceed the minimum percentage awarded for an AO. The percentage awarded for an AE may not equal or exceed the minimum percentage awarded for an AM.

When there is a choice managers will offer employees the option of converting a cash award to a time-off equivalent and will do so only if the employee agrees to the conversion or if budget prohibits cash awards. A combination of cash and time-off is also acceptable.

If funding or time-off are not available, the agency will make every effort to recognize employees using other appropriate means. The lack of funds or time-off shall not preclude employees from being appropriately rated based on merit, (i.e. Level 5, Level 4).

After rating and assigning a score to each critical element, the summary rating shall be derived by using a simple average (number of critical elements divided into total score). Summary ratings shall be this average with the following exception: If any critical element is assigned at the lowest level (UR) then the overall summary rating must be rated at that same level (UR).

Section 2.4

The Agency agrees to notify employees regarding the process, procedures, and details of the performance system. In addition, to the extent practicable, the Agency shall be transparent regarding the budget process involved in performance awards. This will include but not be limited to a web page dedicated to explaining the basic budget process involved in formulating performance award budgets.

Section 2.5

For any group or related committee that makes recommendations or provide input regarding PMAP, the Union shall be permitted to have 1 representative on such group and the union representatives shall have full committee rights on awards matters

affecting or pertaining to unit employees but will not vote on actions pertaining only to non-unit employees. The parties review this as PDI, see Executive order 13522. The agency agrees that any changes to the PMAP or performance changes shall be negotiated with the Union IAW the cba, mid-term bargaining.

Section 2.6

The rating official Agency shall use summary ratings to determine where an employee shall fall in any award distribution range. For instance, if the award range of Level 5 (or equivalent) is 1.5%-3% of salary then an employee with a 4.8 summary score would typically receive a higher percentage than one with a 4.5 summary.

Section 2.7

The Parties recognize that mere declarations are not enough to ensure fairness, consistency, and objectivity in the award process. Therefore, the Parties agree that positive steps must be taken to provide equity and impartiality for all employees. To this end the Parties agree to develop selection, and allocation criteria for employees that shall be transparent and applied consistently, fairly, and equitably. This shall be an ongoing process.

Section 2.8

The Parties agree that any aspect of the PMAP process or system may be grieved in compliance with applicable laws, government-wide regulation, this MOU, and the CBA. Mid-year reviews may not be grieved.

Section 3.0 Quality Step Increases

A QSI is a faster than normal grade increase used to reward employees at any GS grade level who display high quality performance. A QSI will be in accordance with 5 CFR 531.

Section 3.1

When given a choice, an employee who has been recommended for a QSI may choose a cash award, if they are ineligible to receive a QSI or if they formally request the cash award instead, which shall be in the amount of 5 percent of the employee's salary in accordance this Agreement and budget permitting. If budget does not permit the amount must be at the highest range for Level 5 (or equivalent).

Section 3.2

Employees who are ineligible for a QSI because they are at a Step 10 level but would have otherwise been recommended for a QSI, will receive a cash award of 5 percent of

the employee's salary pursuant to Section 3.1 above, budget permitting. If budget does not permit the amount must be at the highest range for Level 5 (or equivalent).

Section 3.3

Whenever possible, managers shall offer employees the option of converting a cash award into a time-off equivalent. This option shall be exercised when budgets cannot cover all cash awards or when the employee has made such a request.

Section 3.4 QSI Eligibility

- Employees are eligible for a QSI if their performance is rated Achieved Outstanding (or equivalent) during their annual performance appraisal;
- An employee may receive only one QSI within a 52-week period;
- A QSI may not be given to an employee who has received a cash award for the same performance.

Section 3.5

The Agency shall use the following selection criteria and process in conjunction with this MOA and regulation to make determinations regarding QSI's:

- A. The Agency shall consider employees at steps 1 and above.
- B. Grade and or bargaining unit status shall not be a factor in any decision regarding QSI's.
- C. Employee summary rating shall be the priority consideration while years of service will be another consideration.
- D. The interval for QSI consideration shall be 52 weeks.
- E. The purpose of quality step increases is to recognize outstanding performance.
- F. Whether or not the employee receives a WIGI shall not be a determining factor.

The Agency shall provide to the Union each year within 10 days of when the awards are finalized: number of BUE's rated Level 5; granted a QSI, grade of those employees, and number of employees rated Level 5; and number of WSI's given (in total for NIEHS).

Section 4.0

The Agency agrees that "SMART" principles shall be used in creation and evaluation of an employee's PMAP. SMART: Specific, Measurable, Attainable, Relevant, and Timely.

The following provides clarification upon the PMAP performance levels that must be followed regarding BUE's. See **appendix** for a description of each element.

Section 5.0 Performance Reviews, Discussions and Ratings

The Agency agrees that it is important for supervisors to communicate with employees to set relevant, achievable goals that support the organization's mission. Each

employee should actively participate in developing his/her performance plan for the appraisal period. Supervisors shall clearly communicate expectations and metrics. The following is a list of actions that supervisors shall follow:

- Communicate to employees their strengths and encourage the development of necessary skills to overcome weaknesses.
- Active partnering in performance management to reinforce positive manager-employee relationship.
- Provide equitable performance expectations.
- Submit constructive feedback and improvement strategies.
- Discuss and identify, where appropriate, supervisor support of employee development and professional growth.
- Development of objective performance measures that reflect job requirements.
- Provide an atmosphere that allows for two- way communication.
- Provide and encourage constructive feedback.
- When applicable, discuss of individual goals or Individual Development Plan.

Section 5.1

Managers should document the content of performance discussions. The documentation may be a short statement or a bulleted list highlighting individual accomplishments and/or contributions.

During the progress review the supervisor will indicate to the employee whether they are meeting or exceeding the AE level for each critical job element. The communication during a progress review does not constitute a final rating and may be subject to change. The employee's performance at the mid-year point is only a reflection of their performance to that date. If, at the time of a progress review, the rating official or supervisor is aware of an instance(s) of performance deficiency below AE in any element, they shall provide that information to the employee at that progress review and what would be necessary for the employee's performance to improve.

Section 5.2

Supervisory conclusions based upon observations of an employee by management will be timely communicated to the employee during informal discussions and/or the progress review. If the employee disagrees with the supervisory conclusions on individual cases or overall performance to date, he/she may provide management with written rebuttals which shall be placed in the employee's file.

If the supervisor or rating official does not provide any feedback or documentation during the rating cycle to the employee regarding a performance deficiency then any such deficiency will not be used to adversely affect the final performance rating. Exceptions can be made but they should be extremely rare involving unusual circumstances. The agency agrees that supervisors shall make every effort to promptly communicate any deficiencies to the employee. For any exception the supervisor or management official shall provide a bona fide rationale with specificity and in writing (to

the employee) regarding why they did not promptly communicate a performance deficiency. Documentation (if it exists) of such deficiency shall be given to the employee. This information, rationale and documentation, will be provided when the supervisor first communicates or discloses the deficiency, as mentioned above, to the employee.

Section 5.3

Employees and supervisors will sign the performance plan to acknowledge that the formal discussion took place. If the employee disagrees with their rating then they do not need to sign the performance plan. The documentation will be placed in the employee's file and a copy given to the employee.

Section 5.4

Signatures for ratings shall not be requested or given until the rating official/supervisor has provided their performance evaluation in writing on the performance plan.

Section 5.5

The identification of job elements and the establishment of performance standards are a management right. Management agrees to formulate the job elements and performance standards fairly, reasonably, and objectively. The job elements and performance standards are not grievable. However, employees may grieve the application of the job elements and performance standards as related to their final rating of record.

Section 5.6

Employees must be under a performance plan for a minimum of 90 days to be rated.

Section 5.7

Employees will only be evaluated on work which they have been assigned or expected to perform as described in their performance elements. Supervisors will not use or hold against the employee, when evaluating performance, any of the following:

- A. Factors or changes which affect performance and are beyond the control of the employee; and
- B. Authorized absences (including Union representation) during the course of the working hours.

Section 5.8

Awards granted during the year shall not be used to negatively influence PMAP ratings

Section 5.9

It is expected that the Agency shall train supervisors on the PMAP process including but not limited to communication and feedback during the year on performance as well as how to discuss the employee's mid-year and final year ratings. During such training the Agency shall ensure that supervisors of BUE's are given a copy of this agreement and instructed as to any differences between BUE's and non-BUE's.

Section 5.10

At least one progress review will take place during the appraisal period, separate and distinct from the final rating, normally midway through the appraisal period.

Section 5.11

Performance progress reviews (mid-year) are excluded from Article __, Grievance Procedure.

Section 6.0

Section 6.1

If an employee disagrees with their current rating they are encouraged to make a timely written response such as within five (5) days of the rating. This response should explain and document why the employee disagrees with any of the findings of the rating official. The response will be attached to the material submitted by the rating official and go into any folders or files that contains the employee's rating. Making or not making a response has no effect on an employee's right to grieve the performance rating under Article ____, Negotiated Grievance Procedure or other appropriate forum such as EEO.

Employees are permitted to make written responses to their ratings at any time. Whenever an employee makes a request regarding a rating that was given over a year in the past, a supervisory response or change in rating will occur at the discretion of management barring any third-party decisions or settlements.

Section 6.2

Within five (5) days from the date of when an employee makes a written response to their rating, the supervisor or rating official will give the employee their decision in writing as to whether or not the employee's rating was changed or not. The supervisor or rating official's response will become part of the record and be contained in any files with the final appraisal.

Section 6.3

If the employee meets the timeframe in section 7.1 above and if the supervisor/rating official does not provide a response within 5 days, any grievance timeframes shall be extended by the number of days the official has exceeded the 5 days.

If there is no response after 10 days the employee may request a response from their second line supervisor. The second line supervisor will render a decision and notify the employee in a prompt manner, normally no longer than 7 days. Any grievance timeframes shall be extended by this number of days.

Regarding the instances above, under no circumstances shall the grievance extension be longer than 30 days from when the employee first received their rating.

Section 7.0

During the PIP process, if the employee requested Union representation, a Union representative has the right to be present at the first and last meetings with the employee, which shall involve or include procedures communicated to the employee regarding the PIP process and responsibilities of both parties.

Section 7.1

The rating official or supervisor (if different from the rating official) shall communicate to employees when performance falls below the “fully successful” level. The rating official and employee will meet at the earliest opportunity to identify specific problem(s) related to the deficient performance. The supervisor should clearly identify performance expectations in writing to the employee to resolve the problem.

The performance opportunity period (POP) is an informal process that affords the employee a reasonable period of at least thirty (30) calendar days to resolve the identified performance-related problem. Normally, employees shall be granted this opportunity period. During this period, the employee will be deemed to be performing at a successful level for purposes of any performance-related personnel actions and will normally not be subject to adverse action for performance-related problems. This “deemed Successful” level will not constitute an assessment or rating of a successful level of performance.

The POP should be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate. The parties agree that solely placing the employee on 100% review does not equate to the best and/or appropriate assistance.

At any time during the POP the supervisor may conclude that assistance is no longer necessary. The supervisor will so notify the employee of this determination in writing. If, following the POP, the supervisor is unable to make an evaluation that the employee is at the fully successful level, the supervisor will give the employee a documented

performance interview communicating (1) this determination, (2) that if the employee is at the minimally successful level, the supervisor should issue the employee a memorandum of expectation, (3) that if the employee is at the “unacceptable” level, the employee will be placed on a formal Performance Improvement Plan (PIP) and will be notified in writing of such, and (4) that personnel related actions (WIGI, awards, etc.) will be withheld while performance continues at the minimally successful level.

Section 7.2

It is the responsibility of the Agency to monitor employee performance throughout the rating period. After the employee has been given a POP and continues to perform at an “unacceptable” level in one or more critical elements, the rating official will call for a meeting with the employee to discuss the employee’s performance. At this meeting, the rating official or supervisor shall:

- (a) Inform the employee of the perceived deficiencies in the applicable critical element or elements, including a discussion of the applicable performance standards within the element or elements;
- (b) Inform the employee of the consequences of an unacceptable rating in any critical element in terms of career ladder promotions and/or within-grade increases;
- (c) Recommend specific ways for the employee to correct the perceived deficiencies.
- (d) The rating official, supervisor (if different from the rating official), employee, and, if requested, a Union representative, will meet to identify the specific problem, attempt to determine the root cause, and develop a written improvement plan to resolve the problem.

The PIP will be developed in writing and the employee will be given an opportunity to review the PIP, ask questions, and/or comment on the PIP, and/or seek counsel of a Union representative seven (7) calendar days prior to its implementation. Final authority for the establishment and the content of the PIP rests with management.

Section 7.3

The goal of the PIP is to return the employee to successful performance as soon as possible. The PIP shall include the following aspects in writing:

1. The improvement plan will identify the critical element(s) for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance. It will state which assigned tasks demonstrate the unacceptable performance and how they relate to an identified job requirement(s), element(s), and standard(s), as applicable.

2. The improvement plan will afford the employee a reasonable opportunity of at least 90 days to resolve the identified performance-related problem. The duration of the PIP shall be specified.

3. The improvement plan will be tailored to the specific needs of the employee and may include formal training, on-the-job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.

4. The improvement plan will state which supervisor or management officials will be available to guide, coach, and otherwise assist the employee in reaching “Minimally Successful” performance, what specific assistance will be provided and when. Employees may request additional assistance.

5. The employee will be informed in writing that personnel-related actions (WIGIs, awards) may be withheld while this level of performance continues.

6. The notice will explain how the supervisor addressed an employee request for reasonable accommodation, if any such request was made. If reasonable accommodation was made, the notice should explain how that may impact on the opportunity to improve, if at all.

New: The PIP shall include what the employee must do to reach an acceptable level of performance and at a minimum, the PIP shall provide for regular weekly feedback by the supervisor of the employee's progress in meeting the required level of performance.

Section 7.4

The purpose of the performance improvement period is to help the employee improve and reach at least an acceptable level of performance, rather than for the supervisor to accumulate documentation as the basis for a future performance-related adverse action. Solely placing the employee on 100% review does not equate to appropriate assistance.

Section 7.5

At any time during the performance improvement period, the rating official may conclude that assistance is no longer necessary because the employee's performance has improved to at least “Acceptable” or equivalent. The rating official will notify the employee of this determination in writing.

Section 7.6

If, following the PIP, the rating official is unable to make an assessment that the employee is at least minimally successful in performing his/her critical job duties and responsibilities, the rating official will give the employee a documented performance interview communicating this determination. In that case, it may be appropriate to extend the PIP until an assessment can be made, consistent with law.

Section 8.0

After awards have been finalized, the Union will be provided data (department, pay plan, grade, step, bargaining unit status code, nature of award code, and award amount). Upon request, the Agency shall provide to the Union, PMAP summary scores on a specific organizational basis. A meeting may be requested by the Union to discuss any concerns or issues it may have regarding the data.

Section 9.0

The parties agree that a reasonable number of critical elements shall be 4-6. Critical elements shall address performance, not necessarily conduct.

Section 10.0

Any element related to the HHS Strategic Plan or higher level organizational goal, objective, or outcome are only to contribute to such goals but no individual employee is expected to be held accountable for the success or failure of any HHS goal.

The supervisor should ensure that the elements in each plan reflect the employee's current responsibilities, are accurate, job-related, and are measurable (i.e., appropriately defined to clearly explain expectations for successful performance).

APPENDIX – Takes the place of the HHS PMAP Guidance

Level 5: Achieved Outstanding Results (AO)

Contributions impact well beyond the employee's level of responsibility. They demonstrate exceptional initiative in achieving results critical to Agency success and strategic goals. Managers must evaluate the employee at this level as based upon the employee's reasonable capability to influence or affect changes beyond their level of responsibility. For example, to be rated AO, a lower graded employee may not be able to substantially affect the Agency's mission or strategic goals; however, the same employee would be expected to contribute substantially to their immediate area and have an indirect influence on the overall Agency success.

The employee performed as a model of excellence by surpassing expectations on a consistent basis. Indicators of performance at this level include outcomes that exceed Achieved More than Expected Results level standards. Examples include:

- Innovations, improvements, and contributions to management, administrative, technical, or other functional areas that impact outside the work unit and facilitate organizational recognition;
- Increases in office and/or individual productivity;
- Improved customer, stakeholder, and/or employee satisfaction, resulting in positive evaluations, accolades, and recognition; methodology is modeled outside the organization;
- Flexibility and adaptability in responding to changing priorities, unanticipated resource shortages, or other obstacles;
- Initiation of significant collaborations, alliances, and coalitions;
- Leadership on workgroups or teams, such as those that design or influence improvements in program policies, processes, or other key activities;
- Anticipates the need for, and identifies, professional developmental activities that prepare staff and/or oneself to meet future workforce challenges; and/or
- Consistent demonstration of the highest level of ethics, integrity, and accountability in achieving specific HHS, OPDIV, and/or program goals; making recommendations that foster clarification, and/or influence, improvements in ethics activities.

Level 4: Achieved More than Expected Results (AM)

The employee continually demonstrates successful collaborations within the work environment, overcoming significant organizational challenges such as coordination with external stakeholders or resource shortfalls. Employee contributions have impact beyond their immediate level of responsibility. Managers must evaluate employees in this level as based upon the employee's demonstrated performance. A new employee would likely need more guidance and assistance from more experienced, possibly

higher-level employees or supervisors as compared to an employee who has demonstrated proficiency in the job. Examples include:

- Effectively plans, is well-organized, and completes work assignments that reflect requirements;
- Decisions and actions demonstrate organizational awareness. This includes knowledge of mission, function, policies, technological systems, and culture;
- Independently follows-up on actions and improvements that impact the immediate work unit; establishes and maintains professional relationships with employees and/or clients; understands their priorities; balances their interests with organizational demands and requirements; effectively communicates necessary actions to them and employee/customer satisfaction is conveyed; and/or
- When serving on teams and workgroups, contributes substantively and completely according to standards identified in the plan.

Level 3: Achieved Expected Results (AE)

Employee consistently meets performance requirements. Work is solid and dependable; customers are satisfied with program results. Employee seizes opportunities to improve business results and include employee and customer perspectives. This is the level where employees are expected to perform. Examples include:

- Acquires new skills and knowledge to meet assignment requirements;
- Demonstrates ethics, integrity and accountability to achieve HHS and agency goals; and
- Resolves operational challenges and problems, and when needed seeks guidance and assistance from higher-level staff.

Level 2: Partially Achieved Expected Results (PA)

Marginally acceptable; needs improvement; occasionally does not meet Level 3 (AE) performance requirements. The employee has difficulties in meeting expectations. Actions taken by the employee are sometimes inappropriate or marginally effective. They do not significantly contribute to any positive results achieved. This is the minimum level of acceptable performance for retention on the job. Improvement is necessary to achieve expected performance level

Whenever an employee's work nears this level the supervisor must clearly and promptly communicate performance deficiencies with the employee. Supervisors are strongly encouraged to closely monitor an employee that is rated PA. The supervisor will provide written guidance to the employee outlining the marginal element and examples as to how to bring their performance up the Achieved Expected Results level. This guidance may be communicated both verbally and in writing to the employee. Examples of PA include:

- Occasionally fails to meet assigned deadlines;
- Work assignments occasionally require major revisions or often require minor revisions;
- Does not consistently apply technical knowledge to work assignments;
- Occasionally fails to adhere to required procedures, instructions, and/or formats on work assignments;
- Occasionally fails to adapt to changes in priorities, procedures or program direction; and/or
- Impact on program performance, productivity, morale, organizational effectiveness and/or customer satisfaction needs improvement.

Level 1: Achieved Unsatisfactory Results (UR)

Employee consistently does not meet Level 3 (AE) performance requirements. There are usually repeat observations of performance that indicate negative consequences in key outcomes (e.g., quality, timeliness, results, customer satisfaction, etc.) Immediate improvement is essential for job retention.

The supervisor must, at a minimum, give written notice to the employee of his or her failure to demonstrate acceptable performance in a given critical element and give the employee an opportunity to demonstrate acceptable performance under a Performance Improvement Plan (PIP). In regard to performance, employees will not be responsible for matters beyond their control. Examples of UR include.

- Consistently fails to meet assigned deadlines;
- Work assignments often require major revisions;
- Fails to apply adequate technical knowledge to completion of work assignments;
- Frequently fails to adhere to required procedures, instructions and/or formats in completing work assignments; and/or
- Frequently fails to adapt to changes in priorities, procedures or program direction.

Nothing in this document changes or waives either party's rights.

For the Agency:

/s/Noreen E. Gordon

16 July 2012

For the Union:

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