

**Settlement Agreement between
Department of Veterans Affairs
&
National Veterans Affairs Council,
American Federation of Government Employees, AFL-CIO**

**Re: WA-CA-21-0435 and WA-CA-22-0548
Retroactive Bargaining Under Section 714 of the Accountability Act**

I. Preamble

American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council #53 ("AFGE/NVAC" or "Union"), and the Department of Veterans Affairs ("VA" or "Department") (collectively "the Parties"), hereby agree to settle all disputes arising out of the Union's Unfair Labor Practice Charges, WA-CA-21-0435 dated September 2, 2021 and WA-CA-22-0548 dated July 30, 2022 ("ULP Charges"), concerning VA's failure to satisfy procedures and appropriate arrangements (impact and implementation) bargaining obligations with the Union prior to implementing 38 U.S.C. §714 ("Section 714") of the VA Accountability and Whistleblower Protection Act ("Accountability Act"), as set forth in the arbitration award of Arbitrator Hyman Cohen, FMCS No. 17-0921-55048 dated March 11, 2021 ("Cohen Award").

On June 23, 2017, the Accountability Act was signed into law. The Department implemented Section 714 of the Accountability Act prior to providing notice to the Union and an opportunity to bargain. As a result, on August 1, 2017, the Union filed a national grievance regarding the Department's unilateral implementation of Section 714 of the Accountability Act.

On November 20, 2019, the Federal Labor Relations Authority ("FLRA") granted the AFGE/NVAC's Exceptions and found that the Accountability Act did not excuse the Department from its statutory duty to bargain over the procedures and appropriate arrangements (impact and implementation) of implementing Section 714. The FLRA further denied the Department's Request for Reconsideration of the decision.

On March 13, 2021, Arbitrator Hyman Cohen issued an Opinion and Award ordering the Parties to engage in retroactive bargaining to remedy the statutory violation. However, the Parties did not reach agreement.

On September 2, 2021, the Union filed an unfair labor practice charge ("ULP") with the FLRA, Charge No. WA-CA-21-0435, to enforce the Cohen Award. The Union also sought the assistance of the Federal Service Impasses Panel ("Panel") to break the impasse between the Parties. However, the Panel declined jurisdiction, in part due to VA's raising that some of the Union's proposals were "covered by the 2011 Master Agreement." This resulted in the Union filing another ULP charge with the FLRA, Charge No. WA-CA-22-0548, on July 30, 2022, asserting that the Parties waived the "covered by" defense in the Master Agreement. Later, the Parties mutually agreed to engage in pre-Complaint mediation of the ULP charges with the FLRA Collaboration and Dispute Resolution Office ("FLRA-CADRO") to resolve disputes concerning VA's compliance with the Cohen Award.

On March 5, 2023, the Assistant Secretary for Human Resources and Administration/Operations, Security and Preparedness, issued a memorandum announcing that the Secretary decided "to cease using the provisions of 38 U.S.C. § 714 to propose new adverse

actions against employees effective April 3, 2023." Resultingly, "[n]o new adverse actions will be proposed under section 714 on or after April 3, 2023."

The following constitutes an agreement between the Department and the Union on the remedy related to the Department's unilateral implementation of Section 714. This Settlement Agreement ("Agreement") resolves all disputes and claims between AFGE/NVAC and VA as to VA's compliance with the Cohen Award, with the exception of any claims that may arise through breach of this Agreement.

II. Terms of Agreement

By execution of this Agreement, the Parties agree to the following:

- A. Section 714 MOU:** If the Department decides to use Section 714 for AFGE bargaining unit employees (BUEs), it will notify the Union and bargain procedures and appropriate arrangements pursuant to 5 U.S.C. § 7106(b)(2) and (3) prior to its implementation of Section 714 with AFGE/NVAC.
- B. Eligible AFGE BUEs:** The Parties agree that the following categories of AFGE BUEs are eligible for relief under this Agreement as stated below ("Eligible AFGE BUEs").
 - 1. Group A.** This category includes employees who received removal decisions under Section 714 effectuated (e.g., with a SF-50 or other official document) between June 23, 2017, and the effective date of this Agreement (including the employee who filed FLRA charge WA-CA-21-0261, those who filed an appeal of their removal, those who retired after the removal was effectuated, and those who were unable to be reached under the Ross Settlement or did not respond to the Ross Settlement) and who do not fall within the Groups defined below.
 - 2. Group B.** This category includes Eligible AFGE BUEs who received removal decisions under Section 714 effectuated (e.g., with a SF-50 or other official document) between June 23, 2017, and the effective date of this Agreement for conduct demonstrating Grievous Misconduct. Grievous Misconduct refers to a removal decision where the substance of a charge and the supporting evidence provided to the deciding official, regardless of the name of the charge, is related to patient abuse, reckless or intentional disregard for patient welfare, racial harassment, sexual harassment, impairment on duty, violent threats, reckless or intentional endangerment of others, and/or criminal activity (e.g., possession of a controlled substance, unauthorized possession of a weapon at work, or fraud amounting to more than \$20,000) without regard to whether the government pursued criminal charges. Conduct meeting the definition of Grievous Misconduct must have been part of the charge(s) upheld in the final decision.
 - a.** No later than 120 days following the execution of this Agreement, the Department will submit to the Union the proposals, evidence files, and final decisions for employees it has identified as meeting the definition of Grievous Misconduct.
 - b.** No later than 60 days following the Department's production of the proposal, evidence file, and final decision, the Union will submit in writing any disputes to the Department. The Parties will then meet virtually, or in person in Washington, DC by mutual agreement, to attempt to resolve the disputes. Each Party will be responsible for their own travel costs associated with this dispute process.

- c. No later than 60 days after the meeting, the Union will submit all remaining, unresolved disputes to an arbitrator selected using the procedures in Article 44 of the Master Agreement. The Union will initiate the arbitration process by providing a notice to invoke arbitration to the Department. There is no requirement for the Union to first file a Grievance to invoke arbitration in this matter.
- d. The scope of the arbitrator's jurisdiction will be limited to determining whether the proposal, evidence file, and final decision for each employee meets the definition of Grievous Misconduct described in II(B)(2) for each individual case.
- e. The issue presented to the arbitrator, for each employee, will be: Whether the substance of a charge and the evidence provided to the deciding official, regardless of the name of the charge, is related to: patient abuse, reckless or intentional disregard for patient welfare, racial harassment, sexual harassment, impairment on duty, violent threats, reckless or intentional endangerment of others, and/or criminal activity (e.g., possession of a controlled substance, unauthorized possession of a weapon at work, or fraud amounting to more than \$20,000) without regard to whether the government pursued criminal charges.
- f. If the arbitrator finds in the affirmative, the individual case will be placed in Group B. If the arbitrator finds in the negative, the individual case will be placed in Group A.
- g. The Department may request the arbitrator to reconsider the decision. If the Department loses the reconsideration, it will pay the full costs for the arbitrator's reconsideration decision and pay the related Union attorney fees and costs.

3. **Group C.** This category includes employees who received a suspension decision effectuated (e.g., with a SF-50 or other official document) under Section 714 for a period greater than fourteen (14) days between June 23, 2017, and the effective date of this Agreement.
4. **Group D.** This category includes employees who received a demotion decision effectuated (e.g., with a SF-50 or other official document) under Section 714 between June 23, 2017, and the effective date of this Agreement.
5. **Last Chance Agreement.** This category includes employees who executed a Last Chance Agreement predicated on a Section 714 action and were later removed for violating that Last Chance Agreement.
6. **Disability Retirees.** This category includes employees who received a proposed adverse action and disability retired from the Department prior to a resolution on the proposal or received a removal decision under Section 714 between June 23, 2017, and the effective date of this Agreement and later filed for retirement disability and received an annuity from the Office of Personnel Management ("OPM").
7. **Resignation in Lieu Of.** This category includes employees who received a proposed adverse action under Section 714 and who resigned from federal service prior to VA effectuating a final decision under Section 714 between June 23, 2017, and the effective date of this Agreement.
8. **Retired in Lieu Of.** This category includes employees who received a proposed adverse action under Section 714 and who retired from federal service prior to VA effectuating a final decision under Section 714 between June 23, 2017, and the effective date of this Agreement.

9. **Individual Employee Settlements.** This category includes employees who received a proposed adverse action or decision under Section 714 between June 23, 2017, and the effective date of this Agreement and executed an individual settlement agreement with VA resolving said Section 714 action.

C. **Relief for Eligible AFGE BUEs.** The Parties agree that the Department will provide the following relief to each category of Eligible AFGE BUEs.

1. **Group A.** Eligible AFGE BUEs in this category are entitled to the option of reinstatement or no reinstatement.
 - a. **Reinstatement.** If the Eligible AFGE BUE chooses reinstatement, they will receive a lump sum of thirty-five percent (35%) of their gross monthly salary at the time of their removal times the number of months removed. Number of months will be calculated by taking the total number of days removed and dividing by thirty (30). If there are excess days, fifteen (15) days or more will be counted as a month. The Eligible AFGE BUE must meet all eligibility requirements, including but not limited to, a suitability review; otherwise, they will receive a lump sum payment without reinstatement pursuant to Section II(C)(1)(b). Eligible AFGE BUEs will not be required to serve a new probationary period.
 1. **Personnel Records and No New Probationary Period.** The Department will memorialize the lack of a new probationary period in the following manner:
 - A. For Title 5 employees eligible for reinstatement under 5 C.F.R. §315 subpart D, the removal SF-50 will be purged and replaced with a resignation SF-50. The employee will be reappointed using this reinstatement authority.
 - B. For Title 5 employees ineligible for reinstatement under 5 C.F.R. §315, subpart D, but eligible for an alternate appointing authority which does not result in an additional probationary period such as Veterans Recruitment Appointment (VRA), 30% or more disabled veteran, or Schedule A, will be reappointed under these authorities.
 - C. For Title 5 employees ineligible for any other appointing authority which would not require an additional probationary period to be served, the Department will rescind the removal SF-50 and process timecards indicating the employee was on leave without pay from the effective date of the removal until the effective date of the Eligible AFGE BUE's return to work. The Eligible AFGE BUE will waive health insurance coverage as of the date of the original removal. The return to a pay status will be a qualifying life event to reinstate health insurance coverage.
 - D. All Title 38 Hybrid employees will be reappointed under 38 U.S.C. §7401(3) with no additional probationary period required.
 2. **Reinstatement Process.** The Department will reinstate the Eligible AFGE BUE in the following manner:
 - A. The Department will place the Eligible AFGE BUE in their previous position and grade.

- B. If the previous position and grade are not available, the Department will place the Eligible AFGE BUE in a similar position for which they are qualified at the same grade, bargaining unit, location (three-digit duty station code), and shift.
- C. If a similar position is not available, the Department will select a position at same grade and location (three-digit duty station code) for which the employee is qualified. The Department will notify the Eligible AFGE BUE of this decision and the following will apply:
 1. If the Eligible AFGE BUE accepts the Department's decision, the Department will also give priority consideration to the Eligible AFGE BUE. The priority consideration will apply to their previous position if the previous position is vacant and approved to be filled within one (1) year from reinstatement. If needed, the local definition of seniority will be the tiebreaker among Eligible AFGE BUEs with priority consideration.
 2. If Eligible AFGE BUE rejects the Department's decision, the Eligible AFGE BUE can elect to receive the fifty-five percent (55%) lump sum payment set forth in Section II(C)(1)(b) of this Agreement or opt out as set forth in Section II(D)(8) of this Agreement.
 3. If Eligible AFGE BUE accepts the Department's decision under protest, AFGE can challenge the selected position by requesting binding arbitration under the Article 44 of the Master Agreement.
 - a. The issue for the arbitrator is: Whether the Department's decision was an abuse of discretion or retaliatory.
 - b. The Eligible AFGE BUE must begin the Department-selected position while the arbitration is pending.
 - c. If the arbitration award decision is in favor of the Department, the Eligible AFGE BUE will continue in the position.
 - d. If the arbitration award is in favor of the Eligible AFGE BUE:
 - i. Within thirty (30) calendar days of the award, the Department must provide the Eligible AFGE BUE with at least two (2) positions but not more than four (4) positions in which the employee qualifies

- at the same grade and location.
- ii. The Eligible AFGE BUE will select a position within fourteen (14) calendar days of receipt of the list from the Department.
- iii. The arbitrator has authority to order the Department to reimburse the Eligible AFGE BUE for any out-of-pocket expenses or losses (e.g., shift differentials) due to the Department-selected position pursuant to Section II(C)(1)(a)(2)(C).
- iv. The Department will pay the Union's attorney fees.
- v. If at any point during the pendency of the arbitration the previous position becomes available, the Department will place the Eligible AFGE BUE in the position. The Union's request for arbitration will be withdrawn.

D. VA reserves the right to take appropriate action if the Eligible AFGE BUE does not return to duty. The Eligible AFGE BUE may avail themselves of any right afforded by law or contract in responding to an action taken by VA, if any.

E. Eligible AFGE BUEs who are retired, and elect reinstatement will be returned to duty as a reemployed annuitant. Any applicable offsets of their annuity and compensation for reinstatement will be applied in accordance with OPM processes. This offset will not be considered a loss in rate of pay.

F. No Eligible AFGE BUE who elects reinstatement will suffer a loss in the underlying OPM General Schedule base rate of pay. For example, if an Eligible AFGE BUE is reinstated to a sublocation with a different locality pay at the same grade and step previously held, this change in rate of pay is not considered a loss of base pay. For Federal Wage System Eligible AFGE BUEs, rate of pay upon reinstatement will not be less than the rate in effect when the Eligible AFGE BUE was removed in the geographic location to which they are reinstated.

b. **No Reinstatement.** If the Eligible AFGE BUE chooses to not be reinstated, they will receive a lump sum of fifty-five percent (55%) of their gross monthly salary at the time of their removal times the number of months removed. Number of months will be calculated by taking the total

number of days removed and dividing by thirty (30). If there are excess days, fifteen (15) days or more will be counted as a month. The removal SF-50 will be purged and replaced with a resignation SF-50. However, if the employee is reemployed with VA within four (4) years of their election:

1. They must repay the twenty percent (20%) difference between the election of reinstatement and no reinstatement.
2. VA will use debt collection procedures consistent with the Department of Veterans Affairs, Financial Policy, Volume XII, Debt Management, Chapter 1, Debt Collection Standards to collect the twenty percent (20%) difference.

2. **Group B.** Eligible AFGE BUEs in this category are entitled to the following:

- a. Twenty percent (20%) of their monthly gross salary at the time of their removal times the number of months removed. Number of months will be calculated by taking the total number of days removed and dividing by thirty (30). If there are excess days, fifteen (15) days or more will be counted as a month. However, if the employee is reemployed with the Department within four (4) years of their election:
 1. They must repay the lump sum amount.
 2. VA will use debt collection procedures consistent with Department of Veterans Affairs, Financial Policy, Volume XII, Debt Management, Chapter 1, Debt Collection Standards to collect the lump sum amount.
- b. These employees are not entitled to reinstatement.
- c. Title 5 employees will not have any change to their removal SF-50.
- d. Title 38 Hybrid employees will have their removal SF-50 purged and replaced with a resignation in lieu of removal SF-50. VA will provide Title 38 Hybrid employees with a copy of the resignation in lieu of removal SF-50 on or about the time VA provides relief to the Eligible AFGE BUE.
- e. Eligible AFGE BUEs in this category must consent to a criminal background check prior to receipt of any lump sum amount in order to confirm whether they are excluded pursuant to Section II(E)(7). The timeframe for disbursement of any lump sum will be extended until the background check is completed. The Department must initiate the criminal background check promptly following receipt of the Eligible AFGE BUEs consent to the criminal background check.

3. **Group C.** Eligible AFGE BUEs in this category will receive a lump sum payment of seventy-five percent (75%) of their hourly rate times the number of suspended work hours. The suspension SF-50 will be purged.

4. **Group D.** Eligible AFGE BUEs in this category will receive a lump sum payment of 75% of the difference between the grade and step they were demoted from and the grade and step they were demoted to as well as an option to remain in their current position or be repromoted to a same or substantially similar position at their former grade level and step.

- a. If the employee chooses to remain in their current position, VA will purge the demotion SF-50 and replace it with a voluntary change to lower grade SF-50.
- b. If the employee chooses to be repromoted, VA will purge the demotion SF-50 and replace it with a voluntary change to lower grade SF-50.

1. VA will follow the procedures in Section II(C)(1)(a)(2)(A) to place the Eligible AFGE BUE in the same position, and if not available then in a substantially similar position under Section II(C)(1)(a)(2)(B), except the SF-50 will be a promotion SF-50 and not an appointment SF-50.
2. No Eligible AFGE BUE will suffer a loss in the underlying OPM General Schedule base rate of pay. For example, if an Eligible AFGE BUE is reinstated to a sublocation with a different locality pay at the same grade and step previously held, this change in rate of pay is not considered a loss of base pay. For Federal Wage System Eligible AFGE BUEs, rate of pay upon reinstatement will not be less than the rate in effect when the Eligible AFGE BUE was removed in the geographic location to which they are reinstated.
5. **Last Chance Agreements.** Eligible AFGE BUEs in this category are entitled to a one-time lump sum payment of \$20,000. VA will purge the removal SF-50 and replace it with a resignation SF-50. Employees are not entitled to reinstatement under this Agreement; however, nothing in this Agreement shall be construed as preventing the employee from seeking reemployment or requiring the employee to repay this lump sum should they later become reemployed by the Department.
6. **Disability Retirees.** Eligible AFGE BUEs in this category are entitled to a one-time lump sum payment of \$10,000. VA will purge any removal SF-50 and replace it with a resignation SF-50. Employees are not entitled to reinstatement under this Agreement; however, nothing in this Agreement shall be construed as preventing the employee from seeking reemployment or requiring the employee to repay this lump sum should they later become reemployed by the Department.
7. **Resignation in Lieu Of.** Eligible AFGE BUEs in this category are entitled to a one-time lump sum payment of \$10,000. To be eligible in this category, the effective date of the Eligible AFGE BUEs resignation must be prior to or on the effective date of the removal. VA will purge the SF-50 effectuating the action and replace it with a resignation SF-50. Employees are not entitled to reinstatement under this Agreement; however, nothing in this Agreement shall be construed as preventing the employee from seeking reemployment or requiring the employee to repay this lump sum should they later become reemployed by the Department.
8. **Retirement in Lieu Of.** Eligible AFGE BUEs in this category are entitled to a one-time lump sum payment of \$10,000. To be eligible in this category, the effective date of the Eligible AFGE BUEs retirement must be prior to the effective date of the removal. VA will purge the SF-50 effectuating the action and replace it with a resignation SF-50. Employees are not entitled to reinstatement under this Agreement; however, nothing in this Agreement shall be construed as preventing the employee from seeking reemployment or requiring the employee to repay this lump sum should they later become reemployed by the Department.

9. **Individual Employee Settlements.** Eligible AFGE BUEs in this category are entitled to a one-time lump sum payment of \$5,000. VA will purge any removal SF-50 and replace it with a resignation SF-50. Employees are not entitled to reinstatement under this Agreement and are bound by any other terms in their individual settlement. Nothing in this Agreement shall be construed requiring the employee to repay this lump sum should they later become reemployed by the Department.
- D. **General Terms for all Eligible AFGE BUEs.** The following is applicable to all Eligible AFGE BUEs identified above:
 1. **Pending Appeals.** If an Eligible AFGE BUE has a pending appeal, grievance, claim, or complaint related to their adverse action pursuant to Section 714 in another forum ("pending Section 714 appeal") and they want to receive relief under this Agreement, they must waive any right to continue to pursue their pending Section 714 appeal and agree to pay their own expenses in that other forum, including attorney fees related to the pending Section 714 appeal. If the Eligible AFGE BUE has a pending Section 714 appeal, they must so indicate on the Remedy Election Form. The Eligible AFGE BUE must agree that VA may submit their Remedy Election Form in connection with a motion to dismiss or other filing to effectuate the waiver, as appropriate. The Parties encourage all Eligible AFGE BUEs to consult an attorney, if they are represented by legal counsel in another forum, or another representative, if desired.
 2. **Tax Consequences.** The Parties make no representation as to the taxability of the payments under this Agreement or as to the tax treatment that such payments will receive from the Internal Revenue Service. All Eligible AFGE BUEs should consult with a tax professional, if desired.
 3. **Offsets and Repayments.** The Parties make no representation as to whether any of the payments under this Agreement will be subject to offset or repayment to the OPM or any other state or federal agency. All Eligible AFGE BUEs should consult with an attorney, if desired.
 4. **Not-to-Exceed Appointments.** If an Eligible AFGE BUE was subject to a not-to-exceed ("NTE") appointment, their lump sum payment eligibility will be capped at their NTE date. For example, if the Eligible AFGE BUE was removed in July 2017, and the NTE date was January 2018, they will only be entitled to a lump sum payment of the percentage of their gross monthly salary times the number of months removed ending on their NTE date, January 2018.
 5. **Re-proposal.** VA may repropose any action, except for those in Group D. Any reproposal must be consistent with law.
 6. **Employability.** All Eligible AFGE BUEs who are reinstated (Group A) or promoted following a demotion (Group D) must meet all eligibility requirements, e.g., licensing, security, qualifications, suitability review, etc. If an employee does not meet the eligibility requirements for their previous position and therefore cannot be reinstated or re-promoted, the employee will not be reinstated or re-promoted and will receive the applicable lump sum payment.
 7. **Payment.** VA will make a one-time lump sum payment within 120 days of receipt of an accurately completed election form and vendorization.
 - a. Payment will be made electronically.
 - b. To facilitate prompt payment and notice to Eligible AFGE BUEs of the lump sum amount, the lump sum payment accrual terminates 60 days after the date of execution of this Agreement. Due to this mutual interest,

processes for payments not executed in accordance with the timeframes of this Agreement are addressed in subsection (d) below.

- c. Lump sum payments are in lieu of back pay and any and all related benefits, differentials, allowances, etc.
- d. If VA does not render payment within 120 days after receipt of an accurate election form and vendorization, VA will pay 5% simple interest on the lump sum amount on Day 121, and the same additional 5% simple interest on the original amount will be added every 90-day period thereafter until payment is submitted to the Eligible AFGE BUE.

8. **Opt-out.** Any Eligible AFGE BUE may elect to opt out of this Agreement. The Parties do not make any representations concerning whether the Eligible AFGE BUE has any viable alternatives to the relief in this Agreement through individual or class complaints, claims, appeals, grievances, or other proceedings. All Eligible AFGE BUEs should consult with an attorney, if desired.

9. **Impact on Annuities.** The Parties make no representation as to this Agreement's impact on annuities or retirement benefits from the OPM, or other administrative agency. All Eligible AFGE BUEs should consult with a retirement professional, if desired.

E. Ineligible AFGE BUEs. The Parties agree that the following categories of AFGE BUEs are ineligible for relief under this Agreement.

- 1. **Non-AFGE BUEs:** Employees who did not encumber a position included in the AFGE bargaining unit at the time of the receipt of their proposed discipline under Section 714 are ineligible for relief under this Agreement.
- 2. **Actions Not Taken Under Section 714:** Employees who received proposed or final adverse actions under legal authorities other than Section 714 are ineligible for relief under this Agreement.
- 3. **Relief Under Ross Settlement:** AFGE BUEs who make an election under the Ross Settlement of FLRA, Charge No. SF-CA-20-0240 are not eligible for relief under this Agreement. The Parties agree that eligible AFGE BUEs may not receive /payment under the terms of this Agreement and the Ross Settlement.
- 4. **Medical Inability to Perform:** AFGE BUEs who were removed for medical inability to perform are not eligible for relief under this Agreement.
- 5. **Probationary Employees:** AFGE BUEs who were terminated during their probationary period are not eligible for relief under this Agreement.
- 6. **Continuation of Individual Appeals:** AFGE BUEs who elect to continue their individual appeal, grievance, claim, or complaint related to an adverse action under Section 714 are not eligible for relief under this Agreement.
- 7. **Criminal Convictions:** AFGE BUEs who are convicted of a crime related to or arising from grievous misconduct that formed the basis for their Section 714 adverse action as defined in Section II(B)(2) above are not eligible for any relief under this Agreement.

F. Prohibition of Duplicate Relief/Payment. The Parties agree that Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

G. Prohibition of Double Relief Under this Agreement. Eligible AFGE BUEs may only receive relief under one Category in this Agreement. Eligible AFGE BUEs are placed in

the Category for which they last qualify in time. For example, if an employee was removed for violating a Last Chance Agreement predicated on a Section 714 action, and later executes an individual settlement agreement resolving claims arising from their removal, they fall into the category of "Individual Employee Settlements."

- H. Prohibition of Relief if Section 714 Action was Rescinded.** The Parties agree that Eligible AFGE BUEs are excluded from relief if their Section 714 proposal or decision was rescinded and reissued under legal authorities other than Section 714.
- I. ULP Posting:** Within thirty (30) calendar days of the effective date of this Agreement, VA will electronically distribute the attached ULP Notice Posting (Exhibit 1), signed by the VA Acting Deputy Secretary to all AFGE BUEs by email affirming that VA will comply with its statutory and contractual obligations to bargain in good faith with the Union and comply with final arbitration awards. At that time, a copy of the ULP Notice Posting and accompanying email will be provided to the undersigned AFGE counsel.
- J. Procedures to Notify and Provide Relief to Eligible AFGE BUEs:** The Parties agree to utilize the following procedures to notify and provide relief to each category of Eligible AFGE BUEs. The agreed-upon language to be used in the Employee Notifications and Remedy Election Forms are attached to this Agreement (Exhibit 2).
 - 1. Content of Notification:** The following provisions apply to the content of the notification to Eligible AFGE BUEs.
 - a. The Employee Notification must include:**
 - 1. The lump sum dollar amounts payable to the Eligible AFGE BUE under this Agreement if they are eligible;
 - 2. If applicable, the lump sum dollar amounts payable to the Eligible AFGE BUE for each option under this Agreement;
 - 3. Notice that the action may be re-proposed for all Eligible AFGE BUEs, except for Group D.
 - b. The Remedy Election Form must include:**
 - 1. The option to opt-out of the Agreement, with a statement that the Parties do not make any representations regarding the viability of any alternative relief to this Agreement.
 - 2. Notice that any election of relief under the Agreement indicates the Eligible AFGE BUE's waiver and withdrawal of any and all actions, claims, complaints, grievances, or appeals related to their adverse action under Section 714.
 - 2. Initial Employee Notification from VA:** Within 120 calendar days after execution of this Agreement, VA will transmit, by 1st Class Mail, a copy of all relevant Employee Notification and Remedy Election Form to all Eligible AFGE BUEs, except Group B and the Employees Excluded from Ross Award.
 - 3. Employee Obligation to Respond:** The Eligible AFGE BUE or their authorized representative must provide the executed Remedy Election Form and Vendorization Form to VA, as applicable. If the executed Remedy Election Form or Vendorization Form, as applicable, is not provided to VA within 365 days of the Initial Employee Notification by VA, the Eligible AFGE BUE will be deemed to have waived their rights to relief under this Agreement. If the response is being submitted by someone other than the Eligible AFGE BUE (e.g., Trustee, Guardian, Administrator for a deceased individual), additional documentation and forms may be required and must also be submitted within 365 days of the

Initial Employee Notification. VA will promptly provide any necessary documentation and forms to the Eligible AFGE BUE's authorized representative.

4. **Second Employee Notification from VA:** Within 200 calendar days of the execution of this Agreement, VA counsel will provide AFGE with a Microsoft spreadsheet identifying: (1) the names of all Eligible AFGE BUEs whose Employee Notification was either returned to VA as undeliverable or who have not yet provided the Remedy Election Form or Vendorization Form to VA, as appropriate, (2) the last four digits of the Eligible AFGE BUEs Social Security Number, (3) the name of the eligible AFGE BUE's VA facility, and (4) the mailing addresses used for the original Employee notification.
 - a. **Address Review by Union:** Within 230 calendar days of the execution of this Agreement, Union counsel will attempt to obtain updated mailing addresses and return the Microsoft spreadsheet to VA counsel.
 - b. **Second Mailing by VA:** Within 290 calendar days of the execution of this Agreement, VA will transmit another copy of the applicable Employee Notification to the Eligible AFGE BUE using the mailing addresses provided by Union counsel.
 - c. **Employee Waiver:** For Eligible AFGE BUEs who VA is obligated to transmit a second copy of the applicable Employee Notification, if the executed Remedy Election Form or Vendorization Form, as applicable, is not provided to VA within 365 days of the Initial Employee Notification by VA, the Eligible AFGE BUE will be deemed to have waived their rights to relief under this Agreement.
5. **Group B Disputes Notification:** Within 120 days of a decision from an arbitrator determining the eligibility of an AFGE BUE, VA will transmit, by 1st Class Mail, a copy of the relevant Employee Notification to the Eligible AFGE BUEs.
6. **FLRA Case Number WA-CA-21-0261:** For the employee at issue in FLRA Case Number WA-CA-21-0261, the Department shall provide the FLRA General Counsel with the Group A offer for this matter within 45 days of the execution of this Agreement. The FLRA General Counsel will present that offer to the Eligible AFGE BUE. Acceptance will be conditioned on withdrawing FLRA Case Number WA-CA-21-0261 or any other pending appeal on the Eligible AFGE BUE's 714 action. Payment shall be made in accordance with the above terms and conditions.

K. No Retaliation or Reprisal: The Department will not retaliate against any AFGE BUE for availing themselves of the rights and benefits to which they are entitled under the terms and conditions of this Agreement. Individuals granted access to VA SharePoint site(s) or similar database(s) maintained by VA to implement this Agreement (e.g., to identify Eligible AFGE BUEs, their specific categories, and election to ensure compliance) are prohibited from using or disclosing the information stored on such a site and/or database unless such use or disclosure is permitted pursuant to the terms and conditions of this Agreement or any other applicable law or regulation. The Parties agree that the creation and/or authorized use of a SharePoint site or similar database to implement this Agreement does not constitute retaliation.

L. Information to AFGE: When the Department has fully complied with this Agreement, it will provide AFGE counsel with an electronic listing of all AFGE BUEs who receive relief under the terms and conditions of this Agreement. The following information will be provided:

1. Employee Name
2. Duty Station
3. Previous VA Position
4. Previous Grade/Step
5. Type of Section 714 Action
6. Date of Section 714 Action
7. Gross Amount of Lump Sum Relief Paid

M. Attorneys' Fees: Within thirty (30) days of the effective date of this Agreement, VA agrees to pay the Union **\$267,758.85** in reasonable attorneys' fees pursuant to the Back Pay Act. The Parties agree that AFGE may petition for additional attorneys' fees that may arise through proceedings concerning a breach of this Agreement. VA will issue payment via electronic deposit/check into:

AFGE Legal Rep Fund **\$104,449.50**

Amalgamated Bank
275 Seventh Avenue
New York, NY 10001
Accounting Number: 81019974
Routing Number: 026003379
Caging Code: 490Z5
Tax Identification Number: 53-0025740

Roberts Labor Law and Consulting, LLC **\$163,309.35**

PNC Bank
390 Main Street
Laurel, MD 20707
Acct. No. 5426102816
Bank Routing Transfer No. 054000030
Caging Code: 94CE9
Tax ID No. 85-201371

III. Withdrawal and Waiver of Claims

- A. Unfair Labor Practice Charge, ULP-9/2/21, WA-CA-21-0435:** The joint execution of this Agreement represents the Union's request to withdraw ULP WA-CA-21-0435.
- B. Unfair Labor Practice Charge, ULP-7/30/22, WA-CA-22-0548:** The joint execution of this Agreement represents the Union's request to withdraw ULP WA-CA-22-0548.
- C. The Union agrees to release and waive its right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's failure to bargain over the procedures and appropriate arrangements (impact and implementation) of 38 U.S.C. § 714 pursuant to 5 U.S.C. § 7106(b)(2) and (3) in this instance against VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA with the exception of any claims that may arise by reason of breach of any term in this Agreement. The Union further agrees that it will not arbitrate or litigate any claims arising from the Department's failure to bargain impact and**

implementation of 38 U.S.C. § 714 pursuant to 5 U.S.C. § 7106(b)(2) and (3) against VA with the exception of any claims that may arise by reason of breach of any term in this Agreement or a future implementation of 38 U.S.C. § 714.

IV. Stipulations

The Parties further stipulate and agree:

- A. They have entered into this Agreement freely and voluntarily.
- B. This Agreement addresses unique circumstances and shall not serve as precedent or past practice for resolving any other matter involving the Department.
- C. They may mutually agree in writing to extend any time limits in this Agreement.
- D. The Agreement constitutes a joint effort by the Parties and should not be construed against any party.
- E. They agree to fulfil their obligations under this Agreement in good faith.
- F. The obligations of the Parties specified above constitute consideration sufficient to render this Agreement enforceable by either party.
- G. The written terms of this Agreement may not be offered, taken, construed, or introduced as evidence of liability or as an admission or statement of wrongdoing by either party in any subsequent proceeding of any nature.
- H. Consistent with 5 U.S.C. § 574(b) and subject to exceptions contained therein, the VA and Union will not voluntarily disclose or through discovery or compulsory process agree to allow disclosure of any dispute resolution communication in connection with the dispute resolution proceeding resulting in this Agreement. Consistent with 5 U.S.C. § 574(c), the VA and Union acknowledge that any dispute resolution communication that is disclosed inconsistent with this provision shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made. Consistent with 5 U.S.C. § 574(c) and Section II(D)(5) of this Agreement, "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant and does not include, any oral or written communication prepared for the purpose of disciplining eligible AFGE BUEs (e.g., proposal and decision letters and evidence files).
- I. This Agreement constitutes the entire understanding between the Parties regarding the resolution and settlement of this matter, and there are no other terms or commitments, verbal or written, regarding the settlement of this matter. No other promises or agreements shall be binding unless placed in writing and signed by the Parties. The Parties may submit this Agreement as evidence of eligibility, ineligibility, and withdrawal of the actions, claims, complaints, grievances, proceedings of whatever nature arising from matters identified in this Agreement.
- J. This Agreement constitutes the full settlement and satisfaction of the cases described herein.

- K. If a binding determination is made that any immaterial term(s) of this Agreement is/are unenforceable, such unenforceability shall not affect any other provisions of this Agreement, and the remaining terms of this Agreement shall, unless prohibited by law, remain enforceable.
- L. All the time limits in this Agreement are in calendar days. If a time limit expires on a Saturday, Sunday, or a Federal Holiday, then the time limit shall expire on the next business day.
- M. The "effective date" of this Agreement is the last date upon which this Agreement has been signed by either party as noted below.
- N. Either party may bring a claim in the form of a grievance arising from the breach of any term of this Agreement.

For AFGE/NVAC:

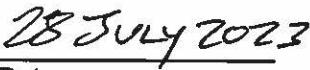
WH Wetmore	7-27-23
William H. Wetmore	Date
Chair, Grievance & Arbitration Committee	
AFGE/NVAC	
<hr/>	
Thomas Dargon, Jr.	7/28/23
Supervisory Attorney	Date
AFGE/NVAC	
<hr/>	
ob o Ibidun Roberts	07/28/23
Ibidun Roberts, Esq.	Date
AFGE/NVAC's Representative	
<hr/>	
For VA:	
	
Guy T. Kiyokawa	Date
Acting Deputy Secretary	
U.S. Department of Veterans Affairs	

Exhibit 1

ULP Posting

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (UNION) AND U.S. DEPARTMENT OF VETERANS AFFAIRS (DEPARTMENT)

This notice is being sent to AFGE bargaining unit employees as a result of a Settlement Agreement executed between AFGE and VA concerning VA's failure to satisfy bargaining obligations with AFGE prior to implementing 38 U.S.C. §714 ("Section 714") of the VA Accountability and Whistleblower Protection Act ("Accountability Act"), as set forth in the arbitration award of Arbitrator Hyman Cohen, FMCS No. 17-0921-55048 dated March 11, 2021 ("Cohen Award").

On June 23, 2017, the Accountability Act was signed into law. On August 1, 2017, the Union filed a national grievance regarding the Department's unilateral implementation of the Accountability Act. On November 20, 2019, the Federal Labor Relations Authority ("FLRA") found that the Accountability Act did not excuse the Department from its statutory duty to bargain procedures and appropriate arrangements (impact and implementation). The FLRA further denied the Department's Request for Reconsideration of the decision. On March 13, 2021, Arbitrator Hyman Cohen issued an Opinion and Award ordering the Parties to engage in retroactive bargaining to remedy the statutory violation. However, the Parties did not reach agreement.

During retroactive bargaining, the Union filed two unfair labor practice charges with the FLRA to enforce the Cohen Award, Charge No. WA-CA-21-0435 and Charge No. WA-CA-22-0548. Later, the Parties mutually agreed to engage the FLRA Collaboration and Dispute Resolution Office to resolve disputes concerning VA's compliance with the Cohen Award. The Parties later executed a Settlement Agreement resolving these disputes.

By and through this Notice, the Department reaffirms and agrees to fully satisfy its duty to bargain in good faith with the Union and to comply with final and binding arbitration awards between the Parties.

Please do not reply to this email. If you have any questions about this notification, please contact your local AFGE representative directly.

VA will not interfere with, restrain, or coerce employees, or their designated representatives, in the exercise of rights assured by law.



Guy T. Kiyokawa
Acting Deputy Secretary
U.S. Department of Veterans Affairs



Date

Exhibit 2

Employee Notifications and Remedy Election Forms

EMPLOYEE NOTIFICATION
(Group A)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a disciplinary action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct; and (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a Settlement Agreement resolving all matters associated with the above referenced award and as a result VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were removed from the position of [insert GS [occupational series]-[grade], [position title]]. You are eligible for relief, and must choose between the following:

1. **No Return to Duty.** I will not return to VA and opt to receive \$[insert 55% of gross monthly salary at time of removal X # months removed]. I agree not to apply to work at the VA for four (4) years; or
2. **Return to Duty.** I will return to work for VA and opt to receive \$[insert 35% of gross monthly salary at time of removal X # months removed].
3. **OPT OUT.** I choose not to participate in this settlement agreement and understand that neither VA nor AFGE make any representations concerning my right to pursue other action as a viable alternative to relief under this settlement.

If you choose option 1, VA will purge/rescind, as appropriate, the adverse action from your electronic Official Personnel File and replace the adverse action with a resignation.

If you choose option 2, VA will purge/rescind, as appropriate, the adverse action from your electronic Official Personnel File and return you to your same or similar position. Once you return to duty, VA may repropose the adverse action against you using an applicable legal authority.

If you choose option 3, the adverse action will remain in your electronic Official Personnel File. You will not receive any money from this settlement.

Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Options 1 or 2, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you elect to return to duty, you will be provided with the procedures for reporting to duty.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.

- Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
- You will now receive a verification email at the email address you used to enter your subscription.
- You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.

3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Onboarding

When pursuing the reinstatement option, be advised you must meet all position requirements, which may include but are not limited to drug testing, professional certifications, and suitability clearance.

Penalty if Reemployed After Selecting Option 1

If you elect the lump sum payment of **insert 55% payment amount**, you agree not to reapply for employment with VA for four (4) years from the date that you made your election.

If you are reemployed by VA within four (4) years of your election, you must return **insert 20% of payment amount** to VA. If you are reemployed by VA within four (4) years of your election, VA will pursue all means available to seek repayment using established debt collection procedures including garnishment of your wages.

Waiver

By choosing option 1 or 2, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pursuant to Section II(C)(1)(a)(1)(C) of the Settlement Agreement, certain Title 5 employees are required to waive health insurance coverage as of the date of their original removal.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

Insert CHRO Name

Insert VISN

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Remedy Election Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Insert EMPLOYEE NAME]
[Insert VA FACILITY NAME]

I elect to receive the following remedy: (check one and initial below)

1. **No Return to Duty: Receive a one-time lump sum payment of [insert 65% Gross monthly salary at time of removal X # months removed] without reinstatement.** This means you are choosing not to return to VA or your previous position/grade. You understand that you must provide documentation confirming that you have withdrawn any outside claims before receiving this remedy and will waive all related costs such as attorney fees associated with the outside claim.
2. **Return to Duty: Receive a one-time lump sum payment of [insert 35% gross monthly salary at time of removal X # months removed] with reinstatement.** This means you are choosing to return to your previous or similar position/grade at VA. You understand that you must provide documentation confirming that you have withdrawn any outside claims before receiving this remedy and will pay all related costs such as attorney fees associated with the outside claim.
3. **OPT OUT.** I choose not to participate in this settlement agreement and understand that neither VA nor AFGE make any representations concerning my right to pursue other action as a viable alternative to relief under this settlement.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1 or 2, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver. Pursuant to Section II(C)(1)(a)(1)(C) of the Settlement Agreement, certain Title 5 employees are required to waive health insurance coverage as of the date of their original removal.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

VA Letterhead

EMPLOYEE NOTIFICATION
(Grievous – T5)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a disciplinary action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were removed from the position of [Insert GS [occupational series]-[grade], [position title]]. Consistent with the Settlement Agreement, if you choose Option 1, you may be eligible for a lump sum payment in the amount of [Insert 20% of monthly gross pay at time of removal X # months removed]. Or if you choose Option 2, you may opt out and not receive the money under this settlement agreement.

In order to receive payment, you must consent to a criminal background check. Instructions for providing consent are below. If you have been convicted of a crime related to or arising from grievous misconduct that formed the basis of the Section 714 adverse action, you will not be eligible for any relief under this settlement agreement.

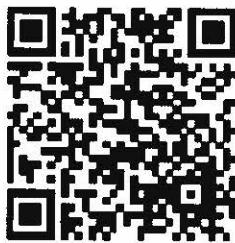
Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Option 1, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Penalty if Reemployed After Opting In

If you elect the lump sum payment of [insert 20% of monthly gross pay at time of removal X # months removed], you may not be reemployed with VA for four (4) years from the date that you made your election.

If you are reemployed by VA within four (4) years of your election, you must repay 100% of the total relief payment back to VA. If you are reemployed by VA within four (4) years of your election, VA will pursue all means available to seek repayment using established debt collection procedures including garnishment of your wages.

Consent to Criminal Background Check

In order to determine your eligibility to receive payment, you must consent to a criminal background check. Otherwise, you waive your right to the lump sum payment under the Settlement Agreement.

Once VA receives your consent, VA will conduct a criminal background check. If you have been convicted of a crime related to or arising from grievous misconduct that formed the basis of the Section 714 adverse action, you will not be eligible for any relief under this Settlement Agreement.

Waiver

By choosing to elect the lump sum payment of [insert 20% of monthly gross pay at time of removal X # months removed], you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

[insert CHRO Name]

[insert VISN]

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Response Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048.

Please note lump sum monthly payment amounts will stop accruing 90 days from the date of the signed Settlement Agreement. Please respond to this Employee Notification as soon as possible to obtain relief.

[Insert EMPLOYEE NAME]

[Insert VA FACILITY NAME]

I elect the following regarding consent to a criminal background check in order to receive payment: (check one and initial below)

- 1. OPT-IN: I DO elect to opt into the settlement agreement and DO consent to a criminal background check.** This means I am choosing to allow VA to conduct a criminal background check prior to issuing payment in the amount of [Insert 20% of monthly gross pay at time of removal X # months removed]. Should the criminal background check reveal any criminal convictions related to the misconduct for the action in question, I will be ineligible to receive payment.
- 2. OPT-OUT: I DO NOT elect to opt into the settlement agreement and DO NOT consent to a criminal background check.** This means I am choosing not to allow VA to conduct a criminal background check. In electing not to allow VA to conduct a criminal background check, I am ineligible for and waive my right to receive payment.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

- Yes
- No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

EMPLOYEE NOTIFICATION
(Grievous – HYBRID T38)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, *AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048*

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a disciplinary action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, *AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048*, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were removed from the position of [insert GS [occupational series]-[grade], [position title]]. Consistent with the Settlement Agreement, if you choose Option 1, you may be eligible for a lump sum payment in the amount of [insert 20% of monthly gross pay at time of removal X # months removed]. Consistent with the settlement agreement, VA will replace the removal SF-50 with a resignation in lieu of adverse action SF-50. Or, if you choose Option 2, you may opt out and not receive the money under this settlement agreement. Opting out also means that the removal SF-50 will remain in your record.

In order to receive payment, you must consent to a criminal background check. Instructions for providing consent are below. If you have been convicted of a crime related to or arising from grievous misconduct that formed the basis of the Section 714 adverse action, you will not be eligible for any relief under this settlement agreement.

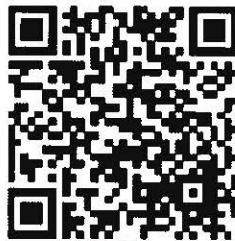
Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Option 1, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.

4. If you opt-in to receive money under the settlement, VA will contact you to complete the Vendorization Form process.
 - o You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Penalty if Reemployed After Opting In

If you elect the lump sum payment of **[insert 20% of monthly gross pay at time of removal X # months removed]**, you may not be reemployed with VA for four (4) years from the date that you made your election.

If you are reemployed by VA within four (4) years of your election, you must repay 100% of the total relief payment back to VA. If you are reemployed by VA within four (4) years of your election, VA will pursue all means available to seek repayment using established debt collection procedures including garnishment of your wages.

Consent to Criminal Background Check

In order to determine your eligibility to receive payment, you must consent to a criminal background check. Otherwise, you waive your right to the lump sum payment under the Settlement Agreement.

Once VA receives your consent, VA will conduct a criminal background check. If you have been convicted of a crime related to or arising from grievous misconduct that formed the basis of the Section 714 adverse action, you will not be eligible for any relief under this Settlement Agreement.

Waiver

By choosing to elect the lump sum payment of **[insert 20% of monthly gross pay at time of removal X # months removed]**, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to

continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

[Insert CHRO Name]
[Insert VISN]

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Response Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, *Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs*, FMCS Case No. 17-0921-55048.

[insert EMPLOYEE NAME]
[insert VA FACILITY NAME]

I elect the following regarding consent to a criminal background check in order to receive payment: (check one and initial below)

- 1. OPT-IN: I DO elect to opt into the settlement agreement and consent to a criminal background check.** This means I am choosing to allow VA to conduct a criminal background check prior to issuing payment in the amount of [insert 20% of monthly gross pay at time of removal X # months removed]. I am choosing for VA to replace my removal SF-50 with a resignation in lieu of adverse action SF-50, and I am choosing to not be reemployed to work for VA for four (4) years. Should the criminal background check reveal any criminal convictions related to the misconduct for the action in question, I will be ineligible to receive payment or any remedy.
- 2. OPT-OUT: I DO NOT elect to opt into the settlement agreement and do not consent to a criminal background check.** This means I am choosing not to allow VA to conduct a criminal background check and I am choosing for VA to not replace the removal SF-50 with a resignation in lieu of adverse action SF-50. In electing not to allow VA to do a criminal background check I am ineligible for and waive my right to receive payment.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

VA Letterhead

EMPLOYEE NOTIFICATION
(Group C – Suspensions)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a conduct-based action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result, VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were suspended from the position of [insert GS [occupational series]-[grade], [position title]]. You are eligible for a lump sum payment in the amount of [insert hourly rate at time of action x suspended hours x .75]. Consistent with the settlement agreement, if you choose Option 1, VA will delete the suspension SF-50s. VA may repropose the adverse action against you using an applicable legal authority. Or, if you choose Option 2, you may opt out and not receive the money under this settlement agreement.

Response Instructions & Remedy Election Form

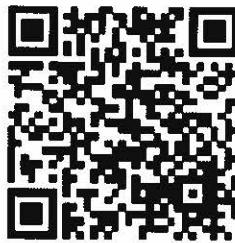
You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Option 1, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete

the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Waiver

By choosing option 1, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

Insert CHRO Name

Insert VISN

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Remedy Election Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, *Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048.*

[insert EMPLOYEE NAME]
[insert VA FACILITY NAME]

I elect to receive the following remedy: (check and initial below)

1. **OPT-IN:** I elect to receive [insert hourly rate of pay x suspended work hours x .75] and for VA to delete the suspension SF-50s.
2. **OPT-OUT:** I decline to receive [insert hourly rate of pay x suspended work hours x .75] and I decline for VA to delete the suspension SF-50s.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating

my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

EMPLOYEE NOTIFICATION
(Group D – Demotion)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, *AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs*, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a disciplinary action under the authority of 38 U.S.C. § 714.

As a result of the arbitration award issued by Hyman Cohen on March 11, 2021, *AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs*, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result, VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were demoted from the position of [insert GS [occupational series]-[grade], [position title]]. You are eligible for relief, and you must choose between the following:

1. **OPT-IN, Repromoted to Previous Position:** Repromoted to your previous or similar position of [insert GS [occupational series]-[grade], [position title]] as well as a lump sum payment of [insert monthly rate of pay in position demoted from x monthly rate of pay for position demoted to x .75]; or
2. **OPT-IN, Remain in Current Position:** Remain in your current position of [insert GS [occupational series]-[grade], [position title]] as well as a lump sum payment of [insert monthly rate of pay in position demoted from x monthly rate of pay for position demoted to x .75].
3. **OPT-OUT:** I choose not to participate in this settlement agreement and understand that neither VA nor AFGE make any representations concerning

my right to pursue other action as a viable alternative to relief under this settlement.

If you choose option 1, VA will purge the demotion action SF-50 from your electronic Official Personnel File and replace it with a voluntary change to lower grade SF-50. Then, you will receive a promotion SF-50 for the new position.

If you choose option 2, VA will purge the demotion action SF-50 from your electronic Official Personnel File and replace it with a voluntary change to a lower grade SF-50.

If you choose option 3, the adverse action will remain in your electronic Official Personnel File. You will not receive any money from this settlement.

Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Options 1 or 2, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

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1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.

2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

If you elect to be repromoted, you will be provided with the procedures for reporting to your position.

Onboarding

When pursuing the repromotion option, be advised you must meet all position requirements, which may include but are not limited to drug testing, professional certifications, and suitability clearance.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

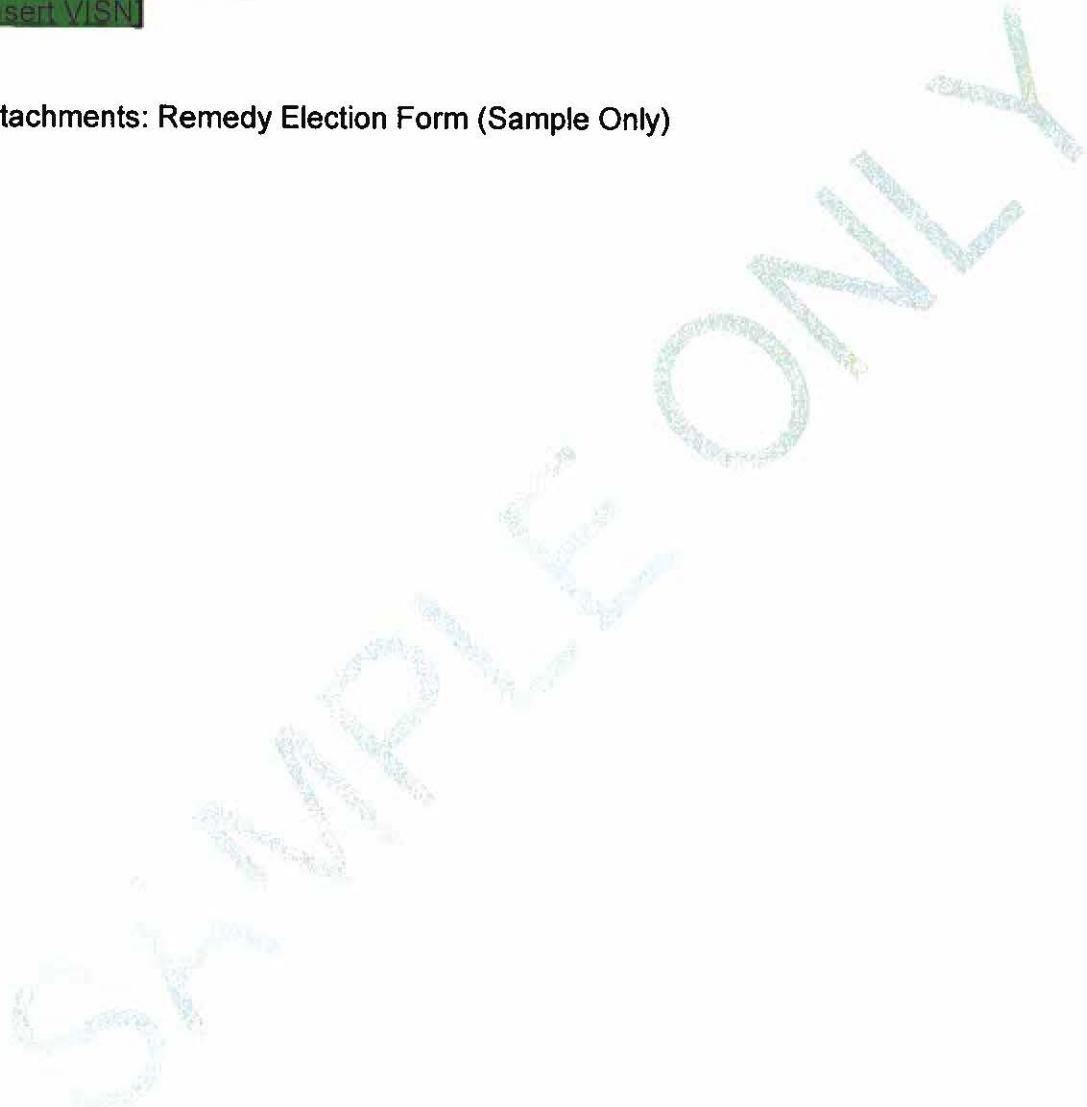
OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

[Insert CHRO Name]

[Insert VISN]

Attachments: Remedy Election Form (Sample Only)



REMEDY ELECTION FORM

As a reminder, this Remedy Election Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, *Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs*, FMCS Case No. 17-0921-55048.

[Insert EMPLOYEE NAME]
[Insert VA FACILITY NAME]

I elect to receive the following remedy: (check one and initial below)

1. **OPT-IN, Repromoted to Previous Position and receive lump sum of [insert monthly rate of pay in position demoted from - monthly rate of pay for position demoted to x .75 x # months removed].** This means you are choosing to return to your previous position/grade or similar at VA.
2. **OPT-IN, Remain in Current Position and receive lump sum of [insert monthly rate of pay in position demoted from - monthly rate of pay for position demoted to x .75 x # months removed].** This means you are choosing not to return to VA or your previous position/grade or similar. If you are still working within VA this means you will remain in your current position.
3. **OPT-OUT:** I choose not to participate in this settlement agreement and understand that neither VA nor AFGE make any representations concerning my right to pursue other action as a viable alternative to relief under this settlement.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1 or 2, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising

from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

VA Letterhead

EMPLOYEE NOTIFICATION
(Retirement/Resignation in lieu of and Disability Retirement)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who received a conduct-based action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result, VA conducted a review of all adverse actions. Upon review of your action, it was determined that you retired or resigned in lieu of effecting a removal decision from the position of [Insert GS [occupational series]-[grade], [position title]] or you applied for and received a disability retirement thereafter. If you choose Option 1, you are eligible for a lump sum payment in the amount of \$10,000. Consistent with the settlement agreement, VA will delete the adverse action SF-50 and replace with a resignation SF-50. Or, if you choose Option 2, you may opt out and not receive the money under this settlement agreement.

Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Option 1, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete

the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Waiver

By choosing Option 1, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

[Insert CHRO Name]
[Insert VSN]

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Response Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048.

[insert EMPLOYEE NAME]
[insert VA FACILITY NAME]

I elect the following: (check one and initial below)

1. **OPT-IN:** I elect to receive the lump sum payment of \$10,000.00 and for VA to delete my adverse action SF-50 and to replace it with a resignation SF-50.
2. **OPT-OUT:** I decline to receive the lump sum payment of \$10,000.00 and I decline for VA to delete my adverse action SF-50 and to replace it with a resignation SF-50.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature

arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

John

VA Letterhead

EMPLOYEE NOTIFICATION
(Last Chance Agreement)

[Date]

SUBJ: Compliance with Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who executed a Last Chance Agreement in lieu of receiving a disciplinary action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were removed for violating a Last Chance Agreement which you executed in lieu of receiving an adverse action under the authority of 38 U.S.C. § 714 from the position of [Insert GS [occupational series]-[grade], [position title]]. If you choose Option 1, you are eligible for a lump sum payment in the amount of \$20,000. Consistent with the settlement agreement, VA will delete the adverse action SF-50 and replace it with a resignation SF-50. Or, if you choose Option 2, you may opt out and not receive the money under this settlement agreement.

Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

If you choose Option 1, you must also complete the Vendorization Form process. Without this necessary information, your lump sum payment cannot be made. Failure to complete

the Vendorization Form process can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

The submission of the Remedy Election Form must be done electronically through DocuSign using these instructions:

Electronic submission through DocuSign is the sole method to submit the Remedy Election Form. If your election is untimely, you will not receive any relief under the terms of this settlement.



1. To start, visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **create a password-protected account** so that you will receive subsequent communication from VA by email.
 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
3. Once your subscription has been verified, you will receive an email from DocuSign with instructions for **completing the Remedy Election Form** electronically.
 - You must complete and submit the Remedy Election Form.
4. If you opt-in to receive money under the settlement, VA will contact you to **complete the Vendorization Form** process.
 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Waiver

By choosing Option 1, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

Insert CHRO Name

Insert VISN

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Response Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048.

[Insert EMPLOYEE NAME]
[Insert VA FACILITY NAME]

I elect the following: (check one and initial below)

1. **OPT-IN:** I elect to receive the lump sum payment of \$20,000.00 and for VA to delete my adverse action SF-50 and to replace it with a resignation SF-50.
2. **OPT-OUT:** I decline to receive the lump sum payment of \$20,000.00 and I decline for VA to delete my adverse action SF-50 and to replace it with a resignation SF-50.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature

arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

ONLINE

VA Letterhead

EMPLOYEE NOTIFICATION
(Individual Settlement)

[Date]

SUBJ: Compliance with Arbitration Award –Accountability and Whistleblower Protection Act, AFGE, *Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs*, FMCS Case No. 17-0921-55048

[Employee Name]

You have been identified as a current or former employee of the United States Department of Veterans Affairs (VA). Also, you have been identified as an American Federation of Government Employees (AFGE) bargaining unit employee who executed an individual settlement based on your disciplinary action under the authority of 38 U.S.C. § 714.

As a result of an arbitration award issued by Hyman Cohen on March 11, 2021, AFGE, *Nat'l Veterans Affairs Council #53, and Dep't of Veterans Affairs*, FMCS Case No. 17-0921-55048, VA was ordered to (1) to cease and desist from interfering with, restraining or coercing bargaining unit employees (BUEs) in the exercise of the rights assured them by law; (2) ordered to bargain on request with the Union with respect to all BUEs adversely affected by the Accountability Act which became effective on June 23, 2017; (3) based on the retroactive bargaining order, make whole any employee, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. And (4) post electronic notice signed by the Secretary which includes the terms of this award.

VA and AFGE have reached a settlement agreement resolving all matters associated with the above referenced award and as a result VA conducted a review of all adverse actions. Upon review of your action, it was determined that you were removed under the authority of 38 U.S.C. §714 from the position of [Insert GS [occupational series]-[grade], [position title]], which you appealed and settled. If you choose Option 1, you are eligible for a lump sum payment in the amount of \$5,000. Consistent with the settlement agreement and if not already agreed to pursuant to your settlement, VA will delete the adverse action SF-50 and replace with a resignation SF-50 and provide the one-time lump sum payment. Or, if you choose Option 2, you may opt out and not receive the money under this settlement agreement.

Response Instructions & Remedy Election Form

You must complete a Remedy Election Form as soon as possible to obtain relief. Failure to submit the Remedy Election Form in a timely manner can result in a delay of payment and/or waiver of your election to receive any money from this settlement.

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 - In order to create an account, you must click "Register Password."
 - Enter your email address and create a password. Click "Register Password".
 - You will now receive a verification email at the email address you used to register the account.
 - You must verify your account by clicking the link provided in the email. Now your account has been created.
2. Visit <https://www.listserv.va.gov/scripts/wa.exe?SUBED1=AFGECONTACT-L> or scan the QR code above to **register your subscription**. Login using the account you created.
 - Now enter your name in the text box and click "subscribe." Please ensure your name is your full legal first and last name. If your name has changed since your employment, please include your former name in parenthesis.
 - You will now receive a verification email at the email address you used to enter your subscription.
 - You must verify your subscription by clicking the link provided in the email. Now your subscription has been verified.
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 - You must complete and submit the Remedy Election Form.
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 - You must complete and submit the Vendorization Form process before you receive any money under the settlement.
5. You may be required to complete and submit additional forms unique to you before you receive any money under the settlement.

Waiver

By choosing Option 1, you agree to release and waive any right to file any complaint, claim, lawsuit, grievance, appeal or proceeding of whatever nature arising from the Department's use of 38 U.S.C. § 714 predating your election. You agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA.

Pending Appeals

In order to receive relief under this Settlement Agreement, you and your representative, if applicable, must waive your right to pursue any pending appeal, grievance, claim, or complaint ("Pending Appeal") filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714 (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court). If you are represented in any Pending Appeal, prior to signing the Remedy Election Form, please ensure that you consult with your representative because your election to be covered under this Agreement will constitute a waiver of your ability to continue to pursue any other Pending Appeal in another forum related to your adverse action pursuant to 38 U.S.C. § 714. By opting into this Agreement, you also agree VA can use your Remedy Election Form as evidence of your express authorization to dismiss any and all Pending Appeal(s) filed in another forum related to your adverse action pursuant to 38 U.S.C. § 714.

Eligible AFGE BUEs may not receive relief/payment under the terms of this Agreement if they successfully challenged a Section 714 decision in any forum and receive the same or greater relief in any other proceeding.

OPM and Retirement Advisement

If you are retired, neither VA nor AFGE make any representations as to whether this settlement will impact your retirement benefits. The Office of Personnel Management (OPM) will be notified of your election and settlement amount. You are advised to contact OPM and/or an attorney regarding any questions you may have regarding the impact of this settlement on your benefits.

Insert CHRO Name
Insert VISN

Attachments: Remedy Election Form (Sample Only)

REMEDY ELECTION FORM

As a reminder, this Remedy Election Form must be submitted electronically as soon as possible from the date of this Employee Notification concerning the Arbitration Award – Accountability and Whistleblower Protection Act, AFGE, Nat'l Veterans Affairs Council #53, and Department of Veterans Affairs, FMCS Case No. 17-0921-55048.

[Insert EMPLOYEE NAME]
[Insert VA FACILITY NAME]

I elect the following: (check one and initial below)

1. **OPT-IN:** I elect the lump sum payment of \$5,000.00 and for VA to delete the adverse action SF-50 and replace with a resignation SF-50 if not already processed.
2. **OPT-OUT:** I decline to receive the lump sum payment of \$5,000.00 and I decline for VA to delete the adverse action SF-50 and replace with a resignation SF-50.

Pending Appeals

Do you have a pending appeal related to your Section 714 action? (e.g., EEOC, MSPB, OSC, OAWP, union grievance, or federal court) Select one:

Yes
 No

Electronic submission through DocuSign is the sole method to submit your Remedy Election Form. If you fail to respond as soon as possible, you risk submitting an untimely election.

If you OPT IN to the Settlement future communication regarding your election and future steps to be taken will be sent via email.

For questions, you may contact the VA point-of-contact identified in this Employee Notification, and/or visit www.afge.org/VA714Settlement.

Waiver

If choosing option 1, I agree to release and waive any right to continue to pursue any complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I agree to release VA, its officials, employees, former officials or former employees, or their successors and assignees, including any and all claims against VA officials, employees, or former officials or employees, in both individual and official capacities, in any state or Federal court, or before any administrative body, tribunal, board, or commission against VA. By opting into this Agreement, I hereby agree VA can use my Remedy Election Form as evidence of my express authorization to dismiss any

pending complaint, claim, lawsuit, grievance, appeal, or proceeding of whatever nature arising from my adverse action by the Department pursuant to 38 U.S.C. § 714 predating my election. I affirm that I have read this entire Agreement, that I have had an opportunity to consult with an attorney or other representatives, that I have not been induced to enter into this Agreement by any promises or representations other than those expressly stated in this Agreement, that I understand all terms of this Waiver, and that I have not been coerced into signing this Waiver.

YOUR SIGNATURE

DATE

YOUR PHONE NUMBER

811-333-1111