



## DEPARTMENT OF HEALTH & HUMAN SERVICES

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### PURPOSE

- (1) This Instruction supersedes Department of Health and Human Services (Department or HHS) Instruction 711 (Labor-Management Relations) and all previous Department instructions on labor relations and is effective as of November 8, 2024.

### MATERIAL CHANGES

- (1) This document reflects a re-write of the 711-instruction issued on May 1, 2019. This document describes the management's legal responsibilities under 5 U.S.C. Chapter 71.
- (2) This document accounts for the responsibilities of the National Labor and Employee Relations Office (NLERO) in labor relations matters.
- (3) This document supports a *OneHHS* approach to labor relations by promoting a final review of various issues by NLERO to ensure consistency across the Department.

### EFFECT ON OTHER DOCUMENTS

This HHS Instruction 711 supersedes HHS Instruction 711, Labor Relations Instruction, dated May 1, 2019.

### AUDIENCE

All Operating Divisions and Staff Divisions.

### EFFECTIVE DATE

November 8, 2024

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HUMAN RESOURCE MANUAL  
Instruction 711: Labor Relations Instruction

DATE OF ISSUANCE: November 8, 2024

Updated:  
HHS INSTRUCTION 711 - Labor Relations

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## 711-00 – Background

This Instruction supersedes Department of Health and Human Services (Department or HHS) Instruction 711 (Labor-Management Relations) and all previous Departmental instruction on labor relations and is effective as of November 8, 2024.

## 711-10 – Purpose

This Instruction provides labor relations guidance for the Department of Health and Human Services and applies to all Operating and Staffing Divisions (OpDiv/StaffDiv). The purpose of this instruction is to facilitate the *OneHHS* goal of a cohesive approach to managing our labor relations functions through the coordination of consistent operational practices. It further protects and advocates for the Department's rights and interest and promotes the efficiency and effectiveness of Agency operations.

This Instruction is consistent with the statutory framework of Title VII of the Civil Service Reform Act of 1978, which established a legal right for Federal employees to organize and bargain collectively with management through labor organizations of their own choosing over conditions of employment. The legislation is premised on the recognition that establishment of this employee right safeguards the public interest, contributes to the effective conduct of public business, and facilitates amicable settlement of disputes over conditions of employment.

HHS can better accomplish its mission of serving the American public if management collectively plans and carries out its labor relations activities with the same sense of direction, conviction, and purpose as its mission. This will enable managers to realize the maximum benefits afforded to the public interest through a constructive and productive relationship with its workforce and its bargaining unit representatives.

This Instruction should be used in conjunction with the Labor and Employee Relations Handbook.

## 711-20 – Coverage and Exclusions

This instruction applies to all employees, managers, and supervisors of the Department of Health and Human Services, including the Staff and Operating Divisions, as well as to any representatives, or contractors engaged in labor relations activities on behalf of the Department and Staff/Operating Divisions.

This instruction applies to bargaining unit employee/labor relations matters. Instruction 711 advises managers and the Labor Relations staff by delineating responsibilities, establishing procedures for daily labor relations business, and providing channels of communication among managers and staff at all levels of the organization.

## 711-30 – Authority

- [Chapter 71 of Title 5, United States Code: The Federal Service Labor Management Relations Statute \(FSLMRS or the Statute\)](#)
- Department of Health and Human Services Delegations of Authority
- Policy Statement dated May 1, 2019
- Labor & Employee Relations Handbook dated May 1, 2019
- [Title VII of the Civil Service Reform Act of 1978](#)

## 711-40 – Definitions

**Agency Head Review (AHR).** The statutory requirement that all negotiated agreements (term agreement, Memorandum of Understanding, etc.) be reviewed for legal sufficiency by the head of the agency or designee in accordance with 5 U.S.C. §7114(c)(1). The Assistant Secretary of Administration (ASA) has delegated this authority to NLERO. OpDivs/StaffDivs must submit their negotiated labor agreements to NLERO for AHR.

**Bargaining Unit.** A group of employees that a labor organization represents or seeks to represent and that is found to be appropriate under the criteria of the Federal Service Labor-Management Relations Statute (FSLMRS) (community of interest, effective dealings, efficiency of operations) for collective bargaining purposes. Certain types of employees cannot be included in units, such as management officials and supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security, and employees engaged in administering the provisions of the FSLMRS.

**Bargaining Unit Status Code.** Every civilian position is assigned a Bargaining Unit Status (BUS) code. BUS codes are 4-digit numbers used to identify which Bargaining Unit a position belongs to, if any. A BUS code can be found on an employee SF-50 Notice of Personnel Action in box 37. Note: it is important to remember that a position is assigned a BUS code, not an employee. When an employee leaves the position, the BUS code remains with that position. If an employee takes a position in another unit, the new position may have a different BUS code which will be reflected on the new SF-50.

**Bypass.** When an Agency through its management or a representative of management changes or deals directly with bargaining unit employees regarding matters related to conditions of employment without notifying/inviting the appropriate union official, who is the exclusive representative of the employees, to participate. NOTE: Instances of bypass often result in an Unfair Labor Practice charge being filed against the agency.

**Collective Bargaining Agreement (CBA).** The written negotiated agreement (referred to as a contract, national agreement, or master labor agreement) establishing the terms and conditions of employment governing the relationship between agency management and a labor organization (exclusive representative).

**Dues Withholding.** Authority for withholding Union membership dues from an employee's pay derives from 5 U.S.C. 7115, which applies only in the circumstance where a labor organization holds exclusive recognition status. Thus, if management has received a written assignment from a bargaining unit employee which authorizes the deduction from the employee's pay of regular and periodic membership dues, payable to a union, then management must honor the assignment at no cost to the employee or the Union. Methods for implementing this statutory requirement are traditionally negotiated and are contained in the organization's CBA.

**Exclusive Recognition.** When a labor organization (union) has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election held by the Federal Labor Relations Authority. Once a union has been authorized with exclusive recognition of an appropriate unit, it becomes the exclusive representative of employees in that unit.

**Federal Service Labor-Management Relations Statute (FSLMRS or Statute).** The law (Chapter 71 of Title 5, United States Code) that provides the basis for the Federal labor relations program and establishes rights and obligations for management, unions, and employees.

**Federal Labor Relations Authority (FLRA or Authority).** The independent administrative federal agency created in 1978 by Title VII of the Civil Service Reform Act of 1978, also known as the Federal Service Labor-

Management Relations Statute (the [Statute](#)), 5 U.S.C. §§ 7101-7135 and is responsible for administering the Statute. The FLRA exercises statutorily independent prosecutorial and adjudicative responsibilities. Composed of three members appointed by the President and confirmed by the Senate, who may be removed only upon notice and hearing for cause, the FLRA carries out several key functions, such as:

- Resolving complaints of unfair labor practices (ULP);
- Determining the appropriateness of units for Labor organization representation;
- Adjudicating exceptions to arbitration awards; and
- Adjudicating legal issues relating to duty to bargain.

**Federal Mediation and Conciliation Services (FMCS)**. The independent administrative agency established in 1947 whose mission is to preserve and promote labor-management peace and cooperation. FMCS is the statutory mediation function in the federal sector and relies on mediation and persuasion technics to perform its role.

**Federal Service Impasses Panel (FSIP)**. The independent administrative agency responsible for resolving impasses between Federal agencies and unions representing federal employees arising from negotiations under the FSLMRS and the [Federal Employees Flexible and Compressed Work Schedules Act](#). The [Panel comprises ten Presidential appointees](#) who serve on a part-time basis, one of whom serves as the Chair.

**The General Counsel (GC) of the Federal Labor Relations Authority**. The FLRA is responsible for investigating allegations that an agency or a labor organization has committed an unfair labor practice (ULP), as defined at 5 U.S.C. 7116(a) or (b). After its investigation, the GC may serve a written complaint on the agency or labor organization and prosecute the complaint before the Authority.

**Human Resources Center**. Servicing Human Resources Center that provides support on behalf of HHS OpDivs or StaffDivs.

**Labor Organization**. An organization composed in whole or in part of employees, in which employees participate and pay dues, and which has the purpose of dealing with an agency concerning grievances and conditions of employment, except for organizations specifically excepted in 5 U.S.C. 7103(a)(4)(A)-(D).

**Labor Relations Specialist**. An agency Human Resources employee (who encumbers a GS-0201 position in Human Resources Management series), who advises management officials on collective bargaining agreements, the Federal Service Labor-Management Relations Statute, negotiations, arbitrations, and other things related to labor relations. Labor relations specialists are the advisors to management on collective bargaining agreement interpretations, bargaining strategy, grievance resolution, responses to charges of unfair labor practices, §7114(b)(4) requests for information, and Weingarten meetings.

**Management/ Program Analysts**. For those divisions (i.e., ACF, SAMHSA, and ASPR), who do not have Labor Relations Specialists, 201 series (as defined above), an agency employee (e.g., who encumbers a GS-0301/GS-0343 position etc.) who is assigned work by the office with HHS labor relations delegated authority to advise management officials on collective bargaining agreements, the Federal Service Labor-Management Relations Statute, negotiations, arbitrations, and other things related to labor relations. With the exception of the OPDIVs listed here, labor relations specialists are the only advisors to management on collective bargaining agreement interpretations, bargaining strategy, grievance resolution, responses to charges of unfair labor practices, §7114(b)(4) requests for information, and Weingarten meetings.

**Managers**. An agency employee who encumbers a management position (PD with an ‘S’), and is given the authority to hire, assign, direct, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or

remove employees, and to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. Managers must adhere to the collective bargaining agreement as well as the Federal Service Labor-Management Relations Statute.

**Union Representative or Union Steward.** An agency employee or a non-agency employee (e.g., former employee) who is authorized as the exclusive representative to represent bargaining unit employees in matters related to working conditions, grievances, arbitrations, negotiations, etc.

**Supervisor.** An agency employee who encumbers a supervisor position (position description with an ‘S’), and is given the authority to hire, assign, direct, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, and to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. Supervisors must adhere to the collective bargaining agreement as well as the Federal Service Labor-Management Relations Statute.

**Official Time.** Authorized time to union representatives, granted under 5 USC § 7131, for appropriate union activities. Per OPM requirements, HHS is required to track this time.

**Unfair Labor Practice (ULP).** A violation of a provision(s) of the Statute as defined under 5 U.S.C. Section 7116. It is a ULP for the agency to:

- interfere with, restrain, or coerce any employee in the exercise by the employee of any right under Chapter 71, 5 U.S.C.;
- encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
- to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under Chapter 71, 5 U.S.C.;
- to refuse to consult or negotiate in good faith with a labor organization as required by Chapter 71, 5 U.S.C.;
- to fail or refuse to cooperate in impasse procedures and impasse decisions as required by Chapter 71, 5 U.S.C.;
- to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of Title 5) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- to otherwise fail or refuse to comply with any provision of Chapter 71, 5 U.S.C.

## **711-50 – Responsibilities**

### **Assistant Secretary for Administration (ASA):**

The ASA is responsible for:

- Establishing all HHS policy and instructions related to the labor relations (LR) programs in the OpDivs/StaffDivs.
- Ensures compliance among all Human Resources (HR) Centers and HHS employees who perform Labor Relations duties on behalf of management.
- Delegated authority of oversight and implementing guidance related to the department’s labor relations strategy to NLERO, in accordance with HHS Human Resources (HR) Delegations.

### **National Labor and Employee Relations Office (NLERO):**

NLERO is responsible for:

- Provides oversight, advice, and guidance for OpDivs/StaffDivs on labor relations issues to ensure consistency and to facilitate a *One HHS*, uniform approach to management of HHS's labor functions (instruction, program management, and compliance) to ensure all parties are in compliance with the Statute.
- NLERO provides strategic, technical advice and consulting services in Labor Relations (LR) areas to HHS leadership and senior labor and employee practitioners from each servicing organization.
- Develops and distributes labor relations guidance and training materials Department-wide for managers and LR/ER Specialists.
- Establishes open lines of communication with HR Centers, LR specialists, and Management/Program Analysts through training, guidance, and regular meetings to ensure compliance with this Instruction and all other program guidance, the collective bargaining agreements, the Statute, and will provide feedback, as appropriate.
- Creates and maintains a LR training curriculum for LR specialists and Management/Program Analysts. To the extent possible, the LR Training Curriculum will include free trainings from NLERO, FLRA, OPM, and FMCS. The LR Training Curriculum will be included in the LER Handbook. LR Specialists and Management/Program Analysts will be required to complete curriculum within a year of implementation and stay up-to-date with new training opportunities.

NLERO is required to:

- Provide strategic, technical advice and consulting services in Labor and Employee Relations (LER) areas to:
  - HHS leadership,
  - Senior labor and employee practitioners from each OpDiv/StaffDiv
- Establish open lines of communication with HR Centers, LR specialists, and Management/Program Analysts through:
  - LR trainings, LR guidance, and hosting regular LR Core Team meetings;
- NLERO will provide final review and oversight over all OpDiv/StaffDiv:
  - Unfair Labor Practices (ULP) responses, and
  - Agency Head Review for all negotiated labor agreements
- Provide feedback as appropriate.

### **Human Resources (HR) Directors:**

HR Directors are responsible for:

- Ensures OpDiv/StaffDiv compliance with this Instruction;
- Advice to customers is in accordance with this instruction, Departmental guidance, and in the spirit of the *One HHS* initiative;
- Ensures that LER Specialists and supervisors are properly trained on the *One HHS* initiative;
- Ensures that LER specialists maintain an open line of communication with LER Core Team members and NLERO; and
- Takes appropriate action to ensure compliance.

### **Labor Unions:**

Collectively HHS has numerous unions across its divisions—some with national and others with local recognition.

- As the exclusive representative for their certified, eligible bargaining unit employees, each union is entitled to act on their employees' behalf in negotiations with management on the conditions of their employment.
- The union is also entitled as the exclusive representative to be represented in formal discussions conducted by management with employees concerning grievances, personnel policies or practices, or other general conditions of employment, as well as at certain interviews of unit employees by management representatives in connection with an investigation.
- Within their certified bargaining unit, each union represents all employees who occupy positions within the bargaining unit, including those who are not dues paying members of the Union.

### **Labor Relations Specialists and Management/Program Analysts:**

LR Representatives are responsible to:

- Review, research, and ensure compliance with this Instruction, appropriate collective bargaining agreement(s), other Department policies;
- Ensure awareness of up-to-date federal labor relations related case law (e.g., cyberFEDS);
- Ensure written communications (e.g., notices, etc.) are used appropriately;
- Advise customers in accordance with these policies, and brings concerns to the attention of NLERO; and
- Compliance with all training requirements and utilizes appropriate tracking system for records management (e.g., Official Time Tracking System (OTTS)).

LR Representatives also serve as management's technical advisors during the litigation (e.g., grievance or unfair labor practice) process. As subject matter experts on labor relations laws, rules, and regulations, the primary role is to advise and assist managers in taking appropriate actions to resolve litigation. This role includes:

- Maintaining the official litigation case file;
- Providing guidance and assistance to managers to prepare for all litigation meetings;
- If requested by management, attending litigation meetings,
- Preparing an Executive Summary for the Executive;
- Assisting in the preparation or review of management's written responses to grievances;
- Drafting some litigation responses (e.g., grievances decision, and ULP position papers); and
- Advising management on implementing appropriate actions to settle/resolve litigation.

The best use of human resources requires not only a full understanding of internal management policies, systems, and processes, but also acceptance of the Unions' institutional role and the determination to manage skillfully in bilateral affairs. It should be noted that the Labor Relations role is advisory; management retains the authority to take any action to settle or resolve litigation.

### **Managers/Supervisors:**

Managers and supervisors of bargaining unit employees are responsible for:

- Informing their LR servicing office of any labor issues;
- Complying with their respective CBA, the Statute, this Instructional, and any HHS policy;
- Making decisions (which are binding on the Agency) on grievances filed by employees or the union(s) per the delegations of authority/CBA;
- Timely approving and denying requests for official time;
- Ensuring requests for official time are approved or denied in accordance with the Statute and the relevant CBA;
- Ensuring that requests for official time are submitted in the appropriate tracking system; and
- Complying with the rights of both employees and their exclusive representatives.



## **711-60 – Statutory Rights**

In support of the efficient and effective operation of the HHS mission, it is the Department's instruction that all employees who perform Labor Relations duties are familiar with and follow 5 U.S.C. Chapter 71. Below are some of the General Provisions and Rights/Duties of Agencies and Labor Organizations found in the Statute:

### **Employee Rights:**

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

- To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

### **Management Rights:**

- To determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- In accordance with applicable laws -
  - to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
  - to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
  - with respect to filling positions, to make selections for appointments from
    - among properly ranked and certified candidates for promotion; or
    - any other appropriate source; and
  - to take whatever actions may be necessary to carry out the agency mission during emergencies.

### **Representation rights and duties:**

- An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—
  - any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
  - any examination of an employee in the unit by a representative of the agency in connection with an investigation if—
    - the employee reasonably believes that the examination may result in disciplinary action against the employee; and
    - the employee requests representation.

## **711-70 – Labor Relations Instruction**

**General:** This instruction outlines procedures, delineates responsibilities, and provides a collaborative approach for any employee performing Labor and Employee Relations duties, NLERO, and management to handle all labor relations issues to maintain the integrity of the Department's labor relations program. It further protects and advocates for the Department's rights and interests and promotes the efficiency and

effectiveness of Agency operations and Agency mission.

**Unfair Labor Practice (ULP):** It is the Department's instruction that all OpDivs/StaffDivs who perform labor relations duties:

- Inform NLERO if any ULP has been filed, provide NLERO with a copy of the ULP, timely respond to unfair labor practices, and to have responses reviewed by NLERO.

Careful attention must be paid to ULP charges filed against management, not simply because remedial action may be ordered if the charge is substantiated, but because public and managerial interests require it. During the processing of the charge or complaint, opportunities may arise for settling the case acceptably without the unnecessary expenditure of additional resources. Moreover, the potential for these cases to set unexpected precedent should be carefully evaluated. Finally, management has as strong interest in correcting its inappropriate practices as it does in defending and maintaining practices that are lawful and appropriate.

Note: in some CBAs, the parties can also file a ULP within a grievance charge. LR specialists must process ULPs consistent with their respective CBA.

Additional management guidance on ULP's can be found in the LER Handbook

**Meetings:** Management officials and employees who perform labor relations duties must recognize the rights of bargaining unit employees and their exclusive representatives when it comes to meetings as defined by the Statute. Specifically, an exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

- Any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or
- Any examination of an employee in the unit by a representative of the agency in connection with an investigation if—
  - the employee reasonably believes that the examination may result in disciplinary action against the employee; and
  - the employee requests representation.

**Weingarten Rights (Meetings):** Weingarten rights are available when the Employer conducts an interview of an employee in a matter or investigation where the employee is a potential recipient of any discipline that may lead up to and include removal from federal service. Weingarten rights are individual rights that employees represented by a bargaining unit may exercise. This right is an individual right that must be exercised by the employee during the course of that meeting under the custodial threat of discipline. When appropriately requested, management must reasonably delay the meeting for the employee to obtain union representation.

Additional management guidance can be found in the LER Handbook.

**Negotiations:** Management has the right to decide whether to take actions listed in [5 USC 7106\(a\)](#). However, unions are entitled, under succeeding Sections 7106(b)(2) and (3), to negotiate with the agency the procedures that the agency will observe in exercising its authority under 7106(a), or to negotiate appropriate arrangements for bargaining unit employees adversely affected by such management decisions. It is the Department's instruction that all employees who perform labor relations duties:

- Provide the Union(s) with proper notice consistent with the relevant collective bargaining agreement and 5 U.S.C. Chapter 71;
- Keep NLERO informed of any negotiability disputes and/or impasses; and

- Submit all negotiated agreements to NLERO for agency head review.

Note: Failure to comply with a union's statutory right to bargain may lead to an unfair labor practice, which can result in a third-party ordering a status quo ante remedy, including monetary damages.

Additional management guidance can be found in the LER Handbook.

**Information Requests Under Section 5 U.S.C. Section 7114(b)(4):** It is the Department's instruction that all management officials, and non-bargaining unit employees who perform labor relations duties, adhere to the Statute and the appropriate collective bargaining agreement(s) when it comes to information requests under 5 U.S.C. Section 7114(b)(4).

**§7131 Official Time:** The President, and the Congress, may order reports on the use of official time used by union representatives pursuant to provisions negotiated in CBAs pursuant to Section 7131 of Title 5, U.S.C. All official time must be requested, approved, tracked, and recorded in accordance with the Statute, and the relevant collective bargaining agreements. HHS OpDiv/StaffDivs will respond to reports in accordance with guidance published by NLERO.

The certification of time and attendance, including official time for union representatives, is an authorization for the expenditure of Government funds. Accordingly, supervisors are responsible for the timely and accurate preparation, certification, and submission of time and attendance records for all employees, including those employees designated as union representatives.

Official time must be requested through the appropriate tracking system and must be submitted to NLERO on a reoccurring basis for compliance reviews and for reporting to required organizations outside of HHS.

**Third-Party Appeals:** With regard to third-party appeals, LER Core Team members must provide the NLERO, no later than two (2) business days after receipt, any:

- Arbitration invoked by the union if it is not automatically filed directly with NLERO, including all supporting documentation from the grievance;
- MSPB appeal filed by an employee if it is not automatically filed directly with NLERO;
- Representation case filed by the union or prior to filing a representation case with the NLERO;
- Unfair Labor Practice (ULP) filed by the union or prior to filing a case with the NLERO; or
- Federal Service Impasses Panel decisions.

The LER Core Team member must provide all supporting documentation on the matter to NLERO.

**Voluntary Bi-lateral Settlements:** NLERO will conduct Agency Head Review (AHR) of all settlement agreements (excluded from NLERO AHR are bilateral agreements stemming from the EEO process and MSPB). Servicing labor and employee relations staff and Management/Program Analysts should send all settlement agreements to NLERO to conduct this review after an agreement is reached. NLERO is also available to assist during settlement discussions with any questions or concerns. Settlement agreements must:

- Comply with established Delegations of Authority, departmental policy, Federal law, rule and regulation, and relevant Executive Orders;
- Be in the best interest of the Department and the Federal Government; and
- Not interfere, modify, or impact organizations, HHS or its appropriate CBA.

**711-80 – Effective Date**

This instruction is effective immediately.