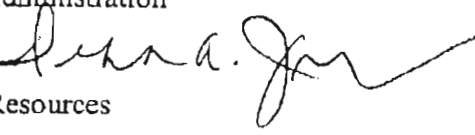




**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

JUN 18 2007

MEMORANDUM FOR Ronald Glaser  
Human Resources Officer  
International Trade Administration

FROM: Deborah A. Jefferson   
Director for Human Resources  
Management

SUBJECT: Memorandum of Understanding between the U.S. Foreign  
and Commercial Service and the American Foreign Service  
Association

In accordance with Department Administrative Order 202-711, we have examined the subject document for legal form and effect. Specifically, the subject Memorandum of Understanding (MOU) was executed by representatives on May 10, 2007, and is an agreement allowing for changes to the U.S. Foreign and Commercial Service (US&FCS) Time-In-Class policy. This MOU affects US&FCS Officers, particularly Class One Officers, who are serving Time-In-Class and are elected to serve in office as the American Foreign Service Association (AFSA) Vice President or Principal Representative.

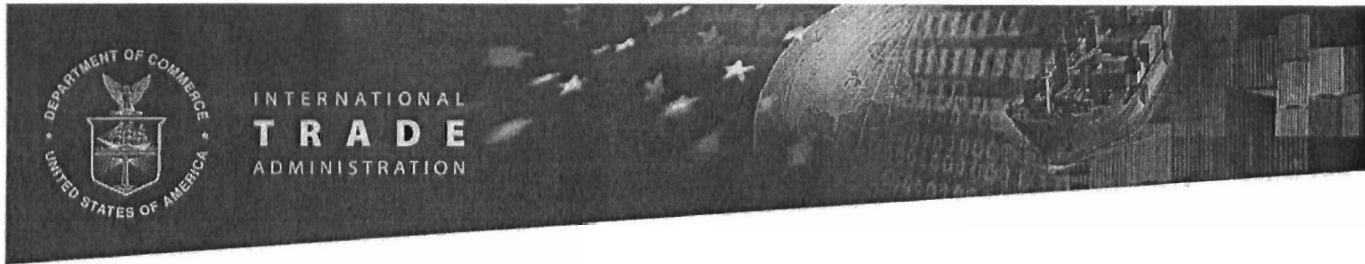
We are concerned regarding the MOU infringing upon management's right to retain employees under 22 U.S.C. § 4105(a)(2) because it requires the Agency to change its Time-In-Class policy, which affects employee retention. However, due to US&FCS management's determination that this MOU will further its ability to retain employees, the MOU is determined to be permissible. During future negotiations, please be cognizant of management's rights in accordance with 22 U.S.C. § 4105(a) and retaining US&FCS's discretion over these rights.

Our review of the attached MOU complies with 22 U.S.C. § 4113(f). After careful review, it is our position that the MOU is in accordance with 22 U.S.C. Chapter 52, and it is found to be consistent with applicable law, rule, and regulation.

Should you have any questions, please contact Stacy J. Chalmers in the Office of Policy and Programs at (202) 482-3321 or via email at [schalmers@doc.gov](mailto:schalmers@doc.gov).

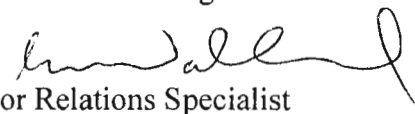
Attachment

cc: Maxine Woodland  
Employee and Labor Relations Specialist



May 14, 2007

**MEMORANDUM FOR:** Felicia Purifoy, Director  
Office of Compensation, Innovation and Work-Life Policy  
Office of Human Resources Management

**FROM:** Maxine Woodland   
Employee and Labor Relations Specialist  
OHRM/ITA

**SUBJECT:** Agency Head Review of Collective Bargaining Agreements Between AFSA and USFCS

Pursuant to DAO 202-771, we hereby request Agency Head Review of the attached Memoranda of Understanding between AFSC and US&FCS dated May 11, 2007. Responses to this request should be returned with any comments to Nancy Kripner, Human Resources Manager, OFSHR, and to myself.

We look forward to your concurrence on the attached within the thirty-day period prescribed by the DAO.

Thank you for your attention to this matter.

cc: Israel Hernandez, Director General, US&FCS  
Ronald Glaser, Human Resources Officer, OHRM/ITA  
Daniel Harris, DAS for International Operations, US&FCS  
Nancy Kripner, Director for Human Resources, US&FCS

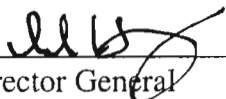
**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE U.S. DEPARTMENT OF COMMERCE,  
UNITED STATES FOREIGN & COMMERCIAL SERVICE [USFCS]  
AND  
THE AMERICAN FOREIGN SERVICE ASSOCIATION [AFSA]**

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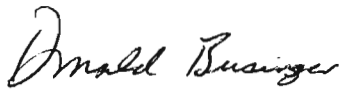
The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, herein after referred to as FCS, enter into this agreement for the purpose of amending and clarifying the Collective Bargaining Agreement for the Time-in-Class (TIC) provisions for the AFSA Vice President and AFSA Representative and for amending and clarifying the Time-in-Class Policy (Subchapter 700-1 of the Foreign Service Personnel Management Manual) concerning TIC exceptions for Officers in general but especially for FS-1 Officers.

1. This memorandum is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. Policies and amended language to the collective bargaining agreement (CBA) will govern the procedures and guidance on Time In Class.
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.
4. For the 2007 Selection Board, the current AFSA Vice President will not be subject to Article VII, Section 3b, which requires the AFSA Vice President to either leave his window open and forego time-in-class extension or close his window prior to the convening of the Selection Board. Because of the discrepancies that previously existed between the TIC policy and the CBA, if the current VP is not promoted by the 2007 Selection Board, he will receive a second year of time-in-class, for the two years he will have served as VP, ending on July 14, 2007.

5. This policy is effective upon receipt of agency head review or 30 days from the date signed, whichever is sooner. Both parties understand and agree that these changes will not affect any TIC calculations/notices prior to signature (i.e., officers whose TIC dates were in 2006) but will be applied for any TIC dates in 2007 after the date of signature.

  
\_\_\_\_\_  
Director General  
U.S. and Foreign Commercial Service

5/10/07  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Vice President  
AFSA

5-10-07  
\_\_\_\_\_  
Date

Article VII (Union Representation and Official Time)

**Section 3. Time-in-Class (TIC) Extensions/Selection Boards <sup>1</sup>**

The AFSA Vice President and Principal Representative may have their Time In Class/Time in Service (TIC/TIS) extended for the initial two years they hold these offices (or during no more than one additional year immediately following the initial two years) under the following conditions:

a. For all officers (except Class one officers who have opened their senior threshold window):

The AFSA US&FCS Vice President and Representative will have reviews conducted by Selection Boards and extension of time-in-class at the conclusion of the Selection Board as provided below:

- 1.) Review by selection board for promotion and awards provided the officer has served more than six (6) months during the last performance cycle under review in an AFSA position and received an evaluation for his/her non-AFSA service; and
- 2.) The officer was not promoted based on service during that evaluation period.
- 3.) In no case will an officer be granted an extension for more than three (3) years for any and all periods of time the employee holds the office(s) of AFSA VP and/or Representative.

b. For Class One officers who have opened their senior threshold window:

- 1.) The officer has the option of temporarily closing his/her window while holding the AFSA VP or Representative position. While the officer's window is closed, the officer's file will not be ranked for promotion purposes but documentation for the latest appraisal cycle will be reviewed for performance pay (award) and, if applicable, pay for performance purposes.
  - a) Prior to the convening of the first selection board that will review service while in the AFSA position, the AFSA VP and Representative may request that his/her window be closed until

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<sup>1</sup> For the purposes of extensions of the TIC or TIS, it shall be presumed that the extensions shall be applied to cover extensions of all Time In Class limits - single class (TIC), the Time In Service (TIS) limit and for FS-01's who have opened their window, ten (10) Selection Board reviews (see sections 4 and 5 of the overall policy), so that all are extended at the same time as applicable for any of the exceptions in Section 8.

the completion of his/her AFSA assignment, but for no more than 3 board reviews.

- b) The AFSA VP's and Representative's windows will be re-opened for the first selection board that reviews the officer's file that contains no evaluations for the non-AFSA responsibilities (either no longer AFSA VP or Representative or service period does not require appraisal documentation) or after 3 board reviews have passed, whichever is sooner.
- c) Although the number of Selection Board reviews will not increase to more than ten, the officer's time-in-class date will be extended by the number of Board reviews that occurred while the officer's window was closed, not to exceed three years (one Board review equals one year TIC extension).

2.) If the AFSA VP or Representative does not choose to close his/her senior threshold window, he/she will not receive any time-in-class extension for service while serving in an AFSA position.

c. For Class 01 officers who have not opened their senior threshold window at the start of their AFSA assignment:

- 1) If the officer chooses to open his/her window during their period of service as AFSA Vice President or Representative, s/he will not have the opportunity to then close it.

## **Policy Document Changes: Subchapter 700-1, Mandatory Retirement for Expiration of Time-in-Class**

### **Section 7. Exceptions for Certain FS-01 Officers.**

Officers in class FS-01 who request in writing consideration for promotion into the Senior Foreign Service will have a TIC<sup>2</sup> limit that is the shorter of:

- a) The Officer's current Time In Service (TIS) date;
- b) The Officer's current single class Time in Class (TIC) date; or
- c) Ten (10) Selection Board reviews.

**When TIS or TIC is extended under Section 8 a-k, below, the 10-Selection Board reviews TIC limit referred to in Section 7c also will be extended by the same amount of time.**

### Section 8. Covered Service.

The calculation of an employee's TIC shall include all periods of service in class except:

- a. Periods of separation from the Service.
- b. Periods of leave without pay in excess of three months.
- c. Periods during which a member has been assigned to an international agency with reemployment rights.
- d. Periods of sabbatical leave.
- e. Periods for which a Selection Board has non-rated a member on grounds of insufficient performance data.
- f. Periods of long-term training. For TIC/TIS purposes, long-term training means training that was approved in advance for a period of more than 6 months.
- g. Periods in which the Director, Office of Foreign Service Human Resources determines should not be counted for TIC/TIS to correct denial of opportunity for promotion consideration resulting from inadequate or incorrect performance data or administrative error.
- h. Periods of service on a limited appointment (either career candidate or non career).

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<sup>2</sup> For all references to Time in Class it shall be presumed that this applies also to Time In Service (TIS).

i. Periods which are non-rated by the direction of the Foreign Service Grievance Board, the Merit Systems Protection Board, or any other authorized board or commission, or a court.

j. Periods when an officer is called to active military service (does not apply to training duty for active reservists).

**k. Periods for which the Vice President or Representative of the American Foreign Service Association receives a TIC/TIS extension under the AFSA/FCS Collective Bargaining Agreement (Article VII, Section 3).**

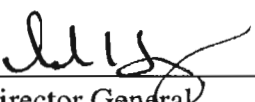
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**MEMORANDUM OF UNDERSTANDING  
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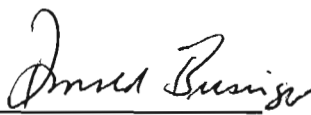
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The parties to this memorandum, the American Foreign Service Association, herein after referred to as AFSA, and the U.S. Department of Commerce's Foreign Commercial Service, herein referred to as FCS, enter into this agreement for the purpose of allowing for language testing for language incentive pay at the Diplomatic Language Service, LLC.:

1. This memorandum is subject to and governed by Chapter 10, Labor-Management Relations, of the Foreign Service Act of 1980, as amended, and the Collective Bargaining Agreement (CBA) between AFSA and FCS, as amended. This agreement will be modified as necessary by any future amendments to the documents mentioned above, or to rules, regulations or laws impacting this agreement.
2. The attached policies and amended language to the collective bargaining agreement (CBA) will govern the procedures for guidance on non-FSI testing for Language Incentive Pay. Changes to the SOP will be negotiated without impact to this memorandum.
3. This memorandum will be reviewed and open for renegotiation during the next Full Term CBA negotiations between the parties.

  
\_\_\_\_\_  
Director General  
U.S. and Foreign Commercial Service

5/10/07  
Date

  
\_\_\_\_\_  
Vice President  
AFSA

5-10-07  
Date

The following changes are herein agreed to the Foreign Service Personnel Manual Subchapter 800-1, Language Incentive Program

Section 4. Policy

.04 Test Score Validity – Language proficiency tests administered by the Foreign Service Institute or Diplomatic Language Service, LLC are the only proficiency tests acceptable for language incentive payments. To qualify for payment, the certified test score must have been achieved within one year prior to arrival at the incentive language post, or during the assignment. A test rating of S-5, R-5 is valid indefinitely.

Section .07 Testing to Qualify for Language Incentive Payments

- a. Tests for language incentive payment must be administered by testers certified by the Foreign Service Institute or Diplomatic Language Service, LLC. *However the test must be administered by FSI if the Officer is enrolled in language training at FSI.*
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