

Master Agreement

Between



United States Citizenship and Immigration
Services (USCIS)

And

American Federation of Government Employees
(AFGE)

National Citizenship and Immigration Services
Council

Agreement 2010

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Preamble

This Agreement is entered into by and between the US Department of Homeland Security, U.S. Citizenship and Immigration Services (hereafter referred to as "the Agency"), and American Federation of Government Employees, National Citizenship & Immigration Services Council (hereafter referred to as "the Council"). Collectively they shall hereafter be referred to as "the Parties."

The Parties enter into this Agreement in the spirit of 5 USC 7101, which states:

(a) The Congress finds that -

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them -

(A) safeguards the public interest

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

Pursuant to these principles, the parties have agreed upon the various articles hereinafter set forth. This Agreement constitutes a Collective Bargaining Agreement between the Agency and the Union.

ARTICLE 1 - Recognition

A. BARGAINING UNIT.

U.S. Citizenship & Immigration Services (hereafter referred to as the "Agency" or "USCIS"), recognizes the American Federation of Government Employees ("AFGE") as the exclusive collective bargaining representative of all non-professional employees of the Agency. All professional employees, managers, supervisors and those excluded from coverage by the Civil Service Reform Act, Federal Service Labor Management Relations Statute, 5 U.S.C. § 7100, (Chapter 71) are not subject to this agreement. This Agreement covers all employees in the bargaining unit certified by the Labor Relations Authority ("FLRA") in Case No. WA-RP-06-0008 for the purpose of collective bargaining.

The Agency recognizes that AFGE has delegated authority to the National Citizenship and Immigration Services Council ("Council") and to the various local affiliates to represent the bargaining unit employees before the Agency on the administration and enforcement of this contract.

B. GENDER LANGUAGE.

All references to employees in this Agreement are intended to designate both sexes. Whenever the male gender is used, it shall be construed to include male and female members as appropriate.

ARTICLE 2 - Governing Laws & Regulations

A. EXISTING OR FUTURE LAW.

In the administration of all matters covered by this agreement, the parties shall be governed by all applicable existing or future laws, as defined in 5 U.S.C. § 7100 *et seq.* Should any conflict arise between the terms of this Agreement and any existing or future laws, the provisions of such laws shall supersede conflicting provisions of this Agreement.

B. GOVERNMENT-WIDE RULES AND REGULATIONS.

Should any conflict arise in the administration of this Agreement between the terms of this Agreement and any government wide rule or regulation, such as the Code of Federal Regulations (other than a rule or regulation implementing 5 U.S.C. 2302), issued after the effective date of this Agreement, the terms of this Agreement will supersede and govern.

C. PAST PRACTICES.

It is agreed and understood that any prior benefits, practices, memoranda of understanding, and any other agreements which were in effect on the effective date of this Agreement at any level (national, council, regional and/or local) shall remain in effect for a period of 180 days after the effective date of this Master Agreement, at which point they expire.

D. SCOPE OF COVERAGE.

The provisions of the article shall apply to all supplemental agreements and subsequently negotiated national and local agreements between the parties.

E. INTENT OF RESTATEMENT.

In a number of the provisions of this agreement, statutes or regulations are restated for the convenience of the parties and the employees covered by the agreement. In restating the provisions of such statutes and regulations, some minor changes to the statutory and regulatory languages have been made for clarify or to place that language in context. These wording changes are not intended to change the meaning of the language in question. However, should there be any conflict between the language of this agreement and the language of applicable statutes or regulations in effect at the time the agreement became effective, the language of the statutes and regulations is controlling.

F. SEVERABILITY.

Should any part of this Agreement or any provisions contained herein be rendered or declared invalid by reason of any changes in law, Government-wide rules or regulations, or Court order, such provision or provisions may be severed from the rest of this Agreement, which shall remain in full force and effect.

ARTICLE 3 - Employee Rights

A. RIGHT TO JOIN AND PARTICIPATE.

(1) Right to Join and Participate. Employees covered by this Agreement 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 in the Civil Service Reform Act of 1978, such rights include the right-

(a) Representation. 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

(b) Collective Bargaining. To engage in collective bargaining with respect to conditions of employment through the Union as provided by law and this Agreement.

(2) Management Non-Participation. Nothing in this section, or this Agreement, authorizes participation in the management of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in the Civil Service Reform Act of 1978, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

B. PRIVATE COUNSELING.

Any discussions with individual employees concerning counseling, evaluations, workload review, or disciplinary actions will be conducted so as to insure the privacy of the employee.

C. RIGHT TO COMMUNICATE AND TO BE REPRESENTED.

An employee has the right to communicate with the appropriate member of the following concerning individual personnel matters:

- (1) The servicing Human Resources Office(s) including local, Regional and Headquarters Offices;
- (2) The EEO Office;
- (3) A supervisor or management official of a higher rank than the employee's immediate supervisor;
- (4) EEO Counselors;
- (5) The Safety and Health Office.
- (6) Union Officials.

Employees are encouraged (but not required) to initiate such individual personnel matters with first-line supervisors and to follow the chain of command where appropriate. Additionally, all parties should conduct themselves in a professional manner and refrain from abusive conduct and language when communicating with each other. This is not intended to limit or restrain robust discussion by Union officials in the course of their representational duties.

D. RIGHT TO MEET WITH UNION.

Employees have the right to discuss representational matters with a Union representative. If an employee wishes to discuss a representational matter with a Union representative during duty time, the representative and/or employee involved shall obtain approval of the employee's supervisor for any meeting during the employee's duty time.

E. INVESTIGATORY INTERVIEWS (AKA: WEINGARTEN MEETINGS).

Employees have the right to be represented by a Union representative at any investigatory interview by a representative of the Agency, as required by law and Article 28, if the employee reasonably believes that disciplinary action may result and the employee requests such representation.

F. PERSONAL RIGHTS.

(1) EEO. All employees shall be treated fairly and equitably without regard to political affiliation, race, color, religion, national origin, sex, marital status, sexual orientation, parental status, genetic information, age, or disabling conditions. Additionally, the Agency will not require employees to disclose their marital status, race, sex, national origin, religion, parental status, genetic information, sexual orientation, age, or political affiliation unless required to do so by law, directive, or higher authority.

(2) Professionalism. Employees shall be treated with courtesy, dignity, and respect. Supervisory guidance shall be provided to subordinate employees in an atmosphere that will avoid embarrassment or ridicule.

G. CONTRIBUTIONS/GIFTS.

(1) Voluntary Participation. The Agency agrees that participation in the Combined Federal Campaign, United States Bond Drives, Blood Donor Drives, and other worthy programs will be on a voluntary basis.

(2) Gifts. Contributions for gifts for supervisors, management officials or fellow employees will be strictly voluntary and will meet the limited exceptions of 5 C.F.R. § 2635.304. Except as provided for in 5 CFR 2635.204, an employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities

regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

ARTICLE 4 - Management Rights

A. STATUTORY RIGHTS.

The parties acknowledge management's rights in accordance with 5 USC 7106:

(a) Subject to subsection (b) of this section, nothing in this Agreement shall affect the authority of any management official of the Agency -

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the Agency; and

(2) in accordance with applicable laws-

(A) 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;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted;

(C) with respect to filling positions, to make selections, for appointments from:

i. among properly ranked and certified candidates for promotion; or

ii. any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the Agency mission during emergencies.

(b) Nothing in this section shall preclude the Agency and the Union from negotiating:

(1) at the election of the Agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

ARTICLE 5 - Union Rights

A. EXCLUSIVE REPRESENTATIVE.

The Union is the exclusive representative of the employees in the unit and is entitled to act for, and represent the interests of, all employees in the unit in all matters relating to terms and conditions of employment as set forth in 5 USC Chapter 71. Unless specified differently, for the purposes of this agreement, when the term District Office is used it is understood that it will include Service Centers, Asylum Offices, Administrative Centers, Regional Offices, Headquarters and any other Agency facilities.

B. REPRESENTATION AT FORMAL DISCUSSIONS.

(1) Formal Discussions. The Union shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Employer and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other general condition of employment.

(2) Notice. The Union representative will receive reasonable advance notice of such formal discussions. The Union will receive copies of documents supplied to employees at the time of the discussion. Except in circumstances in which an urgent operational need to act quickly requires a shorter period or a shorter period is mutually agreed to by the parties, reasonable notice will mean not less than 24 hours.

C. REPRESENTATION AT INVESTIGATORY INTERVIEWS.

The Union shall be given the opportunity to represent employees in investigative interviews as provided in Article 28 of this Agreement.

D. RIGHT TO PRESENT VIEWS.

The Union shall have the right to present its views, either orally or in writing, to the Employer on any matters of concern regarding personnel policies and practices and matters affecting working conditions.

ARTICLE 6 - Status of Employee Representatives

A. NO RESTRAINT.

The Agency shall not impose any restraint (except as may be otherwise provided in this Agreement), interference, coercion, or discrimination against employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining, the presentation of grievances, appeals from adverse actions, Labor-Management Relations, or upon duly designated employee representatives acting on behalf of an employee or group of employees within the bargaining unit.

B. DESIGNATION OF STEWARDS.

A reasonable number of stewards may be designated by the Union or its affiliated Locals and shall be recognized as employee representatives for employees in the District, or other agency facility in which they are designated to be stewards. The Union will supply the Agency with their names, which may be posted on appropriate bulletin boards. It shall be the duty of the Union to notify Management of any changes in the roster of stewards.

C. AUTHORIZATION FOR REPRESENTATIONAL DUTIES.

Upon request and approval in advance, Union officials are authorized to perform and discharge the duties and responsibilities which may be properly assigned to them under the terms of the Civil Agency Reform Act of 1978 by the Union in accordance with this Agreement and any supplemental agreement or agreements hereunder. The Agency agrees that there shall be no restraint, interference, coercion, or discrimination against a union official because of the performance of these duties while they are serving as Union officials. Union officials shall be relieved from official duties during the period they are serving as union officials. This does not preclude employees being called back to their official duties when there is an immediate need for their services. Nothing shall require a Union official to take official time at an agency location unless required by the representational duties performed and/or required by the official duties from which the employee is relieved.

D. STEWARD AND OFFICER LISTS / MANAGEMENT DIRECTORIES.

It is incumbent upon the Union to furnish Management written notice of the names of the Union Officials and to advise Management of any changes in its list of designated Union representatives. In turn, Management will provide the Union, at the National, Regional and Local level, the appropriate Agency telephone Directories and updates as printed. Management will advise new unit employees or employees transferring between stations, upon entering on duty, of the name of the Local President in writing.

ARTICLE 7 - Official Time

A. PURPOSE.

(1) The purpose of official time is to provide bargaining unit employees time in which to perform union representational activities during normal working hours, without loss of pay or charge to annual leave. This Article provides an equitable process for the allocation and approval of official time and recognizes that the appropriate use of official time benefits both Management and Labor.

(2) Official time in the Agency shall be administered in accordance with 5 United States Code ("U.S.C.") Chapter 71, "The Federal Service Labor-Management Relations Statute" (the Statute) as amended and this Agreement.

B. DEFINITIONS.

(1) Official Time means all time, regardless of agency nomenclature, granted to an employee by the agency to perform representational functions under 5 U.S.C. Chapter 71 or by collective bargaining agreement when the employee would otherwise be in a duty status.

(2) Official Time Categories- The four categories of official time use are as follows:

- Term Negotiations- this category for reporting official time hours refers to time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor. (Transaction Code 35)
- Mid-Term Negotiations- this category for reporting official time hours refers to time used to bargain over issues raised during the life of a term agreement. (Transaction Code 36)
- Dispute Resolution- this category for reporting official time hours refers to time used to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies. (Transaction Code 37)
- General Labor-Management Relations- this category for reporting official time hours refers to time used for activities not included in the above three categories. Examples of such activities include: meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews. (Transaction Code 38)

(3) Representational Functions refers to activities undertaken by employees acting on behalf of the labor organization or fulfilling the organization's responsibility to represent bargaining unit employees in accordance with 5 U.S.C. Chapter 71 or the collective bargaining agreement.

C. REPRESENTATIONAL FUNCTIONS.

(1) Elected or appointed Union representatives may use official time for representational purposes as provided by the Statute during such time as they are otherwise in a duty status. This time will be without charge to leave, subject to section E of this article.

(2) Official time is prohibited for any activities performed by any employee relating to the internal business of the Union including the solicitation of membership, elections of Union officials, and collection of dues.

(3) Official time for employees and representatives is provided under separate authority to participate in certain statutory appeal procedures. This includes, but is not limited to, proceedings before the Federal Labor Relations Authority and the Equal Employment Opportunity Commission. Such official time is not limited by this Article, and will not be charged against any amount of official time granted to the Union under Section E below.

(4) Credit Hours. Union representatives may earn credit hours for all time spent on representational business if otherwise in a credit earning status, subject to supervisory approval.

(5) Nothing shall require a Union representative to take official time at an agency location unless required by the representational duties performed and/or required by the official duties from which the employee is relieved. Representational functions may be performed in an alternate work site environment.

D. RELEASE PROCEDURES FOR OFFICIAL TIME USE.

(1) Union representatives will be permitted to leave their assigned work area on official time as authorized under this agreement after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. [Management and Union will develop a request form.] The representative will be released unless a union representative's presence is necessary to meet customer service and the work of the office requirements. If the representative cannot be released at the time of the request, the representative and the supervisor will arrive at a mutually agreeable time for departure, normally within 24 hours. The Union representative will be given time to inform any bargaining unit employees involved in the delay.

(2) If management is unable to approve a request for official time, the reason for denial will be provided in writing. [Management and Union will develop a request form.] If granting official time will adversely impact customer service and the work of the office requirements at the time requested, keeping in mind the interests of the union and employees as well as the needs of the employer, management will ensure that, within one workday, an alternate time will be permissible for use of the requested official time. The representative will be released unless the representative's absence will adversely impact customer service and the work of the office at that time.

(3) Upon entering a work area other than his or her own to meet with an employee, the representative will advise the immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting.

(4) On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time.

(5) When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will notify another supervisor or manager as to where they will be and approximately how long they will be gone.

E. ALLOCATION OF OFFICIAL TIME.

(1) National Citizenship and Immigration Services Council. A bank of 30,000 hours of official time per fiscal year will be made available to the National Citizenship and Immigration Services Council for all representational duties. The bank will be distributed between the National Council and AFGE USCIS Locals. The Council President (or designee) will be responsible for distribution and allocation of bank hours between the National Council and AFGE USCIS Locals. The Council President (or designee) will inform the Agency of the total number of hours assigned to the National Council and the total number of hours assigned to each AFGE USCIS Local within 45 days of the effective date of this Agreement. Once the distribution of hours has been determined by the National Council, said distribution may be adjusted quarterly (January, April, July) and reported to the Agency. If the bank of hours is exhausted prior to the end of the fiscal year, the Union shall receive whatever additional hours are required under 5 U.S.C. 7131 (a) and (c) of the Statute.

(2) In accordance with 5 USC 7131 (b), the use of official time is prohibited for internal union business.

(3) Union representatives are required to stagger their use of authorized official time hours over the course of the fiscal year. Union representatives will work out official time usage with their supervisors to accommodate both union representational activities and Agency assigned duties. The parties recognize that a mutually agreed upon schedule is the recommended method for scheduling official time.

(4) The Union will provide the Office of Labor Employee Relations (LER) with lists of all designated union representatives within 60 days of the effective date of this Agreement. The Union will continue to provide LER with updated lists as necessary. Each list will include the name, union position, designated official time to the representative, local, duty location and telephone number of each designated union representative.

F. OFFICIAL TIME EXCLUDED.

(1) Time for the following activities will not be charged to the amount of official time in Section E(1) above, but will be made available to properly designated representatives, who would otherwise be in a duty status. Consistent with 5 U.S.C. 7131(a) and this Agreement, Union representatives will be granted reasonable and necessary time to carry out the following functions:

- (a) Term agreement bargaining in accordance with 5 U.S.C. 7131(a) and this Agreement, and any related third party proceedings;
- (b) Mid-term bargaining on management-initiated or union-initiated changes in conditions of employment, impact and supplemental bargaining and any related third party proceedings;
- (c) Time spent by employees, including union officials, representing employees in statutory EEO complaints is official time under 29 Code of Federal Regulations and not countable towards the bank hours.

(2) Restriction On Block Time. The hours of official time authorized for use listed in Section E above is intended and shall be interpreted as authorizing official time for all representational duties performed during normal duty hours. However, it does not authorize official time during normal duty hours for the following activities:

- (a) Internal Union Business. Conduct of internal Union business.
- (b) Leave. Activities for which the employee would normally be required to charge his or her time to annual, sick or other appropriate leave if he or she were not a Union representative (e.g. annual leave for a vacation or sick leave for an illness).

(3) Recall To Duty. Notwithstanding the provision of this Section, the Union representatives may be assigned official duties (and appropriately compensated) in situations of emergency.

(4) Travel Time. A Local President or designee may be granted reasonable and necessary travel time for the purpose of traveling to assist in representing a grievant within his or her district at a sub-office or remote location which does not have a local Union steward, or for any other meetings scheduled by management.

G. TRAINING.

(1) The Employer agrees to a bank of 4,000 hours per fiscal year for Union representatives to attend labor relations training or other training related to employees' conditions of employment. Training under this section will generally cover such areas as contract administration, handling of statutory actions such as grievances and information related to Federal personnel/labor relations laws, regulations, and procedures. Official time granted under this section is in addition to the official time hours granted in Section E above.

(2) Written requests, including an agenda, will be forwarded within a reasonable period of time in advance of the training to the Union representative's immediate supervisor who will forward it to the appropriate management official for action within three (3) workdays of receipt. Official time under this section may be used for travel to and from the training. The Agency will respond to the request no later than five (5) work days from the date it is made. The Agency's sole expense for all union sponsored training will be official time. Where available, the Agency shall permit the use of Agency training space.

(3) Official time for training will be approved except in cases where the absence of the employee or employees will significantly adversely impact the Agency's work requirements. When a request for official time for training is disapproved for any reason, the reasons for such disapproval will be furnished to the representative who made the request and to the Council President at the time of disapproval.

H. ALLEGATIONS OF ABUSE

Alleged abuses of official time shall be brought by supervisors and management officials on a timely basis to the attention of an appropriate management official designated by the Agency. The designated management official will then discuss the matter with the President of the Union at the appropriate Local or Council level.

ARTICLE 8 - Facilities and Services

Purpose.

The purpose of this article is to provide those facilities and services that are necessary and reasonable for the Union to carry out its legitimate activities as the exclusive representative of USCIS bargaining unit employees. The parties recognize that providing such facilities and services furthers their joint interest in promoting effective labor-management relations.

A. UNION USE OF AGENCY FACILITIES FOR INTERNAL UNION BUSINESS.

(1) Definition of Internal Union Business. As set forth in Title 5 Chapter 71 § 7131(b), any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials and collection of dues) shall be performed during the time the employee is in non-duty status.

(2) Meeting Space. Upon reasonable advance request by the Union, the Employer will provide meeting space; if available, in areas occupied by the Employer for meetings during non-duty hours. The Union will comply with all security, safety and housekeeping rules in effect at that time and place.

(3) Non-duty Hours. Employees attending meetings under Subsection (2) will do so only during non-duty hours or while they are in a leave status.

(4) Elections. Upon reasonable advance request, mutually agreed upon space will be provided, if available, by the Employer to be used in conjunction with elections governed by Local by-laws. The Union acknowledges that no responsibility for the safety or security of the ballot boxes is assumed by the Employer.

(5) Membership Drives & Materials. Upon reasonable advance request by the Union, management agrees to provide space for the purpose of membership drives and distributing Union issued materials. These activities will be conducted during break, lunch periods and non-duty hours and shall not interfere with the mission of the Agency. Specific arrangements will be negotiated pursuant to Article 9, Impact/Implementation and Mid-Term Bargaining.

B. FACILITIES FOR REPRESENTATIONAL ACTIVITIES.

(1) Definition of Representational Activities: Those activities undertaken by Union officials for the purpose of representing bargaining unit employees in matters related to Title 5, Chapter 71, U.S.C. and this Agreement, for which official time is appropriate.

(2) Meeting Space. Upon reasonable advance request by the Union, the Employer will provide confidential meeting space, if available, during official hours of business, in areas occupied by the Employer, for the following purposes:

- (a) Grievances / Appeals. Preparing or discussing a grievance or appeal;
- (b) Caucusing. Caucusing immediately before, after, and during scheduled meetings with the Employer;
- (c) Agreement Administration. Discussing matters directly related to the administration of this Agreement.

(3) No Internal Union Business. Nothing in this section shall be construed as permitting meetings or the use of management-supplied equipment for the purpose of conducting internal union business.

C. BULLETIN BOARDS.

(1) Exclusive Use. In each District Office, Service Center, National Benefits Center, Asylum Office, and Regional Office, the Employer will provide to the Union for its exclusive use one locked bulletin board (of approximately three feet by four feet). The bulletin board will be permanently attached to the walls where building regulations permit such permanent installations. In offices other than those listed above, the Union may, subject to availability of suitable space, install at its own expense bulletin boards of up to three (3) by five (5) feet in addition to the bulletin board supplied by management. In the absence of a locked bulletin board, the Agency will provide bulletin board space in a place of prominence and reasonably accessible for posting material published by the Union or its affiliated Locals. A designated and recognized Union official, including stewards, shall sign all material before posting on the bulletin board to ensure compliance with the provisions of this article.

(2) Restrictions. Material which does not violate any law, contain libelous material or personal attacks may be posted on union bulletin boards.

(3) The Agency will provide a link on the USCIS intranet site to the National CIS Council 119 website.

D. ACCESS TO EMPLOYEES.

(1) Employee Lists. Upon request, but no more than quarterly, the Agency will furnish to the Council, for internal use only, a list which will contain the names, grades, position titles, series, posts of duty, of all employees in the bargaining unit. The Council president will be supplied during each pay-period a listing of

bargaining unit personnel accessions to and separations from the Agency. The parties recognize that errors may occur from time to time in regard to input and coding of data, and that the listings will not be construed as action by the Agency to unilaterally deny bargaining unit status to any employee, or to confer it.

(2) Employee Orientation. Each new employee, including transfers, as part of his or her orientation, will be given a presentation not to exceed thirty (30) minutes by the local Union representative. The Union representative will be notified by the Agency of each new employee's entrance on duty. The Union Representative will be in a duty status, and the orientation will cover only the labor relations law, the provisions of the Contract and Union/Management Agreements. No recruiting or other internal Union business may be conducted during the orientation, including the distribution of SF-1187 forms.

E. CONTRACT COPIES.

(1) Employee Copy. The Agency shall make a copy of this agreement available electronically through an Agency authorized link. New employees shall be so notified during orientation.

F. UNION REPRESENTATIVES PERMITTED ON GOVERNMENT PROPERTY.

National, Council, and Local Union representatives shall normally be permitted in all Agency facilities to conduct representational activities, consistent with the security procedures in place at that facility. Consistent with Agency security requirements, Union officials will be issued appropriate building access cards. It is understood that such Union representatives shall notify in advance the supervisor in charge of the facility. If the supervisor cannot approve the visit for valid operational reasons the supervisor will make an alternative arrangement for the official. Upon arrival, the official shall advise the supervisor of his or her presence. Such representatives shall not interfere with the work of employees of the facility during duty hours. Subject to the above restrictions, national representatives of the Union shall be permitted to participate in meetings between Local representatives and the Agency.

G. TELEPHONES.

Telephones will be made available on a reasonable basis to Union officers to conduct Union representational activities. Additionally, the CIS National Council will be provided two (2) mobile telephone devices (e.g. Blackberry) capable of sending and receiving Agency e-mail at Agency expense.

H. UNION SPACE AND EQUIPMENT.

The Agency will provide one office and reasonable access to government office equipment to the Council at Headquarters. The Agency will provide one office and reasonable access to government office equipment at each Asylum Office, each Service

Center, at the National Records Center, and at the National Benefits Center. The Agency will also provide one office located in each USCIS District (excluding overseas Districts). The location of the office in each USCIS District will be at the permanent duty station of the Local President, if the Local President is a District employee. If the Local President is not a current USCIS employee or a District employee, the office in each USCIS District will be located at the Agency office with the largest number of USCIS bargaining unit employees. In addition, existing agreements for office space may be retained by mutual agreement. For facilities that do not have a designated union office, Sections A.(2) and B.(2) apply.

I. ELECTRONIC MAIL.

The Agency will provide internet access to the Union for representational purposes, consistent with the Agency's IT policies. The Union may use the e-mail system to communicate informally with employees and Agency officials. The Union may communicate via broadcast messages subject to reasonable limitations on the size of attachments. The Union is encouraged to utilize links instead of attachments in its broadcast messages. The parties agree that internal union business is prohibited when using email or government-provided access to the Internet. The parties should be mindful of the fact that electronic mail messages are considered government records that may be accessed whenever a legitimate governmental purpose exists for doing so. Correspondence submitted through the e-mail system does not satisfy official notice requirements under this agreement.

J. COPY MACHINES.

Copy machines will be made available to union officials with management approval. There will be no use of copiers for internal union business. The Union will supply the paper for any copies made.

K. FAX MACHINES.

Union officials, in the performance of their representational responsibilities, may make reasonable use of the Agency's fax machines. It is understood that documents pertaining to internal Union business are not be transmitted over the Agency's fax machine.

ARTICLE 9 - Impact, Supplemental, and Mid Term Bargaining

A. NOTICE OF PROPOSED CHANGE / PROCEDURES.

This article shall be administered in accordance with Title 5, United States Code, Chapter 71 and this Agreement. The parties recognize that from time-to-time during the life of the Agreement, the need will arise for either party to propose changes to existing personnel policies, practices, and/or working conditions not covered by this Agreement. The Parties are encouraged to engage in pre-decisional involvement prior to formal presentation of proposals for changes to working conditions under this Article.

- (1) The written notice of the proposed change shall include:
 - (a) The nature and scope of the proposed change;
 - (b) A description of the change;
 - (c) An explanation of the initiating Party's plans for implementing this change;
 - (d) An explanation of why the proposed change is necessary;
 - (e) The proposed implementation date;
 - (f) The initiating Party's Point of Contact.
- (2) Nothing herein shall be deemed to waive the Agency's authority as provided by law (e.g., exigencies) to implement proposed changes in conditions of employment before satisfying an obligation to bargain.
- (3) If the Receiving Party intends to exercise its bargaining rights regarding the proposed change, it must submit timely bargaining proposals, in accordance with the procedures and time frames specified below. The Receiving Party's written bargaining proposals shall designate the Chief Spokesperson.
- (4) When notice of change is required, the Proposing Party shall serve its notice of the proposed change upon the Receiving Party. All notices provided for under this article shall be served upon the local or council president (as appropriate) or their designee. If the Agency proposes a change in working conditions for employees represented by more than one Local, it shall serve the requisite notice on the Council at the National Level.
- (5) As soon as possible, but no later than fifteen (15) calendar days after the notice of the proposed change is served, the Receiving Party shall provide its written bargaining proposals upon the Proposing Party.
- (6) Receiving Party will submit bargaining proposals with its demand to bargain. In addition to submitting bargaining proposals, the Receiving Party may request information in accordance with the Statute or case law of the Federal Labor Relations Authority. If the Receiving Party has requested information related to the proposal, the Receiving Party may amend its proposal as soon as possible but no later than fourteen (14) calendar days of its receipt of the information.

(7) Bargaining shall commence *as soon as possible*, but no later than fourteen (14) calendar days after the Receiving Party submits its final bargaining proposals. Commencement of bargaining may be extended by mutual agreement.

B. EXTENSIONS.

All time limits stated below may be extended by mutual consent of the parties involved.

C. MANAGEMENT-INITIATED CHANGE.

- (1) The Agency shall pay for the travel and per diem expenses for all Union bargaining team members who have been authorized official time.
- (2) The Agency shall select the site and provide the facility for bargaining when face-to-face negotiations are held.
- (3) Management will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with Management.
- (4) If the Union does not submit written bargaining proposals within the required time frame, Management will have satisfied its obligation to bargain under the Statute and may proceed to implement the change(s) on the proposed date.

D. UNION-INITIATED CHANGE.

- (1) Union initiated changes will be limited to 3 per year during the life of the contract and can only be served by the National Council regarding National issues.
- (2) The Agency shall pay for the travel and per diem expenses for all Union bargaining team members who have been authorized official time.
- (3) The Agency shall select the site and provide the facility for bargaining when face-to-face negotiations are held.
- (4) Management will provide the Union bargaining team with access to office equipment as may reasonably be needed by the Union team in its negotiations with Management.

E. SUPPLEMENTAL AGREEMENTS / PROCEDURES.

AFGE Locals designated by the Union shall be allowed to negotiate a Supplemental Agreement covering all eligible employees in the District, provided that the Local shall have initiated its request for bargaining over a Local Supplemental Agreement no later than eighteen (18) months after the effective

date of this Master Agreement. It is understood there will be only one Supplemental Agreement per District. For the purpose of this Article, the Headquarters Office, Regional Offices, Service Centers, National Benefits Center, National Records Center and Asylum Offices will each be treated as a District and may negotiate a Supplemental Agreement covering all bargaining unit employees assigned to those locations. All Supplemental Agreements are to be immediately forwarded to the Council President and the Labor Relations Office at the Service's headquarters for review and approval following their execution by the Local Parties. Supplemental Agreements automatically go into effect 90 days after submission if there have been no revisions requested by either party. Where a local union represents employees in more than one Agency component, the negotiation of a single local Supplemental Agreement is appropriate if mutually agreeable to the local union and each activity head. In addition, upon mutual agreement, an office head of an Agency component may negotiate a multi-local supplemental covering all offices in that Agency component.

(1) Master Agreement Controlling. It is understood by the parties to this Agreement that this is the Master Agreement and that supplemental bargaining may be negotiated only at the local level. The Master Agreement is governing and controlling and nothing may be included in the local Supplemental Agreement which is in conflict with this Agreement. Where provisions of a Supplemental Agreement are in conflict with the terms of this Master Agreement, the terms of the Master Agreement shall govern. It is further understood that local Supplemental Agreements shall not repeat or paraphrase any provisions of this Master Agreement.

(2) Subject Matter. Matters appropriate for local supplemental bargaining, that are not covered by the National Collective Bargaining Agreement, may include, but shall be limited to, the following matters:

- (a) physical working conditions such as safety, sanitation, heat, ventilation, smoking policy, lockers, eating facilities, work clothing where applicable, etc.;
- (b) employee seating/office locations;
- (c) leave scheduling;
- (d) procedures for equitably assigning overtime work that are not covered by the National Agreement;
- (e) flexible tours of duty/alternative work schedule as specified in this agreement;
- (f) dress policies to include casual dress days;
- (g) employee parking arrangements;
- (h) up to fifteen (15) additional matters of local concern as may be identified by each party to the particular local supplemental negotiations.

F. EXPIRATION AND RENEGOTIATION.

Any Supplemental Agreement negotiated under the provisions of this Article shall continue through the term and any extensions of the master agreement.

G. GOOD FAITH.

In accordance with 5 USC 7114(b)(1-3), the duties of the parties to negotiate in good faith under this Article shall include the obligation:

1. To approach the negotiations with sincere resolve to reach agreement;
2. To be represented by duly authorized representatives prepared to discuss and negotiate on the subjects authorized by this Article;
3. To meet at reasonable times as frequently as may be necessary, and to avoid unnecessary delays.

H. POST-IMPLEMENTATION BARGAINING.

The parties agree that effective management of the Service and its resources is a mutual concern. The parties also agree that on certain occasions there is a need for expedited implementation of new policies or practices affecting conditions of employment. The provisions of this article apply to such situations. It is understood, however, that nothing in this Article precludes the Service and the Union from engaging in post implementation bargaining if mutually agreeable. Notwithstanding the above, nothing shall affect the authority of the Agency to implement changes prior to the conclusion of bargaining, when doing so is permitted by law.

I. IMPASSES DURING NEGOTIATION.

During bargaining, when either party has determined that an impasse has been reached, the item shall be set aside. After all negotiable items on which agreement can be reached have been disposed of, the parties shall once more attempt to resolve any existing impasse item.

J. MEDIATION.

If such consideration does not resolve the impasse, the assistance of the Federal Mediation and Conciliation Service may be requested by either party.

K. AGREEMENTS ALLOWED.

The procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement with the assistance of the Mediator or the Panel.

L. GROUND RULES FOR MID-TERM, IMPACT AND SUPPLEMENTAL BARGAINING.

As applicable, mid-term, impact and supplemental bargaining shall be conducted in accordance with the following procedures and time frames:

The following ground rules apply to all mid-term, impact and supplemental bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 U.S.C. Chapter 71. These ground rules are intended to supplement the procedure set forth in this Agreement, and may only be changed by mutual consent.

(1) Briefing Sessions. Either Party may request a briefing session to explore or explain the change and its impact on unit employees. This session may be scheduled in advance of the start of actual negotiations, or as a part of the time allotted for bargaining.

(2) Arrangements. Negotiations will be held in a suitable meeting room provided by the Agency. The Agency will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room.

(3) The Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet access, telephone(s), desks and/or tables and chairs, office supplies, and access to at least one printer and one photocopier.

(4) The starting date and the daily schedule for negotiations will be established by the Chief Negotiators.

(5) Alternates may substitute for committee members. Such alternates will be entrusted with the right to speak for and to bind the members for whom they substitute.

(6) During negotiations, the Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each Party will retain his/her copies and will initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.

(7) It is agreed that either team may request a caucus, and may leave the negotiation room to caucus at a suitable site provided by the Agency. There is no limit on the number of caucuses which may be held, but each party will make every effort to restrict the number and length of caucuses.

(8) The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. Negotiation disputes, including questions of negotiability and resolution of impasses, will be processed in a manner consistent

with 5 U.S.C. Chapter 71 and implementing regulations. This will not serve as a bar to the Parties concluding by mutual consent a general agreement on those items which have been or remain to be negotiated.

(9) Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator/Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party.

(10) The Union will be authorized at least the same number of Union representatives on official time as the Agency has representatives at the negotiations table, however not less than 2 representatives. The designated Union negotiators will be on official time for all time spent during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals.

(11) If any proposal is claimed to be nonnegotiable by either Party and subsequently determined to be negotiable, or the declaring Party withdraws its allegations of non-negotiability, the proposal will, upon request, be reopened within a reasonable period of time. Such request must be made within 15 calendar days from when the proposal is declared to be negotiable or the claim that the proposal is nonnegotiable is withdrawn. Nothing in this section will preclude the right of judicial appeal.

(12) This procedure does not preclude the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations.

(13) All time frames in these ground rules may be modified by mutual consent.

(14) The Agency will pay travel and per diem expenses for Union negotiators.

(15) Absent mutual agreement, the alternate work schedules and flexiplace schedules of the Parties will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed upon hours of negotiations.

(16) No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the sessions.

(17) Observers shall be permitted in negotiating sessions only by the mutual consent of the Parties.

ARTICLE 10 - Labor-Management Relations; Travel

A. INFORMATION AND QUESTIONS.

The Agency and the Union recognize that providing Union representatives the opportunity to obtain information and ask questions about Agency programs and other matters of interest may contribute to the effectiveness of the labor-management relationship. Therefore, the Employer shall provide the Union with briefings and the opportunity to ask questions about matters of interest and concern at the national, regional, and local levels.

B. NATIONAL CONSULTATIONS AND LABOR-MANAGEMENT FORUM.

- (1) Consultations. Representatives of the Agency and the Union shall meet at the national level quarterly or at such other times as may be mutually agreed. The parties recognize the importance of working closely together for the purpose of promoting and improving a cooperative relationship by developing meaningful solutions to workplace issues. Also, the national consultation is an opportunity for the Union to review, discuss, consider, and make recommendations to the agency on matters relating to or affecting working conditions, employee morale, and efficiency of the agency's operations. An agenda covering the items to be discussed must be forwarded, in writing, to the Chief Human Capital Officer at least thirty (30) calendar days prior to the scheduled meeting. Up to ten (10) additional agenda items may be submitted on the first (1st) day of the meeting.
- (2) Union representatives, not to exceed five (5), will be in official time status while attending such meetings. The cost of travel, including per diem or actual subsistence, will be borne by the Employer. These national consultations shall be held for two (2) days, with travel being accomplished on official time. Any additional representatives the Union feels are required (not to exceed four (4)) for the meetings may attend on official time at Union expense.

C. REGIONAL CONSULTATIONS.

Regional officials and Union representatives, not to exceed three (3), will meet semi-annually or at such other times as may be mutually agreed and the representatives will be in official status while attending such meetings. The meetings will be conducted by video conferencing unless the Agency agrees to face to face meetings. When face-to-face regional consultations occur, they will not exceed two (2) days, with travel being accomplished on official time, provided it occurs during the regular workweek. The cost of travel and per diem will be borne by the Agency. Any additional representatives the Union feels are required (not to exceed four (4)) for the meeting may attend, on official time, at Union expense. The purpose of Regional meetings will be to provide information to the Union's representatives and to permit the Union representatives to ask questions about matters of concern. Agenda items to be discussed must be forwarded in

writing to the appropriate Regional Director at least thirty (30) calendar days prior to the scheduled meetings. Such notice must be acknowledged promptly. Up to ten (10) additional agenda items may be submitted on the first (1st) day of the meeting.

D. LOCAL CONSULTATIONS.

Representatives of the Agency and the Union at the local level shall have the opportunity to meet quarterly or at such other times as may be mutually agreed for the exchange of views and information, the informal resolution of problems, and for the improvement of communications, understanding, and cooperation between the Service and the Union. Where the Local President is located away from the local Agency Office, the Employer shall pay travel and per diem for the Local President, when travel is required, to attend any quarterly meetings under this Section and for meetings called by management.

E. JOINT MASTER AGREEMENT TRAINING.

The parties will jointly provide Master Agreement training in an online format. This on-line training and any training documents will be prepared jointly. This does not preclude additional or independent training by each party nor does it prohibit either party from developing training material for its own training programs.

F. TRAVEL AND PER DIEM.

(1) The Agency will pay travel and per diem expenses for Council Officers identified in this Agreement when they meet with management and when they act as representatives in arbitration cases for disciplinary actions of ten (10) calendar days or more, within their area.

(2) Union representative official time and travel and per diem provisions of this Agreement shall normally apply only to designated union representatives. However, it is also understood that the Union at the local level may from time-to-time designate employees to represent its interests and to participate in activities including management work groups, labor-management meetings and any other meetings called by management. Such employees shall be authorized official time, travel and per diem, as necessary, for participation in such activities consistent with the needs of the Agency. The union shall make every practicable effort to rely on employees who are locally available for participation in such activities.

G. COUNCIL TRIPS.

The Council President and Executive Vice-President or Council Officers designated by the Council President will be authorized up to a combined total of ten (10) trips per fiscal year, for the purpose of improving the labor-management relationship within the Agency. The Council President and Executive Vice-President or Council Officers designated by the Council President will be authorized up to a combined total of ten

(10) trips per fiscal year, for the purpose of improving the labor-management relationship within the Agency, to assist local unions in Article 9 bargaining; to present the Union's case in arbitration of suspensions of 20 days or more; or cases involving demotions in grade. The trips will be authorized and coordinated with the Labor and Employee Relations Office in Washington, D.C.

ARTICLE 11 - Protecting Against Prohibited Personnel Practices

A. DEFINITIONS.

- (1) Prohibited Personnel Practice. For the purpose of this Article, "prohibited personnel practice" means any action described in Section B.
- (2) Personnel Action. For the purpose of this Article, "personnel action" means:
 - (a) An appointment;
 - (b) A promotion
 - (c) An adverse action, disciplinary action or other corrective action;
 - (d) A detail, transfer, or reassignment;
 - (e) A reinstatement;
 - (f) A restoration;
 - (g) A reemployment;
 - (h) A performance evaluation under Chapter 43 of Title 5 of the United States Code;
 - (i) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subsection; and
 - (j) Any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

B. PROHIBITED ACTIONS.

Any employee of the Agency who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- (1) Discrimination. Discriminate for or against any employee or applicant for employment:
 - (a) On the basis of race, color, religion, sex, or national origin, as prohibited under Section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16);
 - (b) On the basis of age, as prohibited under Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 631, 633a);
 - (c) On the basis of sex, as prohibited under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d));
 - (d) On the basis of disability or handicapping condition, as prohibited under Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 791); or

(e) On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation.

(2) Non-merit Considerations. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of -

(a) An evaluation of the work performance, ability, aptitude or general qualifications of such individual; or

(b) An evaluation of the character, loyalty, or suitability of such individual.

(3) Political Activity. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.

(4) Obstruct Competition. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

(5) Influence Withdrawals. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.

(6) Unauthorized Preference. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

(7) Relatives. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in Title 5 of the United States Code) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in Title 5 of the United States Code) or over which such employee exercises jurisdiction or control as such an official.

(8) Whistleblower Reprisal. Take or fail to take (or threaten to take or fail to take) a personnel action with respect to any employee or applicant for employment because of-

(a) Disclosures. Any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences-

- (i) A violation of any law, rule, or regulation; or
- (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(b) Special Counsel/ Inspector General. Any disclosure to the Special Counsel or to the Inspector General or another employee designated by the head of the Agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences -

- (i) A violation of any law, rule, or regulation; or
- (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(9) Appeal Reprisal. Take or fail to take any personnel action against any employee or applicant for employment because of the exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation, or testifying, or assisting in the exercise of any such right, cooperating with the Inspector General or Special Counsel, or refusing to obey an order that would require a violation of law.

(10) Outside Conduct. Discriminate for or against an employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others, except that nothing in this subsection shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.

(11) Veteran's Preference. Knowingly take, recommend or approve, or fail to take, recommend or approve any personnel action in violation of a veteran's preference requirement.

(12) Violation of Merit System Principles. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles contained in the Civil Service Reform Act of 1978 (5 U.S.C. § 2301).

C. INFORMATION TO CONGRESS.

Nothing in Section B above shall be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

D. EEO AFFIRMATIVE ACTION.

Nothing in Section B above, shall be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under

- (1) Section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16) prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
- (2) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967(29 U.S.C. § 631, 633a), prohibiting discrimination on the basis of age;
- (3) Under Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d), prohibiting discrimination on the basis of sex;
- (4) Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §791), prohibiting discrimination on the basis of disability or handicapping condition; or
- (5) The provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

E. REDRESS PROCEDURES.

- (1) Election of Statutory Procedure or Grievance in Discrimination Cases. An employee aggrieved under Section B(1), above, may raise the matter under a statutory procedure or the grievance and arbitration procedure provided in this Agreement, but not under both.
- (2) Effect of Election. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a written grievance under the provisions of this Agreement, whichever occurs first.
- (3) Review of discrimination grievances. In the case where an employee elects the negotiated grievance procedure and alleges discrimination as described in Section B(1) above (or in 5 USC 2302(b)(1))
 - (a) where the matter could have been appealed to the MSPB, the employee may ask the Board to review any final decision issued under the

negotiated grievance procedure.

(b) where the matter could not have been appealed to the MSPB, the employee may ask the EEOC to review any final decision issued under the negotiated grievance procedure unless the sole basis of discrimination alleged was marital status or political affiliation under B(1)(e).

Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

F. EXCLUSIVE GRIEVANCE PROCEDURE.

Except as provided in Section E, above, an employee may only file his or her complaint under the grievance and arbitration provisions contained in this Agreement.

ARTICLE 12 - Notice to Employees

A. COPY FOR UNION REPRESENTATIVE.

An employee who receives a personally addressed notice, proposal or correspondence from the Employer concerning:

- (1) An adverse action;
- (2) A disciplinary action;
- (3) A reduction-in-force;
- (4) Denial of a within-grade salary increase;
- (5) A fitness for duty examination; or
- (6) An involuntary reassignment or transfer;

shall receive an additional copy which states at the top of the first page, "This copy may at your option be furnished to your Union representative."

B. NEW EMPLOYEES.

- (1) Union Information. All new bargaining unit employees will be informed by the Employer that the Union is the exclusive representative of employees in the unit.
- (2) Right to Join. The Employer will also inform each new bargaining unit employee that he or she has the right, freely and without fear of penalty or reprisal, to form, join and assist a labor organization or refrain there from.
- (3) Contract. Each new bargaining unit employee shall be furnished with a copy of this Agreement as provided in Article 8.

C. LEAVE AND EARNINGS STATEMENTS.

Each employee will be furnished, on a biweekly basis, a NFC payroll earnings statement showing the employee's total cumulative earnings and total cumulative deductions from the first yearly pay period in each standard category. The notice shall also contain annual leave and sick leave balances.

D. WORKPLACE INJURIES.

The Employer agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one year

ARTICLE 13 - Outside Employment

A. PERMISSION.

Employees may engage in outside employment, including self employment, only with the written permission of the Agency. Such employment must not result in, or create the appearance of a conflict of interest with official duties or with official business of the Agency or any other agency involved in the administration of the Immigration and Nationality Act (as amended); or tend to impair the employee's mental or physical capacity to perform official duties and responsibilities.

B. REQUEST.

Employees desiring to accept or undertake outside employment, including self-employment, shall request permission in writing, (on Form G-843, if available) and obtain written authorization from the Agency prior to commencement thereof. The request must include the following information:

- (1) Identity of proposed Employer;
- (2) Nature of work to be performed;
- (3) Approximate remuneration involved;
- (4) Anticipated maximum number of hours to be worked, and anticipated work schedule.

C. VOLUNTARY WORK.

Employees can engage in voluntary work, except that an employee must obtain written approval before engaging in voluntary work involving a subject matter, policy or program that is in the area of responsibility of the Agency or any other agency involved in the administration of the Immigration and Nationality Act (as amended).

D. TIMEFRAMES.

An employee's request must be submitted to the Employer at least fourteen (14) calendar days, prior to proposed commencement of outside employment or business activity. This time period is three (3) days in those cases where an employee has received a furlough notice.

E. APPROVAL.

The Employer will respond to the employee, approving or denying the request, as soon as possible but not later than ten (10) calendar days, after receipt of the request. If there is no response within ten (10) calendar days from receipt, the employee may assume there is no objection and begin in the outside employment or self employment. However, employees who have received less than ten (10) days advance notice of a furlough without pay may assume their requests have been approved if they have not received a

response within three (3) calendar days from management's receipt of their request. When the Employer denies a request, the employee will be advised of the reason therefore. The parties recognize that any approval (whether express or implied) to engage in outside employment may be withdrawn at anytime, provided the Service has a valid basis, as described above, for ordering the employee to cease his or her outside employment.

F. APPLICABLE LAW.

The Employer agrees to follow all applicable laws and regulations regarding outside employment. The Employer shall not take actions regarding an employee's outside employment which are arbitrary or capricious.

ARTICLE 14 - Retirement

A. RETIREMENT COUNSELING.

The Employer will provide a retirement counseling program, describing benefits and eligibility, to be made available on an as-needed basis, in which all employees in the unit nearing eligibility for retirement may voluntarily participate. Employees nearing eligibility for retirement who have questions concerning retirement benefits will, upon request, receive an oral or written response. Management will make retirement seminars or equivalent information available to employees who are within five (5) years of retirement eligibility.

B. DISABILITY / DEFERRED ANNUITY.

Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Employer of the possibility of applying for a discontinued service annuity and eligibility for deferred annuity at sixty-two (62), provided he or she has at least five (5) years of civilian service and leaves his or her money on deposit with the Office of Personnel Management. Upon the employee's request, the Employer will inform an employee of his or her right to file an application for disability retirement provided the employee meets the length of service required for disability retirement (5 years for those under the CSRS and 18 months for those under the FERS system).

C. WITHDRAWAL.

An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with prevailing government-wide regulations. An employee may withdraw a retirement application at any time prior to its effective date unless a commitment has been made to fill the vacancy created by the retirement or the position is scheduled to be abolished. However, if a vacancy exists within the duty station at the same grade and series, management will allow the employee to withdraw his/her retirement application.

ARTICLE 15 - Development and Training

A. EMPLOYEE DEVELOPMENT.

The Agency and the Union agree that the training and development of employees within the unit is a matter of primary importance to the parties. The Agency agrees to develop and maintain forward-looking effective policies and programs designed to achieve this purpose, consistent with its needs.

B. EMPLOYEE INITIATIVE.

The Agency and the Union recognize that each employee is responsible for applying reasonable effort, time and initiative in increasing his or her potential value to the Agency through self-development and training. Employees are encouraged to take advantage of training and educational opportunities which will add to the skills and qualifications needed to increase their efficiency in the performance of their duties and for possible advancement in the Agency.

C. FAIR AND EQUITABLE/AGENCY NEEDS.

The nomination of employees to participate in training and career development programs and courses shall be based on Agency needs and will be fair, equitable and free of personal favoritism.

D. SCHEDULE VARIATIONS.

Employees may be granted variations within the normal workweek, including leave without pay, for educational purposes consistent with Agency needs.

E. INDIVIDUAL DEVELOPMENT PLAN.

The Agency encourages the individual employee to develop a personal plan for career self-development. In developing this plan, the employees may seek counseling and advice from the supervisor. (See Article 3 for rights of employees to contact Human Resources Office or higher-level supervisor for advice). The Agency agrees to provide lists and catalogs on available Agency training.

F. ELIMINATED POSITIONS.

The Employer agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Employer will be given to the employee to enable him or her to perform the duties of the new position.

G. NON-AGENCY TRAINING.

The Employer will pay authorized expenses for non-agency training at a facility, approved by the Employer when the following conditions have been met:

- (1) The training has been applied for and approved in advance;
- (2) Such training will enable the employee to increase his or her proficiency in the current position (i.e., the training is job-related);
- (3) Existing training programs within the Agency will not adequately meet the training need;
- (4) It is not feasible to establish a new training program to meet the need effectively;
- (5) Reasonable inquiry has failed to disclose the availability of a suitable and adequate program elsewhere in government;
- (6) Funds are available to pay for the training program;
- (7) The course is not being taken solely for the purpose of obtaining a degree; and
- (8) The approval of such training will not create undue interference with operational requirements or an imbalance in staffing patterns.

H. TRAINING RECORDS.

The Agency will maintain records for all employees who receive Agency training. The Agency will assign training for trainee level positions consistent with applicable policy and the needs of the Agency.

I. ADVISORY COMMITTEE.

The Union and the Agency will establish an advisory committee to submit recommendations concerning employee training needs and programs. The committee may consist of no more than six members — no more than three from the Union and no more than three from the Agency. The committee will meet annually in person at agency expense, and as needed via remote conferencing, no more than on a quarterly basis.

J. FAIR AND EQUITABLE SELECTION.

The parties recognize that it is the Agency's right to assign duties in accordance with Part 7106 of Title VII of the Civil Service Reform Act of 1978 and that the types of duties assigned to employees may contribute to employee development. Therefore, supervisors will make assignments based on Agency needs but will make reasonable efforts to be fair and equitable in this regard.

ARTICLE 16 - Classification

A. UNION PARTICIPATION.

The Agency encourages the Union to make known to the Agency its views on the adequacy or inadequacy of occupational classification standards. The Agency agrees to consider the Union's oral or written views concerning the occupational classification standards when making recommendations to the Office of Personnel Management and will notify the Union, in like manner, of any action taken.

B. NEW CLASSIFICATIONS.

Classification decisions rendered by the Agency or the Office of Personnel Management having the effect of establishing a grade level within an occupation hitherto nonexistent in that occupation, will be forwarded by the region in which the action is taken to the Headquarters Office for circulation of that decision and the basis for that decision to all regions. This information will be considered where appropriate in the subsequent classification of similar positions within the occupation throughout the Agency.

C. UNION REPRESENTATION.

When the employee designates the Union as the employee's representative in a classification appeal, the representative may discuss the classification appeal with the classifier prior to the beginning of a desk audit. Sufficient time shall be allowed prior to the beginning of the desk audit for the designated representative and the classifier to arrange a mutually agreeable meeting date to discuss the classification appeal. The classifier will summarize his or her findings for the appellant and the Union representative.

D. DESK AUDITS.

Classifiers may continue to make visits or telephone calls to field position locations to conduct desk audits of the different Agency positions. Notice of the visit of the classifier will be posted as far in advance as possible on the bulletin board of the station he or she intends to visit.

E. POSITION DESCRIPTIONS.

The Agency will provide every employee of the Agency with an accurate description of his or her duties which may govern his or her grade. The employee will be encouraged to discuss any changes or inaccuracies with the supervisor who will also maintain a continuing review of duties.

F. REQUEST FOR DESK AUDIT.

If an employee has a question concerning his or her classification or position description, he or she is entitled to discuss his or her position description with his or her supervisor. Upon request of the employee, a Union representative may be present during this discussion. If the employee wishes to further pursue the question, he or she may forward a written request to the servicing human resources office. The servicing human resources office will either answer or acknowledge receipt of the request in writing within thirty (30) days, providing an estimate of the additional time needed to reply.

G. EFFECT OF LOWER GRADED DUTIES.

The parties agree that where lower graded duties not addressed in the employee's position description are assigned to an employee on a continuing basis to meet the needs of the agency, this will not adversely affect the employee's salary or classification and the devotion of time to such duties will be recognized through an appropriate adjustment in assigned performance standards.

ARTICLE 17 - Safety and Health

A. SAFE AND HEALTHFUL WORKING CONDITIONS.

The Agency agrees to provide safe and healthful working conditions, taking into account the mission of the Agency and the inherent hazards of the job performed. The parties shall be governed by the Safety and Health Regulations contained in government wide, departmental and/or Agency regulations and policies and this Agreement.

B. SAFETY AND HEALTH COMMITTEES.

Safety and health committees are an important part of the Agency Safety and Health Program as they form a chain of communication between employees and Management. They are in an excellent position to give program advice to appropriate levels of Management. Safety and Health Committees consisting of union and agency representatives will meet at the national and Office level. With respect to Safety and Health Committees, the term Office will include District Offices, Service Centers, the National Benefits Center, the National Records Center, Training Facilities, Regional Offices, Asylum Offices, and Headquarters Office. Field Offices, Satellite Offices, and Application Support Centers may form their own committees or may participate in committees at higher levels as determined by management. Both parties agree that to the extent possible, committee members will be appointed from the local commuting area. Upon request, management will provide travel and per diem expenses to a union-appointed committee member to attend a required site visit only if there is no union - appointed committee member assigned to the facility or within the local commuting area. Where such offices are co-located, the formation of a unified committee is appropriate if mutually agreeable to the union local and each Director. Where the term Director is used in this article it is understood that certain Service facilities are under the control of officials other than Directors. At those facilities, the appropriate management official shall be responsible for matters under this Article.

- (1) Membership. Each Safety and Health Committee shall be composed of at least one representative of Management and at least one representative of the Union per local. The Management representative shall be designated by the Agency. The Union representative shall be selected by the Union.
- (2) Training. Consistent with 29 CFR 1960.58-59, the committee members, including union representatives, shall be provided training commensurate within the scope of their assigned responsibilities. Training may be provided online. If the Agency decides that off-site training is necessary, it will provide travel and per diem expenses as appropriate.

- (3) Meetings. The Safety and Health Committee will meet as often as necessary upon the request of either party, but as a minimum, the committee will meet once every year to inspect facilities. The annual inspection will include a review of ergonomic conditions in the workplace. Copies of the minutes of the meeting and inspection reports will be submitted to the Director for correction of unsafe/unhealthful working conditions or practices observed or reported. A copy of the minutes/inspection report and the written response will be furnished in a timely fashion from the Director to the committee and will be posted on the District bulletin board for the information of all employees. Copies of the minutes will be forwarded to the Regional Director, Regional Safety and Health Specialist and Regional Program Manager or other appropriate responsible management official.
- (4) Purpose of Meeting. Committees will meet to discuss methods for protecting the safety and health of employees, promoting safety and health education, promoting and implementing the Agency Safety and Health Programs, the development and implementation of a Safety and Health Program as it applies to the Office, conduct annual inspections of facilities and the recommendation of deserving employees for safety awards.

C. UNION PARTICIPATION.

The Union agrees to participate on the Committee and will endeavor to have its members observe all safety rules and use all equipment and safeguards provided. Members of the Committee, upon request and with the approval of the Director, shall be allowed to leave work, for the purpose of performing their duties as outlined in this Article, without loss of pay or charge to leave.

D. DUTY TO REPORT UNSAFE CONDITIONS.

In the course of performing their normally assigned work, employees should be alert to observe unsafe practices and conditions. If an unsafe condition is observed, the employee should report it to his/her supervisor or a member of the Safety and Health Committee.

- (1) Review and Report Unsafe Conditions. The Committee shall meet within seven (7) calendar days of notification that a question has arisen and shall issue its recommendations, in writing, to the Director no later than fourteen (14) calendar days after their meeting. In the event that the members of the Committee do not agree on the recommendations, any of the members shall have the right to express a written minority view.
- (2) Director Decision. The written decision or an interim response of the Director shall be rendered within fourteen (14) calendar days after receipt of the Committee's recommendations.

- (3) Grievance. In the event that the decision of the Director does not satisfactorily resolve the problem, the employee or the Union may file a grievance pursuant to Article 38 of this Agreement, except that all such grievances shall be presented within fourteen (14) calendar days at Step III of the grievance procedure, and insofar as the subject matter would be negotiable under the Civil Service Reform Act of 1978.
- (4) Identical Grievances. When the parties become aware of identical grievances on safety issues arising under this section, involving two or more Districts, subject to the consent of the Union, one grievance shall be selected by the Union for processing. All decisions for that grievance will be binding on the other safety grievances.
- (5) Injury Logs. Copies of the OSHA 300 log maintained by each office will be provided to the Safety and Health Committee for investigation of related unsafe conditions. The parties agree that any confidential or private information contained in the OSHA 300 Log may be redacted prior to submission to the committee.

E. VEHICLE SAFETY.

Agency policy prohibits the use of vehicles not in safe operating condition. The Agency will continue to require periodic inspection of all vehicles in order to ensure a safe operating condition at all times. It is clearly the responsibility of any vehicle operator to report, in writing, all vehicle malfunctions or deficiencies to the person responsible no later than the end of the tour of duty; who, in turn, will be responsible to take immediate action to see that needed repairs are made. Negligence in reporting vehicle damages may be grounds for disciplinary action being taken against the responsible operator.

F. AGENCY SAFETY HANDBOOK.

The Agency agrees to amend the appropriate Agency Safety Handbook to incorporate changes relating to Agency safety procedures. The handbook and appropriate forms shall be publicized and made available to all employees no later than ninety (90) days after the effective date of this agreement and at least annually thereafter.

G. SPECIAL HAZARDS / IMMINENT RISK.

When duties involving special hazards must be performed, the Agency will provide reasonable training or indoctrination to the employees involved concerning the hazards and the proper work methods to be used. When an employee or the Union believes that the employee is being required to work under conditions which are unsafe or unhealthy beyond normal hazards inherent in the operation in question, he or she shall refer the matter to his or her supervisor. This may include situations where staffing levels are not in keeping with the demonstrated levels of risk. The supervisor will make an evaluation of the working conditions and direct that the work either be continued or stopped. If the

supervisor directs that the work continue, the employee (or Union official) may, if time permits, immediately escalate the request for review of the matter to the second line supervisor. However, if time does not allow for such an escalation, the employee must obey the order of the supervisor unless the employee reasonably believes that obeying the order would expose the employee to a health or safety hazard presenting an imminent risk of death or serious bodily harm.

H. MEAL BREAKS/LUNCH ROOMS.

Employees assigned to Offices as defined in this Article should be accorded an uninterrupted lunch period between the third (3rd) and fifth (5th) hours of duty where lunch periods are customarily taken to the maximum extent possible. Lunch periods may fall outside the 3rd and 5th hours of duties in offices where alternative work schedule arrangements are in place. The Agency shall provide clean and healthful lunch rooms for the consumption of food, to the maximum extent possible, for all Agency employees. Agency facilities shall comply with the national facilities MOU dated February 8, 2007. Arrangements within Districts for lunch periods will be subject to supplemental negotiations.

I. DAY CARE / HOUSING.

The Agency agrees to cooperate with other local and Federal agencies whose function it is to provide assistance to locating day-care centers and low-cost housing.

J. GSA FACILITIES.

The Agency, following the recommendations of the Safety and Health Committees, as provided in Article 17, Section B, will contact the General Services Administration or Management of the responsible facility to correct problems relating to safety and health that are their responsibility to correct.

K. IMMUNIZATIONS.

Subject to the availability of funds, the Agency will provide appropriate immunizations, including but not limited to flu shots, post-exposure hepatitis B, and post-exposure tetanus, in accordance with established service level agreements, at no expense to the employee.

L. UNSAFE CONDITION MOVE.

In the event of a relocation of an office that involves the safety or health of employees, the Union will be notified (in accordance with Article 9A of this agreement) in advance of such a move.

M. SAFE STAFFING.

The safety and health of all employees is a foremost concern of the Agency, and will be considered when employees are required to work after hours or overtime. Ensuring adequate staffing is an essential part of maintaining a safe and healthy workplace. When overtime assignments are required to ensure safety, such assignments shall be made in a fashion consistent with applicable agreements regarding overtime distribution.

N. ASSISTANCE FOR DISABLED EMPLOYEES.

The Employer agrees to develop procedures to assure that all disabled employees are provided appropriate assistance to evacuate buildings in case of emergencies.

O. FEDERAL EMPLOYEE HEALTH BENEFITS (FEHB).

The Employer agrees to furnish each employee, on a timely basis, a copy of each of the following:

- (1) Open Season Instructions;
- (2) Information to consider in choosing a health plan; and
- (3) Biweekly Health Benefits Rates.

Such distribution shall be made by the Employer to the extent such brochures are available to it from the normal sources of supply.

P. TB SCREENING.

Subject to the availability of funds, the Agency will offer a post-exposure voluntary screening program for Tuberculosis.

ARTICLE 18 - Injury Compensation

A. WORKPLACE ILLNESS / INJURY.

When employees or their representatives report an illness or injury has occurred in the performance of official duties, the employees will be promptly advised as to their right to file for compensation benefits and the benefits payable. The employees also shall be advised as soon as possible that compensation benefits can be used in lieu of sick or annual leave. The Agency will give appropriate assistance to the employee in filing a compensation claim.

B. CONTINUATION OF PAY / LEAVE.

The Agency and Union understand that injury compensation cannot be paid for any period when an employee is on paid leave. If at the time disability begins the injured employee has sick or annual leave to his or her credit, he or she may decide whether to use all or part of it before applying for injury compensation benefits. An employee who suffers a traumatic injury, may obtain continuation of pay for absences caused by the traumatic injury in accordance with 5 U.S.C. 8118. If the employee should be charged for sick or annual leave (or if he or she is so charged because he or she was not informed of the possibility of injury compensation benefits) he or she may repay, in a lump sum or by any other plan acceptable to his or her payroll office, the amount collected while on annual or sick leave. This repayment would permit him or her to qualify for injury compensation provided all other conditions are met.

C. PAMPHLETS AND FORMS.

(1) "When Injured at Work". The Employer agrees to provide an employee who is injured while in a duty status with a copy of the brochure entitled "When Injured at Work," within a reasonable time after the filing of an official accident or injury report, with no more than two (2) copies to be sent to an individual in one year.

(2) "Authorization for Examination and/or Treatment" (CA-16). If the employee requires medical treatment because of a work-related traumatic injury, the supervisor should complete the front of Form CA-16 "Authorization for Examination and/or Treatment" within 4 hours of the request. In an emergency, where there is not time to complete the form, the Employer may authorize medical treatment by telephone and then forward Form CA-16 to the medical facility within 48 hours. Form CA-16 may not be used to authorize treatment for occupational disease or illness except if OWCP authorizes such use in an individual case.

D. RESTORED TO DUTY.

An employee who suffers a compensable illness or injury and later, within one year after commencement of benefits, recovers from such injury or illness and meets the physical requirements of the position to which he or she is being assigned, will be restored to duty in the former or an equivalent position in accordance with 5 U.S.C. 8151 and 5 CFR 353.307 et. seq.

E. DOCUMENT REVIEW.

Employees will be permitted to review documents relating to their claim which the Office of Workers' Compensation Programs has authorized the appropriate Regional Human Resources Office to make available. Employees may be accompanied by their designated representative if they so desire.

ARTICLE 19 - Fitness for Duty Examination

A. FITNESS FOR DUTY EXAMINATION.

In directing employees to undergo a fitness for duty examination, the Agency will observe applicable rules and regulations.

B. RIGHT TO UNION REPRESENTATION.

Employees will be advised of their rights to have a Union representative at any time allowed, or not prohibited, by applicable rules and regulations. Employees may also be represented by an attorney or any other person of their choice.

ARTICLE 20 - Limited Duty

A. LIGHT DUTY.

If the treating physician of an incapacitated or injured employee (or a physician of the Service) certifies that the employee is capable of performing limited duty work, the employee will be assigned such limited duty work on a temporary basis as may be available and which the employee is capable of performing. The Parties understand that this provision does not obligate Management to create limited duty work or limited duty overtime work but only to temporarily assign it to qualified employees to the extent that it is available and necessary.

ARTICLE 21 - Personnel Records

A. ACCESS TO RECORDS.

The Agency will comply with all applicable disclosure provisions of the FOIA and the Privacy Act with regard to any and all employee records, whether electronic or paper maintained by the Agency. Such records may include but are not limited to, Official Personnel Folders, Employee Performance Folders, Supervisory Work Folders or Conduct Folders.

B. OFFICIAL PERSONNEL FOLDERS.

Official Personnel Folders (OPF) will be maintained in accordance with applicable laws and regulations. Only information authorized by law or regulation will be maintained in the OPF.

(1) The Union recognizes the Agency has converted to an electronic OPF (e-OPF) system, and electronic folders have replaced paper-based folders covering employees' personnel records. Under the e-OPF system, employees may access their personnel records at any time through a secure internet site. Employees not having access to a computer may request copies of records through their servicing Human Resources Office.

(2) An employee may request, through their servicing Human Resources Office, that a record contained in his/her OPF be corrected or amended. Such requests must be accompanied with supporting documentation.

(3) The employee shall have the right to prepare and file on the temporary side of the OPF a concise statement of disagreement (no more than two pages) with any letter of reprimand, suspension, or demotion within ten (10) days of the effective date of the action. If the employee elects to file such a statement, a copy of the proposal (if applicable) and decision letter on which the action is based will be placed on the temporary side of the OPF. When the document for which the employee files a statement of disagreement is removed from the OPF, the statement of disagreement will also be removed. Nothing in this Article shall negate the employee's right to grieve any matter. The filing of a statement of disagreement does not toll the time frame for filing a grievance or other complaint.

C. EMPLOYEE PERFORMANCE FOLDER.

(1) Copy of Documents and Right to Respond. Each employee or his or her personal representative designated in writing will, upon request, and in accordance with the provisions of the Freedom of Information Act and/or the Privacy Act, be given a copy of any document contained in his or her Employee Performance Folder (EPF) with the exception of records restricted by law or regulation.

(2) Procedures to Review Requests for access to EPF shall be made in writing through channels to the appropriate Headquarters or Regional Human Resources Office. The review of the EPF will normally take place at the requesting employee's place of assignment. Where this is not feasible it will take place at a site mutually agreed upon by the employee and/or Union representative and the Employer.

(3) In the interest of strengthening supervisor-employee relationships, supervisors will discuss employee work performance or work deficiencies with involved employee on a timely basis.

D. UNAUTHORIZED DISCLOSURE.

No record, file or document filed in the e-OPF, OPF or EPF or other systems of records will be made available to any unauthorized person for inspection or photocopy. Such information will be made available to any authorized person only for official use, in accordance with the provisions of 5 USC 552a.

E. RETENTION OF RECORDS.

All records shall be maintained and/or purged in accordance with 5 CFR Part 293 and any other applicable record retention regulations.

F. DEROGATORY MATERIAL.

No derogatory material of any nature which might reflect adversely upon the employee's character or Agency career will be placed in his or her OPF without his or her knowledge.

G. RESULTS OF INVESTIGATION.

When a formal investigation of an employee's alleged misconduct is conducted under the auspices of the Agency's Office of Security and Integrity (or successor), and or the investigative report of the Inspector General or Office of Professional Responsibility is reviewed by the Agency and the Agency determines that misconduct did not occur, the Agency will notify the employee in writing. At the employee's option and upon written request, a copy of the clearance letter will be placed in his/her OPF. Such notification shall be provided unless prohibited by law or applicable regulation. The Union acknowledges that the Agency may not be authorized under law to release or reference specific investigations conducted by an agency external to itself. The parties understand that this section will not apply in matters of informal fact finding by local management officials.

ARTICLE 22 - Performance Management

A. The performance appraisal program shall be administered fairly, reasonably, uniformly, and in good faith; shall provide employees with regular feedback to keep them advised of what is expected of their performance and of how well they meet those expectations; and shall provide information on an employee's current performance and assistance in improving that performance, as more fully described herein and below. This article is to be used in conjunction with the Performance Management Directive. This article is controlling where there are any conflicts with the Management Directive, provided however, that any provision of the Management Directive that is an exercise of reserved management right under 5 U.S.C. 7106(a) or sets forth a government-wide rule or regulation will take precedent over this Article.

B. Definitions. Terms used in this article that relate to the Performance Management System, such as "appraisal," "critical element," or "performance rating" will, to the extent applicable have the same meaning as in government wide regulation

(1) Performance is an employee's accomplishment of assigned duties and responsibilities as set forth in the employees performance standards and position description.

(2) Appraisal is the act or process of reviewing an employee's performance against the performance standards. The Agency will not prescribe a distribution of levels of ratings for employees covered by this Agreement. Each employee's performance will be judged solely against his/her, performance standards. The employee performance management system and its application will be fair, equitable, reasonable and related to the employee's position description.

(3) Critical Element is a component of an employee's job consisting of one or more duties and responsibilities which contributes towards accomplishing organizational goals and objectives and which is of such importance that "unacceptable" performance of the element would result in "unacceptable" rating. All critical elements to be used for performance appraisals will be directly related to the employee's assigned position description and communicated to the employee at the beginning of the rating period or whenever elements or expectations change during the rating period.

(4) Performance Standards or goals are statements of the expectations or requirements established by management for a critical element at a particular rating level. To the maximum extent feasible, performance standards must be based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met. To the maximum extent feasible, the performance standards will be consistent for standard or like positions.

(5) Rating means the written record of the appraisal of each critical element and overall performance.

(6) A Summary Rating is an overall performance rating obtained by a composite consideration of the levels of performance of the critical elements.

C. Employee Participation. Communication and Discussion.

(1) Employees are encouraged to contribute, discuss and communicate to appropriate supervisory person(s) their ideas regarding the performance appraisal system.

(2) Informal discussions are a standard part of supervision and should occur throughout the annual assessment period. Discussions may be initiated by the supervisor, rating official (if not the immediate supervisor) or employee. Discussions may be held one-on-one or between a supervisor or rating official and a work group.

(a) If an employee requests a discussion with his/her rating official to discuss his/her performance, it will be scheduled within 15 work days. If this is impracticable, the employee's file should be documented to show the request for a discussion and the failure to have one.

(b) Discussions should be candid, forthright dialogues between the supervisor or rating official and employee(s) aimed at improving the work process or product and developing the employee.

(c) The discussion will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product.

(d) Where indicated, the supervisor or rating official should provide additional guidance aimed at developing the employee(s), removing obstacles and improving the work product or outcome.

(e) Discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for improving processes.

(f) Management will give each employee a copy of his or her critical elements and performance standards when hired or promoted and as changes occur. Management will discuss/explain the elements and standards to the employee when hired and as changes occur.

(g) The employee's signature on the elements and standards will be requested and will signify receipt of the documents and that a discussion thereof took place. The employee's signature means that the supervisor has communicated the performance plan to the employee. It does not mean that the employee agrees with the plan.

(3) Prior to receiving their performance plans, employees will be provided an opportunity and encouraged to participate in the establishment of their performance standards. Rating officials will give serious consideration to suggestions made by the employees.

(a) The performance plan will be given to the employee normally within (30) days after the beginning of the rating period.

(b) Employees will be given five (5) workdays to submit written or oral comments on any proposed performance plan applicable to them. Reasonable requests for extensions will normally be granted. Before comments are due, the employee may request to meet on duty time with a Union representative to discuss the proposed changes in his/her performance plan. The employer agrees to consider the written comments of an employee before finalizing a new or revised performance plan.

(c) If the employee declines to sign, the effective date of the plan is the date the rating official attempted to obtain the employee's signature. The supervisor will note this on the plan, citing the date the employee was given a copy of the established plan.

(4) At the beginning of every rating period, or upon entering on duty, employees will meet with their rating official regarding their job functions and responsibilities. During this meeting, the rating official and the employee will have an oral discussion to explain, clarify and communicate the employee's job responsibilities to ensure that there is a clear and common understanding of the duties and responsibilities contained in the performance plan and their relationship to the Agency's mission, and the levels of performance necessary to achieve each summary rating for a given critical or other element. If there are no changes in job functions, responsibilities, or their relationship to the employee's performance plan, the rating official will advise the employee of that fact, and document in the employee's records.

(5) An employee will not be held accountable for his/her performance plan until the employee receives it. However absent a performance plan, the employee is still accountable for their performance on a daily basis.

(6) Subsequent discussions between the employee and rating official will normally be held when there is a change in the work situation, but not limited to:

- (a) change in the supervisor of record;
- (b) detail;
- (c) change in the component's goals or objectives;
- (d) change in assignments;
- (e) change in the work process or product of the component;

- (f) change in the composition of the work team;
- (g) when seasonal employees return to duty; or
- (h) when an employee returns from an extended absence of 90 days or more

D. Critical Elements and Performance Standards.

- (1) Elements and standards will be in writing and related to the employee's assigned work.
- (2) The Management Directive on Performance Appraisal establishes that performance standards will be on a four tier basis; i.e., Achieved Excellence, Exceeded Expectations, Achieved Expectations, and Unacceptable..
- (3) The Union will be provided copies of critical job elements and standards that are significantly different than ones in existence. Any adverse impact on conditions of employment will be bargained, if requested, to the extent required by law
- (4) When evaluating performance, it is important to communicate to employees all changes in working procedures. The fact that an employee assumes new tasks, receives new critical job elements, changes positions, is a trainee, and/or gets promoted to a new position does not create a presumption that his or her performance is only "Achieved Expectations."
- (5) Time spent performing Union representational functions will not be taken into consideration when evaluating any critical job elements.

E. Frequency of Appraisals.

The appraisal period will be for a 12-month period beginning generally on October 1 and ending on September 30. Employees will receive an annual rating of record. In no event will an employee be appraised if he or she has not worked under critical elements and performance standards for at least 90 calendar days.

F. Appraisal Process.

- (1) Performance appraisals will be based on elements and performance standards. A summary rating will also be given.
- (2) Each annual rating will be reviewed and approved prior to providing a copy to the employee.
- (3) When a copy of the appraisal is given to the employee, the appraising official shall discuss it with the employee and respond to any questions the employee may have. Employees shall sign the appraisal. The signature indicates that the

discussion(s) took place and that the employee received a copy of the appraisal. It does not constitute agreement with the rating. The performance rating will normally be issued in writing to the employees within 30 days of the end of the assessment period. This period may be extended where the employee is subject to a Performance Improvement Plan (PIP) under Article 30 and the established ending date would not afford him or her reasonable opportunity to demonstrate improved performance.

(4) When an employee's performance plan changes less than 90 days before the end of the rating period, the employee will be evaluated based on those parts of the performance plan that had previously been in place. In rare instances, rating periods may be extended if changes to the performance plan are changed shortly before the normal period ends.

(5) When assessing performance, the Agency may consider and make allowances for factors which affect performance that are beyond the control of the employee.

(6) Rating officials will give employees a written progress review report at least once during the rating period. This review will be made at the approximate midpoint of the rating period. Additional progress reviews may be made, and one is required if the rating official believes the employee is not performing at the achieved expectations level. The progress review will indicate to the employee what the employee's rating would be at that time for each critical job element and what would be necessary for the employee's performance to improve. If, at the time of a progress review, the Agency is aware of an instance(s) of performance deficiency, it shall provide that information to the employee during that progress review.

(7) Self assessments are voluntary on the part of employees. If an employee chooses to do a self assessment he/she will be provided with a reasonable amount of administrative time, not to exceed two (2) hours, to prepare written self assessment concerning any performance appraisal that becomes the employee's annual rating of record. These self assessments will be attached to and become part of the appraisal.

G. Progress Review.

The rating official shall provide communication regarding the employee's achievement of goals and objectives throughout the rating period. Formal face to face conversations are one way this communication can occur. Communication may include such things as comments on written products the employee has submitted, e-mail comments regarding assignments, suggestions concerning better ways of conducting business, etc. Such feedback may be coupled with the regular mid-point progress review discussion. This discussion will be sufficient for most employees to understand expectations and measure progress toward meeting these expectations. However, if performance is below the Achieved Expectations level, additional steps, including written documentation and meetings, should be taken to provide feedback.

H. Unsuccessful Performance.

(1) If, at any time during the appraisal year, the appraising official concludes that an employee's work is approaching an unsuccessful level as to any critical element, the official shall meet with the employee to:

(a) inform the employee of the perceived deficiencies in the applicable critical element or elements, including a discussion of the applicable performance standards within the element or elements;

(b) inform the employee of the consequences of a unsuccessful rating in any critical element in terms of career ladder promotions and/or within-grade increases;

(c) recommend specific ways for the employee to correct the perceived deficiencies.

(2) Failure to comply with any of the provisions in Section H(1) will not preclude management from rating an employee unsuccessful on one or more critical element(s).

I. Any appraisal program established will be a positive building block in the foundation of a relationship based on shared interests and mutual objectives.

(1) The assessment system will emphasize:

(a) Employee development;

(b) Administrative simplicity;

(c) The supervisor's role as team leader and coach;

(d) Overall employee contributions;

(e) Recognition of special skills and contributions such as translation and interpretive activities done as part of or in addition to regular job duties;
and

(f) Unit and group achievement of the Agency's mission.

(2) The assessment program will not:

(a) Be used as a disciplinary tool;

(b) Foster individual competition;

(c) Be based on numerical goals and/or numerical performance levels not contained in the employee's own performance standards;

(d) Be punitive, adversarial or overly labor-intensive;

J. Uses of the Performance Rating

The performance rating given to employees under this performance assessment program

is used for a number of purposes.

(1) Within-Grade Increases' (WIGI). An employee who has attained a rating of at least "Achieved Expectations," has achieved an "acceptable level of competence" and will be entitled to appropriate within-grade increases.

(2) The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.

(3) This performance rating will be considered in making determinations regarding reductions-in-force (RIF) within the Agency in accordance with Article 23 of this Agreement.

(4) The rating of record may be used in evaluating candidates under the merit promotion system contained in Article 46 of this Agreement.

(5) To identify systemic changes in operations, work processes, training, teamwork, etc.

K. Acceptable Level of Competence Determinations. Acceptable level of competence determinations, performance improvement plans and denials of within-grade increases will be handled in accordance with the provisions contained in Article 31 of this Agreement.

L. Authority of Arbitrator. Pursuant to the provisions of the Civil Service Reform Act of 1978, and regulations prescribed by the Office of Personnel Management, the Parties recognize that an arbitrator has jurisdiction to hold management to carry out the provisions of this Agreement, which provides the performance appraisal system for bargaining unit employees, including periodic appraisals of the job performance of employees, encouraging employee participation in establishing performance standards, and use of the results as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

ARTICLE 23 - Reduction-in-Force, Transfer of Function and Reorganization

A. WORKFORCE ADJUSTMENTS.

The Agency, and the Union jointly recognize that occasions may arise where adjustments of the work force may be necessary either by reduction-in-force, transfer of function, or reorganization.

B. DEFINITIONS.

(1) Reduction-in-Force. A reduction-in-force means the release of employees from their competitive level by separation, demotion, furlough for more than thirty (30) days, or reassignment requiring displacement; when lack of work or shortage of funds, reorganization, insufficient personnel ceiling, reclassification due to change in duties, or the need to replace a person exercising reemployment or restoration rights requires the Agency to release the employee.

(2) Transfer of Function. Transfer of function means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function is virtually identical to functions already being performed in the other competitive areas affected; or the movement of the competitive area in which the function is performed to another commuting area.

(3) Reorganization. For the purpose of this article, "Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization that result in an employee's release from a competitive level by separation, furlough for more than thirty (30) days, demotion or reassignment.

C. EMPLOYEE / UNION NOTIFICATION.

Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Agency, prior to official notification of employees, the Union will receive ten (10) days advance notice of any pending reduction-in-force or transfer of function or reorganization. This notice, in writing, will include the reasons for the reduction-in-force, transfer of function or reorganization, the approximate number and types of positions affected, the approximate date of the action, and an invitation to the Union to a meeting conducted by the Agency to explain the reduction-in-force, transfer of function or reorganization procedures, and answer relevant questions.

D. MINIMIZE ADVERSE IMPACT.

The Agency will attempt to minimize actions that adversely affect employees which often follow reduction-in-force by using, to the extent feasible, attrition to accomplish reductions. All reductions-in-force will comply with applicable laws and regulations.

E. ADVANCE NOTICE.

Except in the case of furloughs due to unforeseeable circumstances beyond the control of the Agency, the Agency agrees to provide affected employees as much advance notice of reduction-in-force as is administratively possible but in no case will such notice be less than sixty (60) calendar days. All such notices shall contain the information required by Office of Personnel Management regulations.

F APPLICABLE LAWS.

All reductions-in-force, transfer of function and reorganizations will be carried out in compliance with applicable laws, and any alleged failure to comply with such laws and regulations will be processed in accordance with the grievance procedure set forth in Article 38, of this agreement, or for cases appealable to the MSPB, in accordance with their rules.

G. RETENTION REGISTERS.

Employees receiving a reduction-in-force notice have the right to review retention lists pertaining to all positions for which they are qualified. This includes the retention register for their competitive level and those for other positions for which they are qualified, down to and including those in the same or equivalent grade as the position offered by the Agency. If separation occurs, this includes all positions equal to or below the grade level of their current positions. Affected employees shall have the right to the assistance of the Union when reviewing such lists of records.

H. OFFERS OF EMPLOYMENT.

Affected employees shall have a minimum of five (5) calendar days in which to accept or reject, in writing, an offer of another position. Failure of employees to respond, in writing, to the offer within the time limits will be considered a rejection of the offer.

I. MANAGEMENT RESPONSIBILITIES. The Agency will:

- (1) Inform Employees. Inform employees of plans for the transfer of function and the governing regulation after a decision has been made;
- (2) Written Notification. Notify the employee of the proposed plan, in writing, so that the employee will be able to consider the action and give a reasonable answer. Where the transfer of function is to another commuting area, the employee shall have no less than thirty (30) calendar days to accept or reject the position offered;
- (3) Placement Assistance. Assist and counsel affected employees in seeking placement opportunities with other Federal agencies or elsewhere in the community; and,

(4) Retirement and Severance. Counsel employees on individual rights relating to such matters as retirement and severance pay.

J. MINIMIZE ADVERSE IMPACT.

The Agency will attempt to minimize actions that adversely affect employees which often follow a reduction-in-force by using, to the extent possible, attrition to accomplish reductions.

In the event career or career-conditional employees are separated by reduction-in-force the Agency will refer these names to the Department of Homeland Security for inclusion on the appropriate reemployment priority list in accordance with governing regulations. Employees will be given preference for reemployment consistent with governing regulations.

The Agency will provide affected employees information regarding employment possibilities with other government agencies, retirement, severance pay and other benefits available to them.

K. AUTOMATION AND TECHNOLOGY CHANGES.

The parties agree that technological changes such as automation and re-engineering are desirable for the efficient operation of the Agency. However, decisions and actions concerning the impact of these changes should be made with a full awareness of employee morale. In light of this, when changes affect the classification, or status of positions covered by this Agreement, the Agency will meet with the Union to discuss these changes. The Agency will attempt to minimize the adverse impact of these changes by using attrition and reassignment.

L. TRANSFER OF FUNCTION TO OTHER AGENCY.

In the event of a transfer of function of Agency activity to another government entity, the Agency will solicit the cooperation of the gaining agency in explaining the ramifications of such a change to the Union.

M. ELIMINATED POSITIONS.

The Agency agrees that, when an employee is reassigned due to the position previously held having been eliminated, sufficient training as determined by the Employer will be given to the employee to enable him or her to perform the duties of the new position.

ARTICLE 24 - Standards of Dress and Appearance

A. APPEARANCE.

Employees will maintain a professional appearance, consistent with norms prevailing in the local community. Employees shall be attired in a manner appropriate for their position and the duties being performed, such as office duty, working at home, court duty or field duty. The parties recognize and agree that this provision shall not preclude employees from participating in casual dress days such as "dress down Fridays" where such practices now exist or are subsequently established through local supplemental bargaining.

B. SAFETY.

The parties recognize that officer safety is matter of critical importance. When management becomes aware that an employee, as a result of the performance of official duties, has been subjected to threats, harassment or other conduct leading to a reasonable fear on the part of the employee for the safety of the employee and/or his or her family, the Employer shall take action as follows.

(1) Name Plate. The Employer will promptly discuss the matter with the employee and shall authorize the removal of a name plate for a period of not less than 120 days while the incident is reviewed.

(2) Extensions. At the end of 120 days, management may extend the authorization to remove a name plate in 60 day increments pending the outcome of the review.

(3) Other Actions. The Agency may also take such other action as may be appropriate, including, but not limited to, reimbursing the employee for the cost of an unlisted telephone number, contacting local and Federal law enforcement authorities and/or relocating the employee if the employee and Agency agree that such action is necessary.

(4) Written Statement. As soon as practical, the employee will provide management with a written statement outlining the threat, which will be used by management as the basis for conducting a review.

ARTICLE 25 – Overtime

A. FAIR AND EQUITABLE ROTATION.

Overtime assignments will be distributed and rotated fairly and equitably among eligible and qualified employees. Supervisors shall not assign overtime work to employees as a reward or a penalty, but solely in accordance with the Agency's need. Complaints or disagreements on distribution of overtime shall be processed in accordance with the negotiated grievance procedure.

B. PERFORMANCE OF DUTIES.

All employees in an overtime status will perform the duties of the position to which assigned.

C. MAINTAIN RECORDS.

Necessary records to comply with this provision will be maintained at each duty station and made available to all employees upon request.

D. LAWS, REGULATIONS, AND POLICIES.

The Agency agrees to continue to comply with applicable regulations, laws and policies in the payment of overtime to employees.

E. EFFECT ON PERFORMANCE APPRAISAL.

The participation or non-participation of an employee in overtime work, where such work is voluntary, shall not in any manner reflect adversely on his or her appraisal.

F. LIGHT DUTY.

An employee on light duty is not precluded from participating in overtime if there is a need for those light duties to be performed on an overtime basis.

G. OVERTIME ASSIGNMENT PROCEDURES.

The Parties recognize and agree that procedures, such as overtime wheels, for equitably distributing overtime assignments among eligible employees are matters appropriate for local bargaining.

ARTICLE 26 - Details and Temporary Duty Stations

A. PROCEDURES TO ASSIGN.

- (1) Management Right. The Employer retains the right to detail employees.
- (2) Limits. The Employer shall exercise this authority:
 - (a) Law, Regulation, and Contract. In accordance with applicable law, appropriate regulations, and this Agreement;
 - (b) Advance Notice. By giving as much advance notice as possible to employees selected for detail.
 - (c) Utilize Volunteers. Absent a particularized need for specific skills or qualifications the Agency shall utilize volunteers before requiring employees to participate on details involuntarily unless management determines that there is a need for a specific volunteer to continue to perform his regular duties.

B. DEFINITIONS.

For the purposes of this Article, the following definitions apply:

- (1) Temporary Assignment: The change of an employee from one position, work location, or post of duty for a fixed or limited duration of time, upon the expiration of which the employee is expected to return to the original position, work location or post of duty. A temporary assignment may be in the form of either a temporary promotion or a detail.
- (2) Detail: Temporary assignment of an employee to a different position, work location, or post of duty without change of pay regardless of grade, for a specified period, with the employee returning to his or her assigned position at the end of the detail.
- (3) Rotation: The recurring assignment of employees to different work locations, work shifts and/or tours of duty within the confines of the employee's work location or other locations to which the employees are regularly assigned.

C. TEMPORARY PROMOTIONS.

Temporary Promotions and details to higher graded positions will be handled in accordance with the Merit Promotion and Reassignment Plan.

D. RECORD OF DETAIL/PERSONAL FAVORITISM.

The parties recognize that details to other positions and activities are necessary and integral part of mission accomplishment. Details to other activities or to higher graded positions for fifteen (15) consecutive workdays or more will be documented by memorandum to the employee with a copy to his or her Official Personnel Folder. Details will not be made on the basis of personal favoritism. Should the requirements of the Agency necessitate an employee's being detailed to a lower position, this will in no way adversely affect the employee's salary, classification or job standing. If an employee alleges that a detail violates governing regulations or this Agreement, he or she may file a grievance under the negotiated grievance procedure.

E. VOLUNTEER LISTS.

Employees who are interested in participating in details at other than their regular duty station should make their interest known to local supervisors. The Employer will maintain and refer to employee requests for voluntary details. Absent a particularized need for a specific skill or qualification, employee volunteers will be considered as the primary source for selecting employees for details.

F. TIME LIMIT.

Except for training courses, and details outside the 50 States, details away from the normal duty station will not exceed 45 calendar days, unless the employee volunteers for a longer period or management determines that there is a valid operational need for a specific employee to continue on the detail.

G. UNION REPRESENTATIVES.

Management will make every effort to avoid placing a Union representative on a detail that would prevent that official from performing his or her representational functions, unless the employee volunteers for the detail.

H. SELECTION PROCEDURES.

The following procedures shall apply when the service offers temporary assignments, noncompetitive details or rotations, of forty-five (45) consecutive workdays or more to members of the bargaining unit:

- (1) Volunteers. The Agency will canvass the qualified employees for volunteers.
- (2) Selection. Selection will be made from qualified volunteers.
- (3) Local Bargaining. Procedures for selecting from equally qualified volunteers are a matter appropriate for bargaining as part of a local supplemental agreement.

ARTICLE 27 - Hours of Work

A. DETERMINATION OF WORK HOURS.

It is agreed that except in cases of emergency, or where otherwise authorized by law or applicable government-wide rule or regulation, or where the Agency determines that it would be seriously handicapped in carrying out its functions or that the cost would be substantially increased, it will provide the following, consistent with 5 CFR 610.121:

- (1) Basic Workweek. The basic workweek shall be scheduled on five (5) days, Monday through Friday, where possible and the two (2) days outside the basic workweek shall be consecutive.
- (2) Basic Workday. The basic non-overtime workdays shall not exceed eight (8) hours, excluding any non-paid meal period.
- (3) Effect of Holidays. The occurrence of holidays shall not affect the designation of the basic workweek.
- (4) Posted Schedules / Individual Changes. In locations where work schedules are posted, assignments to work schedules shall be posted five (5) days in advance in the appropriate work area covering a 4-week period. Individual changes in the work schedule or assigned shifts shall be posted in the work area no later than one (1) week prior to the beginning of the workday affected. Exceptions to this provision may be made where there is mutual agreement between the employees and supervisors involved. Individuals involved in a change of tour shall be notified of the reasons, including the circumstances of the change.
- (5) Meal Breaks / Lunch Rooms. Employees assigned to District and to Regional Offices and to the Headquarters Office should be accorded an uninterrupted lunch period between the third (3rd) and fifth (5th) hours of duty where lunch periods are customarily taken to the maximum extent possible. Lunch periods may fall outside the third (3rd) and fifth (5th) hours of duty in offices where alternative work schedule arrangements are in place. The Agency shall provide clean and healthful lunch rooms for the consumption of food, to the maximum extent possible, for all Agency employees. Arrangements within Districts for lunch periods will be subject to Article 9.
- (6) Establishment of Shifts. If the need arises where the Agency determines that shift work is necessary then the parties agree to negotiate in accordance with Article 9.

B. DEFINITIONS.

For the purposes of this Article, the parties understand that:

(1) Tours of Duty. Tours of duty refers to an employee's basic workweek, i.e., the days and hours within which the employee is expected to be on duty, e.g., day shift Monday through Friday;

C. ALTERNATIVE WORK SCHEDULES.

(1) Establishment/termination of Alternative Work Schedules. As an exception to other provisions of this Agreement relating to the establishment of work hours, the Agency and Union recognize that establishment of an alternative work schedule for any work unit has the potential of improving productivity, increasing employee morale and providing greater service to the public in accordance with 5 U.S.C. Section 6120. Establishment of alternative work schedules will be consistent with this Article. The terms and conditions of employee participation in alternative work schedules are to be negotiated consistent with Article 9, Mid Term Bargaining and/or Supplemental Bargaining.

(2) Alternate Work Schedule Options.

(a) Employees shall be afforded the opportunity to work an Alternate Work Schedule consistent with mission requirements and Section C(2)(c) of this Article.

(b) When establishing Alternate Work Schedules, Offices shall consider options consistent with the Office of Personnel Management's Alternate Work Schedule Handbook and mission needs.

(c) Legal Restrictions. The parties recognize that the law provides that the Agency may not establish such a schedule or continue such a schedule if the schedule would result in "Adverse Agency Impact:"

(i) A reduction in the productivity of the Agency;

(ii) A diminished level of services furnished to the public by the Agency; or

(iii) An increase in the cost of Agency operations (other than a reasonable administrative cost relating to the process of establishing an alternative work schedule).

(3) Overtime. It is understood by the parties that, under law, none of the hours that constitute an alternative work schedule may be compensated with, or be credited for purposes of premium pay, including administratively uncontrollable overtime, inspectional overtime and Fair Labor Standards Act compensation.

(4) Negotiations. The establishment or termination of an alternative work schedule is to be negotiated in accordance with Article 9 (Mid Term Bargaining).

ARTICLE 28 - Investigative Interviews

A. INVESTIGATIVE INTERVIEWS.

(1) Weingarten Rights. The Agency will provide the Union the opportunity to be represented at any examination of an employee in the unit by a representative of the Agency in connection with an investigation if:

(a) Reasonable Belief. The employee reasonably believes that the examination may result in disciplinary action against the employee; and

(b) Employee Request. The employee requests representation.

(2) Annual Notice. The Employer will advise employees in the unit of this right annually.

B. WRITTEN MEMORANDUM.

In some circumstances, a written memorandum may be used as a substitute for an oral examination in connection with an investigation. In such cases, where the criteria of paragraph A (1) of this article are met, the employee is entitled to the opportunity to consult with a Union representative prior to completing the memorandum.

C. WRITTEN NOTICE / WITNESSES.

(1) Office of Security and Integrity. In conducting investigations under the auspices of the Office of Security and Integrity (or successor), the Agency in taking a sworn statement from employees based on allegations which could result in disciplinary action against the employee, will provide sufficient advance written notice to the subject of the interview to allow them time to secure Union representation if they so desire. The failure to obtain representation, or adequately confer with the representative, will not delay the interrogation by more than 48 hours from the time the employee receives such notice. The Union will promptly designate its representative and make reasonable efforts to minimize delay. Upon request, a reasonable extension of time will be granted when the representative cannot be present.

(2) Witness. An employee who is requested to give testimony against another employee and who refuses to do so voluntarily will be entitled to representation prior to the time the Agency initiates proceedings to compel such testimony or institutes charges of insubordination.

D. SCHEDULING OF INTERVIEW.

Interviews in connection with misconduct investigations may be conducted at any reasonable hour. However, where an employee is directed to appear for an interview, all hours spent in the interview shall be compensated at the appropriate rate.

E. TRAVEL FOR INTERVIEW.

When an employee is required to travel for the purpose of participation in an investigative interview or any hearing appeal process, the Agency will pay the travel and per diem for the employee.

ARTICLE 29 - Disciplinary and Adverse Actions Based on Misconduct

A. STATEMENT OF PURPOSE AND POLICY.

The objective of discipline is to promote the efficiency of the service.

B. Disciplinary and adverse actions will be applied by each deciding official according to the individual fact circumstances. The Agency will administer disciplinary and adverse action procedures and determine appropriate penalties to all employees in a fair and equitable manner, and only for appropriate cause as provided in applicable law. In most cases, the proposing and deciding official will not be the same person.

C. Notice to an employee of any proposed disciplinary or adverse action shall be given to the employee at an early and practical time after the alleged offense has been committed and made known to the employer and investigated, if appropriate. The Agency shall have a reasonable amount of time for the investigation of each individual case according to the individual circumstances of each case. The parties recognize that disciplinary and adverse actions are time-consuming. For adverse actions, any assertion that too much time elapsed between the alleged offense and issuance of either the proposed notice or decision notice must be supported by proof of harmful error.

D. No record of a complaint, determined to be unfounded, will be placed in the employee's Official Personnel Folder (OPF) and/or electronic Official Personnel Folder (e-OPF). Any unfounded complaint may, in the interest of the employee and the Agency, be maintained in a subject file but will not under any circumstances be considered as a factor in connection with any disciplinary or adverse action, promotion, etc. Such subject file will be maintained in accordance with the Agency records retention program.

E. DEFINITIONS.

(1) Disciplinary Actions. The disciplinary actions covered by the provisions of this Article are written reprimands and suspensions of fourteen (14) days or less.

(2) Adverse Actions. Adverse actions covered by the provisions of this Article are removals, suspensions for more than fourteen (14) days, reductions in pay, reductions in grade, and furloughs of thirty (30) days or less. Reductions in pay and reductions in grade, when associated with unacceptable performance of an individual employee, are more specifically covered in succeeding Article 30, Actions Based Upon Unacceptable Performance.

(3) Day means a calendar day, unless otherwise specified.

(4) Furlough means the placing of an employee in a temporary status without duties and pay because of lack of work or other non-disciplinary cause.

F. ADMINISTRATION OF DISCIPLINE / ADVERSE ACTION.

Prior to issuing any proposal for disciplinary or adverse action, the Agency will make an effort to discover whether the employee did in fact engage in the alleged misconduct. This effort, at a minimum, will include the following:

- (1) An employee who is being investigated for wrongdoing will be afforded appropriate legal rights in connection with the investigation.
- (2) Consistent with Article 28, if the employee has a reasonable belief that disciplinary adverse action may result from what h/she says during an investigative interview, the employee may request to have a Union representative present at the examination/interview.
- (3) For interviews not conducted under the auspices of the Office of Security and Integrity, all employees being interviewed by Agency officials for the purposes of uncovering or revealing misconduct will, no later than the start of the interview, be provided with a brief description of the purpose of the interview. This brief description will not include complainant or witness names.

G. UNION REPRESENTATION.

- (1) When a bargaining unit employee is issued any proposed disciplinary or adverse actions, the employee shall receive an additional copy which states at the top of the first page, "This copy may at your option be furnished to your union representative," in accordance with the provisions of Article 12, Section A." Upon employee request, the Agency shall assist the employee with contact information for the appropriate Union official for representational purposes.
- (2) When the Union is designated as the representative in a disciplinary or adverse action, the employee will notify the Agency in writing of the name and address of the person to whom a copy of all correspondence addressed to the employee relating to the case shall be mailed or delivered. A copy of correspondence addressed to the employee will be furnished to the designated person by mail or by personal delivery.
- (3) If the employee elects not to be represented by the Union, correspondence will be addressed to the employee and it will remain his/her prerogative as to whether he or she wishes to furnish the Union with copies of such correspondence.

H. PROCEDURES.

- (1) Just Cause.

The parties agree that letters of reprimand, suspensions of less than fifteen (15) days, and adverse actions will be taken only for appropriate cause as provided in applicable law, including just cause standards. Just cause is that cause which

promotes the efficiency of the Service.

(2) Oral Admonishment.

An oral admonishment will not normally be used as a basis for any disciplinary action, unless it is confirmed in writing and a copy furnished to the employee.

(3) Letter of Reprimand.

(a) When a letter of reprimand is issued, the employee will be informed that s/he shall have the right, within ten (10) days, to prepare and submit a concise statement (not to exceed two pages) of disagreement. The Agency will consider the statement, and if appropriate modify, or withdraw the letter of reprimand. If the letter of reprimand is not withdrawn the statement of disagreement will be filed with the letter of reprimand on the temporary side of the OPF and/or e-OPF. The employee does not waive his or her right to grieve the reprimand in accordance with Section 0 outlined below.

(b) The letter of reprimand will inform the employee that s/he has the right to file a grievance over the reprimand under the negotiated grievance procedure, and the right to Union representation.

(c) The reprimand will remain in the employee's OPF for a period not to exceed two (2) years unless the employee leaves the Agency. If the employee leaves the Agency, the reprimand will be removed from the OPF, e-OPF, and/or any other file in which it may have been placed.

(4) Short-Term Suspensions. An employee against whom a suspension for 14 days or less is proposed is entitled to:

(a) An advance written notice of a minimum of thirty (30) days stating the specific reasons for the proposed action.

(b) A complete copy of all evidence considered the proposing official. Such evidence shall be provided at the time the proposal is served. It is understood that all witnesses' personal information will be redacted.

(c) A minimum of ten (10) calendar days after the latter of the receipt of written notice as provided by item 4(A) above or receipt of the evidence considered by the proposing official, if any, as provided by item 4(B) immediately above, to respond orally and in writing and to furnish affidavits and other documentary evidence in support of the response; and

(d) Be represented by an attorney or other representative.

(e) Be given a reasonable amount of duty time to prepare and present a response to the proposal.

(f) After considering the employee's response, the Agency will issue a written decision. If the decision is unfavorable to the employee, the decision may be grieved, in accordance with Section N below.

(5) Removal, Suspension for More Than 14 Days, Reduction-in-Grade, Reduction-in-Pay, and Furlough of 30 Days or Less

(a) An employee against whom such an action is proposed is entitled to advance written notice of a minimum of thirty (30) days stating the specific reasons for the proposed action, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. For these situations, the employee shall only be provided advance written notice of ten (10) days.

(b) The employee will be provided a complete copy of the evidence considered by the proposing official. Such evidence shall be provided at the time the proposal is served. It is understood that all witnesses' personal information will be redacted.

(c) At least ten (10) calendar days, after the latter of the receipt of written notice as provided by item 5(A) above or receipt of the evidence considered by the proposing official, if any, as provided by item 5(B) immediately above, to respond orally and in writing, and to furnish affidavits and other documentary evidence in support of the response; and

(d) The employee is entitled to be represented by an attorney or other representative.

(e) The employee will be provided a reasonable amount of duty time to prepare and present a response to the proposal.

(f) After receiving the employee's response, and considering all available information, the Agency will issue a written decision that complies with the requirements of this Article. If the decision is unfavorable, the employee has the right to file either an appeal or a grievance in accordance with the provisions of this Agreement.

I. NEW OR AMENDED CHARGES.

If the Agency wishes to add additional charges between the time it proposes disciplinary action and when a decision is issued, the Agency will rescind the original proposal and issue a new one, including the new charges, thus re-starting the procedures outlined in part H above.

J. EXTENSION OF TIME LIMITS.

Upon request, the Agency may grant a request for extension of the time, including but not limited to a reasonable amount of time to furnish medical documentation. Denials of requests for additional time will not be arbitrary or capricious.

K. UNWARRANTED DISCIPLINE.

Any disciplinary or adverse actions and all copies thereof which are later found to have been unwarranted shall be removed from the OPF and/or e-OPF of the employee and destroyed.

L. INVESTIGATIVE INTERVIEW TRAVEL.

When an employee is required to travel for the purpose of participation in an investigative interview or an administrative hearing, the Agency will pay travel and per diem, consistent with government-wide rules and regulations.

M. NOTICE OF PROPOSED ACTION.

An original and one (1) copy of all proposed notices of disciplinary actions, including adverse actions, shall be furnished to the affected employee.

N. GRIEVANCES AND APPEALS.

If an employee believes that s/he has been unfairly disciplined, s/he may:

(1) Reprimands and Disciplinary Suspensions. With regard to written reprimands and suspensions of 14 days or less: file a grievance as stated below.

(2) Adverse Actions. With regard to adverse actions employees may file either a grievance as stated below or file a statutory appeal. Once an employee (or the Union on behalf of the employee) has filed a written grievance or a timely statutory appeal, he or she may not pursue the same matter through the other procedure.

O. GRIEVANCES.

If an employee wishes to pursue a grievance concerning a written reprimand or the final decision regarding a suspension or an adverse action, the Parties recognize and agree that:

(1) Reprimands. In the case of an official reprimand, the grievance process shall begin with Step III of Article 38 (F) (3) of this Agreement and proceed to arbitration if not satisfactorily resolved at the Step III grievance level.

(2) Suspension or Adverse Action. In the case of a suspension or adverse action,

the grievance process shall begin at the arbitration step in accordance with the procedures set forth at Article 39 provided that the Union invokes arbitration after being so requested by the employee. If the Union declines to invoke arbitration, the employee has no further grievance rights under the negotiated grievance procedure. However, where the Union declines to invoke arbitration, the employee still retains whatever statutory appeal rights they might otherwise possess. In that case, the Agency Notice of Decision shall represent the Agency's final decision.

P. APPEAL ARBITRATOR. An employee may seek review of an arbitrator's award in an appealable adverse action to the Merit Systems Protection Board according to the rules and regulations of the Board pursuant to 5 U.S.C. 7121(d).

Q. LAST CHANCE AGREEMENTS. Last Chance Agreements refer to situations in which the Agency agrees to forgo taking a disciplinary or adverse action against an employee in exchange for the employee agreeing to set terms, including conforming to certain conduct expectations for a set period of time. The understanding is that if the employee does not meet his/her obligation under the agreement, then the Agency is free to reinstate disciplinary or adverse action. The use of Last Chance Agreements shall not be arbitrary or capricious. The employee will not be compelled to waive his or her right to grieve or appeal an alleged breach of a Last Chance Agreement.

R. ALTERNATIVE TO FORMAL DISCIPLINE. Alternative forms of discipline in lieu of formal discipline may be appropriate in some circumstances and of benefit to both the employee and the Agency. Alternative discipline is an option only in cases in which non-alternative disciplinary action would result in an official reprimand or a suspension of 14 days or less. However, if used, all provisions of this agreement must be followed, such as but not limited to notice periods, complete copies of evidence considered by the proposing official, etc. The objectives of alternative discipline may include, but are not limited to:

- Improving communications and interpersonal working relationships between supervisors and employees;
- Correcting behavioral problems;
- Reducing the costs and delays inherent in traditional disciplinary actions; and
- Decreasing the contentiousness between the parties.

ARTICLE 30 - Actions Based Upon Unacceptable Performance

A. PERFORMANCE BASED ACTIONS.

The actions covered by the provisions of this Article are: reduction in grade and removal for unacceptable performance pursuant to 5 U.S.C. 4303, for employees in bargaining unit positions at the time the action was initiated.

B. PERFORMANCE IMPROVEMENT PLAN.

Before a performance based action is taken against an employee, the employee will be given an opportunity to improve his or her performance through the issuance of a written Performance Improvement Plan (PIP). The PIP will include the following:

- (1) Identify Problems. Identification of each critical element which is being performed at an unacceptable level.
- (2) Explain Standards. An explanation of what the employee must do to bring his or her performance in the critical elements so identified up to an acceptable level.
- (3) Allow Improvement. A reasonable period of time commensurate with the employee's duties and responsibilities in which to improve performance, but not less than forty-five (45) days. And
- (4) Provide Assistance. Where appropriate, the types of assistance that will be provided to the employee in improving his or her performance.

C. ADVANCE WRITTEN NOTICE.

An employee whose reduction in grade or removal under this Article is proposed shall be provided with at least a thirty (30) day advance written notice which identifies:

- (1) Identify Unacceptable Performance. Specific instances of unacceptable performance;
- (2) Identify Critical Elements. The critical elements of the employee's position involved in each instance of unacceptable performance;
- (3) Time to Review and Respond. That the employee will be provided a reasonable amount of official time to review material on which the action is based and to prepare an answer orally and in writing;
- (4) Right to Representation. That the employee will be given the right to be represented by the Union or an attorney or other person of his or her choosing in responding to the proposed action; and

(5) Written Decision That the Service will provide a written decision with specific reasons for the action taken within thirty (30) days after the expiration date of the notice period.

D. ESTABLISHED PERFORMANCE STANDARDS.

No bargaining unit employee will be subject to removal or reduction in grade based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical elements of his or her position.

E. RIGHT TO REVIEW DOCUMENTS.

Where an action is proposed under this Article, the employee or his or her representative will be provided, upon written request, with a copy of those portions of written documents which contain information and evidence on which the action is based. The Employer will also supply the employee or his or her representative, upon written request, with a copy of those portions of written documents favorable to the employee which are directly related to the specific instances on which the unacceptable performance is based.

F. PERFORMANCE BASED ACTION PROCEDURE.

(1) Notice, Information and Response. An employee against whom an action is proposed under this Article shall be provided with ten (10) days, from receipt of notice of the proposed action and all information as set forth in Section E above, to review material relied upon by the Employer and answer the proposed action orally and/or in writing. Any request for data must be submitted within 10 days of receipt of the proposal. The employee may submit affidavits and/or other documentary evidence in support of the answer.

(2) Decision. An official who sustains the proposed reasons against an employee in an action based on unacceptable performance will set forth his or her reasons for the decision.

G. ONE YEAR LIMIT.

The final decision in the case of a proposed action to either remove or downgrade an employee based on unacceptable performance will be based on those instances of unacceptable performance by the employee which occurred during the one (1) year period ending on the date of the advance notice letter.

H. RECORD RETENTION.

If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for three (3) years from the date of the advance written notice letter, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any record relating to the employee.

I. FINAL DECISION.

The final decision regarding a proposed action based on unacceptable performance will be concurred in by an official in a higher position than the official who proposed the action. The final decision letter shall set forth the basis of the decision.

J. APPEAL.

If the Employer's decision is to effect an action based upon unacceptable performance, the employee may appeal the decision to the Merit Systems Protection Board in accordance with the applicable law or under the grievance/arbitration procedures as provided in this Agreement. Under no circumstances may an employee appeal an action under this Article to both MSPB and the grievance/arbitration procedures in this Agreement.

ARTICLE 31 - Career Ladder Promotions and Within Grade Increases

A. PROMOTIONS.

Career ladder promotions shall be processed in a timely manner once an employee has met any applicable time-in-grade and qualification requirements and the supervisor has determined the employee has acquired the knowledge, skills and abilities to work at the next higher level. Once these criteria are met, the promotions will be made effective at the beginning of the following pay period. If the determination is delayed, and that determination is that the employee possessed the necessary knowledge, skills and abilities on the date of eligibility, the promotion will be retroactive. Promotions will be processed retroactively if a delay occurs after the supervisor's determination.

B. GRADE INCREASES.

A within-grade increase shall be effective on the first day of the first pay period following the completion of any required waiting period. There are two exceptions:

(1) Not Acceptable Level of Competence. When there has been a determination that the employee is not performing at an acceptable level of competence (ALOC); or

(2) Delayed Determination. When the employee's ALOC is delayed because the employee:

(a) 90 Day Review. Has not served 90 days under performance standards; or

(b) New Position. The employee was reduced in grade because of poor performance and has not served 90 days under performance standards in the new position.

However, an employee's within-grade-increase will not be delayed under (2) (a) solely because the Agency has made changes to an employee's performance standard. If a within grade increase is delayed under (2) and the employee is subsequently found to be performing at the ALOC, the increase will be granted retroactively to the beginning of the pay period following the completion of the waiting period.

C. PERFORMANCE ASSISTANCE.

When the Agency's evaluation leads to a conclusion that the employee's work is not at an acceptable level of competence for a within grade increase, the Employer will be required to take the following actions:

- (1) Identify Problems. Explain each aspect of performance in which the employee's performance falls below an acceptable level and relate the deficiencies to specific job elements and performance standards.
- (2) Explain Requirements. Explain what is required to meet the acceptable level and what the employee must do to elevate his or her performance to that level,
- (3) Warn of Consequences. Warn the employee that if performance does not improve to the acceptable level, the within grade increase, for which the employee otherwise would be eligible, will be denied.
- (4) Provide Assistance. Provide assistance in improving performance rated below the fully successful level. Such assistance may include formal training, on-the-job training, counseling, or closer supervision. Within-grade increase determinations will be made in accordance with applicable regulations, to include providing the employee with a written notification, when a negative determination is made, stating the reason(s) for the determination and what the employee must do to improve performance to an acceptable level.

ARTICLE 32 - Quality Step Increase

A. DEFINITION.

"Quality Step Increase" means an increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of the grade in accordance with Section 5336 of Title 5, United States Code. The term "quality step increase" is used in Section 5336 of Title 5, United States Code.

B. PURPOSE.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

C. CONSIDERATION.

To be considered for a quality step increase, an employee's current rating of record must be outstanding and the employee must not have received a quality step increase within the preceding 52 consecutive calendar weeks.

D. DETERMINATION.

A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved.

F. EFFECTIVE DATE.

A quality step increase shall be effective on the first (1st) day of the first (1st) pay period following the approval date.

G. UNION CONSULTATIONS.

The Union may raise questions and concerns with regard to the performance rating system at Regional consultations pursuant to Article 10 of the contract.

ARTICLE 33 - Leave

****Article 33 has been replaced by three Leave Articles 10/25/2013. See addendum page 171.****



ARTICLE 34 - Counseling for Performance and Conduct

A. REASONABLE AND FAIR.

Counseling is not a disciplinary action. It shall be reasonable, fair, and used to encourage an employee's improvement in areas of conduct and performance.

B. PRIVACY AND NOTICE.

Oral counseling will be conducted in private. The supervisor will notify the employee in advance if more than one Management official is to attend the counseling session. Management recognizes that the employee will not be able to perform productive work during the counseling session and will take this into account in assigning work and evaluating the employee's work output.

C. UNION REPRESENTATIVE.

The employee may request Union representation when the meeting involves an examination as described in Article 28.

D. WRITTEN RECORD.

Not all counseling will necessitate a written record. However, if counseling is reduced to writing, the employee will be given two copies of the written record. The written counseling will include, if appropriate, any references to prior related oral counseling.

E. MISCONDUCT RECORD.

A record of counseling for misconduct may be retained for a period of up to one year.

F. PERFORMANCE RECORD.

A record of counseling for performance will be retained during the rating period for which it was issued. If the performance appraisal for that year incorporates information from the counseling record in the narrative section or the counseling is incorporated into a performance improvement plan notice, it may be retained for a longer period.

ARTICLE 35 - Holidays and Religious Observances

A. HOLIDAYS.

The following days are treated as holidays for the purpose of pay and leave of Agency employees:

1. New Year's Day - January 1;
2. Martin Luther King's Birthday – 3rd Monday in January;
3. Washington's Birthday/Presidents' Day) – 3rd Monday in February;
4. Memorial Day - Last Monday in May;
5. Independence Day - July 4th;
6. Labor Day – 1st Monday in September;
7. Columbus Day – 2nd Monday in October;
8. Veterans Day - November 11th;
9. Thanksgiving Day – 4th Thursday in November;
10. Christmas Day - December 25th;
11. Inauguration Day - January 20th quadrennial (in the Washington, D.C. metropolitan area only);
12. Any other day designated as a holiday by Federal Statute or Executive Order.

B. IN LIEU OF HOLIDAY OBSERVANCE.

(1) Federal Statute. For employees working a Monday through Friday workweek, holidays falling on a weekend will be celebrated as defined by Federal Statute.

(2) Sunday. When a holiday falls on a Sunday or an employee's day off in lieu of Sunday, the employee is excused from work on the next workday of his or her basic workweek. Holiday pay is authorized for the next workday if the employee is not excused on that day.

(3) Saturday. When a holiday falls on Saturday or an employee's day off in lieu of Saturday, the employee is excused from work on the previous day of his or her basic workweek. Holiday pay is authorized for the previous workday if the employee is not excused from duty on that day.

C. RELIGIOUS HOLIDAYS.

Employees who wish to attend or participate in the observance of the established religious holidays of their faith (e.g., Good Friday, Yom Kippur) may be granted annual leave in accordance with provisions set forth in Section D of this Article.

D. ACCOMMODATION OF RELIGIOUS BELIEFS.

(1) Religious Observance. The Agency will make every effort to accommodate the practice of religious beliefs by individual employees as consistent with the

needs of the Agency. Employees who are required to be absent for some period of the workday because of religious observance or belief, may elect to work compensatory overtime as a substitute for time off, or take appropriate leave.

(2) Compensatory Time. The Employer shall grant compensatory time off to an employee requesting such time off, and shall in each instance afford the employee the opportunity to work compensatory overtime in order to repay the compensatory time off. A request may be disapproved, however, if the requested change in work schedule would interfere with the ability of an organization to efficiently accomplish its mission. In such circumstances, there is no obligation to approve requests for time off for religious observances.

(3) Leave Procedures. Where an employee is granted leave for religious observance, the employee may perform compensatory overtime work before or after the compensatory time off. Time off taken in advance must be repaid by an equal amount of compensatory overtime work within six (6) pay periods following the pay period in which the employee was absent; otherwise, the time off will be charged to annual leave or leave without pay, as appropriate. When compensatory overtime work is performed in advance, the time off for religious observance must be taken within six (6) pay periods of the pay period in which it was earned; otherwise, it will be forfeited.

(4) Premium Pay Excluded. The premium pay provisions for overtime work do not apply to compensatory overtime work performed under this section.

(5) Unavailable Overtime. If no productive overtime is available to be worked by the employee at such time as he or she may initially request such work, alternative times will be arranged by the Employer for the performance of the compensatory overtime work within the time frames stated in Section D (3).

E. STATE AND LOCAL HOLIDAYS.

State and local holidays will normally be treated as regular workdays if they fall within an employee's basic workweek. However, the Employer may release employees on administrative leave for a state or local holiday when the employees of the Agency office, installation, or post of duty are actually prevented from working by one of the following circumstances:

(1) Building Closures. The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating.

(2) Local Transportation. Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location.

(3) Related Duties. The duties of the employees consist largely or entirely of dealing directly with employees or industrial establishments or local government offices and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

ARTICLE 36 - Probationary Employees

A. PERFORMANCE STANDARDS AND REVIEW.

Probationary employees will be advised in writing of the applicable critical elements and performance standard at the beginning of the probationary period. The supervisor will explain the requirements of each probationer's position and answer any questions the employee may have. The supervisor will review the performance of the probationary employee and provide counseling regarding any performance deficiencies. If the employee is not performing satisfactorily, he will be so advised by the supervisor. The supervisor will inform the employee how to correct his performance. The parties understand that a probationary employee may be terminated whether or not the supervisor has followed these procedures.

B. NON-RETENTION AND NOTICE.

Although termination of a probationary or a temporary employee is not an adverse action, the Agency agrees that when it deems advance notice of termination to be in the best interests of the operations of the Agency, the affected employee will be given two (2) weeks advance notice prior to the effective date of such action. Prior federal service qualifies towards the probationary period to the extent consistent with applicable law and regulation.

ARTICLE 37 - Equal Employment Opportunity

A. STATEMENT OF POLICY.

The Agency will provide equal opportunity in employment for all qualified persons and will prohibit discrimination in employment because of race, color, religion, sex, national origin, age, reprisal, disability, status as a parent, genetic information, and sexual orientation, except where required by statute or pursuant to bona fide occupational qualifications. The employer will also provide religious and disability accommodations in accordance with the law and the agency's reasonable accommodation procedures.

B. EEO RESPONSIBILITIES.

(1) **MANAGERS AND SUPERVISORS.** The agency recognizes its responsibility for its acts and those of its managers and supervisors with respect to discrimination to the extent of and in accordance with applicable law. With respect to conduct between supervisors, managers and employees, supervisors and managers have a responsibility to maintain a discrimination-free environment to the extent required by law.

(2) **FELLOW EMPLOYEES.** With respect to conduct between fellow employees, employees have a responsibility to maintain a discrimination-free environment to the extent required by law. With respect to conduct between fellow employees, the employer may also be responsible for acts of sexual harassment in the work place, where the Employer knows or should have known of the conduct, unless it can be shown that the Employer took immediate and appropriate corrective action.

(3) SEXUAL HARASSMENT.

(a) **Workplace Atmosphere.** The Employer agrees to provide all bargaining unit employees a work atmosphere free from sexual harassment.

(b) **Unwelcome Advances.** Unwelcome sexual advances request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

i. **Condition of Employment.** Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;

ii. **Employment Decisions.** Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

iii. Hostile Work Environment. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(c) Lost Opportunity. Where employment opportunities or benefits are granted because of an individual's submission to the Employer's sexual advances or requests for sexual favors, an employee who was qualified for but denied that employment opportunity or benefit has the right to exercise one of the options in Section C below.

C. DISCRIMINATION CLAIM AVENUES.

(1) Claims. Any employee who believes that he or she has been discriminated against on the grounds set forth in this Article, may file any one of the following:

(a) Grievance. A grievance pursuant to the provisions of Article 38 of this Agreement;

(b) EEO Formal Complaint of Discrimination. A formal complaint of discrimination with the Service subsequent to the required EEO pre-complaint counseling; or

(c) MSPB. An appeal to the Merit Systems Protection Board (MSPB) where an action is otherwise appealable to the Board and the employee alleges that the basis for the action was discrimination prohibited by race, color, religion, sex, national origin, age, reprisal or disability.

(2) Elected Procedure. An employee shall be deemed to have exercised his or her option under this section at such time as the employee timely files either a formal complaint of discrimination, an MSPB appeal, or a grievance in writing in accordance with the provisions of this Agreement.

(3) Grievance Appeal. The selection of the negotiated grievance procedure contained in this Agreement to process a complaint of discrimination shall in no manner prejudice the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Commission. Appeals to the Merit Systems Protection Board or the Equal Employment Opportunity Commission shall be filed pursuant to such regulations as the Board or the Commission may prescribe.

(4) Grievance Filing Deadlines.

(a) An employee may file a grievance pursuant to this Article within fifteen (15) days following:

- i. INCIDENT. The date of the alleged discriminatory incident; or
- ii. AWARENESS. The date upon which the aggrieved became aware or reasonably should have become aware of the alleged discriminatory incident or situation; or
- iii. FINAL INTERVIEW. The date of the employee's final interview with the Equal Employment Opportunity Counselor.

(b) An employee must seek EEO counseling within forty-five (45) days of the alleged discriminatory incident. An employee may not proceed under section 4(a)(iii) if they are not timely under this subsection.

(5) Closed Arbitration Hearing. Where a grievance under this Article is advanced to arbitration, the arbitration hearing - at the option and request of the grievant - shall be conducted as a closed hearing.

D. ADDITIONAL COMPLAINT PROCEDURES RELATING TO SEXUAL HARASSMENT.

(1) Investigation. Where an allegation of sexual harassment is brought to the attention of Management, the Employer will promptly and seriously investigate said allegations.

(2) Substantiation. In substantiating an allegation of sexual harassment, an employee need not demonstrate resistance to the harassment or that resistance of the harassment caused loss or denial of tangible job benefits.

(3) Confidentiality. Where an employee has brought an allegation of sexual harassment to the attention of Management, the Employer shall treat such allegations as confidential and shall reveal no more information concerning such an allegation than is necessary to conduct a full, prompt, and serious investigation.

E. RIGHT TO REPRESENTATION.

At any stage in the processing of an EEO complaint the employee shall have the right to be accompanied, represented, and advised by a representative of his/her choosing. The employee shall also have the right to present the EEO complaint without representation.

F. USE OF EEO COUNSELORS.

(1) EEO Intake Office. The agency shall make known the telephone number (1-866-860-8885) and mailing address of the agency's EEO Intake Office on its Outlook Email Directory and Intranet site.

(2) Consultation. Employees are encouraged but not required to consult with an Equal Employment Opportunity Counselor prior to filing a grievance under this Article. Such consultation shall take place within forty-five (45) days of the alleged discriminatory incident.

(3) EEO Counselor Duties. The EEO Counselor shall:

- (a) COUNSEL. Counsel the aggrieved employee concerning the issues in the matter;
- (b) INQUIRE. Make whatever inquiry into the matter that he or she believes necessary;
- (c) RESOLVE. Seek a solution of the matter on an informal basis;
- (d) DOCUMENT. Keep a record of his or her counseling activities; and
- (e) WRITTEN REPORT. Submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved employee, summarizing his/her actions concerning the allegations of discrimination.
- (f) INFORM OF RIGHT TO REPRESENTATIVE. Advise the aggrieved employee that he or she has the right to have a union representative or other representative of their own choosing present, throughout all stages of the EEO complaint process.

(4) Final Interview. The EEO Counselor shall, insofar as is practicable, conduct a final interview with the aggrieved employee within thirty (30) calendar days after the date on which the matter was called to the attention of the EEO Counselor by the aggrieved employee.

(5) Right to File Complaint. If the final interview is not concluded within thirty (30) calendar days and the matter has not been previously resolved to the satisfaction of the employee, the Counselor shall at that time inform the aggrieved employee of his or her right to immediately file a complaint of discrimination by exercising one of the options in Section C.

(6) Neutrality of EEO Counselor. The EEO Counselor shall not in any way attempt to restrain an employee from filing an EEO complaint, nor may an EEO Counselor encourage an employee to file an EEO complaint.

(7) Confidentiality. The EEO Counselor shall not reveal the identity of an aggrieved employee who has come to him or her for counseling, except when authorized to do so by the aggrieved employee, until a written EEO complaint has been filed.

(8) Independence of EEO Counselor. Equal Employment Opportunity Counselors shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of their duties.

G. UNION RIGHTS.

(1) Notification of Change. If at any stage of the complaint process under procedures covered by this article, the Employer determines to make changes to resolve the complaint with respect to personnel policies and practices or matters affecting the general working conditions of unit employees, the Union will be afforded reasonable notification. Likewise, where the development and implementation of the Employer's Management Directive 715 Plans and Programs involve changes in personnel policies, practices, or working conditions, the Employer will fulfill its bargaining obligations consistent with the requirements set forth in 5 USC Chapter 71.

(2) Conflict with Contract.

(a) Notice and Opportunity to Bargain. Where the corrective or remedial action to be taken as a result of statutory adjudicatory procedures would conflict with or appear to conflict with, the provisions of this Agreement, the Employer shall afford the Union reasonable notification and opportunity to negotiate the impact of the Employer's action effectuating the decision.

(b) Priority of Appellant Decisions. The provisions of this Agreement may not serve to prevent implementation of statutory equal employment opportunity decisions (of, i.e., the Merit Systems Protection Board, the Equal Employment Opportunity Commission or the Federal courts) where the provisions:

- i. Violate applicable law, order, or regulations in effect at the time this Agreement was approved; or
- ii. Are themselves discriminatory in their impact on employees; or

iii. Leave no reasonable alternative for taking required action.

(3) MD715 Plan. The union recognizes that the agency is responsible for the development of the annual MD715 Plan which must be submitted by the Department to the Equal Employment Opportunity Commission or the Federal Courts.

(4) Union Right to be Present. If the employee elects to pursue the complaint under the grievance procedures of this Agreement and he or she elects to process the grievance without representation, the Union shall have the right to be present at any meeting between Management and the employee concerning the grievance.

H. EEO COMMITTEES.

(1) Purpose. The Agency and Union reaffirm their commitment to the principles of EEO, and to that end agree to support a positive program which has as its objective the realization of that commitment.

(2) Membership. An EEO Committee will be established in each office. With respect to EEO committees, the term Office will include the District Offices, Service Centers, the National Benefits Center, the National Records Center, Training Facilities, Regional Offices, Asylum Offices and Headquarters Office. The Committee will be composed of up to two (2) Management representatives, up to two (2) Union representatives per local, up to two (2) Special Emphasis Program Managers, and up to two (2) non-management representatives who are not SEPMs. For the purposes of this Article, the SEPMs will not be management or union representatives.

(3) Meetings. Office committees may meet as frequently as quarterly, but shall meet at least annually. Committee participants not within the local commuting area will participate via telephone, video-conference or other electronic means, unless their physical presence is necessitated by the duties to be performed.

(4) Duty Hours. All Committee meetings will be during regular duty hours and the Agency will, to the maximum extent possible, make shift changes to accommodate attendance by Union representatives.

(5) Time, Travel and Per Diem. Because EEO Committees are established as Management Advisory Committees, all Union representatives shall receive official time while attending such meetings for the time they would have otherwise been in a duty status. The cost of travel and per diem for a Union representative to attend District EEO meetings in person will be borne by the Service. Any travel required by a Union representative will be on official time if otherwise in a duty status.

(6) Committee Responsibilities. Advisory Committees established under this Article are to be advisory and consultative in nature. The committee is advisory to

the Office of Equal Employment and Inclusion and management. Specifically, they serve as a continuing link of communication on matters of an EEO nature. Operations and functions of EEO Advisory Committees will consist of:

(a) Identify Issues. Identifying and bringing to the attention of local management any personnel policy, practice or procedure which denies quality of opportunity to any group or individual on the basis of race, color, religion, sex, national origin, age or disability.

(b) Exchange Ideas / Proposals. Acting as a forum for an exchange of ideas and action proposals on sensitive issues, and matters of concern of an EEO nature.

The Committee or its members shall not be involved in any individual EEO issues where a pre-complaint or complaint has been filed.

(7) EEO Statistics. The Agency agrees to furnish semiannually to the Council President a copy of the annual 462 Report on EEO complaints and a copy of the MD715 Plans to identify/eliminate EEO barriers.

I. ANNUAL ANNOUNCEMENT.

The Agency shall annually incorporate the provisions of this Article into an information announcement on the topic of discrimination, and said information announcement shall be distributed to all managers, supervisors and employees.

ARTICLE 38 - Grievance Procedure

A. PURPOSE.

The purpose of this Article is to provide a fair, simple and expeditious means of processing grievances. This negotiated procedure shall be the exclusive procedure available to the Union and employees in the unit for resolving grievances which come within its coverage, except as specifically provided in B below. However, any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the Agreement and the exclusive representative has been given an opportunity to be present during the processing. The initiation or presentation of a grievance by employees will not cause any reflection on their standing with or their loyalty to the Agency.

B. DEFINITION.

A grievance means a complaint either by a unit employee concerning his or her conditions of employment, by the Union in its own behalf concerning conditions of employment of any employee, or covering alleged contractual violations by the Agency, or a complaint by the Agency concerning alleged contractual violations by the Union. Unless excluded below, such a complaint may concern the adverse impact of:

- (1) Violation of Agreement. A claim of breach, or any adverse impact arising from such a breach, or the effect of interpretation of this Agreement or any other written agreement between the parties; or
- (2) Violation of Law, Rule, or Regulation. Any claimed violation, misinterpretation, or misapplication, of any law, rule, or regulation affecting conditions of employment.

C. EXCLUSION.

This procedure does not cover grievances concerning:

- (1) Political Activities. Any claimed violation of Subchapter III of Chapter 73 of Title 5 U.S. C. (relating to prohibited political activities);
- (2) Benefits. Retirement, life insurance, or health insurance;
- (3) National Security. A suspension or removal under 5 U.S.C. § 7532 for reasons of national security;
- (4) Hiring Authority. Any examination, certification, or appointment;
- (5) Classification. The classification of any position which does not result in a reduction in grade or pay of any employee;

- (6) Statutory Discrimination Complaint. A complaint of discrimination which is listed in 5 U.S.C. § 2302(b)(1) if the employee has elected to use an available complaint procedure provided by statute, such as EEO;
- (7) Adverse Action Appeal. An appeal of an adverse action based on performance under 5 U.S.C. § 4302 or for efficiency under 5 U.S.C. § 7512 if the employee has elected to file an appeal under the statutory appeal procedure provided under 5 U.S.C. § 7701 or its implementing regulations;
- (8) Already Filed. Where the relief requested is the same, matters which can be raised under the grievance procedure or as an unfair labor practice may, in the discretion of the aggrieved party, be raised under either procedure but not under both procedures;
- (9) Probation. The removal of a probationary employee during his/her probationary period.
- (10) Appointments. The Agency's determination not to extend the appointment of individuals serving under term or temporary appointments, the Federal Career Intern Program, or as a student trainee (Co-Op);
- (11) Proposed Actions. Notices of proposed disciplinary/adverse actions, furloughs, or removals. Issues relating to such proposal notices may, however, be raised in connection with any grievance over the final decision on the proposed action.

D. IDENTICAL OR "GROUP" GRIEVANCES.

In the case of an identical grievance involving a group of employees, one employee's grievance may be selected by the Union for processing as the "lead grievance." In such cases, all decisions on that "lead grievance" will be binding on the other grievance(s). The Parties agree that for the purposes of this section, identical grievances are those arising from a common set of circumstances which adversely affect the grievants in the same manner where all of the witnesses would be testifying to the same or substantially similar facts. The term "substantially similar" means facts which are sufficiently alike so that a reasonable person would conclude that application of the same rules to the facts in each grievance would result in the same conclusions with regard to the outcome of those grievances. Grievances may be consolidated or amended in appropriate circumstances.

E. RESOLUTION AT LOWEST POSSIBLE LEVEL.

The Agency and the Union agree that every effort will be made by Management and the aggrieved party(s) to settle grievances at the lowest possible level. The employee will be given a reasonable amount of time to present the grievance. The Union official presenting the grievance will be on official time in accordance with Article 7. At any time during the

grievance process, a grievant or his or her representative may attempt to resolve a grievance informally. If the requested relief is granted, the grievance will be closed at that step, and no further processing will take place.

F. PROCEDURES FOR GRIEVANCES.

(1) Step I (Informal Grievance).

(a) Step I is for a grievance filed by an employee or by the Union on behalf of the employee. A grievant may, but is not required, to file at Step I as provided below, or may proceed directly to Step II.

(b) Presentation. Informal grievances must be presented within 35 calendar days after the incident occurs, and must identify the name(s) of the grievant, nature of the complaint, and the remedy requested. The grievant may, at his or her option, reduce the grievance to writing, and may use the form attached hereto as Form CIS-827. This time limit will not apply where it is established that the employee had no way of being aware of the incident. The grievance may first be presented verbally by the concerned employee (or the employee's union representative acting on their behalf) with the first level supervisor in an attempt to settle the matter. If the first level supervisor is also designated as a Step II official, the grievance will be filed with that official. The grievant may, if he or she desires, be assisted in the presentation by a Union representative. The Union representative must be present if the employee so desires. If the employee presents a grievance directly to Agency Management for adjustment consistent with the terms of this Agreement, the Union shall be given the opportunity to have an observer present, on official time, at the time of adjustment.

(c) Response. Within 14 calendar days after receiving the employee's grievance, the immediate supervisor (or designee) shall complete such inquiry as he or she deems necessary and render his or her decision to the grievant's representative, if any. Failure to respond in the allotted time shall permit the employee to proceed to the next step. If the employee is dissatisfied with the decision of the immediate supervisor, s/he may proceed to Step II.

(2) Step II Grievance.

(a) Presentation:

1) Grievance filed by employee or union on behalf of the employee.

a) If the grievance is initiated at Step II, the employee (or the employee's union representative acting on behalf of the employee), may submit a written grievance, to the appropriate official as specified below within 35 days after the incident occurs.

b) If the grievance was initiated at Step I, the employee (or the employee's union representative acting on behalf of the employee) may submit a written grievance, to the appropriate official as specified below, within 14 calendar days after receiving the immediate supervisor's decision on the grievance.

A Step II grievance must be filed using Form CIS-827. It is intended to identify all the issues and the specific allegations of the grievance so that the dispute may be resolved at the lowest possible level. A grievance that is timely filed using Form CIS-827 will not be rejected. If the Step II official is also designated as a Step III official, the grievance will be filed with that official.

2) Grievance filed on behalf of the Union or Management

If a dispute arises between a Local Union and an Office, either the President of the Local or the Office Director (or their respective designees) may file a written grievance within 35 calendar days after the event giving rise to the grievance. The grievance must be filed using Form CIS-827. It is intended to identify all the issues and the specific allegations of the grievance so that the dispute may be resolved at the lowest possible level. A grievance that is timely filed using Form CIS-827 will not be rejected. This time limit will not apply where it is established that the grieving party had no way of being aware of the incident. Any such grievance must include the relevant facts, the provisions of any law, rule, or contract allegedly violated, and the relief being sought.

3) Step II Officials for grievances filed by employee or on behalf of employees or the Union are designated as follows:

Headquarters — Appropriate Program Head or designee
Regional Offices — Regional Director or designee
Service Centers — Director or designee
Field/District Offices — District Director or designee
Asylum Offices — Director or designee
International Offices — District Director or designee
Telephone Service Centers — Director or designee
National Records Center — Director or designee
National Benefits Center — Director or designee
Other Agency Branches — Deputy or equivalent or designee

Merit Promotion Grievance. Grievances on merit promotion violations may be filed either with the Head of the Human Resources Office that handled the particular promotion/vacancy action at issue, or with the official designated above where the relevant position is located.

4) The Step II official for grievances filed on behalf of Management shall be the Local President or designee.

(b) Response. Within 20 calendar days after receiving the grievance, the Deciding Official (or designee) shall hold such meetings and complete such inquiry as he or she deems necessary and shall render his or her written decision on the grievance. The written decision shall set forth, in precise terms, the basis of the decision. Failure to respond in the allotted time shall permit the grievant to proceed to the next step.

(3) Step III Grievance.

(a) Presentation

1) Grievance filed by employee or by Union on behalf of employee:

If the employee is dissatisfied with the decision at Step II and desires to proceed to Step III, the employee (or the employee's union representative acting on behalf of the employee) may elevate the grievance, to the appropriate official as specified below, within 15 calendar days after receiving the Step II decision. The written grievance must include a copy of the Step II grievance/Form CIS-827 and decision, and an explanation as to why that decision was not acceptable to the employee. If the grievance is initiated at Step III, it must be filed using Form CIS-827. It is intended to identify all the issues and the specific allegations of the grievance so that the dispute may be resolved at the lowest possible level. A grievance that is timely filed using Form CIS-827 will not be rejected.

2) Grievance filed on behalf of the Union or Management

If either the Union or Management is dissatisfied with a decision at Step II and desires to proceed to Step III, the grievant may elevate the grievance as set forth below within 20 calendar days of receipt of the Step II decision. A copy of the original grievance/Form CIS-827 and response shall be attached.

3) Step III Officials for grievances filed by employee or on behalf of the employee or the Union are designated as follows:

Headquarters — Deputy Associate Director or designee
Regional Offices — Chief, Field Operations or designee
Field/District Offices — Regional Director or designee
Service Centers — Chief, Service Center Operations or designee
Asylum Offices — Deputy Chief, Asylum or designee
International Operations — Deputy Chief, International Ops or designee
Telephone Service Centers — ICS Director or designee
National Records Center — Chief, Records Division or designee
National Benefits Center — Chief, Field Operations or designee
Verification — Chief, Verification Division or designee
Other Agency Branches — Office Head or designee
Merit promotion grievances -- either the Chief Human Capital Officer or the appropriate official from the list above.

4) The Step III official for grievances filed on behalf of Management shall be the appropriate Council Vice-President or designee.

(b) Response. Within 25 calendar days after receiving the grievance, the Deciding Official (or designee) shall complete such inquiry as he or she deems necessary and render a written decision on the grievance. The written decision shall set forth, in precise terms, the basis for the decision. Failure to respond in the allotted time to the Step III grievance shall permit the Union or Management to invoke arbitration on the merits as provided in Article 39.

(4) Arbitration. If the employee is dissatisfied with the Step III decision, the appropriate Local Union may invoke arbitration as provided in Article 39. If either the Union or Management is dissatisfied with a Step III decision, they may invoke arbitration as provided in Article 39.

G. USE OF GRIEVANCE FORM CIS-827.

- 1) Within 60 days of the effective date of this contract, the Agency will make copies of Form CIS-827 available to all employees. Availability will include printable electronic forms as well as paper forms.
- 2) In the unlikely event that the form is not available to a grievant, the grievance will be committed to writing providing all relevant information.
- 3) Training on the use of the form will be included in the joint contract training indicated in Article 10.

H. EXCEPTIONS

- 1) If a dispute affects the national parties, or affects Local Unions in more than one Region, the grievance shall be filed with either the Council President or the _____ (or their respective designees) within 35 calendar days of the event giving rise to the dispute of the date on which the grievant became aware of the dispute.
- 2) Suspensions and Adverse Actions. Grievances concerning suspensions and adverse actions are to be initiated at the arbitration stage of the grievance procedure, as provided in Article 29.

I. TIME LIMITS.

All time limits herein may be extended by mutual agreement of the parties involved. If the last day of a time limit falls on a Saturday, Sunday or holiday, or on a day when the applicable government office is closed, the limit shall be extended to the next business day. If a grievant should fail to meet an applicable time limit for moving a grievance forward, the grievance shall be deemed to have been withdrawn. If a deciding official fails to meet the time limit for rendering a decision on the grievance, such failure shall entitle the grievant to advance the grievance to the next step (including arbitration, if appropriate) within the applicable time frame for such action as measured from the date the deciding official should have rendered his or her decision.

J. GRIEVABILITY/ARBITRABILITY.

Consistent with Article 39, Arbitration, when the Agency or the Union has reason to believe that a grievance is not grievable, it will endeavor to so inform the other party as soon as possible and explain its reasons in writing. In the event either party declares a grievance non-grievable or non-arbitrable, the original grievance shall be considered amended to include this issue, which will become a threshold issue in arbitration. If the dispute is not resolved and the filing party elects to proceed to arbitration of the grievance, such grievability/arbitrability questions are to be decided as a threshold issue by the arbitrator who is appointed to hear the grievance.

K. ALTERNATIVE DISPUTE RESOLUTION (ADR)

Within six months of the effective date of this agreement, the parties will meet to discuss the establishment of a pilot project for voluntary mediation of grievances.

ARTICLE 39 - Arbitration

A. PURPOSE

This article shall be administered in accordance with the Federal Service Labor-Management Relations Statute, 5 U.S.C. Chapter 71, and this agreement. This article establishes the procedures for the arbitration of disputes between the Union and Agency which are not satisfactorily resolved by the negotiated grievance procedure covered in this Agreement.

B. INVOKING ARBITRATION.

If the Agency and the Union fail to settle any grievance processed under the negotiated grievance procedures, such grievance, upon written request by the Union or the Agency, may be submitted to arbitration within (30) calendar days from the date the Agency or the Union's final decision is received. If arbitration is being invoked on behalf of an employee, it may only be invoked by the Local union with jurisdiction over that employee. In cases involving disciplinary or adverse actions, requests for arbitration must be filed not later than thirty (30) calendar days after the effective date of the action.

C. SERVICE.

Requests for arbitration filed by the Union will be submitted to the Servicing Labor Relations Office. Requests in cases which involve employees at more than one location, or requiring Agency-wide interpretation or application of this agreement will be filed with the Chief of Labor Employee Relations at Headquarters or designee.

D. SELECTION OF PANELS.

Within 90 calendar days of the effective date of this agreement, the parties agree to the establishment of one national level panel to handle arbitrations under this Article. The panel shall consist of fifteen (15) arbitrators. The National representatives of the parties will each nominate fifteen (15) arbitrators. If both sides nominate the same arbitrator, he/she will automatically become a member of the panel. Otherwise, the parties will alternate strikes until fifteen (15) arbitrators are chosen. A coin toss will determine which party strikes first.

(1) Replacements.

Should any arbitrator ask to be removed from the panel, the parties will each nominate three new arbitrators. If one or more names are on both lists, they will be selected and added to the list. Otherwise, the parties will alternate strikes until the arbitrator is chosen. A toss of the coin will determine which party strikes first.

(2) Removal.

During the life of the agreement, each party at the national level may unilaterally remove up to three (3) arbitrators from the panels by providing the other party with written notice. Such removal shall not be effective until thirty calendar days after receipt of the written notice by the other party. Any additional removals must be done by mutual agreement. Selection for a replacement will be done by the procedures outlined above.

E. ROTATION.

Arbitrators will be used alphabetically on a rotational basis. If an arbitrator is not available within a mutually agreeable time, the parties may agree to select the next arbitrator on the list.

F. THRESHOLD ISSUES.

(1) Threshold issues of jurisdiction, grievability or arbitrability should be raised as soon as possible by written notice to the opposing party, but not later than the 30th day following the date that arbitration is invoked. Failure to notify the opposing party of threshold issue(s) by the 30th day following invocation of arbitration shall constitute a waiver and abandonment of threshold issue(s). Such threshold issue(s) shall be submitted to the arbitrator for decision by written briefs prior to any hearing on the merits of the grievance/arbitration. Such submission shall be within thirty (30) days of selection of the arbitrator. Upon submission of such briefs, the arbitrator shall make his/her ruling on such threshold issue(s) prior to the scheduling of any hearing on the merits of the grievance/arbitration. If the ruling of the arbitrator is that the grievance is not arbitrable, grievable, or that there is a lack of jurisdiction, there shall be no subsequent hearing on the merits of the grievance/arbitration. If the ruling of the arbitrator is that the grievance is arbitrable, grievable or within the arbitrator's jurisdiction, an arbitration hearing on the merits of the case shall be promptly scheduled.

(2) Postponement. If either party raises an arbitrability question later than fourteen (14) calendar days prior to the date scheduled for a hearing, the other party shall have the right to postpone the hearing, if it deems postponement necessary. Any additional costs by the arbitrator for cancellation required by the late notification, as to the arbitrability issue, shall be borne by the party raising the question.

G. PRE-ARBITRATION CONFERENCE.

Not later than the 30th day after the date that arbitration is invoked, the parties shall conduct a pre-arbitration settlement conference. At such settlement conference, the parties shall make good faith efforts to reach a resolution of the case.

H. TRANSCRIPTS.

Each party will inform the other no later than fourteen (14) calendar days prior to the start of the arbitration hearing whether it desires a transcript of the hearing. If the parties mutually agree upon the need for a transcript, they shall equally share the cost of the transcript and management will make the arrangements for securing a transcript. If they do not agree on the need for a transcript, the party desiring a transcript will arrange for the transcript and will bear the full cost. However, should the other party change its mind prior to the close of the arbitration hearing and indicate its desire for a copy, it shall then be responsible for half of the costs.

I. PROCEEDINGS.

The arbitrator will be requested to render his or her decision as quickly as possible but, in any event, no later than thirty (30) calendar days after the conclusion of the hearing unless the parties mutually agree to extend the time limit. Each party has the obligation to cooperate promptly with the designated arbitrator in setting a date for a hearing. Failure of either party to proceed with due diligence in responding to an offer of dates may serve as a basis for establishment of a hearing date by the arbitrator or dismissal of the grievance. At the request of either party, the Agency or the Union shall be provided a complete list of the other's known witnesses no later than five (5) calendar days prior to the hearing, along with a brief synopsis of the anticipated testimony. If no exception is filed during the thirty (30) calendar day period beginning on the date the award is served, the award is final and binding. Either party will immediately take the actions required by the final award within thirty (30) calendar days after it becomes final and binding, except as provided by the Award. This section does not apply to the expedited arbitration procedure set forth herein.

J. DOCKET REVIEW/SETTLEMENT.

Discussion of any cases where arbitration has been requested and pending will be conducted upon advance request. Such discussions may include possible settlements in pending cases or in pending grievance matters. The content of such settlement discussions are confidential. Any statements made during settlement discussions specific to the settlements, and any portions of written materials revealing the contents of such settlement discussions, may not be introduced in proceedings before the arbitrator.

K. EXPEDITED PROCEDURE

The parties recognize the importance of promptly handling cases involving demotions, suspensions of more than fourteen (14) days, and removal cases, and therefore adopt the following expedited arbitration process. These time-lines may be used in other cases where it is mutually agreeable.

(1) Invocation

If the Union wishes to invoke expedited arbitration, the Local Union President or designee shall within ten (10) calendar days of the final agency decision notify the Servicing Labor Relations Office. The Union, however, may withdraw its request for the expedited grievance/arbitration procedure at any time prior to the setting of the hearing date. Group grievances may be included by mutual consent.

(2) Timelines

For such cases, the parties have agreed to ask the arbitrator to adhere to the following time lines:

- a. Hearing. Arbitrators are to conduct a hearing within thirty (30) calendar days of selection.
- b. Briefs. Post hearing briefs will be submitted within twenty-one (21) calendar days after completion of hearing or receipt of transcript unless the parties agree to an extension.
- c. Decision. Arbitrators are to render a decision within twenty-one (21) calendar days of closing of the record. The record will be considered closed upon receipt of briefs, receipt of transcript, or completion of hearing whichever is later.

L. COSTS.

Payment of Costs. Arbitrator fees and expenses of arbitration, if any, shall be borne equally by the Agency and the Union.

- (1) Fees to be paid by the Agency will be governed by existing regulations. Travel and per diem shall not exceed that authorized by government-wide regulations.
- (2) Cancellation Costs. The parties will share cancellation costs equally when notice is provided at least 96 hours prior to the scheduled hearing date. The party seeking the cancellation will pay arbitration costs incurred for canceling less than 96 hours prior to any hearing.

M. LOCATION OF HEARINGS.

The arbitration hearing will be held, if possible, on the Agency's premises during the regular day shift of the basic workweek. The arbitration will normally be held within the commuting area of the grievant unless the grievant has transferred from the site of the dispute. In such cases the hearing will be held at the site of the dispute unless both parties agree to hold it in another location.

N. PARTICIPANTS.

- (1) Duty Status. All participants in the hearing shall be on administrative leave or official time, if they would otherwise be in a duty status. If a hearing is scheduled on what would otherwise be a participant's day off, the Agency will adjust the employee's schedule so that the employee would be in a duty status.
- (2) Travel and Per Diem. Where the grievant and/or witnesses are not within the commuting area of the hearing site, and where the witnesses are deemed approved by the arbitrator, the Agency will pay travel and per diem for them.

O. AUTHORITY OF ARBITRATOR.

The arbitrator's decisions shall be final and binding subject to the parties' right to take exceptions to an awarding accordance with law. However, the arbitrator shall be bound by the terms of this Agreement and shall have no authority to add to, subtract from, alter, amend or modify any provision of this Agreement. In addition, the arbitrator is bound by all applicable laws, rules, and regulations. The arbitrator will retain jurisdiction over the case where exceptions are taken to an award and the Federal Labor Relations Authority sets aside all or a portion of the award, or for enforcement purposes. However, any adverse action appeals shall be presented to the appropriate appellate jurisdiction.

P. NO EX PARTE COMMUNICATION WITH ARBITRATOR

With the exception of discussion regarding scheduling only as provided in section G, both parties agree that there will be no communication with the arbitrator unless both parties are participating in the communication or one party has expressly agreed to the communication by the other party with the arbitrator.

Q. ATTORNEY FEES

Reasonable attorney fees and costs will be provided to the Union in cases where it represents employees who suffer unjustified or unwarranted personnel actions, in accordance with 5 USC Sec. 5596 or other applicable law.

- (1) Procedure for Fee Awards. Upon issuance of an award, the arbitrator shall retain jurisdiction to determine the entitlement to attorney fees in accordance with 5 USC Sec. 5596 or other applicable law. The Union may request attorney fees after the award is final and all appeals have been exhausted. Such a request must be submitted within 30 calendar days after the arbitrator's decision becomes final, and shall be accompanied by sufficient documentation to enable the arbitrator to decide the amount to be awarded, and shall be simultaneously served on the Agency.
- (2) Objections. Within twenty (20) calendar days of receipt of the Union's request, the Agency may submit any objections, which must be accompanied by appropriate documentation and simultaneously served on the Union.

(3). Award. The Arbitrator shall render a fee award within 30 calendar days of receipt of the agency's objections, or within 30 calendar days of the initial request if no objections were filed.

ARTICLE 40 - Effective Date and Duration

A. EFFECTIVE DATE.

This Agreement shall take effect on January 1, 2010.

B. DURATION.

This Agreement shall remain in full force and effect for three (3) years from its effective date. This Agreement shall automatically renew itself from year to year thereafter.

C. RENEGOTIATION.

If either party desires to renegotiate any terms of this Agreement, it will furnish written notice to the other party, identifying the Articles that it wishes to change, not more than one hundred and twenty (120) or less than ninety (90) days prior to the expiration date.

In the event such notice is given by either party, the parties will begin negotiating ground rules for the new negotiations within sixty (60) days from the date of receipt of notice of the proposed changes. If negotiations are not completed by the anniversary date, the Agreement will be automatically extended until a new agreement is negotiated.

D. REOPENER.

Either party may propose negotiations during the term of this Agreement to reopen, amend, or modify in accordance with Article 9 (Mid-Term Bargaining).

E. AMENDMENTS AND MODIFICATIONS.

This Agreement may only be amended, modified, or renegotiated in accordance with the provisions of this Agreement.

ARTICLE 41 - Employee Assistance Program

A. ASSIST EMPLOYEES.

Under the Employee Assistance Program (EAP) the Employer agrees to continue efforts to identify, counsel and assist in rehabilitating employees with alcohol, drug related, or personal problems which may adversely affect job performance. The union agrees to cooperate fully with the Employer in this program while complying with the provisions for confidentiality in safeguarding client information.

B. The Agency's Employee Assistance Program, administered through the Federal Occupational Health (FOH), a component of the U.S. Public Health Service Department of Health and Human Services, will provide free, confidential, in-person counseling sessions with EAP-approved service providers, for the purpose of assessment and referral, and/or for preliminary attempts to resolve employee problems. Up to four (4) sessions, may be used for each problem presented to the EAP, per employee and per family member, per year.

Reasonable amounts of administrative leave will be granted to employees for such purposes, including travel time. Once the employee has been referred by EAP to a private provider, sick leave, annual leave or leave without pay may be used for visits to the private health care provider.

C. Employees, at their option, may avail themselves of free, confidential telephonic assessment and referral sessions with EAP professionals in lieu of in-person clinical visits. In such cases, the Agency will make appropriate arrangements for administrative leave, including travel time to an appropriate site to make such calls. For employees who lack access to confidential telephone facilities at a work site or home location, the Agency will make appropriate arrangements at no expense to the employee.

D. The Agency's Employee Assistance Program shall provide the full range of services offered by the FOH, including, but not limited to: counseling, referral, training and critical incident response.

E. USCIS employees working overseas, including those on temporary duty will have access to the FOH International Employee Assistance Program.

F. UNION ROLE.

The Union shall designate a point of contact for EAP matters. The Union point of contact will be identified on Agency and Union websites.

The Employer agrees to provide an orientation for union officials concerning EAP policies, referral procedures and program resources.

G. REHABILITATION.

The Employer recognizes its responsibility to identify and make reasonable effort at rehabilitation of employees with alcohol or drug problems at an early stage. Employees undergoing a prescribed program of treatment will be granted sick leave for this purpose on the same basis as any other illness which requires absence from work.

H. DISCIPLINE.

The Employer and the Union jointly agree that employees entering the EAP are not immune from disciplinary action. However, the fact that an employee is actively pursuing, or indicates a commitment to enter an established program of rehabilitation will be given weight in considering appropriate disciplinary action.

I. ANNUAL REVIEW.

The EAP authorities will meet annually with designated union representatives in reviewing the agencies yearly statistical report and general program effectiveness.

J. CHILD CARE/ELDER CARE.

The Agency will continue to provide and or support various activities in order to meet the ongoing child and elder care needs of employees. These may include, but are not limited to, such things as child/elder care and parenting information, child/elder care resource and referral information, workshops, and counseling as available through the Employees Assistance Program.

It is agreed that the responsible officials will grant emergency annual leave requests and consider emergency requests for leave without pay brought about by unexpected changes in child care or elder care arrangements, consistent with Agency needs. Consistent with Agency needs, the Agency agrees to utilize programs that may assist employee with child care or elder care needs; for example, part-time employment, job sharing, leave, flextime, etc. The Agency recognizes that it may be necessary for employees to contact child care and elder care providers during duty hours.

K. The wording of this Article is without prejudice to the following two positions of the Agency:

(1) That law enforcement officers are subject to a higher standard of conduct than other personnel in the bargaining unit, and

(2) That law enforcement officers whose drug related problems arise from the use of illicit drugs may not be entitled to the same consideration for employee assistance as personnel with different problems. The parties recognize that the Union retains the right to challenge these determinations of management in any appropriate forum.

ARTICLE 42 - Contracting

A. BRIEFINGS.

Management will brief union representatives of the affected employees concerning any decisions to contract out work currently performed by bargaining unit employees of the Agency, consistent with the provisions of Article 10. The briefings are to provide information about contracting out studies under OMB Circular A-76.

B. SITE VISITS.

The Agency will notify the Union if a site visit is going to be conducted for potential bidders seeking contracts for work performed by bargaining unit employees. A Union representative may attend such a site visit.

C. UNION NOTIFICATION.

When the Agency determines that unit work will be contracted out, the Agency will notify the Union to provide them an opportunity to request to negotiate as appropriate.

ARTICLE 43 - Dues Withholding

Section I Definitions

- A. Dues: The regular, periodic amount determined by the Union to be required of the member to maintain good standing in the Union. This amount is certified by the Union on the SF-1187 form and excludes special assessments, back dues, fines, and similar items not considered to be dues. A multi-level dues structure may be utilized.
- B. SF-1187: "Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues."
- C. SF-1188: "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues."
- D. Payroll Office: National Finance Center, Department of Agriculture.
- E. Servicing Human Resources Office: Regional Human Resources Office for Regional employees and Operating Services Branch of the Human Resources Office for Headquarters Office employees.

Section II Eligible Employees

To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

- A. Bargaining Unit Employee. Be in the Unit covered by this Agreement;
- B. Member in Good Standing. Be a member in good standing with the Union;
- C. Regular Salary. Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues; and
- D. Request. Request the allotment on the prescribed form (SF-1187) which has been certified by the authorized Union official.

Section III Responsibilities of the Union

The Union shall:

- A. Voluntary Nature. Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;

- B. Provide SF-1187. Purchase and distribute the SF-1187 Form to its members;
- C. Certify SF-1187. Certify on the SF-1187 Form the amount of dues to be withheld each biweekly pay period, and identify the Local to receive the dues deductions;
- D. Forward SF-1187. Promptly forward completed SF-1187 forms to the appropriate servicing Human Resources Office;
- E. List of Authorized Signatures. Furnish written notification to the servicing Human Resources Office concerning the names and titles of Local Union officials authorized to certify the SF-1187 form; and
- F. Written Notification. Provide the appropriate servicing Human Resources Office with written notification concerning:
- (1) Changes. Changes in the amount of Union dues;
 - (2) Terminations. The name of any employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) days of such determination; and
 - (3) Transfers. The name of any employee on check off who transfers from one Local to another; any change in the Local who receives dues deducted from check; and any change in the amount to be deducted occasioned by the transfer to a new Local.
- G. Multiple Locals. In Districts where there is more than one Local, each Local in a District shall have the right to process SF-1187's.

Section IV Responsibilities of the Employer

The Employer shall:

- A. Screen SF-1187. Screen each Form SF-1187 to ensure that only eligible employees are on the dues withholding listing. The servicing Human Resources Office will also screen each promotion action to remove employees who are promoted or transferred out of the unit.
- B. Certify SF-1187. Receive in the appropriate servicing Human Resources Office the SF-1187 form from the Union; certify on the SF-1187 form that the employee is a member of the bargaining unit; stipulate the bargaining group the employee is a member of by certifying the appropriate group in the upper right-hand corner of the SF-1187; and promptly forward the SF-1187 Form to the Payroll Office for processing.

(C) Reinstatement from Temporary Assignments. Automatically reinstate the dues withholding of a bargaining unit employee returning to a bargaining unit position from a temporary reassignment or a temporary promotion to a position outside the bargaining unit.

D. Reinstatement from Non-pay Status. Automatically reinstate the dues withholding of a bargaining unit employee returning to pay status from a non-pay status (for example, leave without pay).

Section V Procedures

It is agreed that the following procedures will govern the voluntary allotment of dues:

A. Withholding of Dues.

(1) **Arrange Withholding** Upon receipt of a properly completed SF-1187 form from the servicing Human Resources Office, the Payroll Office shall arrange to withhold the Union dues in accordance with existing pay periods (26 biweekly periods) and procedures under which employees are regularly compensated.

(2) **Effective Date.** The dues deduction will be effective as soon as possible, but in no case will be later than two (2) full pay periods following receipt of the SF-1187 form by the Payroll Office.

(3) **Existing Withholdings.** Employees who meet the eligibility requirements for dues withholding (stated in Section II) and who have a current dues withholding agreement in effect on the date this Agreement is approved, need not execute a new SF-1187 form to come under the provision of this Agreement; PROVIDED, that this Agreement does not necessitate any change being made to their current allotment.

B. Changes in Dues.

(1) **Union Certification Required.** The amount of dues certified on the original allotment form (SF-1187) will remain unchanged until an authorized Union official provides written certification to the servicing Human Resources Office that the amount of dues has changed. New SF-1187 forms will not be required.

(2) **Once per Year.** Changes in the amount of the allotment due to changes in the amount of Union dues will not be made more than once every twelve (12) months.

(3) Effective Date. Changes in the amount deducted for Union dues will be effective as soon as possible, but in no case will it be later than two (2) full pay periods following receipt by the Payroll Office of the Union's certification of changes in its dues.

C. Termination of Allotments.

(1) Automatically:

- (a) Loss of Recognition. Upon loss of exclusive recognition by the Union, effective at the beginning of the first full pay period after such loss of recognition;
- (b) Termination of Agreement. When the dues withholding agreement is terminated;
- (c) No longer Eligible. When an employee ceases to be eligible for inclusion in the Union in good standing, effective with the first complete pay period after receipt by the Payroll Office of written notice from the authorized Union official.

(2) Voluntarily:

- (a) Employee Revocation. An employee may submit a written request, SF-1188, for the revocation of an allotment at anytime. He or she may submit the request, in duplicate, to the servicing Human Resources Office. No revocation can occur before the employee's first anniversary following the commencement of Union dues. Thereafter, revocations will be effective the first full pay period the following March 1, if the request is received in the servicing Human Resources Office by March 1.
- (b) Procedures. Revocations by employees shall be in duplicate, preferably on the SF-1188 form, and shall be forwarded by the employee to the servicing Human Resources Office. The servicing Human Resources Office Payroll Unit will process the SF-1 188 and retain a copy for the payroll records. A copy shall be returned to the employee at the address provided on the SF-1188. The servicing Human Resources Office shall provide the names and local numbers of voluntary terminations to the Council Secretary Treasurer.

D. Remittances of Dues.

(1) Composite Checks. All Locals which indicate composite participation will neither receive checks nor employee listings. However, if the Union code in the employee's master record does not indicate composite participation, the Local will continue to receive a check and listing. A maximum of three (3) composite checks

(one from each payroll computation cycle) with supporting summary listings will be forwarded to NST AFGE, 80 F Street, N.W., Washington, D.C. 20001.

(2) Magnetic Tape. A magnetic tape for the Locals will be made available to AFGE. This tape will contain detailed information to support all deductions and charges reflected on the three (3) composite checks, as well as those employees in the composite Locals who did not have sufficient funds to allow a deduction. The magnetic tape will also contain a code indicating the employee's current pay status, and a code indicating whether the deduction resulted from the processing of a Time and Attendance Report or as a result of a payroll adjustment.

(3) Code Combinations. The expected code combinations to be recorded on the SF- 1187 for proper processing are as follows:

- 1 — NCISC Council, to be included in composite check to AFGE.
- 01 — NCISC Council, to be included in check to Local.

Section VI Cost of Withholding

The service of withholding the Union dues shall be provided at no cost to the Union by the Employer.

Section VII Under Payments and Over Payments

Rejections. The Agency does not assume responsibility for the maintenance in good standing in the Union of the employee. Any SF-1187 submitted to the servicing Human Resources Office that Management does not process will be returned to the Union with the reasons why this was not accepted. The Union reserves the right to discuss the exclusions with Management personnel.

Administrative Errors. Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the employee organization is not scheduled to receive a remittance check after discovery of the error, the employee organization agrees to promptly refund the amount of erroneous remittance.

ARTICLE 44 - Hardship Reassignments

A. EMPLOYEE REQUESTS FOR REASSIGNMENT OF DUTY STATION.

B. The parties agree that there are instances whereby circumstances arise when it is in the best interest of the employee and the Agency to effect a reassignment of duty station. The circumstances may be, but are not limited to, the transfer of the employee's family member, illness, care of elderly relatives, or any other circumstance that rises to a level deemed appropriate by the Employee and the Agency.

(1) Procedures:

(a) The employee must provide proper documentation of the circumstances supporting the request to be reassigned.

(b) Management, in its discretion, will approve or deny the request, and inform the employee of its decision.

(c) There will be no relocation expenses allowed for reassignments under this article.

ARTICLE 45 - Service of Notice

A. PURPOSE.

The purpose of this Article is to establish the means and methods associated with the proper service of notices, requests, demands, or documents as presented throughout this Agreement, unless specifically denoted otherwise elsewhere in this Agreement.

B. METHOD OF SERVICE.

Service of all notices, requests, demands or documents provided for under this Agreement shall be accomplished either by personal service, by U.S. Mail with delivery confirmed by signature, or by commercial courier such as FedEx, DHL, UPS with delivery confirmed by signature. Personal service shall be accomplished by hand delivery to the appropriate management or union official or their designated representative. The parties, at the national, regional and local levels, shall notify each other of the names and contact information of those officials, and their designee(s), who are authorized to receive service of official documents or of other correspondence for which verification of service is required. In the absence of the appropriate official or designee(s), service may be to any officer or steward of the Local or any management official of the Agency Office, respectively. A signed and dated copy shall be provided to the serving party. In the case of mail or courier service, electronic confirmation of signature will be deemed adequate proof of service. Alternatively, a Return Receipt may be used as an additional means of proof of service. By mutual agreement, service may be accomplished by facsimile, email, or other alternate means provided that the agreement contains a provision for proof of service.

For personal service of notice between the national or regional parties, service shall be to the appropriate official or designee(s) only. In the absence of the appropriate national or regional official or designee(s), service shall be accomplished by mail or commercial courier (with confirmation of signature) only.

C. TIME LIMITS.

Time limits are determined when the required document is personally served, postmarked by the U.S. Postal Service, electronically tracked by the U.S. Postal Service or commercial courier, or otherwise transmitted by mutually agreed alternative method within the specified time limit. Applicable time limits shall begin to run from the date of service of the document that triggers the particular time limit as provided in B above. The parties agree that they will act in good faith and will not attempt to evade the service of documents upon them.

D. APPROPRIATE RECIPIENTS OF SERVICE.

Except as provided elsewhere in this Agreement,

(1) Service of notice at the national level will be made to:

- For the Union: the National Council President, or designee(s), and
- For the Agency: the Chief Human Capital Officer or designee(s).

(2) Service of notice at the regional level will be made to:

- For the Union: the Council Regional Vice President or designee(s), and
- For the Agency: the regional director or designee(s)

(3) Service of notice at the local level will be made to:

- For the Union: the Local President, or designee(s), and
- For the Agency: the Director of the District Office, Service Center, Telephone Center, Asylum Office or other Agency activity, or designee(s), as appropriate.

ARTICLE 46 - Merit Promotion and Reassignment

A. PURPOSE.

- (1) The purpose and intent of this Article are to ensure that merit promotion principles are applied in a consistent manner, with equity to all employees, and without regard to political, religious, or labor organization affiliation or non-affiliation, marital status, race, color, sex, national origin, disabling condition, age, or sexual orientation and shall be based solely on job-related criteria
- (2) To provide employees and applicants the opportunity for career growth through promotion and internal placement opportunities;
- (3) Encourage the best qualified persons to apply for available positions
- (4) Assure that selection procedures will be based solely on the relative ability, knowledge and skills of each applicant after fair and open competition
- (5) Develop and use USCIS employees to the maximum extent possible consistent with the goals and objectives of the Agency;
- (6) Keep employees informed of available promotion opportunities
- (7) Managers and supervisors are responsible for encouraging the development of employees under their supervision and providing training and development opportunities consistent with the Merit System Principles and the provisions of this Article.

B. ACTIONS COVERED BY COMPETITIVE PROCEDURES.

In accordance with 5 CFR 335.103, competitive procedures will apply to the following types of personnel actions:

- (1) Promotions, except those listed in Section C of this Article.
- (2) Time-limited promotions for more than 120 days to a higher graded position (prior service during the preceding 12 months under noncompetitive time-limited promotions and noncompetitive details to higher graded positions count toward the 120-day total).

(a) A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and that it might lead to a permanent promotion was made known to all candidates. The Agency must give the employee advance written notice of the conditions under which the time-limited promotion is given, including the time limit of the promotion; the requirement for competition beyond 120 days; and that the employee may be returned at any time to the position from which temporarily promoted, or to a different position of equivalent grade and pay, when the return is not subject to the procedures in 5 CFR, part 351, Reduction-in-Force; part 432, Performance Based Reduction in Grade and Removal Actions; part 752, Adverse Actions; and part 771, Agency Administrative Grievance Procedures.

(b) A temporarily promoted employee may not be reassigned or demoted to a position with a higher grade or with promotion potential higher than his or her permanent position without the use of competitive procedures. A formal personnel action must be used to document all temporary promotions, including their termination.

Note: The temporary promotion must be made for a definite period of five years or less. Subject to prior approval, time limited promotions made for less than five years may be extended up to five years from the effective date of the initial time-limited promotion. Requests for extensions must be submitted to servicing Human Resources office at least 30 days in advance of the proposed effective date.

- (3) Details for more than 120 days to a higher graded position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive detail to higher graded positions and noncompetitive time-limited promotions count toward the 120-day total).
- (4) Selection for training that is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion (e.g., Upward Mobility).
- (5) Selection for positions that provide specialized experience needed for promotion.
- (6) Reassignment or demotion to a position with greater promotion potential than the position last held. Exceptions are actions permitted by reduction-in-force regulations and reassignment of an intern or trainee as part of the training and development plan.
- (7) Transfer to a position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.

- (8) Reinstatement to a permanent or temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service.
- (9) Promotion of an employee based on the assignment of supervisory or work leader duties and responsibilities.

C. ACTIONS NOT COVERED BY COMPETITIVE PROCEDURES.

In accordance with 5 CFR 335.103, competitive procedures will not apply to the following personnel actions which are exceptions to Section B above:

(1) Career Ladder Promotions. Career ladder promotions are permitted when an employee is appointed or assigned to any grade level below the established full performance level of the position (i.e. the position has a documented career ladder and promotion potential). These promotions may be made non-competitively for any employee who entered the career ladder by:

- (a) Competitive procedures;
- (b) Competitive appointment from a certificate of eligibles (through OPM or delegated examining authority); or
- (c) Non-competitive appointment under special authority; e.g. conversion of Student Career Experience Program student or Federal Career Intern, appointment of former ACTION Volunteers or Peace Corps personnel (must clear ICTAP through an announcement), conversion of a Veterans Recruitment Appointment (VRA) Appointee and Presidential Management Fellows.

(2) Promotion Based on Reclassification When:

- (a) No significant change occurs in the duties or responsibilities of the position and the position is upgraded due to issuance of a new classification standard, an updated Agency-wide classification policy or the correction of a classification error; or
- (b) The position is upgraded due to accretion of additional duties and responsibilities and the following provisions are met:
 - i. The employee continues to perform the same basic functions in the same organization, working for the same supervisor (the duties of the former position are absorbed into the new position, and the former position is abolished);
 - ii. The new position has no promotion potential;

- iii. The additional duties and responsibilities assigned or accrued by the incumbent do not adversely affect or impact other positions in the unit; and
 - iv. The accretion is supported by a written analysis of the position (which may involve an audit with the employee and/or the employee's supervisor, or other fact gathering method).
- (3) Permanent promotion to a position held under a temporary promotion when:
- (a) The assignment was originally made under competitive procedures;
 - (b) It was known to all competitors at the time that the assignment may lead to a permanent position.
- (4) Temporary promotion of an employee for less than one hundred twenty (120) days; or for more than one hundred twenty (120) days to a grade level previously held on a permanent basis, unless the employee was demoted for reason related to performance or misconduct.
- (5) Placement as a Result of Priority Consideration when the referral is a remedy for candidates not given proper consideration in a competitive promotion action.
- (6) Reduction in Force Placements which result in an employee receiving a position with higher promotion potential.
- (7) Promotion to a Grade, Previously Held on a permanent basis in the competitive service, from which the employee was separated or demoted for other than performance or conduct reasons.
- (8) Promotions, Reassignments, Demotions, Transfer, Reinstatement, or Detail to a Position Having No Higher Promotion Potential than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service and did not lose because of performance or conduct reasons.
- (9) Promotion Resulting from Successful Completion of a Training Program for which the employee was competitively selected.
- (10) Selection from the Re-employment Priority List at the same or lower grade level than the position from which separated.
- (11) Reinstatement to any Position if a career or career conditional employee who served under a career SES appointment consistent with 5 CFR 335.103(c)(3).
- (12) Promotion as a Legal Remedy as ordered and agreed upon in a legal or administrative proceeding.

(13) Details for one hundred twenty (120) days or less to a higher graded position or to a position with known promotion potential.

D. TEMPORARY PROMOTIONS.

(1) Temporary Promotions and details to higher graded positions will be handled in accordance with the Merit Promotion and Reassignment Plan. Bargaining unit employees will not be detailed or temporarily promoted to higher graded positions for more than a cumulative total of 120 calendar days during any 12 month period without the use of competitive procedures.

(2) Temporary promotions for qualified and eligible bargaining unit employees will take effect on the 31st day that an employee is assigned to the higher graded bargaining unit position.

E. PRIORITY CONSIDERATION BEFORE USING COMPETITIVE PROCEDURES.

(1) Involuntarily Demoted Employees.

(a) Employees who are involuntarily demoted in the Agency without personal cause or who are in grade retention status are entitled to consideration for re-promotion before using the competitive procedures. This applies to positions at the employee's former grade or at any intervening grades that are to be filled under competitive procedures. The right to this consideration does not apply to a position with promotion potential higher than that of the position held at the time of the change to the lower grade.

(2) For Employees Not Given Proper Consideration.

(a) Employees entitled to Priority Consideration as determined by the Human Resources servicing office due to a regulatory, program, or procedural violation from a previous merit promotion, action. These candidates must be referred to the selecting official prior to filling the position or a similar position within the organization for which the applicant missed consideration for a promotion or other type of personnel action. This is a onetime consideration. The applicant is not entitled to selection. If non-selection, the record must be documented to record the reasons for non-selection.

(3) Notification.

(a) The employee will be notified in writing of non-selection under this section.

F. SCOPE OF COMPETITION.

(1) In determining the area of consideration for a vacancy announcement, the Agency will consider the Federal Equal Opportunity Recruitment Program (FEORP), a recruiting initiative established by the Civil Service Reform Act and administered by OPM. The program is designed to eliminate under-representation of minorities and women in the federal service. The area of consideration should be sufficiently broad to ensure a reasonable number of highly qualified candidates for the position to be filled. Area of consideration determinations must be made prior to announcing the position(s), documented in the promotion file, and clearly specified in the vacancy announcement.

(a) Managers are encouraged to initially consider USCIS status employees in a USCIS area of consideration but, may at their discretion, limit it to the USCIS status employees within the commuting area where the vacancy exists.

(b) If requested by the component, Human Resources servicing office may approve a more restrictive area of consideration.

(c) The commuting area is the geographic area that constitutes one area for employment purposes. To be considered, applicants must live within the predefined commuting area of the position to be filled. For applicants who are unemployed, the definition of local commuting area applies to their place of residence.

G. VACANCY ANNOUNCEMENTS.

(1) The Agency will post a link to vacancy announcements on the Agency's website. Utilization of daily employee email broadcasts is encouraged.

(a) Potential applicants within the stated area of consideration who may need additional assistance in applying on-line, e.g., those with no reasonable access to the Internet, may contact the Human Capital Management Division before the closing date for assistance. Human Resources Specialists can provide options for submitting the required information via facsimile; in these instances, the applicant must obtain prior approval from the Human Resources Specialist and the facsimile must be received in the Human Resource Operations Center prior to the closing date.

(b) Announcements shall be posted for at least ten (10) calendar days before the closing date.

(2) Vacancy announcements will include:

- (a) The name of the Agency and the announcement number, posting and closing dates;
- (b) Statement of nondiscrimination;
- (c) Position number(s); title(s), series and grade(s),
- (d) Number of anticipated vacancies to be filled;
- (e) Area of Consideration;
- (f) Test to be used, if any;
- (g) Description of promotion potential/full performance level, if any;
- (h) Minimum qualification requirements, any selective factors, knowledge, skills, abilities, competencies or other factors that will be evaluated during the rating process
- (i) Principal job duties;
- (j) Salary range;
- (k) When using an automated recruitment system, each factor/question used to determine the basic eligibility and/or best-qualified candidates will be included on each announcement. Ifs position is not announced using an automated system, a summary of criteria to be used by the evaluation panel (including the relative weights of knowledge, skills, abilities, and other characteristics) to rank candidates will be stated on the announcements;
- (l) Geographic and organizational location;
- (m) Whether or not relocation expenses will be paid
- (n) Summary of eligibility and qualification requirements;
- (o) Permanent or temporary nature, and, if temporary, the duration and if the promotion may be made permanent;
- (p) How to apply, including the name and telephone number of the Human Resources Specialist to contact for information relating to the announcement;
- (q) Special working conditions, such as tour of duty, travel requirements, expected overtime, etc.;

- (r) A statement whether or not the position is in the bargaining unit;
- (s) The different levels at which the position may be filled if it is a multiple-level announcement;
- (t) Additional specific information relevant to the evaluation of the candidates, e.g., writing samples, portfolios, resume or transcripts;
- (u) USCIS's definition of "well-qualified," for Career Transition Assistance Plan (CTAP) purposes, including information on who may apply and what proof of eligibility is required.
- (v) Military spouse preference comment for noncompetitive consideration.
- (w) Equal Employment Opportunity statement that reads as follows: "The United States Citizenship & Immigration Services (USCIS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, or other non-merit factor.
- (x) Reasonable Accommodation Statement that reads as follows: "This Agency seeks to provide reasonable accommodation to applicants with disabilities. If you need a reasonable accommodation for any part of the application and hiring process, please notify the Human Resources servicing office. The decision on granting reasonable accommodation will be made on a case-by-case basis."
- (y) statement as to whether the position is subject to drug testing;
- (z) Privacy Act notice that describes the purposes and uses of the personal information being collected.
- (aa) Whether or not the incumbent is subject to submitting a Financial Disclosure Statement as a requirement of the position.
- (bb) A statement as to whether the position is considered "essential" for purposes of reporting to work when the facility might otherwise be closed; and
- (cc) A statement -if the position is sensitive and if the appointment is subject to reappointment investigation.
- (dd) A statement as to whether Relocation expenses will be authorized.

(3) Announcements may be issued to establish a pool of applicants so that certificates may be issued up to four months from the issue date of certificate. In order to allow sufficient time to complete the evaluation process for announcements that include additional evaluation methods after the closing date of the announcement (e.g., performance tests, structured interview), certificates may be issued up to four months (120 Days) from the issuance of the first certificate. In either case, vacancy announcements must specify the intent to establish long-term use and indicate how long certificates may be used.

(4) Vacancy announcement should be developed in a format that supports the 1.3 deliverable of the Presidential Management Agency, whereby career pattern strategies are incorporated into vacancy announcements to increasingly attract qualified applicants to mission critical occupations (MCOs) in accordance with OPM guidance.

(5) OPM requires that when agencies are accepting applications for merit promotion from outside the Agency (in this case, the parent Agency, or DHS), the vacancy announcement must be posted on OPM's USAJOBS website at www.USAJOB.opm.gov. In addition to the items listed above, the following information must be included on the job announcement.

(a) How to apply for veterans' preference; and

(b) A statement that under the Veterans Employment Opportunities Act of 1998, preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service may compete for vacant positions under merit promotion procedures.

(6) Time Limit.

Vacancy announcements will be open for a minimum of ten (10) calendar days.

(7) Open and Continuous Announcements.

Open continuous announcements and announcements for standing registers may be used.

(8) Amending Vacancy Announcements.

If a vacancy announcement has been posted and any information is later found to be in error or subsequently changed, i.e., area of consideration, duty station, grade change, career ladder of the position, or if there is a change in the factors by which the candidates will be evaluated, the announcement must be re-posted citing the change and whether or not the original applicants need to re-file in order to be considered. Posting time and distribution shall be the same as the original vacancy announcement.

(9) Cancellation.

Notice of cancellation of vacancy announcements will be posted in the same areas as the announcements.

H. EMPLOYEE APPLICATIONS.

(1) Filing an Application.

To be considered for a vacancy, an employee must sign and file the appropriate application as described in the announcement.

(2) Electronic Application.

- (a) The Agency will give bargaining unit employees access to Agency computers to complete automated applications under this article. Access includes a reasonable amount of time during an employee's non-working hours to prepare or modify his or her application.

(3) Time Limits.

The time limits for filing for a posted vacancy are as follows:

- (a) Open Continuous Announcements - An employee may file at any time as outlined on the vacancy announcement.
- (b) Individual Announcements
 - i. In those instances where electronic applications are utilized, the closing date and time reflected on the vacancy announcement will be the acceptance deadline.
 - ii. In those instances where employees mail in their applications, they must be received by the closing date shown on the vacancy announcement

(4) Absence during Posting Period.

- (a) Exceptions may be granted to employees who are unable to apply to an announcement by the closing date due to unique circumstances, such as extended military service. In these situations,, the employee may be allowed to apply and receive consideration after the closing date of an announcement, provided no selection has been made.

(5) Multiple Applications

(a) When an employee applies for more than one announcement, full consideration will be given for each vacancy applied for, regardless of selection to one or more vacancies.

(6) Any employee may compete for both Wage Grade and General Schedule positions.

I. ESTABLISH THE BEST QUALIFIED LIST.

(1) To be eligible for promotion or placement, candidates must meet minimum qualification requirements, e.g. general and specialized experience, professional education requirements, etc., under the applicable OPM qualifications standards, or OPM's Job Qualification System for Trades and Labor Occupations for those jobs in the Federal Wage System. A minimum score of 70 is required for basic eligibility and referral. In addition, the candidate must satisfy all legal and regulatory requirements for the position, and any selective factors, e.g., proficiency requirements by the closing date of the vacancy announcement in order to receive consideration. Ineligible applicants shall be notified in writing of the determination of ineligibility prior to submission of the referral list to the selecting official.

(2) Development of Assessment Criteria.

(a) A job analysis will be conducted to determine the competencies required for the position. This may include the knowledge, skills, abilities, and other characteristics and (if applicable) selective factors required to identify the best-qualified candidates for the position to be filled. Job analysis requirements shall conform to the Uniform Guidelines on Employee Selection Procedures at 29 CFR 1607 and 5 CFR 300, Subpart A.

(b) Assessment criteria used to evaluate candidates must be job related and applied fairly and equitably.

(3) Information on performance appraisals and awards documented in the application package will be given due weight during the evaluation/rating review.

(4) Ratings will be transmuted based on a total possible score of 100 points. The minimum qualifying score for consideration is 70 points.

(5) Qualified candidates competing for promotion shall be rated based on their job-related knowledge, skills, and abilities (KSAs). This evaluation may be based on one or more evaluation methods described below. The evaluation of applicants under these methods must be against criteria developed through appropriate job analysis procedures.

The KSAs identified through job analysis must be critical for successful performance. These factors must be able to measure the extent and/or degree the applicant possesses the KSAs and must be fairly and consistently applied in order to distinguish potential job performance among the applicants.

(a) *Answers to job-related questions.* Applicants may be evaluated based on answers to job-related questions, using a rating method determined through the appropriate job analysis.

(b) *Crediting plans* will include definitions of all job elements used to rate and rank candidates. These elements will be identified through the appropriate job analysis, and will be defined in terms of the required knowledge, skills, abilities, and other competencies required for successful performance of the position. In coordination with the selecting official or subject matter expert (SME), the crediting plan will be developed and approved by a representative of the Human Resources servicing office. The method used for evaluation may include assessment of education, job-related training, paid and unpaid experience, and job-related outside activities. The representative from the Human Resources servicing office will ensure that the rating criteria is reliable and valid measures of the knowledge, skills and abilities required by the position being filled. Any weighting of the evaluation factors in ranking candidates must be clearly documented for each merit promotion action and must include an explanation of the assignment of factor weights in terms of evaluating the candidates and determining the best qualified.

(c) Narrative responses to job knowledge, skill, and ability or competency requirements.

i. Applicants may be evaluated based on narrative responses to the required KSAs and/or information provided in the employment application/resume. This evaluation may be performed by one or more individuals (e.g., subject matter experts) familiar with the position to be filled. The information provided by the applicant must be reviewed and compared to the required KSAs identified for successful job performance. The evaluation instrument will consist of four levels for each KSA: Excellent, Good, Moderate and Barely Acceptable levels, and will be scored 4, 3, 2, 1, respectively. If an applicant shows no evidence of possessing a particular KSA or if there is insufficient information on which to base a rating, a zero score will be assigned. (See Appendix 2 for an explanation of scoring.)

ii. Applicants may also be evaluated using category rating

procedures. Category rating is a process of evaluating qualified eligibles by quality categories rather than by assigning individual numeric scores. Under this system, applicants are assessed against job-related criteria and then placed into two or more pre-defined categories (groupings of individuals) with similar level of job-related KSAs). Quality categories are defined to differentiate between the relative qualities of the candidates in each category. Unlike the method described in (a) above, there are various methods which can be used to determine the pre-defined categories. The factors to consider when developing categories may include:

- Breadth and scope of knowledge, skill, and ability or competency,
- Increased levels of difficulty or complexity,
- Successful performance on the job; and
- Level of the job.

(d) *Structured interviews.* Applicants may be evaluated based on responses to standard questions under a structure interview method. This assessment is used in conjunction with other assessments. The result of the interview may be scored and applied to an applicant's overall rating or used on a pass/fail basis. Note, however, that records and scoring criteria obtained during the interview process is maintained by the selecting official.

(e) *Other approved assessment instruments.* Any other approved assessment method or process may be used provided it is based on a relevant job analysis that can measure an applicant's job-related knowledge, skill, or ability requirements and can be fairly and consistently applied to all candidates

(6) Determining the Best Qualified.

(a) Applicants will be considered for selection based on the rating received from the evaluation process. The final rating is a reflection of his/her overall education, training, and/or experience for a particular position and will determine further selection consideration. Those applicants who meet the basic eligibility requirements and are determined best qualified may be referred for selection consideration accordingly:

- i. Competitive applicants will be evaluated and referred to the selecting official based on ranking and listed in alpha order which will be valid for four months (120 days) from the date of issuance.
- ii. Applicant scores will not be shown on the selection list.

iii. Non-competitive applicants (i.e., reinstatement, reassignment, repromotion eligibles, Veterans Recruitment Authority, or appropriate interchange agreements) will be referred in alpha order on a separate certificate of eligibles, provided they meet the basic qualification and eligibility requirements.

iv. Outside candidates may not be appointed by transfer or reinstatement to a higher graded position or one with higher promotion potential above the highest grade held in a non-temporary Federal position, unless evaluated under competitive promotion procedures and found to be best qualified.

(b) In an effort to ensure diversity and meet affirmative action goals, a sufficient number of best-qualified applicants will be referred. The following will be practiced:

i. Fifteen (15) applicants will be referred for one vacancy with three (3) additional applicants for each additional vacancy.

ii. Within the applicant referral ranges, all applicants with tied scores will be referred.

iii. Refer to Appendix three (3) for the specific steps in preparing and completing a best-qualified list.

iv. The evaluation board member(s) or the Human Resources Specialist may refer fewer applicants if it is determined that a significant difference exists in the applicants eligible for referral, or a natural break occurs. Additionally, the evaluation board member(s) or the Human Resources Specialist may refer more applicants depending on where a significant difference or a natural break occurs. In this case, all applicants within this group will be deemed best qualified, regardless of the number of applicants being referred, and any individual(s) may be selected.

v. If the best-qualified list is less than or more than 15 applicants normally referred, the case file must be clearly documented as to the reason(s) why the list was reduced or expanded.

(c) If category rating is used, the primary category shall be determined prior to the announcement. All applicants in the highest quality category are referred as best qualified or, if fewer than three (3) applicants are available, from a merged category consisting of the highest and second highest quality levels.

(d) The Human Resources servicing office is responsible for referring for

consideration the names of those employees who become eligible under the following conditions should they request such consideration:

- i. Absent due to compensable injury or in military service, in accordance with 5 CFR 353.106(c),
- ii. Granted reemployment rights under a letter of authority from OPM or through, legislation; or
- iii. On an Intergovernmental Personnel Act Mobility Agreement in accordance with applicable law.

J. SELECTION PROCEDURES.

Order of Selection.

(A) Selection made from within the DHS workforce:

- i. Employees entitled to Priority Consideration pursuant to an action taken by the Agency head or his designee to settle a formal complaint, grievance, appeal, or other litigation, in accordance with 5 CFI .330.b06(d)(20).
 1. Employees entitled to and eligible for priority consideration or placement will be referred to the selecting official prior to other candidates, and if possible, before a vacancy announcement is issued.
 2. It is the responsibility of Human Resources servicing office to ensure that management officials afford priority candidates appropriate consideration, maintain documentation and, upon request, provide the appropriate documentation of consideration to priority candidates.
- ii. Applicants who have applied under the Career Transition Assistance Program and who have been evaluated as "well-qualified." These candidates will be referred to the selecting official for priority selection before any additional action may be taken to fill the vacancy;
- iii. Employees entitled to Priority Consideration as determined by the Human Resources servicing office due to a regulatory, program, or procedural violation from a previous merit promotion action. These candidates must be referred to the selecting official prior to filling the position or a similar position within the organization for which the applicant missed consideration for a promotion or other type of personnel action. This is a one-time consideration. The applicant is not

entitled to selection. If non-selection, the record must be documented to record the reasons for non-selection; and

- iv. Applicants referred as repromotion eligibles (RPL) and those who certified on properly issued merit promotion certificates.

(B) Selections made from outside the DHS workforce:

- i. Employees entitled to Priority Consideration pursuant to an action taken by the Agency head or his designee to settle a formal complaint, grievance, appeal, or other litigation, in accordance with 5 CFR 330.606(d)(20);
 - 1. Employees entitled to and eligible for priority consideration or placement will be referred to the selecting official prior to other candidates, and if possible, before a vacancy announcement is issued.
 - 2. It is the responsibility of HRM to ensure that management officials afford priority candidates appropriate consideration, maintain documentation and, upon request, provide the appropriate documentation of consideration to priority candidates.
- ii. Applicants who have applied under the Career Transition Assistance Program and who have been evaluated as "well-qualified." These candidates will be referred to the selecting official for priority selection before any additional action may be taken to fill the vacancy;
- iii. Employees entitled to Priority Consideration as determined by the Human Capital Management Division due to a regulatory, program, or procedural violation from a previous merit promotion action. These candidates must be referred to the selecting official prior to filling the position or a similar position within the organization for which the applicant missed consideration for a promotion or other type of personnel action. This is a one-time consideration. The applicant is not entitled to selection. If non-selection, the record must be documented to record the reasons for non-selection;
- iv. Applicants referred as repromotion eligibles;
- v. Employees referred under the Agency's Reemployment Priority List who are exercising regulatory or statutory reemployment rights;
- vi. Employees who have applied for consideration under the Interagency Career Transition Assistance Program (ICTAP) and who have been determined to be "well-qualified" for the position and scoring 85 points.

These candidates will be referred to the selecting official for priority selection before any additional action may be taken to fill the vacancy; and

vii. Applicants certified on a merit promotion certificate, or an OPM/DEU certificate of eligibles.

(C) Interviewing.

1. At their discretion, selecting officials (or their designees) may interview applicants referred as best qualified. Interviews may be conducted in person or by telephone.

(a) Selecting officials may select from those referred as best-qualified and/or alternate staffing. Alternate Staffing candidates, or candidates from any other appropriate source, may be selected at any time in the process of filling a position.

(b) Selecting officials are encouraged to make selections in a timely manner. Normally, selections for other than long-term vacancy announcements should be made within 30 days from the issue date of the selection certificate. Each certificate issued must indicate the date the certificate expires. HRM may approve extensions with a goal toward completing the selection process within 45 days. Except in unusual circumstances, extensions should not exceed 120 days from the issuance date.

(D) Selection.

Selecting Officials may choose any applicant referred on the best-qualified list. However, in cases where fewer vacancies are filled than initially identified, selections must be within the allowable number of referrals for each vacancy.

(E) Release and Notification of Applicants.

The Human Resources Office will work with program officials to establish mutually agreeable release dates based on mission and program requirements. Normally, an employee will be released no later than one (1) complete pay period for promotions, following the selection. When local workforce and program conditions permit, an employee will be released no later than two (2) complete pay periods for reassignments, following the selection. When an employee is nearing the end of a waiting period for a within grade increase, consideration should be given to releasing the employee at the beginning of a pay period on or after the effective date of the within-grade increase, not to exceed four pay periods, provided such an action would benefit the employee.

K. EMPLOYEE INFORMATION.

(1) At a minimum, applicants will be notified of application receipt and the final status of their application. To the extent possible, the announcement status will be made available to applicants. An applicant may request, and receive, the name, title, organization, and geographic location of the person who was selected for the position. In addition, an applicant may request, and receive, information regarding his or her qualifications relative to the rating and ranking criteria. An applicant may not receive the crediting plan or category rating levels.

(2) The following information may NOT be released regarding a selection:

- (a) Confidential examining materials (e.g. answer keys, rating schedules and crediting plans, rating sheets, test booklets, etc.)
- (b) Any information that may intrude upon the privacy of other individuals
- (c) Any other materials that would compromise the objectivity or fairness of the examination and evaluation process

L. COMPENSATION.

An employee's level of compensation upon promotion shall be set in accordance with applicable regulations.

M. PROMOTION RECORDS FOR UNIT POSITIONS.

In accordance with 5 CFR 335.103, a file sufficient to allow for reconstruction of the competitive action will be kept for two years, unless there is a grievance or complaint pending on the particular promotion action, in which case the file will be kept pending final decision of the grievance or complaint.

N. INFORMATION ON PROMOTION ACTIONS.

Upon completion of the selection process, the Union may request the information used by the Agency to make the selections. The Agency will provide the requested information consistent with the requirements of law.

O. UPWARD MOBILITY OPPORTUNITIES.

The Agency at its' discretion may use an upward mobility program to provide new career development opportunities to permanent employees who hold positions with limited career growth.

P. JOINT COMMITTEE.

The parties will form a joint committee, the purpose of which will be to review the implementation of the USCIS Merit Promotion and Reassignment program during its first year. The committee, comprised of, equal numbers of agency and union representatives will meet at least quarterly to discuss the operation of the program and make recommendations to the USCIS Director for the resolution of problems and overall improvements to the program. After considering recommendations from the union, management will determine the length of the meetings, the number of participants and the method by which the meeting will occur.

Attachments:

1. Definitions
2. Personnel Actions Comp Guide
3. Best Qualified List Prep Guide

Attachment 1

Definitions

- (A) Ability - Competence to perform an observable behavior.
- (B) Accretion of Duties - Phrase used to describe a noncompetitive promotion in those unique instances where an employee's duties and responsibilities have increased over time, and not the result of planned management action.
- (C) Agency - for purposes of the Reemployment Priority List, the Career Transition Assistance Program, and the Interagency Career Transition Assistance Program, named in this plan, "Agency" means an Executive Department (5 U.S.C. 105), i.e., the Department of Homeland Security (DHS) and its Components.
- (D) Area of Consideration - the geographical and/or organizational area from which applications for a specific job announcement are being accepted.
- (E) Bargaining Unit Position - a position in a unit for which a union has been certified as the exclusive representative.
- (F) Best Qualified - those candidates for a specific position, who are the most highly ranked when evaluated and compared with other highly qualified candidates.
- (G) Career Ladder - the formal grade progression of an employee within an occupational series that represents increasing levels of difficulty and responsibility.
- (H) Career Ladder Promotion - the promotion of an employee without further competition when the competition was held at an earlier stage (i.e., selection from either an Office of Personnel Management (OPM) or Delegated Examining Unit (DEU) certificate of eligibles, or under internal merit promotion procedures), and the fact that the initial promotion could lead to further career advancement was made known to all candidates.
- (I) Career Transition Assistance Program - the Agency's plan to actively assist its surplus and displaced employees by implementing policies to provide career transition services to those affected by downsizing or restructuring. This includes providing special selection priority to well-qualified surplus and/or displaced Agency employees who apply for Agency vacancies in the local commuting area, before selecting any other candidate from either within or outside the Agency.
- (J) Certificate - a document given to the selecting official that contains the names and applications of the most highly qualified candidates for a competitive position.

- (K) Competitive Status - as defined in title 5, part 1, Coverage and Definitions, competitive status is one's basic eligibility to be non-competitively selected to fill a vacancy in a competitive position. Competitive status is acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service.

Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination.

- (L) Crediting Plan - the instrument designated for the evaluation of candidates for a specific position. Rating criteria are developed based on thorough job analysis to identify the requisite knowledge, skills and abilities required for successful job performance.
- (M) Demotion - the change of an employee to a lower grade when both the old and the new position are in the General Schedule or under the same type of graded wage schedule; or to a position with a lower rate of pay when both the old and the new positions are under the same type of ungraded wage schedule or are in different pay method categories.
- (N) Detail - the temporary assignment of an employee to different duties or to a different position for a specified period of time. For pay purposes, the employee continues to occupy his or her permanent position of record.
- (O) Exceptions - those promotion actions that do not require competitive procedures and are therefore not covered under the requirements of this plan.
- (P) Full Performance Level - the highest level of work projected within a career ladder or in association with a position's established promotion potential.
- (Q) Highly Qualified Candidates - those eligible candidates who have been determined to possess the knowledge, skills, abilities and other personal characteristics described by the evaluation criteria as necessary to perform the duties of the position successfully.
- (R) Interagency Career Transition Assistance Program - the Agency's plan that provides eligible, well-qualified employees selection priority over almost any other applicant from outside the Agency. Under ICTAP, for example, a Department of Defense employee with a Reduction-in-Force (RIF) separation notice could apply for a competitive service vacancy in the local commuting area with USCIS, and in most instances USCIS would select this well-qualified person for the position before choosing another applicant from outside the Agency.
- (S) Interchange Agreement - under Civil Service Rule 6.7, OPM and another Agency,

having an established merit system in the excepted service, may enter into an agreement prescribing conditions under which employees may be moved from one system to the other through noncompetitive appointments. Eligible employees must meet all of the requirements for appointment under the specific interchange agreement.

- (T) *Intergovernmental Personnel Mobility Act* - The Intergovernmental Personnel Act Mobility Program provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. To learn more about the program, please visit <http://www.optn.gov/programs/ipa/index.asp>
- (U) *Job Analysis* - systemic review of a position description to assess the knowledge, skills and abilities required for successful job performance.
- (V) *Knowledge* - body of information *applied* directly to the successful performance of a position's function.
- (W) *Local Commuting Area* - as defined in 5 CFR 351.203, the geographic locality that constitutes one area for employment purposes, as determined by the Agency. It includes any population *center* and the surrounding localities within which people live and can reasonably be expected to travel back and forth daily to their usual place of employment.
- (X) *Noncompetitive Action* - as defined in 5 CFR 210.102(8), a promotion, demotion, reassignment, transfer, or reinstatement, or appointment based on prior service.
- (Y) *Position Change* - the promotion, demotion, or reassignment of an employee effected during his or her service within the Agency.
- (Z) *Priority Consideration* - the process by which competitive procedures are temporarily suspended for the purpose of correcting or minimizing any injustice resulting from a procedural, program, or regulatory violation of merit promotion procedures. When non-selected employees have not actually been adversely affected by the *violation*, they are not entitled to Priority Consideration. Priority Consideration is special, one-time *considerations given* a candidate who was denied proper promotion consideration *in a* prior competitive action.
- (AA) *Promotion* - the change; of an employee to a higher grade when both the old and the new positions are under the General Schedule, or under the *same* type of graded wage schedule, or to a position with a higher rate of pay when both the old and new positions are under the same type of *ungraded wage* schedule or in a different pay system.

- (BB) Public Notice - explains to job seekers when, where, and how to apply for a federal job. Public notice is required whenever the Agency *is* considering applicants from outside the Federal workforce for competitive service positions.
- (CC) Qualified Standards - the experience, education, training or other criteria contained in OPM's Qualification Standards for a specific occupational series and grade level.
- (DD) Qualified Candidates - Those candidates who meet the minimum qualification requirements established by OPM, as well as any selective placement factors critical to successful performance in the position.
- (EE) Rating Panel - those employees tasked with rating and ranking candidates for a specific merit promotion vacancy.
- (FF) Reasonable Accommodation - an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment.
- (GG) Reassignment - The change of an employee from one position to another within the Agency, and without promotion or demotion. Note: For the purpose of this plan and payroll servicing, "Agency" is defined as DHS.
- (HH) Reemployment Priority List (RPL) - a list that the Agency maintains to give reemployment priority to any career or career-conditional competitive service employee who may have been separated through reduction-in-force or as a result of recovery from a compensable injury after more than one year. OPM regulations require that each Agency establish an RPL for each local commuting area. Eligible employees may register through the Office of Human Capital & Training, DHS.
- (II) Repromotion Eligible List (REL) - an exception to competitive procedures whereby an employee is repromoted to the grade level previously held or its Federal Wage System equivalent. An employee becomes eligible for repromotion if he or she is changed to lower grade without cause, and without his or her consent.
- (JJ) Selective Placement Factors - specific knowledge, skills and abilities not prescribed by OPM's qualification standards, but are essential to successful job performance. The necessity for the particular factor must be documented in the position description and identified through job analysis.
- (KK) Skill - an observable competence to perform a learned psycho motor act.
- (LL) Spouse - means the husband or wife of a member of armed forces.
- (MM) Uniformed Services Employment and Reemployment Rights Action of 1994 (USERRA) - is a federal law intended to ensure that persons who serve or have

served in the Armed Forces, Reserves, National Guard or other "uniformed services:" (1) are not disadvantaged in their civilian careers because of their service; (2) are promptly reemployed in their civilian jobs upon their return from duty; and (3) are not discriminated against in employment based on past, present, or future military service. The federal government is to be a "model employer" under USERRA. See 38 U.S.C. 4301. USERRA provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, service members who leave their civilian jobs for military service can perform their duties with the knowledge that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also prohibits employers from discriminating against these individuals in employment because of their military service.

- (NN) Vacancy Announcement - an announcement, generally posted on OPM's website at www.USAJOBS.opm.gov lists job opportunities within USCIS. Some vacancy announcements are open only to USCIS or DHS candidates; others will allow candidates from outside the Agency to apply.
- (OO) Veterans Employment Opportunity Act (VEOA) of 1998 - allows preference eligibles or veterans to compete for vacancies under merit promotion procedures when the Agency is accepting applications from individuals outside its own workforce. Candidates eligible for a VEOA appointment must be a preference eligible or a veteran who has been separated under honorable conditions with 3 or more years of continuous active service. "Agency" in this context means the parent Agency, i.e., DHS.
- (PP) Veterans Recruitment Appointment - allows the initial appointment of eligible veterans up to the GS-11 or equivalent level. Such positions may have promotion potential. Veterans are hired under excepted appointments to positions in the competitive service. After 2 years of satisfactory service, the veteran may be non-competitively converted to a career or career-conditional appointment.
- (QQ) Well-Qualified Employee - under the Interagency/Career Transition Assistance Program, a well-qualified employee is an eligible employee who possesses the *knowledge, skills and abilities that clearly exceed the minimum qualification* requirements for the position. A well-qualified employee will not necessarily meet the Agency's definition of "best qualified," when evaluated against other candidates. At USCIS, a well-qualified employee is one with a score of 85 or above.
- (RR) USAJOBS - is the official job site of the United States Federal Government. It's a one-stop source for Federal jobs and employment information. USAJOBS is located at: <http://www.usajobs.opm.gov>.

Attachment 2 — Personnel Actions Comp Guide

Probation, Reassignment, Change to Lower Grade	is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service		Yes
	is not one with known promotion potential or promotion potential is no greater than the potential of a position previously held on a permanent basis	Employee was not separated or demoted because of performance or conduct reasons	No
Promotion	to a grade previously held on a permanent basis in the competitive service	employee was separated or demoted for other than performance or conduct reasons	No
	to a position to which employee was detailed for training or evaluation	the employee was selected for detail under competitive procedures and all competitors were informed that the detail could lead to probation without further competition	No
	to a higher grade in the employee's career ladder position*		No
Promotion resulting from an employee's position being classified at a higher grade because of additional duties and responsibilities			

Temporary Promotion	is for more than 120 days	the position is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service	Yes
		The position is one with known promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service	No
	is for 120 days or less	the employee has not served on a noncompetitive temporary promotion for an aggregate of 120 days in the last 12 months	No
Reinstatement or Transfer	is at a higher grade than previously held on a permanent basis or is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on permanent basis in the competitive service		Yes
	is at the same or lower grade than previously held on a permanent basis or is one with no, known promotion potential greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service		

Detail	same grade as employee's current position	detail is for any length and the position is one with no known promotion potential greater than the potential of a position an employee currently holds or previously held on permanent basis in the competitive service	No
	is to a higher-graded position	detail is for more than 120 days (including extensions), and the position is one with known promotion potential greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service	Yes
		the position is one with known promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service	No
	is to a higher-graded position	detail is for 120 days or less (including extensions), and the employee has not served an aggregate of 120 days in such a position in the last 12 months	No
Selection for training leading to promotion		successful completion of training is a condition of eligibility for promotion	Yes

conversion of temporary promotion to permanent promotion		the employee was selected for temporary promotion under full competitive procedures and all competitors were informed that the temporary promotion could lead to permanent without further competition	No
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Attachment 3 — Best Qualified List Prep Guide

To determine the best-qualified list, complete the following steps and grid:

- (1) Prepare a ranked list of all qualified applicants (from highest score to lowest score.
- (2) Determine the number of vacancies.
- (3) Identify the number of applicants to be referred based on the number of vacancies: 15 for 1 vacancy, 18 for 2 vacancies, etc.
- (4) The scores in each KSA will be totaled to determine the raw score for all KSA's.
- (5) Using the ranked list, identify the cut off score based on the number of applicant referrals from column B. Enter this score on the appropriate vacancy line in column C.
- (6) Determine the number of applicants with the cut off score or higher. Enter this number in column D. Note that all candidates with tied scores will be referred.
- (7) Prepare the best-qualified list from the number of applicants identified in column D.

(A) Number of Vacancies	(B) Number of Applicants Normally Referred	(C) Cut off Score (from The ranked list of qualified applicants)	(D) Actual Number of Applicants to be Referred*
1	15		
2	18		
3	21		
4	24		
5	27		
(continue in increments of 1)	(continue in increments of 3)		
<p><i>*Note: This number may be higher than the number of applicants identified in Column B due to ties.</i></p>			

ARTICLE 47 - Telework

A. Telework is a voluntary program which may be authorized when an employee's officially assigned duties can be performed at an alternate location and the criteria specified in this Article can be met. The purpose of this Article is to ensure that eligible employees may participate in Teleworking to maximum extent possible without diminishing employee performance or mission accomplishment. This Article is being read in conjunction with Management Directive, Telework Program. The parties recognize that both regular and recurring and ad hoc (intermittent) Telework arrangements benefit employees and the Employer by, among other things:

- (a) potentially improving the productivity of employees;
- (b) assisting in the recruitment and retention of high quality employees;
- (c) improving employee morale;
- (d) allowing employees to establish a better balance between their work and personal lives;
- (e) reducing commuting costs and commuting stress;
- (f) improving job access and reasonable accommodations for disabled employees;
- (g) reducing costs for office space and related costs for utilities, parking, etc.;
- (h) accommodating employees needs for convalescence from short-term injuries or illnesses;
- (i) accommodating work needs when the regular workspace is unavailable (e.g., during office renovation); and
- (j) promoting the United States Citizenship and Immigration Service as an Employer of choice.

B. The parties recognize that some positions are not eligible for Telework. The organization's Approving Official or designee is responsible for determining "Position-related" eligibility. These positions involve tasks that are not suitable to be performed away from the traditional worksite, including tasks that:

- (a) require the employee to have daily face-to-face contact with the supervisor, colleagues, clients, or the general public in order to perform his or her job effectively, which cannot otherwise be achieved via email, telephone, fax or similar electronic means;
- (b) require daily access to classified information; or
- (c) are part of trainee or entry-level positions.

C. The parties recognize that employees who Telework must be available to work at the traditional worksite on Telework days on an occasional basis if necessitated by work requirements. Conversely, requests by employees to change scheduled Telework days in a particular week or biweekly pay period should be accommodated by the supervisor

wherever practicable, consistent with mission requirements.

D. TYPES OF TELEWORK:

(a) **Telework Schedules:** Telework may be defined as “core” or “episodic or situational,” as described below:

1. **Core Telework.** The employee teleworks on a routine, regular, and recurring basis one or more days per week. Individuals can conduct core telework on a full-time or part time basis.
2. **Episodic or Situational Telework.** The employee teleworks on an occasional, non-routine, irregular basis. An authorization to perform situational or episodic telework does not negate compliance with all the telework application procedures, including executing an agreement prior to teleworking. Under extenuating circumstances, such agreements can be executed within a reasonable period of time after telecommuting commences. Episodic or situational telework for continuity of operations and emergency response purposes will be executed in accordance with applicable procedures.

(b) Regular and recurring Telework arrangements are approved work schedules allowing eligible employees to work at an approved alternative worksite at least one day per week (including from home). The number of days of Telework is based upon workload requirements, ability to maintain effective communications in the workplace, implementation of new work processes, and accomplishment of the mission of the Agency. When an employee submits a Telework request, he/she will meet with the supervisor to discuss these specifics, including the proposed telework schedule. This discussion will assist the supervisor in recommending the number of days per week Telework should be authorized. Approving officials have the sole discretion to determine the number of days per week (from one to five) a Teleworker is approved to work. Approving officials will advise Teleworkers of the number of days per week they are authorized to Telework.

(c) Ad hoc (intermittent) Telework means occasional, one time, or irregular Telework by an employee at an approved alternative worksite typically for a day, or a block of days, to work on projects or assignments that may be effectively performed away from the traditional worksite. Ad hoc (intermittent) Telework provides an ideal arrangement for employees who, at infrequent times, have to work on projects or assignments that require intense concentration. Work assignments in this situation may include a specific project or report, such as drafting a local directive, preparing a brief or arguments, preparing an organization’s budget submission, reviewing various types of proposals, or preparing research papers. Such situations may occur through the year or be a one-time event.

E: TELEWORK AGREEMENTS

(a) Prior to commencement of a regular and recurring Telework arrangement, the supervisor and the employee must request approval using the Telework Application and Agreement (G-1129) form contained in the Management Directive. Written approval or disapproval normally will occur, within 10 (ten) workdays of submission by the employee, but no later than 20 workdays. If disapproved, the employee will be provided with a written explanation of the reason.

(b) Individual participants may terminate their personal Telework agreement by giving advance written notice.

(c) The Employer may modify or terminate a Telework arrangement if that arrangement is having an impact on work operations or performance. When practicable, the supervisor or manager will provide written notice prior to the cancellation of participation in order to provide adequate time for conversion back to the official duty station.

F. REQUIREMENTS

Employees who wish to Telework must:

(a) Be performing at the Fully Successful level or equivalent.

(b) Not have a disciplinary action in their record during the prior 12 month period from the date they requested to Telework. This provision may be waived by the Telework approving official.

(c) Not be under a letter of leave restriction. This provision may be waived by the Telework approving official.

(d) Submit a G-1129 Telework Program Application and Agreement and G-1129A Employee Self Certification of Safety (if the Telework location is the residence).

(e) Complete all mandatory Telework training prior to the execution of the Telework Agreement.

G. LOCAL SUPPLEMENTAL BARGAINING

Nothing in this article shall preclude bargaining at the local level in accordance with Article 9 relative to the implementation of a Telework program.

ARTICLE 48 - Employee Wellness

A. PROMOTION OF PHYSICAL AND MENTAL FITNESS.

The parties recognize that physical and mental well-being of the workforce is important. In that regard, the Agency may establish and administer physical and mental fitness programs. In addition, the Agency will continue to publicize the Employee Assistance Program (ref. Article 53), which may provide assistance to employees in need of mental health services or counseling.

Voluntary non-duty-hour fitness programs at no cost to the Agency may include but are not limited to:

Physical fitness:

- Walking, running or bicycling clubs or events
- Classes in aerobic exercise, weight lifting, stretching and other physical activities
- Physical and health-related education
- Fitness assessments.

Mental fitness:

- Promotional programs on general awareness about stress (causes, costs, and control).
- Specialized training, classes or use of stress consultants, including on-line training programs.

B. ROLE OF THE SAFETY AND HEALTH COMMITTEE IN PROMOTING PHYSICAL AND MENTAL FITNESS.

It shall be appropriate for any Health and Safety Committee established in Article 17, Safety & Health, to explore the feasibility of programs described in Section A of this article.

C. TOBACCO USE CESSATION.

The Agency may promote programs for the cessation of tobacco use by employees desiring assistance in this area. To the extent consistent with law, the Agency may also make reasonable efforts to provide educational resources, web sites, activities, and events supporting tobacco cessation.

D. ERGONOMICS.

The Agency will make reasonable efforts to provide all employees with ergonomic workstations consistent with the standards contained in the facilities memorandum of understanding between the Union and the Agency dated February 8, 2007.

E. WORKPLACE VIOLENCE.

The parties recognize that workplace violence constitutes a health and safety hazard in the workplace. Moreover, the parties agree that violence of any form or the threat of violence is unacceptable in the workplace. The intent of this clause is to prevent workplace violence, and to minimize the occurrence and effects of violence in the workplace, should it occur.

F. NURSING MOTHERS.

Management will make reasonable efforts to provide a clean, healthy and private environment (such as the temporary utilization of a private office or union office) and, flexibility on non-duty time for nursing mothers to express milk.

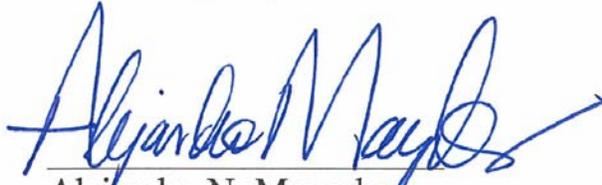
G. HANDLING OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

The Agency will handle PII and any breaches of PII in accordance with applicable laws and directives, including OMP and DHS directives.

EXECUTION OF AGREEMENT

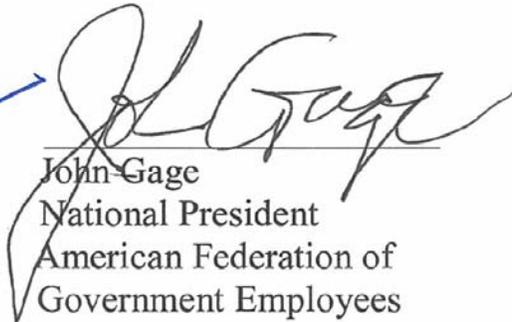
The United States Citizenship and Immigration Services and the American Federation of Government Employees hereby execute this Master Labor Agreement on November 5, 2009.

For the Agency:



Alejandro N. Mayorkas
Director,
USCIS

For the Union:

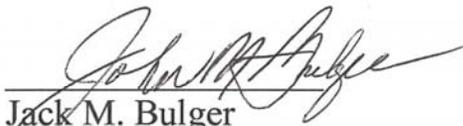


John Gage
National President
American Federation of
Government Employees

COMPLETION OF BARGAINING

In accordance with the ground rules dated September 5, 2007, the signatures below of the Chief negotiators for the Agency, USCIS, and the Union, AFGE, National Citizenship and Immigration Services Council, denotes that the bargaining of the collective bargaining agreement has been completed.

For the Agency:



Jack M. Bulger
Chief Negotiator
11/2/09

For the Union:



Mark J. Whetstone
Chief Negotiator

Preamble

Article 1 - Recognition

- A. BARGAINING UNIT.
- B. GENDER LANGUAGE.

Article 2 - Governing Laws & Regulations

- A. EXISTING OR FUTURE LAW.
- B. GOVERNMENT-WIDE RULES AND REGULATIONS.
- C. PAST PRACTICES.
- D. SCOPE OF COVERAGE.
- E. INTENT OF RESTATEMENT.
- F. SEVERABILITY.

Article 3 - Employee Rights

- A. RIGHT TO JOIN AND PARTICIPATE.
- B. PRIVATE COUNSELING.
- C. RIGHT TO COMMUNICATE AND TO BE REPRESENTED.
- D. RIGHT TO MEET WITH UNION.
- E. INVESTIGATORY INTERVIEWS (AKA: WEINGARTEN MEETINGS).
- F. PERSONAL RIGHTS.
- G. CONTRIBUTIONS/GIFTS.

Article 4 - Management Rights

- A. STATUTORY RIGHTS.

Article 5 - Union Rights

- A. EXCLUSIVE REPRESENTATIVE.
- B. REPRESENTATION AT FORMAL DISCUSSIONS.
- C. REPRESENTATION AT INVESTIGATORY INTERVIEWS.
- D. RIGHT TO PRESENT VIEWS.

ARTICLE 6 - Status of Employee Representatives

- A. NO RESTRAINT.
- B. DESIGNATION OF STEWARDS.
- C. AUTHORIZATION FOR REPRESENTATIONAL DUTIES.
- D. STEWARD AND OFFICER LISTS / MANAGEMENT DIRECTORIES.

ARTICLE 7 - Official Time

- A. PURPOSE.
- B. DEFINITIONS.
- C. REPRESENTATIONAL FUNCTIONS.
- D. RELEASE PROCEDURES FOR OFFICIAL TIME USE.
- E. ALLOCATION OF OFFICIAL TIME.
- F. OFFICIAL TIME EXCLUDED.
- G. TRAINING.

H. ALLEGATIONS OF ABUSE

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- A. UNION USE OF AGENCY FACILITIES FOR INTERNAL UNION BUSINESS.
- B. FACILITIES FOR REPRESENTATIONAL ACTIVITIES.
- C. BULLETIN BOARDS.
- D. ACCESS TO EMPLOYEES.
- E. CONTRACT COPIES.
- F. UNION REPRESENTATIVES PERMITTED ON GOVERNMENT PROPERTY.
- G. TELEPHONES.
- H. UNION SPACE AND EQUIPMENT.
- I. ELECTRONIC MAIL.
- J. COPY MACHINES.
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ARTICLE 9 - Impact, Supplemental, and Mid Term Bargaining

- A. NOTICE OF PROPOSED CHANGE / PROCEDURES.
- B. EXTENSIONS.
- C. MANAGEMENT-INITIATED CHANGE.
- D. UNION-INITIATED CHANGE.
- E. SUPPLEMENTAL AGREEMENTS / PROCEDURES.
- F. EXPIRATION AND RENEGOTIATION.
- G. GOOD FAITH.
- H. POST-IMPLEMENTATION BARGAINING.
- I. IMPASSES DURING NEGOTIATION.
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- K. AGREEMENTS ALLOWED.
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- B. NATIONAL CONSULTATIONS AND LABOR-MANAGEMENT FORUM.
- C. REGIONAL CONSULTATIONS.
- D. LOCAL CONSULTATIONS.
- E. JOINT MASTER AGREEMENT TRAINING.
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- B. PROHIBITED ACTIONS.
- C. INFORMATION TO CONGRESS.
- D. EEO AFFIRMATIVE ACTION.

- E. REDRESS PROCEDURES.
- F. EXCLUSIVE GRIEVANCE PROCEDURE.

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- C. LEAVE AND EARNINGS STATEMENTS.
- D. WORKPLACE INJURIES.

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- A. PERMISSION.
- B. REQUEST.
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- A. RETIREMENT COUNSELING.
- B. DISABILITY / DEFERRED ANNUITY.
- C. WITHDRAWAL.

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- A. EMPLOYEE DEVELOPMENT.
- B. EMPLOYEE INITIATIVE.
- C. FAIR AND EQUITABLE/AGENCY NEEDS.
- D. SCHEDULE VARIATIONS.
- E. INDIVIDUAL DEVELOPMENT PLAN.
- F. ELIMINATED POSITIONS.
- G. NON-AGENCY TRAINING.
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- I. ADVISORY COMMITTEE.
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- C. UNION REPRESENTATION.
- D. DESK AUDITS.
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- G. EFFECT OF LOWER GRADED DUTIES.

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- B. SAFETY AND HEALTH COMMITTEES.

- C. UNION PARTICIPATION.
- D. DUTY TO REPORT UNSAFE CONDITIONS.
- E. VEHICLE SAFETY.
- F. AGENCY SAFETY HANDBOOK.
- G. SPECIAL HAZARDS / IMMINENT RISK.
- H. MEAL BREAKS/LUNCH ROOMS.
- I. DAY CARE / HOUSING.
- J. GSA FACILITIES.
- K. IMMUNIZATIONS.
- L. UNSAFE CONDITION MOVE.
- M. SAFE STAFFING.
- N. ASSISTANCE FOR DISABLED EMPLOYEES.
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- B. OFFICIAL PERSONNEL FOLDERS.
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- B. PERFORMANCE OF DUTIES.
- C. MAINTAIN RECORDS.
- D. LAWS, REGULATIONS, AND POLICIES.
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- B. DEFINITIONS.
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- E. VOLUNTEER LISTS.
- F. TIME LIMIT.
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- H. SELECTION PROCEDURES.

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- A. DETERMINATION OF WORK HOURS.
- B. DEFINITIONS.
- C. ALTERNATIVE WORK SCHEDULES.

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- A. INVESTIGATIVE INTERVIEWS.
- B. WRITTEN MEMORANDUM.
- C. WRITTEN NOTICE / WITNESSES.
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- A. STATEMENT OF PURPOSE AND POLICY.
- B. Disciplinary and adverse actions will be...
- C. Notice to an employee...
- D. No record of a complaint...
- E. DEFINITIONS.
- F. ADMINISTRATION OF DISCIPLINE / ADVERSE ACTION.
- G. UNION REPRESENTATION.
- H. PROCEDURES.
- I. NEW OR AMENDED CHARGES.
- J. EXTENSION OF TIME LIMITS.
- K. UNWARRANTED DISCIPLINE.
- L. INVESTIGATIVE INTERVIEW TRAVEL.
- M. NOTICE OF PROPOSED ACTION.
- N. GRIEVANCES AND APPEALS.
- O. GRIEVANCES.
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- Q. LAST CHANCE AGREEMENTS
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- D. DETERMINATION.
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Article 33 - Leave **Replaced by three Leave Articles
see addendum**

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- A. HOLIDAYS.
- B. IN LIEU OF HOLIDAY OBSERVANCE.
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- B. EEO RESPONSIBILITIES.
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- G. UNION RIGHTS.
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- D. IDENTICAL OR "GROUP" GRIEVANCES.
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- G. USE OF GRIEVANCE FORM CIS-827.
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- I. TIME LIMITS.
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- A. PURPOSE
- B. INVOKING ARBITRATION.
- C. SERVICE.
- D. SELECTION OF PANELS.
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- F. THRESHOLD ISSUES.
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- H. TRANSCRIPTS.
- I. PROCEEDINGS.
- J. DOCKET REVIEW/SETTLEMENT.
- K. EXPEDITED PROCEDURE
- L. COSTS.
- M. LOCATION OF HEARINGS.
- N. PARTICIPANTS.
- O. AUTHORITY OF ARBITRATOR.
- P. NO EX PARTE COMMUNICATION WITH ARBITRATOR
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- A. EFFECTIVE DATE.
- B. DURATION.
- C. RENEGOTIATION.
- D. REOPENER.
- E. AMENDMENTS AND MODIFICATIONS.

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- A. ASSIST EMPLOYEES.
- B. The Agency's Employee Assistance Program...
- C. Employees, at their option, may avail themselves of free...
- D. The Agency's Employee Assistance Program shall provide...
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- F. UNION ROLE.
- G. REHABILITATION.
- H. DISCIPLINE.
- I. ANNUAL REVIEW.
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- K. The wording of this Article is without prejudice...

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- A. BRIEFINGS.
- B. SITE VISITS.
- C. UNION NOTIFICATION.

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Section I - Definitions

- A. Dues
- B. SF-1187
- C. SF-1188
- D. Payroll Office
- E. Servicing Human Resources Office

Section II - Eligible Employees

- A. Bargaining Unit Employee
- B. Member in Good Standing
- C. Regular Salary
- D. Request

Section III - Responsibilities of the Union

- A. Voluntary Nature
- B. Provide SF-1187
- C. Certify SF-1187
- D. Forward SF-1187
- E. List of Authorized Signatures
- F. Written Notification
- G. Multiple Locals

Section IV - Responsibilities of the Employer

- A. Screen SF-1187
- B. Certify SF-1187
- C. Reinstate from Temporary Assignments
- D. Reinstates from Non-pay Status

Section V – Procedures

- A. Withholding of Dues.
- B. Changes in Dues.
- C. Termination of Allotments.
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Section VI - Cost of Withholding

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- A. EMPLOYEE REQUESTS FOR REASSIGNMENT OF DUTY STATION.

- B. The parties agree that there are instances whereby...

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- A. PURPOSE.
- B. METHOD OF SERVICE.
- C. TIME LIMITS.
- D. APPROPRIATE RECIPIENTS OF SERVICE.

Article 46 - Merit Promotion and Reassignment

- A. PURPOSE.
- B. ACTIONS COVERED BY COMPETITIVE PROCEDURES.
- C. ACTIONS NOT COVERED BY COMPETITIVE PROCEDURES.
- D. TEMPORARY PROMOTIONS.
- E. PRIORITY CONSIDERATION BEFORE USING COMPETITIVE PROCEDURES.
- F. SCOPE OF COMPETITION.
- G. VACANCY ANNOUNCEMENTS.
- H. EMPLOYEE APPLICATIONS.
- I. ESTABLISH THE BEST QUALIFIED LIST.
- J. SELECTION PROCEDURES.
- K. EMPLOYEE INFORMATION.
- L. COMPENSATION.
- M. PROMOTION RECORDS FOR UNIT POSITIONS.
- N. INFORMATION ON PROMOTION ACTIONS.
- O. UPWARD MOBILITY OPPORTUNITIES.
- P. JOINT COMMITTEE.

Article 47 - Telework

- A. Telework is a voluntary program...
- B. The parties recognize that some positions are not eligible...
- C. The parties recognize that employees who Telework...
- D. TYPES OF TELEWORK
- E. TELEWORK AGREEMENTS
- F. REQUIREMENTS
- G. LOCAL SUPPLEMENTAL BARGAINING

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- A. PROMOTION OF PHYSICAL AND MENTAL FITNESS.
- B. ROLE OF THE SAFETY AND HEALTH COMMITTEE IN PROMOTING PHYSICAL AND MENTAL FITNESS.
- C. TOBACCO USE CESSATION.
- D. ERGONOMICS.
- E. WORKPLACE VIOLENCE.
- F. NURSING MOTHERS.

Addendum to Contract: Article 33- Leave

This addendum references the Master Agreement between United States Citizenship and Immigration Services and American Federation of Government Employees National Citizenship and Immigration Services Council Agreement 2010.

The parties made the following additions or change a part of said contract as if contained therein. The following three Leave Articles will replace Article 33 effective 10/25/2013 :

- (1) MOA Annual Leave
- (2) MOA Sick Leave
- (3) Other Leave Categories

OCT 25 2013

Office of the Chief Human Capital Officer
U.S. Department of Homeland Security
Washington, DC 20528

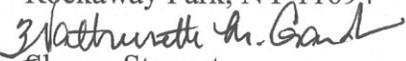


**Homeland
Security**

MEMORANDUM FOR: Jonathan C. Theodule, Acting Chief
Labor and Employee Relations Division
U. S. Citizenship and Immigration Services
633 3rd Street, NW
Washington, DC 20529

Kenneth Palinkas, President
AFGE Council 119
P.O. Box 940163
Rockaway Park, NY 11694

FROM:


Sharon Stewart
Executive Director, Human Capital Policy and Programs

SUBJECT: Agency Head Review of Memorandum of Agreement between
USCIS and AFGE NCISC

Pursuant to title 5, United States Code § 7114 (c) (1), the Memorandum of Agreement between U.S. Citizenship and Immigration Services and American Federation of Government Employees (AFGE) National Citizenship and Immigration Services Council (NCISC) executed by the parties on September 25, 2013, concerning Annual Leave was submitted for review. The Memorandum of Agreement has been reviewed and is hereby approved.

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9/25/13

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ARTICLE XX – Annual Leave

A. POLICY.

The following shall apply to annual leave.

(1) ACCRUAL AND RIGHT TO USE. An employee is entitled to accrue and use annual leave in accordance with Government-wide rules and regulations and this Agreement. Use of accrued annual leave is a right of the employee and not a privilege.

(2) PROCEDURES FOR REQUESTING ANNUAL LEAVE . Except in an emergency situation or in the event of an unanticipated absence, annual leave will be requested in advance utilizing WebTA or its successor. Where WebTA is not available, the request will be made using Office of Personnel Management Form 71 (OPM-71) (former SF-71), "*Request for Leave or Approved Absence*".

(3) INCREMENTS OF ANNUAL LEAVE. All absences shall be charged in 15-minute increments.

(4) TIMELY LEAVE DECISIONS. Except for annual leave scheduled in advance as described in section six (6) below, the supervisor will update WebTA, or the OPM-71 where required, within three business days of the employee's request being submitted via WebTA, or the OPM-71. However, barring operational need, a request submitted for early departure will be decided within 2 hours of submission.

(5) USE OF ANNUAL LEAVE IN ASSOCIATION WITH UNION MEMBERSHIP RECRUITMENT. If the Union provides Management with reasonable advance notice of any Union membership recruitment drive, Management agrees to apply a liberal annual leave policy, consistent with work requirements, to allow union officials and interested employees to attend the union membership drive.

(6) PROCEDURE TO SCHEDULE IN ADVANCE. Each employee shall be responsible for planning and making a timely request for annual leave. Leave preferences in excess of five days, or that span more than one work week (regardless of duration) shall be submitted no later than February 1 of each calendar year. Employees who do not request leave by February 1 will be allowed to take leave at a later date, provided it does not interfere with the annual leave schedule.

(7) PRIORITY APPROVAL. When all requests for annual leave for a given period cannot be granted, the supervisor shall give consideration to the following factors:

(a) Restored Annual Leave. Must be used within two years of restoration according to 5 CFR 630.306 et seq.

(b) Accrued Leave. Amount of leave to the employee's credit.

(c) Seniority: For the purpose of the Article, seniority is defined as the length of service with the Agency and/or its predecessor Agency commencing with the first (1st) day of employment.

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(d) Children's Vacation. Whether employee has children of school age and cannot benefit from a vacation taken when his or her children are in school.

(e) Previous Requests. Whether the employee is able to take leave at desired time during a previous scheduling period.

(8) THREE CONSECUTIVE WEEKS. The Employer agrees to grant annual leave in a manner which permits each employee, if he or she wishes, to take at least three (3) consecutive weeks of annual leave each year.

(9) NO SEASONAL EXCLUSION. In no case will any particular time of the year or season be excluded from consideration for the granting of annual leave only because it is a particular time or season of the year.

(10) RELIGIOUS HOLIDAY. An employee may request annual leave for an established religious holiday of his or her faith which occurs on a regularly scheduled workday of the employee's basic workweek, in accordance with the provisions set forth in this Article and Article 90 – Religious Leave and Holidays.

(11) REASON FOR LEAVE. An employee is not required to specify the reason for a request of annual leave unless the employee is requesting leave under the emergency procedures of Section (14) below.

(12) CANCELED / CHANGED LEAVE. Both the needs of the employee and the Agency will be considered prior to any cancellation of annual leave. An approved annual leave request for two (2) days or more will be canceled only for valid operational reasons which require the employee not to take leave. Valid operational reasons include such matters as illness or death of another employee, directed details by authority outside the Agency, special mission requirements which do not lend themselves to normal scheduling, and other events which create an actual necessity for personnel and not reasons which may make canceling leave merely desirable. Whenever possible, the employee whose leave is canceled will be notified at least forty-eight (48) hours in advance. Such notice will be given in writing or by e-mail.

(13) RESTORATION OF CANCELED LEAVE. Use-or-Lose annual leave that has been canceled for valid operational reasons shall be restored in accordance with the provisions of the governing regulations.

(14) EMERGENCIES AND UNANTICIPATED ANNUAL LEAVE. Use of annual leave for an emergency is applicable when an unforeseen emergency situation arise in a manner such that an employee is unable to give adequate advanced notice of his or her request for leave. In the event of an emergency situation or unanticipated absence, at the earliest opportunity, the employee will attempt to first contact his or her first-line supervisor to notify management of the reason for the absence, the type of leave being requested, the expected duration of the absence and a call back number. If the immediate supervisor is not available, the employee will leave an email and/or voice message at the phone number provided by the first-line supervisor and then attempt to

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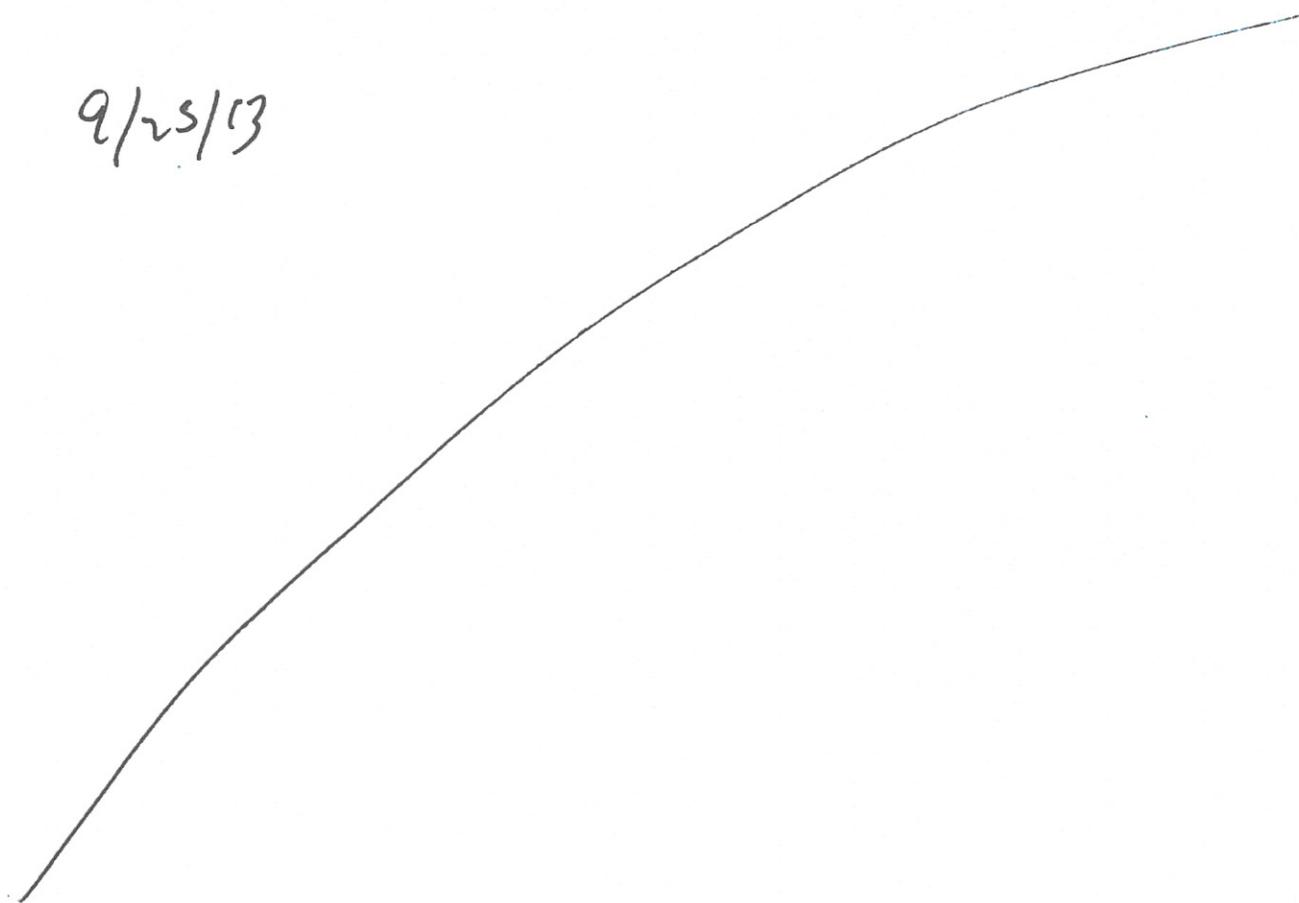
contact the second-line supervisor to notify them of the emergency, if the second-line supervisor is unavailable, then the employee will leave an email and/or voice message. Upon return, the employee will request the appropriate leave upon return using WebTA , its successor system or OPM-71 if an electronic system is unavailable upon return to duty.

If the emergency extends beyond the period for which leave was originally requested, the employee must again notify the employer and request additional leave.

(15) HABITUAL TARDINESS. Habitual tardiness may be corrected by counseling followed by appropriate discipline if necessary. Occasional and infrequent tardiness of less than sixty (60) minutes may be excused at the discretion of the supervisor. Depending on the circumstances the time may be charged in multiples of fifteen (15) minutes to annual leave, compensatory leave, leave without pay or AWOL. An employee cannot be required to perform work for the period of leave charged against his or her account.

(16) ADVANCE ANNUAL LEAVE. Following an employee's request, annual leave may be granted and used in advance of accrual, not to exceed the amount that the employee is expected to accrue during the remainder of the same leave year.

9/25/13





Homeland
Security

OCT 25 2013

MEMORANDUM FOR: Jonathan C. Theodule, Acting Chief
Labor and Employee Relations Division
U. S. Citizenship and Immigration Services
633 3rd Street, NW
Washington, DC 20529

FROM: Kenneth Palinkas, President
AFGE Council 119
P.O. Box 940163
Rockaway Park, NY 11694
Sharon Stewart
Sharon Stewart
Executive Director, Human Capital Policy and Programs

SUBJECT: Agency Head Review of Memorandum of Agreement between
USCIS and AFGE NCISC

Pursuant to title 5, United States Code § 7114 (c) (1), the Memorandum of Agreement between U.S. Citizenship and Immigration Services and American Federation of Government Employees (AFGE) National Citizenship and Immigration Services Council (NCISC) executed by the parties on September 26, 2013, concerning Sick Leave was submitted for review. The Memorandum of Agreement has been reviewed and is hereby approved.

9/26/13 D.O.Dr.

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9/26/13

SICK LEAVE.

(1) PURPOSE OF SICK LEAVE. When requested and approved as provided in this Article and in 5 CFR 630.401 or its successor employees may use sick leave for the following purposes:

(a) Sick Leave Related to Self.

i. Medical Appointments. To receive medical, dental, or optical examination or treatment;

ii. Incapacity. When incapacitated for duty by physical or mental illness, injury, pregnancy, or childbirth;

iii. Communicable Disease. When, as determined by health authorities having jurisdiction or by a health care provider, the employee's presence on the job would jeopardize the health of others as consequence of the employee's exposure to a communicable disease;

(2) SICK LEAVE REQUEST PROCEDURES.

(a) Anticipated and Unanticipated Sick Leave:

i. Anticipated Sick Leave. An employee may use sick leave for personal medical needs, appointments, or medical attention, bereavement, care of a family member in general, care of a family member with a serious health condition, and adoption related purposes. If the employee knows in advance of their need to use sick leave, the sick leave should be requested as far in advance as possible using WebTA unless WebTA is unavailable. For absences in excess of four (4) consecutive workdays, medical documentation may be required. If leave use patterns demonstrate possible abuse, the Employer may request documentation if the absence is less than 5 days.

ii. Unanticipated Sick Leave. In the event of emergency situations or unanticipated absences, employees will attempt to first contact their first-line supervisor to notify management of the reason for the absence, the type of leave being requested, the expected duration of the absence and a call back number. If the immediate supervisor is not available, the employee will leave an email and/or voice message at the phone number provided by the first-line supervisor and then attempt to contact the second-line supervisor to notify them of the emergency, if the second-line supervisor is unavailable, then the employee will leave a voice message. Upon return, the employee will request the appropriate leave upon return using WebTA, its successor system or OPM-71 if an electronic system is unavailable upon return to duty. Employees are expected to provide notification of illness prior to the start of an assigned shift, but in no event later than one hour after the start of the shift unless the illness or incapacitation precludes such request. In such instances, the employee shall provide notification as soon as possible.

9/26/13 N.O.Dr

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9/26/13

(b) Evidence of Illness

(i) If medical documentation is required due to an absence that is in excess of four (4) consecutive workdays, the employee is expected to provide medical documentation (see below) upon return to duty or, in extenuating circumstances, within a maximum of 15 days of the agency's request. If the employee fails to provide the required evidence within the specified time period, he or she may be denied leave.

(ii) Medical documentation when required will include information from a health care provider stating the employee has a condition that prevents the employee from performing work, how long the employee will be away from work, the expected date of return, and any information concerning restrictions on resuming work activities or temporary accommodations such as telework, adjustable schedule, more convenient parking, light duties, or as determined in an approved medical accommodation.

The following is a sample of the type of documentation that may be obtained:

This is to inform you that, John Doe, is under my care and has a medical condition that will preclude him from working over the next 2 weeks. Mr. Doe is expected to return to work on June 1, 2013. Upon return, Mr. Doe can continue his regular duties.

(3) PATTERN OF SICK LEAVE ABUSE. Supervisors will counsel employees in accordance with Article 34 of this Agreement whose leave use could be considered inappropriate. In a situation in which an employee has demonstrated an abuse of sick leave, for example periods of sick leave usage:

- a. Before and/or after holidays.
- b. Before and/or after weekends or regular days off.
- c. After pay days.
- d. Any one specific day.
- e. Absence following overtime worked.
- f. Half days.
- g. Continued pattern of maintaining zero or near zero leave balances.
- h. Excessive absenteeism - use of more sick leave than granted.

the employee may be subject to leave restriction.

When leave restriction becomes necessary, the supervisor will provide written notification of the specific procedures for future leave requests and leave use by employee for a period of one year, or less if a determination is made by the supervisor that the leave abuse has ceased. The employee will be notified, in writing, at the end of the one year of the reasons if the leave restriction is to continue beyond one year. If the leave restriction is not continued, the employee will be notified of the cancellation of the leave restriction. Records of the leave restriction shall be expunged if there is no recurrence of the problem within six (6) months, except as otherwise required by rule or regulation.

(4) OTHER LEAVE FOR ILLNESS. Upon request by the employee, an approved absence which would otherwise be chargeable to sick leave may be charged to annual, credit hours,

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compensatory time, or time off awards if the request is made at the time the request for approval of the leave is submitted and such other leave is available.

(5) USE OF SICK LEAVE DURING ANNUAL LEAVE. An employee may request sick leave during a period of annual leave for any of the purposes described above.

(6) ADVANCED SICK LEAVE. When an employee's sick leave balance has been exhausted, the Employer will approve requests for advanced sick leave in cases of serious disability or ailment of the employee or a family member, bereavement, or for purposes relating to the adoption of a child if:

(1) The application is supported by medical documentation. Medical documentation when required will include information from a health care provider stating the employee or a qualified family member has a condition that prevents the employee from performing work, how long the employee will be away from work, the expected date of return, and any information concerning restrictions on resuming work activities or temporary accommodations such as telework, adjustable schedule, more convenient parking, light duties, or as determined in an approved medical accommodation. Additional information may be requested consistent with privacy and confidentiality laws, rules and regulations including HIPA regulations; and

(2) Repayment is reasonably expected; and

(3) The absence on account of illness must be for a period of five (5) or more consecutive workdays, but the actual advance may be for any part of the total absence.

(a) Maximum Advance. A supervisor or designee may advance a maximum of 240 hours of sick leave to a full-time employee, up to 104 hours of which may be used for general family care or bereavement purposes, or to care for a family member with a serious health condition. (for a part time employee or an employee on an uncommon tour of duty, the amounts must be prorated according to the number of hours in the employee's regularly scheduled work-week) Requests for advanced sick leave should be submitted by employees to their immediate supervisor or designee.

(b) Restrictions on Approval. Advanced sick leave will not be approved under the following circumstances:

(1) When the employee has filed an application for disability retirement or has indicated there is an intention to resign for disability;

(2) When a separation date has been established which would preclude the employee enough leave to repay the advanced sick leave; or

(3) When there is other evidence that the employee will not return to duty in order to repay the advanced sick leave.

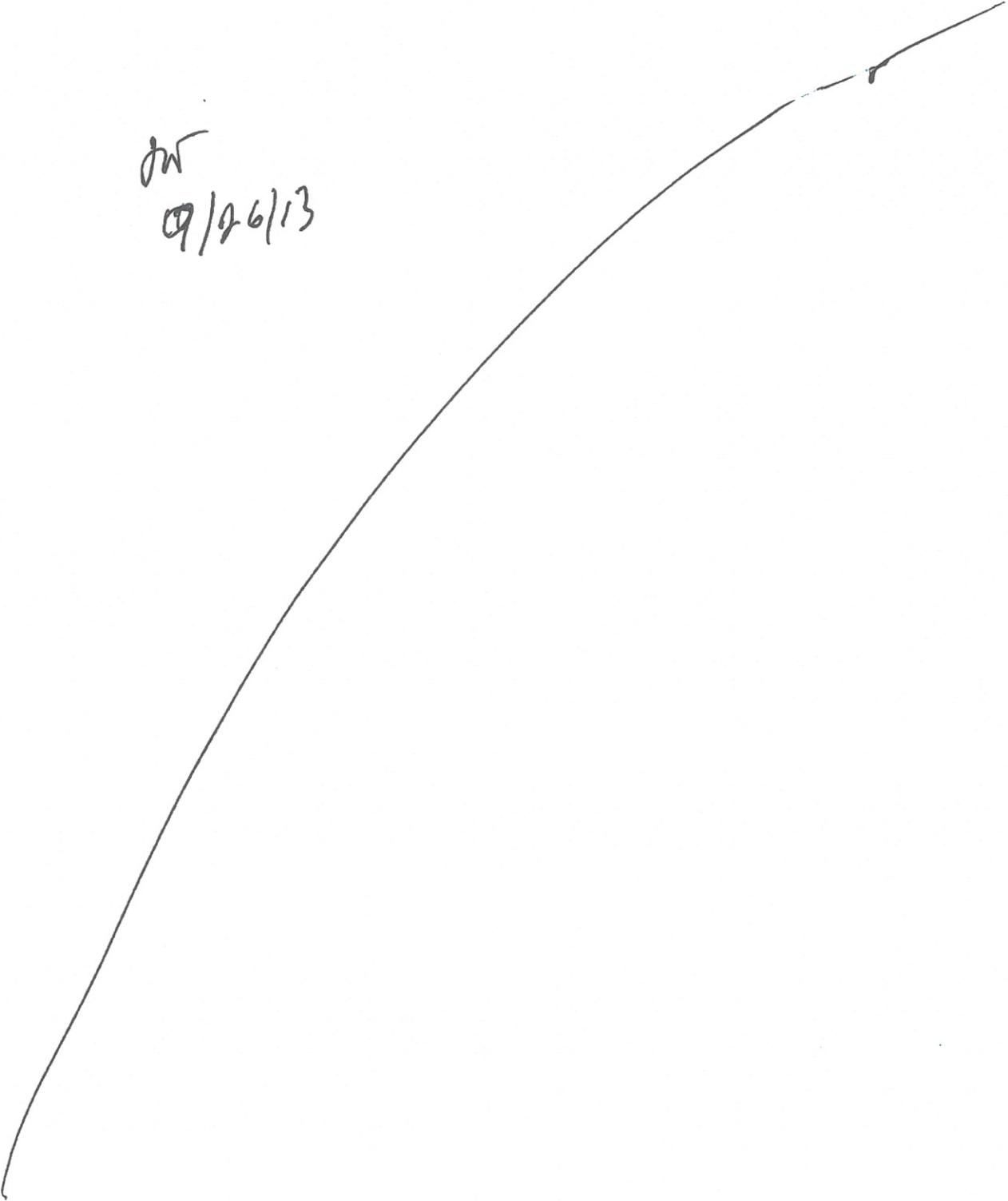
(c) Repayment of Advanced Sick Leave. The total sick leave advanced must be charged against sick leave subsequently earned. In case of separation of any employee who is indebted for advanced sick leave (except in case of death, disability supported by an acceptable medical certificate, retirement for disability, or for active military service with restoration rights) recovery shall be made in accordance with 5 CFR 630.209 or its successor.

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(d) Temporary Employees. Temporary employees are not normally eligible for advanced sick leave. In cases where advanced sick leave is approved for a temporary employee, advanced sick leave may not be provided in excess of the amount which they will earn during the period of temporary employment.

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**Homeland
Security**

OCT 25 2013

MEMORANDUM FOR: Jonathan C. Theodule, Acting Chief
Labor and Employee Relations Division
U. S. Citizenship and Immigration Services
633 3rd Street, NW
Washington, DC 20529

Kenneth Palinkas, President
AFGE Council 119
P.O. Box 940163
Rockaway Park, NY 11694

FROM:

Walter M. Good
Sharon Stewart
Executive Director, Human Capital Policy and Programs

SUBJECT: Agency Head Review of Memorandum of Agreement between
USCIS and AFGE NCISC

Pursuant to title 5, United States Code § 7114 (c) (1), the Memorandum of Agreement between U.S. Citizenship and Immigration Services and American Federation of Government Employees (AFGE) National Citizenship and Immigration Services Council (NCISC) executed by the parties on September 26, 2013, concerning Other Leave Categories was submitted for review. The Memorandum of Agreement has been reviewed and is hereby approved.

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ARTICLE ?? – OTHER LEAVE CATEGORIES

A. ADMINISTRATIVE LEAVE.

(1) Definition. Administrative leave is an excused absence from duty administratively authorized without loss of pay and without charge to accrued leave.

(2) Voting in Civil Election.

(a) General Rule. As a general rule, where the polls are not open at least three (3) hours either before or after an employee's regular hours of work, he or she may be granted an amount of excused leave to vote in a civil election which will permit him or her to report for work three (3) hours after the polls open or leave work three (3) hours before the polls close, whichever requires the lesser amount of time off.

(b) Additional Time. Depending upon exceptional circumstance in an individual case, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the particular circumstances in his or her individual case, but not to exceed a full day.

(c) Travel Time. If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted the time necessary to make the trip to the voting place to cast his or her ballot. Time off in excess of one (1) day shall be charged to annual leave or if annual leave is exhausted, then to leave without pay.

(d) In-person Registration. For employees who vote in jurisdictions which require registration in person, time off to register may be granted on the same basis as for voting, except that no time shall be granted if registration can be accomplished on a non-workday and the place of registration is within reasonable one (1) day round trip travel distance of the employee's place of residence,

(e) Costs. All costs incurred for travel in cases described in Sections D2(a), (b), (c) and (d) will be borne by the employee.

(3) Blood Drive. An employee donating blood at an officially authorized blood bank or in emergencies to individuals, will be granted administrative leave for the time necessary to make the blood donation and necessary time for travel and recuperation. The time authorized under this section shall be limited to four (4) hours on the day the blood is donated.

(4) Bone Marrow/Organ Donation. Administrative Leave may be granted for bone marrow or organ donation in accordance with law and regulation.

(5) Change of Duty Station. Employees effecting changes in a residence in connection with a change in duty station within the Agency will be granted administrative leave of five (5) workdays. The first two (2) days will be provided by the losing activity and the remaining three (3) days will be provided by the gaining activity. The purpose of this leave is to make all arrangements, preparations, and actions relating to preparing for and actually

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effecting the changes in station. An additional one (1) workday of administrative leave will be granted by the gaining activity when the changes in station will not be at government expense.

(6) Court Leave. Employees will be granted court leave to serve as a juror, or as a witness in a judicial proceeding in which the Federal, State, or local government is a party, regardless of shift. An employee is responsible for informing his or her supervisor as soon as he or she is excused from jury or witness service, but shall not be required to return to work unless a substantial part of the workday remains.

(7) Agency Interviews / Examinations. Employees being interviewed for positions within the Agency or taking examinations for positions within the Agency will be granted administrative leave for the actual time of the interview or examination.

B. HOME LEAVE.

(1) Home Leave: A period of approved absence with pay authorized by 5 USC Section 6305 for employees stationed abroad.

(2) Accrual. Home leave shall be accrued, credited, and granted in accordance with applicable laws, rules and regulations and this Agreement.

(3) Granting. Upon request, home leave will be granted to an employee who has completed an initial tour of overseas duty of at least twenty-four (24) months and who has been approved for an additional assignment overseas of at least twelve (12) months.

(4) Limited Use. Home leave may be used only in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States, or at other locations, in accordance with regulations.

(5) Combined with Annual Leave. Home leave may be taken in combination with annual leave.

(6) Management Discretion. The discretion to approve an employee's home leave request will rest with the Headquarters. Home leave will be approved in a fair and objective manner devoid of personal favoritism.

C. LEAVE WITHOUT PAY.

(1) Definition. Leave without Pay (LWOP) is a temporary non-pay status and absence from duty which has been requested and approved in advance by the Employer.

(2) Matter of Right. The following employees are entitled, as a matter of right, to take leave without pay for the following purposes:

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(a) Disabled Veteran. A disabled veteran for medical treatment when he or she presents an official statement from a duly constituted medical authority that medical treatment is required. The disabled veteran must give prior notice of the period during which his or her absence for treatment will occur.

(b) Military Reservist. A military reservist or national guardsman for the period he or she is required to perform active duty training if he or she has exhausted his or her military leave or he or she is not entitled to military leave.

(c) Family Necessity. An employee who requests leave under the Family And Medical Leave Act (FMLA) (5 USC 6381 et seq.) and as set forth in section E below will be granted up to 12 weeks of leave without pay during any 12 month period as necessary to manage one or more of the following circumstances: the birth, adoption, or foster care of a child; a serious health condition of the employee that renders the employee unable to perform the essential functions of his or her position; to care for a spouse, son, daughter, or parent of the employee when that person has a serious health condition. It is understood that the definitions as set forth at 5 CFR Part 630, Subpart L, shall apply to the terms of this subsection to the extent such terms are so defined.

(3) For Union Purposes: The Employer may approve leave without pay in the following circumstances:

(a) National Union Office; For three (3) years to any employee elected a National Officer of AFGE. Such leave may be extended in three (3) year increments and will be terminated when the employee leaves office.

(b) Council Convention. Local Officers, duly elected delegates, and National Officers at their option may substitute LWOP for annual leave for the purpose of attending the regularly scheduled Council Convention.

(c) Union Representatives. Upon request of the National President of AFGE, employees who are selected to serve in the capacity of AFGE Union representative or officer, which requires absence from the job, may be granted annual and/or leave without pay for a period of up to three (3) years. Extension for an additional year may be considered. For short absences, not exceeding two (2) weeks of annual leave or LWOP, upon request of the Local President or the Council President, Executive Vice President, or Regional Vice President, the Local Director may approve such absences for a reasonable number of employees consistent with workload requirements.

(4) Administrative Discretion. Recognizing that LWOP is a matter of administrative discretion and may not be demanded as a right, the Employer may approve requests for LWOP in the following circumstances:

(a) Education. When requested at least sixty (60) days in advance (a response will issue within thirty (30) days of receipt thereof), an employee may be granted up to one (1) year to participate in full-time study at an accredited institution of higher learning when the following conditions are met:

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i. Related to Position. The proposed course of study is directly related to the employee's position with the Agency and the employee has completed a minimum of five (5) years of service with Agency.

ii. Acceptable Performance / Expected Return. The employee has demonstrated an acceptable level of competence through past performance and it can reasonably be expected that the employee will return to work with the Agency upon completion of the study period. Such LWOP will be automatically terminated without further notice when the employee withdraws or is terminated from the study program.

(b) Injury/Illness. For up to six (6) calendar months (including leave taken under FMLA) when an employee has an illness or injury, that would otherwise be covered with sick leave when the employee's annual and sick leave have been exhausted and there is reasonable assurance that the employee can and will return to work with the Service at the end of the leave period.

(5) Substitute for Annual Leave. An employee at his or her option may substitute leave without pay for annual leave in the following situation:

(a) Family Death. For leave granted in conjunction with death in the immediate family,

(b) Religious Holiday. For leave on an established religious holiday which occurs on a regularly scheduled workday of the employee.

(c) Family care as provided under the FMLA and in section E below.

D. VOLUNTARY LEAVE TRANSFER PROGRAM.

An employee who has no leave balance may apply for the Voluntary Leave Transfer Program for the purpose of caring for himself or herself or a family member in a medical emergency.

E. LEAVE FOR FAMILY RESPONSIBILITIES.

(1) Family Considerations. The Parties recognize that, consistent with Department and government-wide policies concerning family-friendly working conditions, the Employer encourages its managers, to the maximum extent consistent with efficient and effective mission accomplishment, to grant leave requested by its employees in connection with employee family responsibilities. Such family responsibilities may include childbirth, adoption, caring for an ill or disabled family member, or one with a serious health condition, attending to a family member who is receiving medical, dental, or optical examination or treatment, or in connection with the death of a family member, including attending funerals. The Employer shall approve or disapprove such requests for leave consistent with law and applicable regulations.

(2) Sick Leave for Family Care. Employees are entitled to use sick leave to enable them to provide care for family members as set forth in 5 CFR 630.201, subject to the limitations set forth therein.

(3) FMLA Leave. Employees are also entitled to use up to 12 weeks of leave without pay ("LWOP") during any 12 month period due to the birth, adoption, or foster care of a child, to care for a spouse, son, daughter, or parent who has a serious health condition, or due to a serious health condition which makes the employee unable to perform the essential functions of his or her position. FMLA leave is in addition to other paid time off available to an employee. However, employees may elect to

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substitute annual leave and/or sick leave for unpaid leave under the FMLA, where consistent with law and regulations. The leave may be intermittent or may be scheduled so as to result in a reduced work schedule. While on FMLA leave, the employee is entitled to maintain health benefits coverage in accordance with rules and regulations.

(4) Procedure for requesting FMLA Leave. The employee must provide notice of his or her intent to take FMLA leave not less than 30 days before leave is to begin, or as soon as practicable. The Agency may request medical certification for FMLA leave requests, where requested for the purpose of dealing with a serious health condition.

(5) Return to Work/ Continuation of Employment. Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status and terms and conditions of employment.

(6) Leave for other Family Purposes. Employees may request annual leave in accordance with the Annual Leave Article of this Agreement for the purposes of participating in events with family members that do not meet the criteria described elsewhere in this article, such as participation in school activities, volunteer work, or attending weddings, sports and cultural events.

(7) Voluntary Leave Transfer Program. An employee who has no leave balance may apply for leave under the Voluntary Leave Transfer Program, for the purpose of caring for a family member, in accordance with the requirements of the program.

(8) Leave for Maternity or Paternity Purposes:

(a) Employees may request, and the employer may evaluate and approve leave for maternity and paternity, in accordance with the terms of this article.

(b) Requests under this section may be for periods of up to six (6) months, and include a combination of sick leave, annual leave, and LWOP (including under FMLA) in accordance with related sections of this agreement.

(c) Nothing in this section requires an employee to exhaust accrued annual leave and/or sick leave prior to requesting LWOP under this section.

F. BEREAVEMENT

(1) Purpose. To make arrangements in connection with the death of a family member, attend the funeral of a family member, or for bereavement purposes in conjunction with the death of a family member. Under this section, "family member" is defined as a spouse or parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and/or any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship as defined in OPM Regulations (5 CFR 630.201).

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(2) A full-time employee may not use more than 104 hours of sick leave (or for part-time employees the amount of sick leave the employee normally accrues in a leave year) for this purpose within any leave year;

(3) For leave granted in conjunction with death of a family member as defined in this Article, the employee may request any accrued leave or leave without pay.

(4) Employees may also request advanced leave for this purpose, in accordance with applicable laws, rules, and regulations, using the process set forth in this Agreement.

G. COMPENSATORY TIME:

(1) Regular compensatory time may be used in accordance with law, rule and regulation (currently 5 CFR 550.114 and 551.531).

(2) Travel compensatory time may be used in accordance with law, rule and regulation (currently 5 CFR 550, Subpart N).

(3) Compensatory time off (regular or travel) shall be requested and approved in accordance with the procedures for requesting annual leave.

I. CREDIT HOURS

(1) Where approved by the employee's supervisor, or designee, credit hours may be accrued in accordance with 5 USC 6126.

(2) The use of credit hours shall be requested and approved in accordance with the procedures for requesting annual leave.

H. TIME OFF AWARDS. When an employee is granted a time-off award, he or she must take the awarded time-off within one year of receiving the award.

