

2022 Agreement between the Minority Business Development Agency (MBDA), Department of Commerce and the National Federation of Federal Employees (NFFE)

2022 AGREEMENT BETWEEN THE MINORITY BUSINESS DEVELOPMENT AGENCY (MBDA) AND THE
NATIONAL FEDERATION OF FEDERAL EMPLOYEES (NFFE)

MBDA and NFFE 2022 Collective Bargaining Agreement

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MBDA AND NFFE 2022 Collective Bargaining Agreement

PREAMBLE

WHEREAS the Minority Business Development Agency (MBDA), Department of Commerce (DOC) and the National Federation of Federal Employees (NFFE or the Union) recognize the statutory right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, safeguard the public interest, contribute to the effective conduct of public business, and facilitate and encourage the amicable settlement of disputes between employees and the Agency involving conditions of employment;

WHEREAS 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;

WHEREAS the Agency and the Union recognize that a mutual commitment to cooperation promotes both the efficiency of the Agency's operations and the well-being of its employees;

WHEREAS the Agency and the Union agree that the dignity of all involved will be respected in the implementation and application of this Agreement as well as related personnel policies and practices;

NOW THEREFORE the Agency and the Union, in good faith, and governed by honesty, reason and mutual respect, do hereby make and enter into the following Agreement collectively.

ARTICLE 1: PARTIES AND COVERAGE

Section 1.01

This Collective Bargaining Agreement (CBA or Agreement) is made by and between the Minority Business Development Agency (MBDA), Department of Commerce (DOC) and the National Federation of Federal Employees (NFFE or the Union).

This Agreement, together with any amendments which may be agreed upon during this Agreement, is entered into under the Civil Service Reform Act of 1978 (October 13, 1978 Public Law 95-454 (CSRA)), and in accordance with the regulations of the DOC and the MBDA. NFFE is the exclusive representative of bargaining unit employees as defined by *Section 1.03* below in accordance with the Federal Labor Relations Authority (FLRA) Certificates of Exclusive Representative dated May 29, 2020 (Case No. WA-RP-20-0021). For reference, the FLRA certification is included in *Appendix A: Federal Labor Relations Authority Certification* of this Agreement.

Section 1.02

It is the intent and purpose of the parties hereto to promote and improve the efficient administration of the CBA, secure the well-being of employees, and promote the public interest within the meaning of the CSRA and the DOC's labor-management policies and regulations.

Section 1.03

Pursuant to 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7), this Agreement covers all nonprofessional employees with appointments of one year or longer, excluding all professional employees; supervisors; management officials; confidential employees; employees engaged in personnel work in other than a purely clerical capacity; employees engaged in intelligence, counterintelligence, investigative, or security work that directly affects national security; employees primarily engaged in investigation or audit functions relating to the work of individuals whose duties directly affect the internal security of the Agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity; and temporary employees with appointments of less than one year.

Section 1.04

If NFFE becomes certified as the exclusive bargaining representative for any MBDA employees not currently covered by this Agreement, this Agreement shall extend automatically to all employees covered by the certification.

Section 1.05

The following definitions shall apply for purposes of this Agreement:

- A. "Employee" means bargaining unit employee, unless otherwise noted.
- B. "Agency" means the Minority Business Development Agency, Department of Commerce
- C. "Union" means the National Federation of Federal Employees.
- D. "Days" means calendar days, unless otherwise specified.

ARTICLE 2: DURATION AND TERMINATION

Section 2.01

This Agreement will become effective thirty-one (31) calendar days from execution (signing) or upon Agency head approval, whichever occurs first.

Section 2.02

This Agreement shall remain in effect for a period of four (4) years from its effective date and shall be automatically renewable for additional one (1)-year periods unless either party notifies the other party, in writing, at least sixty (60) days, but not more than one hundred twenty (120) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this Agreement. Such written notice will be accompanied by any proposed amendments or modifications to the Agreement being delivered to the other party. The party receiving the written notice may deliver counter-proposals and proposals to the other party during the next thirty (30)-day period. The parties will begin negotiations no later than thirty (30) calendar days prior to the expiration date of this Agreement. If negotiations are not concluded prior to the expiration date, this Agreement shall continue in full force until a new Agreement has been approved.

Section 2.03

Nothing in this Agreement shall serve as a waiver by either party of the right to negotiate over matters that are affected by a change (during the life of this Agreement) to the Federal Service Labor-Management Relations Statute that expands or contracts the scope of bargaining in the federal sector. Such bargaining may be initiated at any time after sixty (60) days from the effective date of the statutory change.

ARTICLE 3: EFFECT OF LAW AND REGULATION

Section 3.01

- A. In the administration of all matters covered by this Agreement, the parties are governed by the following:
 - 1. Existing and or future laws;
 - 2. Government-wide and DOC rules or regulations in effect upon the effective date of this Agreement; and
 - 3. Government-wide and DOC rules or regulations issued after the effective date of this Agreement that do not conflict with this Agreement.
- B. For all government-wide rules and regulation impacting conditions of employment of bargaining unit employees promulgated after the effective date of this Agreement, the Agency shall provide notice to, and bargain with, the Union, in accordance with *Article 9: Mid-term Negotiations*.

Section 3.02

To the extent that provisions of the Agency's published policies, procedures, rules, and regulations specifically conflict with this Agreement, the provisions of this Agreement will govern.

Section 3.03

The Agency shall provide all bargaining unit employees access to the following:

- A. An electronic copy of this Agreement, including all appendices affixed thereto; and
- B. Any published MBDA regulations and policies.

ARTICLE 4: MANAGEMENT RIGHTS

Section 4.01

- A. The Agency retains the right:

1. To determine the mission, budget, organization, number of employees, and internal security practices of the Agency;
 2. To hire, assign, direct, layoff, and retain employees or to suspend, remove, reduce in grade, or pay, or take other disciplinary action against employees;
 3. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which operations shall be conducted;
 4. With respect to filling positions, to make selections for appointments from:
 - a. Among properly ranked and certified candidates for promotion; or
 - b. Any other appropriate source;
 5. To take whatever actions may be necessary to carry out the mission during emergencies.
- B. In accordance with 5 U.S.C. § 7106(b), nothing in this article 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 5 U.S.C. § 7106; or
 3. Appropriate arrangements for employees adversely affected by the exercise of any authority under 5 U.S.C. § 7106.

Section 4.02

The Agency retains all other rights in accordance with applicable laws and regulations, except for those specific modifications contained in this Agreement.

ARTICLE 5: UNION RIGHTS

Section 5.01

The Union will have the right to represent all bargaining unit employees and to present its views to the Agency on matters of concern, either orally or in writing.

Section 5.02

- A. NFFE, after reasonable advance notification (i.e., generally not less than two (2) business days), shall be given the opportunity to be represented at formal discussions as defined by 5 U.S.C. § 7114. Such advance notice shall include a copy of the meeting agenda if one is developed. In accordance with 5 U.S.C. § 7114(a)(2)(A), NFFE shall be entitled to the opportunity to be

represented at any formal discussion between one (1) or more representatives of the Agency and one (1) or more employees in the unit or their representatives concerning any grievance, personnel policy, practice, or other general condition of employment.

- B. In any formal discussion held pursuant to this article, the Union representative will be identified. The representative may ask relevant questions and may make a brief statement of the Union's position regarding the subject of the meeting.
- C. For regularly scheduled formal discussions, the Agency shall provide the Union with notice and a meeting agenda, if one is developed, no less than two (2) business days in advance.

Section 5.03

- A. The Union will be given a list of prospective bargaining unit employees' names, position titles, grades, and posts-of-duty not less than two (2) business days prior to the employees beginning their employment with the Agency.

The Union will be provided a reasonable period of time, not to exceed fifteen (15) minutes, for new bargaining unit employee orientation (BUNEO). This time will normally be provided at the front end of the orientation. The Union may distribute copies of the Agreement during this session. The Agency will introduce the Union during each BUNEO orientation.

Section 5.04

On an annual basis, the Union will provide the Agency (Chief Administrative Officer and Labor Relations Specialist, MBDA, MBDA) with an organizational chart that contains all Union stewards and officials. If changes to union stewards and officials happen more frequently, the Union will provide the Agency an updated organization chart within five (5) days of the effective date of the change.

Section 5.05

- A. A copy of any survey created by MBDA, which is intended to be distributed to bargaining unit employees by the Agency, will be first provided to the Union for comment at least seven (7) calendar days in advance of distribution to bargaining unit employees. All surveys shall be voluntary and anonymous with the exception of surveys mandated by other government agencies (e.g., DOC or Office of Personnel Management (OPM)).
- B. Union officials shall be provided a copy of survey results within 14 days of receipt of results.

Section 5.06

Employees assigned to a non-bargaining unit position may not concurrently serve as a Union representative.

Section 5.07 Upon reasonable advance request by the Union, no less than three (3) days in advance, the Agency will provide a meeting space, if available, for meetings in each location of the Agency. Requests by the Union to utilize meeting space will be granted if consistent with availability. It is agreed that the Union will comply with all security and housekeeping rules in effect on the MBDA office work hours, and local security arrangements. The room may be used for the following purposes:

1. Preparing or discussing a grievance;
 2. Preparing for meetings with the Agency;
 3. Conducting informal discussions, including meetings during employee non-duty time to meet employees and generally discuss collective bargaining and labor relations; and
 4. Internal Union business (e.g., internal Union meetings), so long as no official MBDA duty time is utilized for such meetings.
- A. MBDA employee Union representatives may use the Agency office equipment, including computers, telephone(s), e-mail, fax and photocopy machines in connection with labor management activities for which official time is authorized under *Article 7: Official Time*. The Union may not use the above-referenced equipment or services for internal Union business.
- B. NFFE staff representatives and Union representatives may send email and documents to one another and to bargaining unit employees via the MBDA email system. When the Union sends bargaining unit wide emails to employees, it shall use the BCC line to address recipients.
- C. Union representatives accessing the MBDA computer system shall comply with applicable law, rules, policies, and regulations.

Section 5.08

The Agency will provide the Local 2 President, or if that position is unfilled, the Chief Shop Steward, for its internal use only, a quarterly electronic bargain unit employee list which will contain the names, grade and step, position titles, division, organization code/name, duty station, and assigned office. The list will also identify employees who are on dues withholding status.

Section 5.09

- A. The Union will distribute an electronic copy of the Agreement to each bargaining unit employee in MBDA. A copy will also be provided to each supervisor or any other non-bargaining unit employee responsible for administering the terms of this Agreement. Five (5) copies of the printed Agreement will be furnished to the Union for its internal requirements by MBDA. Employees will be permitted to access the Agreement on-line through both the MBDA and NFFE web sites. The Agency will encourage bargaining unit members and supervisors to familiarize themselves with the contents of the Agreement.

Section 5.10

The Agency will provide the Union with an office in its MBDA facilities and office equipment in accordance with current law. Changes to the size or location of this office are subject to negotiation by the parties. (The Agency and Union will work together to determine the timing location and size).

Section 5.11

The Agency will provide the Union with one 2 ½'x3 ½' of bulletin board space per floor in MBDA. Material will be posted directly by the Union in a mutually agreed upon area in the office space.

Section 5.12

- A. Upon reasonable notification of at least five (5) business days in advance, the Union may distribute material in non-work areas of the MBDA premises to employees, provided that the employee distributing the material is in a non-duty status, and further provided that the distribution does not create a litter or employee traffic problem and that the material being distributed complies with the requirements of this article.
- B. When the Union wishes to set up displays or tables to distribute materials or gather signatures on petitions in non-work areas of the Agency's premises, it will do so on non-duty time. Furthermore, the Chief Administrative Officer and Labor Relations Specialist, will be notified by the union five (5) business days in advance.
- C. The Union will be permitted to perform desk drops to bargaining unit employees subject to the following constraints:
 - 1. Reasonable notice of a planned desk drop will be given to the Chief Administrative Officer and Labor Relations Specialist. Such notice will be given or in writing in advance at least five (5) business days in advance between receipt of the notice and execution of the desk drop.
 - 2. The employee performing the desk drop will do so on her/his own non-duty time (e.g., during work breaks, lunch periods, before/after work, on annual leave, or Leave Without Pay (LWOP)). When desk drops are performed after work hours, they will be completed in a time and manner consistent with the Agency's security procedures.
 - 3. The following areas will be considered "restricted areas" and desk drops will not be performed in them: management areas or offices in which no bargaining unit employees are located.

ARTICLE 6: UNION REPRESENTATIVES

Section 6.01

- A. The term "Union representative" is used in this Agreement to refer to all bargaining unit employees authorized to represent the Union, including stewards, chief stewards, and Union

officers. No other bargaining unit employee(s) may be authorized by the Union to act on its behalf and receive official time under *Article 7: Official Time*, unless mutually agreed to by the parties.

- B. The Union may select bargaining unit employees as Union representatives to act on its behalf in accordance with the following:
 - 1. Union officers include a president, recording secretary, vice president, secretary-treasurer, communicator, educator, conductor sentinel, and three (3) trustees.
 - 2. The Union president may appoint stewards to represent the Union. The total number of stewards will be no more than two (2). The Chapter President shall designate stewards to ensure adequate Union representation of bargaining unit employees.
- C. Union representatives will receive official time in accordance with 5 U.S.C. § 7131 and *Article 7: Official Time* of this Agreement. Official Time is to be requested in advance and approved by a manager. If the official time interferes with the needs of the service, then an alternate time should be allocated, articulated to the requester, and approved.

Section 6.02

The Union agrees to provide the Agency with a list of Union representatives no later than January 30 of each year. The Union will also provide to the Agency reasonable notification of any changes (additions or deletions) in the form of an updated list in advance of the effective date of the change. Bargaining unit employees will not be eligible for official time to perform representational functions unless they are identified on the most current list of Union representatives provided to the Agency's Chief Administrative Officer and Labor Relations Specialist, MBDA or the parties mutually agree otherwise. All official time use is subject to *Article 7: Official Time* of this Agreement.

Section 6.03

In accordance with applicable law, a Union representative will not be disadvantaged in the assessment of her/his performance based on her/his use of approved/documented official time when conducting labor-management business authorized by *Article 7: Official Time* of this Agreement. The Agency will consider the time spent by Union representatives carrying out their representational responsibilities and interruptions in performing their normal job functions when evaluating the performance of such Union representatives. However, it is understood that performance problems unrelated to the use of official time may be addressed in accordance with applicable law, rule, regulation, and *Article 16: Performance Evaluation*. The performance of each employee serving as Union representative will be rated on the basis of Agency assigned work consistent with the elements identified in the employee's performance plan.

ARTICLE 7: OFFICIAL TIME

Section 7.01

- A. The Agency and the Union recognize that the use of official time to conduct authorized representational activities is in their mutual interest. Such time is to be accounted for in

QuickTime or any successor system. Only designated Union representatives are entitled to official time under 5 U.S.C. § 7131.

- B. The Chief Steward shall receive up to .5 hours per bargaining unit employee up to eight (8) hours of duty time per pay period as official time. Other Union Representatives shall receive official time as follows:
 - 1. Additional Stewards shall receive up to .25 per bargaining unit employee Up to four (4) hours per pay period. As the bargaining unit grows by 20 bargaining unit employees the union is entitled to add one steward.
- C. In the event that the allotment for the Chief Steward or Stewards is exhausted in a particular pay period, such Union representatives will be granted a reasonable amount of official time, as determined by the Agency, to participate in representational activities in accordance with *Section 7.01(F)* below.
- D. Union representatives will receive official time, if otherwise in duty status, as specifically authorized by law and this Agreement.
- E. The Union may identify a unit employee as a trainee steward and such individual may attend a meeting as an observer in accordance with 5 U.S.C. §§ 7114(a)(2)(A) or (B). There will be a limit of two (2) trainees in any calendar year. Up to four (4) hours of duty time per calendar year may be used by each trainee under this section. Use of duty time for this purpose is subject to the employee providing his or her supervisor at least five (5) calendar days of advance notice in writing, the ability of the employee to be released from work, and the supervisor's approval.
- F. Official time for Union representatives otherwise in a duty status is authorized for the following purposes:
 - 1. Preparation for and attendance at meetings with the Agency concerning personnel policies, practices, or other general conditions of employment or any other matter covered by 5 U.S.C. § 7114(a)(2)(A);
 - 2. Preparation for and attendance at meetings with or proceedings before the FLRA;
 - 3. Preparation for and participation in oral replies to notices of proposed disciplinary, adverse, or unacceptable performance actions;
 - 4. Examinations of employees in the unit by a representative of the Agency in connection with an investigation if:
 - a. The employee or Agency reasonably believes that the examination may result in disciplinary action against the employee; and
 - b. The employee requests representation;
 - 5. Preparation for and attendance at grievance meetings and arbitration hearing;
 - 6. Preparation for and attendance at negotiation sessions with the Agency;

7. Preparation for and attendance at an Agency, Union or jointly sponsored training, conference, seminar or meeting designed to improve representational skills or otherwise improve the labor-management relationship, including Labor-Management Relations Committee meetings and forums;
 8. Investigation, preparation and representation during the grievance procedure (*Article 10: Grievance Procedure*) and arbitration (*Article 11: Arbitration*);
 9. To confer with affected employee(s) about matters covered under this Agreement; and
 10. To prepare and maintain records and reports required of the Union by federal agencies.
- G. To the extent possible, problems/issues will be handled by a steward within the same duty station.

Section 7.02

- A. Bargaining unit employees who are not designated as Union representatives will be granted a reasonable amount of duty time, if otherwise in a duty status, to confer with her/his Union representative concerning matters listed under *Section 7.01(F)(2), (3), (5), (8) and (9)* above, as it involves the individual employee.
- B. Consistent with the Statute, Union representatives requesting official time under this article will request such time by submitting an email to their immediate supervisor. The subject of the email should be 'Official Time Request' and the body of the email should include the following information: date and time of request; approximate amount of time needed; and a general description of the activity. The supervisor will review and respond to the request within 24 hours. If no response is given, the Union representative may elevate the request to the second line supervisor. In case of a representational emergency, the Union representative will notify their supervisor and provide explanation as to why immediate official time is needed. If the request is denied, the request will be elevated to Chief Administrative Officer. If the Agency refuses a Union representatives request for official time, the supervisor will provide an explanation as to why and provide alternate times within the next 24 hours to schedule official time. Once official time is approved, the Union representative must log their time in time and attendance system.
- C. Denial of release and/or disagreement over the amount of time may be challenged under the grievance and arbitration procedures set forth in *Article 10: Grievance Procedure* and *Article 11: Arbitration*.

Section 7.03

Any use of official time under this article shall begin when the Union representative ceases his/her normal job duties and continue through the end of his/her tour of duty or until the time that normal job duties are resumed, whichever occurs first.

Section 7.04

Union representatives who meet the criteria set forth in *Article 44: Telework* and who are authorized to telework may engage in any representational matters listed under *Section 7.01(F)* above while on official time.

Section 7.05

Official time will be authorized for the attendance of Union stewards at any training event conducted by the Union's National Office, provided that the content is provided in advance. Such official time granted under this subsection is in addition to allotment of official time available under *Section 7.01(B)* above.

ARTICLE 8: EMPLOYEE RIGHTS

Section 8.01

- A. The initiation of grievances in good faith is an employee right and will not reflect adversely on an employee's standing and value with the Agency. Employees and Union stewards who have relevant information concerning any matter for which remedial relief is available under this Agreement will cooperate in seeking resolution of such matter. The exercise of an employee's rights in these matters is guaranteed by federal labor law. The Agency shall ensure that employees will be free from restraint, interference, coercion or discrimination, and intimidation or reprisal.
- B. In accordance with 5 USC 7116 it shall be an unfair labor practice for an agency to interfere with, restrain, or coerce any employee in the exercise by the employee of a right under such law. An employee may request a Union steward for the purpose of representing to the Agency any matter of concern over the interpretation or application of this Agreement or of representing the employees to any government agency or official other than the Agency, subject to law and this Agreement.
- C. Discussions between a Union representative and an employee seeking counsel or advice regarding non-criminal investigations are confidential, absent the Agency's overriding need for the information determined on a case-by-case basis, consistent with applicable case law. The Agency agrees not to solicit information from any Union representative concerning the nature of such confidential discussions except as noted above.

Section 8.02

Except as provided by law, nothing in this Agreement will require an employee to become or remain a member of a labor organization, or to pay money to the organization, except pursuant to a voluntary written authorization by a member for payment of dues through payroll deductions or by voluntary cash dues payment by a member. Employees have the right to revoke dues withholding subject to law and this Agreement.

Section 8.03

In accordance with 5 U.S.C. § 7102, each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under 5 U.S.C. § 7102, this includes the right:

- A. 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 government, Congress, or other appropriate authorities; and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

Section 8.04

- A. Any employee who is the subject of a conduct investigation, or is being interviewed as a third-party witness, and who reasonably believes that an interview with the Agency may result in disciplinary action has the right to representation, if requested, by a Union representative.
- B. The Agency shall inform employees of their right to a Union representative in an investigative interview by issuing a notice to all employees during the month of January each year that states, in part, the following:

Employees have the right to be represented by the Union in an examination conducted by the Agency or a representative of the Agency in connection with an investigation if:

- a. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - b. The employee requests such representation.
- C. Where a reasonable basis exists to believe an employee may have engaged in a criminal act, the matter shall be referred to the appropriate law enforcement authority.
- D. At the time the employee is contacted to schedule such an interview, the employee will be provided the following information:
 - 1. The subject matter of the interview in as much specificity as possible, except when doing so would undermine the investigation.
 - 2. That he/she is the subject of the conduct interview or whether the employee is being interviewed as a third-party witness.
- E. If the employee requests Union representation, the interview will be scheduled sufficiently in advance to allow the employee an opportunity to seek the counsel of a Union representative. A Union representative's unavailability shall not unduly delay the interview.
- F. If an employee appears for a scheduled interview without representation and reasonably believes, because the subject of the interview has changed, that disciplinary action may result, the employee may request a delay to secure such representation.

- G. If an employee is represented in an interview and the subject of the interview changes to subjects over which the employee and the representative have not conferred, the employee or the representative may request a recess to confer on such issues.
- H. When the person being interviewed is accompanied by a representative furnished by the Union, the role of the representative includes, but is not limited to, the following rights:
 - 1. To clarify the questions;
 - 2. To assist the employee in providing favorable or extenuating facts;
 - 3. To suggest other employees who have knowledge of relevant facts; and
 - 4. To advise the employee.
- I. All interviews shall be conducted in a respectful and professional manner.
- J. The employee and the Union representative may take such notes as they deem necessary.
- K. The Agency recognizes the importance of completing an investigation of an employee in as timely a manner as practicable. When an employee has been advised that he/she is/was the subject of an investigation, and a determination is made not to propose discipline or take other action, the Agency will notify the employee to that effect, in writing. In the event that the Agency's administrative investigation of an employee exceeds thirty (30) days, upon request, the employee will be provided an update of the status of the investigation.

Section 8.05

If there is a disagreement between the employee and the Agency regarding the employee's right to Union representation, the meeting will be delayed no more than one (1) full workday, in order to permit the employee to consult with her/his Union representative, and for the supervisor to consult with the Chief Administrative Officer and Labor Relations Specialist, MBDA. Contact with Union representatives and/or HR officials should occur as soon as the meeting is scheduled.

Section 8.06

Employees are required to provide complete and truthful answers in response to questions in matters of official interest. An employee who fails to provide such answers is subject to disciplinary action, including removal.

Section 8.07

In accordance with the Privacy Act, 552, managers are expected to respect the privacy of their employees, protect confidential information regarding their employees, and only share such information with individuals with a "need to know." The Agency will not access employee email accounts, except for cause.

Section 8.08

The Agency has determined that employees shall not be required to disclose an arrest or conviction that a court has ordered purged from the employee's record in any interview, on any official form or statement, or during any investigation with the Agency or an Agency representative, unless required by policy, law or regulation.

Section 8.09

Employees recognize they must comply with all lawful orders and instructions from management officials. Employees are reminded of the principle, "work now, grieve later". However, no employee will be subject to disciplinary or adverse action for refusing to comply with an unlawful order.

Section 8.10

Under the Whistleblower Protection Enhancement Act, the Agency recognizes the right of every bargaining unit employee to be free from reprisal for providing information in connection with a violation of any law, rule, or regulation, and/or evidence supporting mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

ARTICLE 9: MID-TERM NEGOTIATIONS

Section 9.01

- A. The Agency agrees not to unilaterally establish or change any personnel policy, practice, or condition of employment without providing notice to, and bargaining with, the Union, in accordance with this article and applicable law.
- B. Additionally, in accordance with 5 U.S.C. Chapter 71, the Union or the Agency may initiate mid-term bargaining by proposing changes in conditions of employment provided that such changes are not covered by this or any other CBA between the parties and provided further that such changes do not relate to matters over which either party has expressly waived its right to bargain during the negotiation of this Agreement.
- C. This article establishes ground rules for mid-term bargaining between the parties. The provisions of this article apply to all mid-term negotiations between the parties unless modified by other articles in this Agreement or agreed to by both parties.

Section 9.02

- A. The Agency shall provide the Union with reasonable advance notice, but normally not less than fifteen (15) calendar days of the proposed changes in conditions of employment. Written notice of the intended changes by the Agency will be served on the Chapter President or his/her designee. The notice shall include:
 - 1. A description of the proposed change;

2. A description of the impact of the change on the bargaining unit;
 3. An explanation of how this change will be implemented; and
 4. An explanation of why the proposed change is necessary.
- B. Following receipt of a notice proposing changes in conditions of employment, the receiving party will be entitled to a briefing upon request. Unless agreed otherwise, a briefing will be scheduled by the party initiating the notice at a mutually agreeable date, time, and location, no later than fifteen (15) calendar days from the date of notice.
- C. Unless otherwise agreed, proposals must be submitted within fifteen (15) calendar days of the briefing if one is held. If no briefing is held, proposals must be submitted within fifteen (15) calendar days of the receipt of the notice. Unless agreed otherwise, the parties shall meet to begin negotiations within fifteen (15) calendar days of the proposals being submitted.

Section 9.03

- A. For briefings requested consistent with this article, official time will be approved for up to three (3) Union representatives designated by NFFE unless additional representatives are authorized by the Agency. Union representatives located outside the commuting area of the briefing location may participate telephonically or through some other electronic means.
- B. Management has determined it will have up to four (4) representatives on its bargaining team. The Union bargaining team will include up to four (4) representatives. Management retains the right to determine to increase the number of representatives on its bargaining team. In such event, the Union may also add an equal number of representatives to its bargaining team. In accordance with 5 U.S.C. § 7114(b)(3), negotiation sessions will be scheduled at reasonable times and convenient places.
- C. All agreements are tentative until full agreement is reached.
- D. Mid-term agreements reached will be reduced to writing and executed by both parties.
- E. Agreements will set forth an effective date. The termination date of a mid-term agreement will be mutually agreed upon by the parties. The effective date will be thirty-one (31) calendar days from execution or upon Agency head approval, whichever occurs first.
- F. Unless otherwise agreed, copies of agreements executed pursuant to this article will be distributed by the Union to affected employees in a paper or electronic format as appropriate.
- G. Agreements negotiated under the provisions of this article will be subject to Agency head approval pursuant to 5 U.S.C. § 7114(c). In the event of a disapproval, the Union will have the option of renegotiating either the entire disapproved agreement or the portion that has been disapproved.

- H. If one of the parties invokes impasse procedures, the Agency shall postpone the implementation of any changes until the impasse is resolved, except as provided by law, prior to a decision by the Federal Service Impasses Panel (FSIP).

ARTICLE 10: GRIEVANCE PROCEDURE

Section 10.01

- A. The Agency and the Union recognize and endorse the importance of bringing to light and addressing employee concerns through the negotiated grievance procedure promptly and, whenever possible, informally.
- B. A grievance may be initiated by an employee, a group of employees, the Union or the Agency.
- C. The filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, performance, loyalty, or desirability to the organization.

Section 10.02

The term "grievance" is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours and conditions of employment. A grievance should include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this agreement or any local Memorandum of Understanding not in conflict with this Agreement.

- A. This procedure will be the only procedure available to bargaining unit employees for the processing and disposition of grievances as defined in *Section 10.02(A)* above, except when the employee has a statutory right of choice, that is, adverse actions, actions taken for unacceptable performance, or Equal Employment Opportunity (EEO) complaints, OIG Complaints, complaints filed under DAO 202-955, Harassment Complaints, and Whistleblower Complaints.
- B. The grievance procedures of this article shall not apply to the following;
 - 1. Any claimed violation of Subchapter III of Chapter 73 of Title 5 (relating prohibited political activities);
 - 2. Retirement, life insurance, or health insurance;
 - 3. A suspension or removal under Section 752 of Title 5 (relating to national security matters);
 - 4. Any examination, certification or appointment;
 - 5. The classification of any position that does not result in the reduction of grade of the employee;
 - 6. Matters already filed with the Merit Systems Protection Board (MSPB) as an adverse action which are, therefore statutorily precluded from duplicate filing under this procedure;

7. Matters over which an employee has filed a written complaint of discrimination through the formal EEO complaint process;
 8. The termination of a probationary employee;
 9. Matters specifically excluded by other articles of this Agreement; and
 10. Non-selection from among a group of properly ranked and certified candidates consistent with 5 C.F.R. § 335.103(d).
- D. Employees who believe they have been illegally discriminated against on the basis of any protected status (e.g., race, color, religion, sex, genetic information, pregnancy, national origin, age, or disability) have the right to raise the matter under the statutory procedure or the negotiated grievance procedure of this Agreement, but not both.

Section 10.03

- A. Grievances under this article may be initiated by employees in the unit either singly or jointly, or by the Union on behalf of employees.
- B. Where an employee has initiated a grievance and does not elect to be represented by the Union, the Union will have a right to be present at all discussions between the employee and the Agency concerning the grievance and the union will be notified ahead of the meeting as early as possible. The resolution of grievances must be consistent with the terms and conditions of this Agreement. The Union will be provided with a copy of the Agency's response.

Section 10.04

Grievances will not be considered unless they are filed with the Agency within fifteen (15) business days of the incident which gives rise to the grievance or within fifteen (15) business days after the aggrieved became aware of the matters out of which the grievance arose, whichever occurred later. Timelines may be extended by mutual consent of both parties.

Section 10.05

The parties are encouraged to seek informal resolution of grievances.

A. Step 1

A grievance is required to be presented in writing to the employee's immediate supervisor with a simultaneous electronic copy to the Chief Administrative Officer and Labor Relations Specialist assigned to MBDA. If the grievance pertains to discipline, the deciding official will not be the proposing official. In this case, the grievance will be presented to the next level supervisor in the chain of command and will follow the chain of command through the grievance process

1. The grievance will specify the following:

- a. The nature of the grievance;
 - b. Whether the grievance involves an individual or group of employees;
 - c. To the extent possible, the articles of the Agreement alleged to be violated;
 - d. To the extent possible, any statute, regulation or Agency policy alleged to be violated, if applicable;
 - e. The approximate date and nature of the action or incident and the individuals involved, if available;
 - f. The name of the Union representative(s);
 - g. The remedy sought.
2. If requested by either party, the meeting shall take place within fifteen (15) calendar days of the submission of the grievance. Grievance meetings will be scheduled at a time agreeable to all parties. The meeting shall include the proposing official, the Labor Relations Specialist assigned to MBDA, the employee, and the employee's Union representative. Such meeting shall be held face-to-face unless the parties agree otherwise.

The grievant and the Union will be provided with a written response to the grievance within fifteen (15) business days of the close of the Step 1 meeting. The response must indicate the right to submit the grievance to Step 2 below. If the agency does not respond within the time frame, then the union may advance the grievance to Step 2. Timelines may be extended by mutual consent of both parties.

3. At any step of the grievance process, Management and Union Representatives shall have the authority to settle the grievance.
4. The Union may elect to withdrawal the grievance in whole or in part at any point in the grievance process.

B. Step 2

1. If an employee is dissatisfied with the decision rendered at Step 1, they may appeal the grievance to the next level supervisor in the chain of command with a simultaneous electronic copy to the Labor Relations Specialist assigned to MBDA. Such appeal must be filed in writing within fifteen (15) business days of receipt of the Step 1 decision.
2. If requested, within fifteen (15) business days of the filing, the parties shall hold a Step 2 meeting. The meeting shall include the next level management official in the chain of command, the employee, the Labor Relations Specialist assigned to MBDA, the employee's Union representative. Such meeting shall be held face-to-face unless the parties agree otherwise.

3. Within fifteen (15) business days of the Step 2 meeting, a next level management official shall issue a final decision.
4. If the Union is dissatisfied with the final decision, the Union may invoke arbitration within thirty (30) calendar days in accordance with *Article 11: Arbitration*.
5. The parties may agree to have additional representatives attend any step of the grievance procedure.
6. New issues may not be raised at the Step 2 level by either party unless they have been raised in the original Step 1 grievance procedure.

Section 10.06

- A. The parties shall have the obligation of maintaining a complete record during the steps of the grievance process, including the obligation to produce all witnesses who have information relevant to the matter at issue. The Union's request for the participation of a witness, who is an employee of MBDA, will normally be approved, absent a severe workload interruption.
- B. The parties agree to exchange information that is relevant and necessary to understand the dispute and maximize the potential of settling the matter.
- C. Failure to cite a specific Agreement provision, regulation, or statute shall not bar an employee or the Union from amending the grievance to include such violations provided the issue has been raised in the grievance at Step 1.

Section 10.07

- A. Grievances are considered group grievances if two (2) or more grieving employees have designated the Union to serve as their representative on one (1) or more grievances involving the same facts and the same issues, or the Union has filed one (1) or more grievances on behalf of two (2) or more employees involving the same facts and the same issues.
- B. Group grievances will be processed in accordance with the grievance procedure outlined above, except that such grievances, at the Union's option, may be initiated at Step 2 in *Section 10.05(B)* above. The Union will submit the grievance to the Senior Career Executive (SES) and the Labor Relations Specialist assigned to MBDA.

Section 10.08

- A. If the Agency is aggrieved, its representative shall file a grievance with the NFFE FL 2 President, as appropriate, within thirty (30) calendar days of the act or awareness of the act causing the grievance, whichever occurred later. At the request of the Agency, representatives of the parties shall meet within fifteen (15) calendar days from the date of submission of the grievance. Within fifteen (15) calendar days of said meeting, the Union official shall render a decision, in writing, to the Senior Career Executive (SES) and the Labor Relations Specialist assigned to MBDA. If such

decision fails to resolve the matter, the Agency may invoke arbitration in accordance with the procedures set forth in *Article 11: Arbitration*.

ARTICLE 11: ARBITRATION

Section 11.01

- A. Matters not settled in the grievance procedure for which arbitration is invoked will be arbitrated pursuant to the terms of this article.
- B. There are two (2) types of arbitration procedures available:
 - 1. Conventional Arbitration: Shall be used unless a matter is covered by expedited arbitration.
 - 2. Expedited Arbitration: Expedited arbitration may be used to resolve specified disputes in accordance with *Section 11.04* below.

Section 11.02

- A. The party invoking arbitration will make a written request to the Federal Mediation and Conciliation Service (FMCS), with a copy to the other party, seeking a list of seven (7) randomly selected arbitrators having federal sector experience to the extent available, and are also available to conduct the arbitration at the location designated by the parties, within the period of time mutually agreed upon by the parties.
- B. The parties will meet within fourteen (14) calendar days after receipt of the list to select an arbitrator. If the parties cannot agree upon an arbitrator from the list, they will alternately strike names from the list. A coin flip will determine which party will strike first. When a single name remains on the list, that person will serve as the arbitrator.
- C. Within fourteen (14) calendar days after selection of an arbitrator, the parties shall jointly contact the arbitrator for the purpose of scheduling mutually agreeable dates for a hearing. If, within fourteen (14) calendar days of the date the arbitrator is first contacted, the parties do not mutually agree on the date(s) for a hearing on the merits, the arbitrator shall, upon request by either party, set a hearing date.

Section 11.03

- A. The following procedures apply to all arbitrations.
 - 1. The cost of arbitration will be shared equally by the Agency and the Union to include all regular fees, including travel expenses of the arbitrator hearing the case.
 - 2. Arbitration hearings will be held on the Agency's headquarters facility, normally at the appellant's duty station, and at the Union's offices on a rotating basis, absent mutual agreement otherwise by the Parties of a different location.

3. The grievant, the grievant representative, and all employees who are called as witnesses will be excused from duty to the extent necessary to participate in the arbitration proceedings without loss of pay or charge to annual leave.
4. The arbitrator shall have the sole discretion to determine who may testify.
5. Unless mutually agreed upon by the parties, the arbitrator will not have the authority to keep the record open to hear testimony of additional witnesses. Each party has the responsibility and obligation to produce its witnesses on the day of the hearing.
6. The arbitrator shall have the authority to make all arbitrability and/or grievance determinations. The arbitrator shall make grievance and/or arbitrability determinations prior to addressing the merits of the original grievance. Such determinations shall be made within the hearing and shall not be bifurcated.
7. The arbitrator's decision shall be final, binding and, precedential. For the purposes of this Agreement, "precedential" means an interpretation of this Agreement that is binding on the bargaining unit to the extent not contrary to law and the interpretation may be given due weight by an arbitrator hearing subsequent related matters.
8. The arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law or applicable regulation, including the authority to award back pay and interest in accordance with 5 C.F.R. § 550.801(a), reinstatement, retroactive promotion where appropriate, to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate and attorney's fees in accordance with the Back Pay Act.
9. Once an arbitration date has been established, a party requesting that an arbitration hearing be postponed, delayed, and/ or canceled for any reason (which results in any fees being charged by the arbitrator and/or court reporter) shall pay any resulting fees.
10. In any grievance where the parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, they will equally share the cost of any fees being charged by the arbitrator and/or court reporter. The fact that one party has no objection to the request of the other party for postponement, delay, or cancellation of the arbitration hearing will not absolve the requesting party from the paying of all the resulting fees being charged.
11. The strict rules of evidence are not applicable, and the hearing shall be informal.
12. The parties have the right to present and cross examine witnesses and issue opening and closing statements.
13. The arbitrator may exclude testimony or evidence which is determined to be irrelevant or unduly repetitious.
14. Testimony shall be under oath or affirmation.

15. The arbitrator may ask questions of or request information from either party to complete the record at hearing. The arbitrator may also draw an appropriate inference when either party fails to present facts or witnesses that the arbitrator deems necessary and relevant.
 16. The Agency will make employees available as witnesses when requested by the Union. If the Agency determines that it is not administratively practicable to comply with the Union's request, and the arbitrator determines the employee's testimony is relevant, then the hearing may be postponed.
 17. Bargaining history may not be used in an arbitration hearing unless the party proposing to use it has notified the other in writing at least seven (7) calendar days prior to the hearing of its intent to use it.
 18. The parties will request that the Arbitrator render a decision within thirty (30) calendar days of submission of post-hearing briefs or within thirty (30) calendar days of the arbitration if no briefs are submitted.
- B. The following procedure applies to conventional arbitration only. A verbatim transcript of the arbitration proceeding will be made by an authorized court reporter unless the parties mutually agree not to have a transcript made. The arbitrator and each party will be provided with a copy. The cost of the transcript shall be equally borne by the parties.

Section 11.04

- A. A grievance concerning the following matters may be submitted for expedited arbitration:
1. Dues withholding;
 2. Denials of official time;
 3. Improper maintenance of personnel records;
 4. Denials of a work schedule or telework request;
 5. Bulletin board postings or literature distribution by the Union;
 6. Denials of an outside employment request; or
 7. Any other matters which the parties involved in the dispute mutually agree upon.
- B. The party invoking expedited arbitration must make a written request to other party within fifteen (15) calendar days of receipt of the final decision in the grievance procedure (*Article 10: Grievance Procedure*). If no final decision has been issued, the request will be made within fifteen (15) calendar days from the date such decision should have been issued. The arbitrator will be selected in the same manner as provided for in *Section 11.02* above. An arbitrator unable to hear an expedited arbitration case within thirty (30) calendar days will be deemed unavailable and the parties will select another arbitrator.

- C. The hearing will be conducted as soon as possible and will be informal in nature. The parties may arrange for a pre-hearing conference with or without the arbitrator to consider means of expediting the hearing. The arbitrator will issue a decision as soon as possible, but no later than twenty (20) calendar days after the official closing of the hearing, unless otherwise agreed by the parties.
- D. The following procedures apply to expedited arbitration only:
 - 1. No briefs may be filed. A transcript is not required. However, if either party requests a transcript, it will be made and the requesting party will pay the cost. Such transcripts shall not be provided to the arbitrator unless otherwise requested.
 - 2. The arbitrator will issue a bench decision, if possible. If not, he/she will issue a brief written decision within fourteen (14) calendar days of the close of the hearing.

Section 11.05

- A. The arbitrator shall hold the hearing notwithstanding that one (1) party refuses to attend the arbitration. The first issue to be addressed shall be the question of whether the case is properly before the arbitrator. If the case is proper, the grievance will be heard on the merits. The party going forward will notify the other party of its intent, listing the date and the location of the hearing.
- B. Any written decision by the arbitrator will be provided to the designated representatives of the parties in both paper and electronic forms.

Section 11.06

In accordance with the Back Pay Act, reasonable attorney fees will be provided to employees (the Union) who suffer unwarranted and unjust personnel actions if the employee (the Union) is the prevailing party and the arbitrator determines that payment of attorney fees is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the Agency or any case in which the Agency's action was clearly without merit, and is otherwise consistent with applicable law.

Section 11.07

The jurisdiction, authority, and expressed opinions of the chosen arbitrator will be confined exclusively to the interpretation of the expressed provision or provisions of this Agreement at issue between the parties. The arbitrator will have no authority to add to, subtract from, alter, amend, or modify any provision of this Agreement, or impose on either the Agency or the Union any limitation or obligation not specifically provided for under the terms of this Agreement. The parties reserve the right to take exceptions to any award to the FLRA.

Section 11.08

The grievant, or his/her representative, may request that the Agency provide such written information as is relevant to the subject matter of the grievance and necessary to its resolution consistent with 5

U.S.C. § 7114(b)(4). If the Agency refuses to provide all necessary and relevant information, that issue may be joined with the grievance and processed to arbitration. At arbitration, the arbitrator shall review the information denied to the Union “in camera” and decide whether or not it is to be provided to the Union consistent with applicable law.

ARTICLE 12: DISCIPLINARY ACTIONS

Section 12.01

- A. For the purpose of this article, a disciplinary action is defined as a letter of reprimand or a suspension of fourteen (14) days or less.
- B. Disciplinary actions will be taken only for such cause as will promote the efficiency of the Service. Such actions must be consistent with applicable laws and government-wide regulations.
- C. If a disciplinary action is rescinded, all documentation relative to the action will be removed from the Electronic Official Personnel Folder (eOPF) with confirmation of said action sent to the employee.

Section 12.02

- A. Progressive discipline, fairness, equity, and the principle of similar penalties for similar offenses guide Agency discipline determinations as warranted by the circumstances of each case.
- B. Prior to deciding what disciplinary action is a proper response to the incident or act, the Agency will consider the factors outlined in *Appendix D: Douglas v. Veterans Administration (5 MSPB 280 (1981))*, if relevant.
- C. In deciding what action may be appropriate, the Agency will give due consideration to the relevance of any mitigating circumstances and any information provided by the employee in the course of the inquiry leading to the action.

Section 12.03

Unless prohibited by law, any and all documents or any other evidence, upon which a disciplinary action is based, will be made available to the affected employee and her/his designated representative upon request. This provision in no way limits the Union's right to information under 5 U.S.C. § 7114.

Section 12.04

- A. An employee has a right to Union representation at any examination of them by the Agency, in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.
- B. Where the Agency has relied on witnesses to support the reason for a disciplinary action, to the extent any written statements were taken, they will be made a part of the file which is provided

to the employee and his/her representative. The Agency shall advise any bargaining unit employee serving as a witness that his/her statements may be shared with a third party.

Section 12.05

- A. For Letters of Reprimand the following procedures will apply:
 - 1. The Agency will hand-deliver the letter to the employee, if practicable, provided the employee is in a duty status. Letters that are not hand-delivered may be sent via trackable means.
 - 2. The letter will include the specific reasons for the action, the retention period in the eOPF, if applicable, and the employee's rights and time limits for filing a grievance.
 - 3. Letters of Reprimand will be removed from an employee's eOPF no later than two (2) years from the date of issuance. Letters of Reprimands older than two years will not serve as a basis for future progressive discipline.
 - 4. Letters of Reprimand are grievable as per Article 10.
- B. The following procedures shall apply for a suspension of fourteen (14) calendar days or less:
 - 1. The Agency will hand-deliver the notice to the employee, if practicable, provided the employee is in a duty status. Letters that are not hand-delivered may be sent via trackable means.
 - 2. In cases where a suspension is proposed for reasons of off-duty misconduct, the Agency's written notification will also contain a statement of the nexus (relationship) between the off-duty misconduct and the efficiency of the Service. An employee's off-the-job conduct shall not result in disciplinary action unless a nexus to the job is demonstrated by the Agency. If the Agency elects to change the stated nexus prior to issuing a final decision letter, the employee will be informed of such changes or modifications in writing and be given an opportunity to respond prior to final Agency action.
 - 3. An employee has the right to make an oral and/or written reply within fifteen (15) calendar days of the employee's actual receipt of the letter of proposed action. An employee, who chooses to make an oral reply must schedule the meeting within seven (7) calendar days of his/her actual receipt of the letter of proposed action. Prior to the expiration of the fifteen (15) calendar days, the employee will have a reasonable amount of duty time (not to exceed four (4) hours) to prepare for and to make the oral and/or written reply. If the employee elects to make an oral reply, the oral reply will be made to the deciding official. The employee may submit within five (5) calendar days of the oral reply, a written outline of the points covered upon conclusion of the oral reply.
 - 4. The deciding official shall issue a written decision based upon the evidence presented and the employee's response, if any, within a reasonable period of time normally within 30 calendar days following the oral or written reply.

5. The final decision in any sustained suspension will be made by a management official other than the official who issued the notice of proposed action. The final decision letter will contain the Agency's determination with respect to each charge and/or specification made against the employee in the notice of proposed action, and the dates of the suspension. The final decision will contain a statement of the employee's appeal rights including the right to file a grievance as stated in the negotiated grievance procedure contained in this Agreement, if applicable.

ARTICLE 13: ADVERSE ACTION

Section 13.01

- A. An adverse action, for the purpose of this article, is defined as a removal, a suspension for more than fourteen (14) calendar days, a reduction in grade, a reduction in pay, based on performance and/or conduct, and a furlough (when not a condition of employment) of thirty (30) calendar days or less of an employee.
- B. Adverse actions will be taken only for such cause as will promote the efficiency of the Service. Such actions must be consistent with applicable laws and government-wide regulations.
- C. If an adverse action is rescinded, all documentation relative to that action will be removed from the eOPF.

Section 13.02

- A. Progressive discipline, fairness, equity and the principle of similar penalties for similar offenses guide Agency discipline determinations as warranted by the circumstances of each case.
- B. Prior to deciding what adverse action is a proper response to the incident or act, the Agency will consider the factors outlined in *Appendix D: Douglas v. Veterans Administration (5 MSPB 280 (1981))*, if relevant.
- C. In deciding what action may be appropriate and in accordance with applicable law and regulation, the Agency will give due consideration to the relevance of any mitigating circumstances and to information provided by the employee to the Agency in the course of the inquiry leading to the adverse action.

Section 13.03

Unless prohibited by law, any and all documents or any other evidence, upon which an adverse action is based, will be made available to the affected employee and her/his designated representative, upon request. This provision in no way limits the Union's right to information under 5 U.S.C. § 7114.

Section 13.04

- A. The employee has a right to Union representation at any examination of them by the Agency, in connection with an investigation, if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee so requests representation.
- B. Where the Agency has relied on witnesses to support the reasons for an adverse action, to the extent any written statements were taken, they will be made a part of the file which is provided to the employee and her/his representative upon request. The Agency shall advise any employee serving as a witness that his/her statements may be shared with a third party.

Section 13.05

- A. In all cases of proposed adverse action, except for emergency suspensions and actions taken in which there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the employee will be given written notice stating the specific reasons for the proposed action thirty (30) calendar days in advance of the action and informed of their right to reply to the proposed action. The written notice shall include the following:
 - 1. Specific action proposed;
 - 2. Specific reason for proposed action;
 - 3. Deciding official to whom the employee may respond;
 - 4. Employee's right to respond orally and/or in writing, including affidavits or other written statements in support of his/her response;
 - 5. Employee's response will be considered by the deciding official;
 - 6. The deciding official will consider the relevant factors outlined in *Appendix D: Douglas v. Veterans Administration (5 MSPB 280 (1981))*, as appropriate;
 - 7. Employee's right to be represented by a Union Representative or by an attorney of his/her choice;
 - 8. Employee's status during the notice period; and
 - 9. The employee is entitled up to four (4) hours of duty time to review the material relied upon to support the reasons given in the notice and confer with their representative as appropriate.
- B. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Agency's written notification will also contain a statement of the asserted nexus (relationship) between the off-duty misconduct and the efficiency of the Service.
- C. An employee may request an oral reply within seven (7) calendar days of his/her actual receipt of the letter of proposed action. An employee also has the right to make a written reply within

fifteen (15) calendar days of the employee's actual receipt of the letter of proposed action. If the employee elects to make an oral reply, the oral reply will be made to the deciding official. The employee may submit a written outline of the contents of the oral reply within three (3) calendar days of the reply meeting, and the Agency shall consider them prior to making a final decision.

- D. The deciding official shall issue a written decision based upon the evidence presented and the employee's response, if any, within a reasonable amount of time ideally within 30 days following the oral or written reply.
- E. The final decision in any sustained adverse action will be made by a management official other than the official who issued the notice of proposed action. The final decision letter will contain the Agency's determination with respect to each charge and/or specification made against the employee in the notice of proposed action. The final decision will contain a statement of the employee's right to appeal an adverse decision to the MSPB or to binding arbitration, but not both.

Section 13.06

- A. If the Agency's final decision is to affect an adverse action against a bargaining unit employee, the employee may either appeal the decision under the appellate procedures in accordance with applicable law or file a grievance under the negotiated grievance procedure. Under no condition may an employee appeal an adverse action under both the applicable appellate procedures and to arbitration.

The Union must notify the agency's Chief Administrative Officer and the Labor Relations Specialist assigned to MBDA of any appeal to arbitration filed by the union and will include the matter to be arbitrated. The Union must invoke arbitration within thirty (30) days of the date the employee receives the final decision issued by the Agency.

- B. The standard of proof in any arbitration over this matter will be the preponderance of evidence.
- C. Both parties will exchange their anticipated witness lists seven (7) days prior to the hearing date.
- D. The Agency may request to hold a pre-arbitration settlement conference with NFFE following the Union providing the Agency notice pursuant to *Section 13.06(B)* above with respect to any employee who was not represented by NFFE at the proposed adverse action stage. If requested, the meeting will take place at a mutually agreed-upon location (including telephonically) and time within fourteen (14) days from the date NFFE invokes arbitration. Such meeting will not result in a delay of the arbitration hearing or require either party to produce evidence.

ARTICLE 14: NOTICES TO EMPLOYEES

Section 14.01

The Agency presents an employee with a written notice specified in Section 14.02 of this Article; the

employee shall be given an extra copy of the notice which shall contain the following statement: "An extra copy of this notice is enclosed herein. This copy may, at your own option, be furnished to NFFE, Local 2."

Section 14.02

For purposes of this Article, the term "written notice" includes, but is not limited to:

- A. Letters of proposed disciplinary or adverse action;
- B. Letters of advance notice on a decision to impose a reduction-in-force (RIF);
- C. Letters placing an employee on leave restriction;
- D. Notice of a decision to separate a probationary employee;
- E. Notice of involuntary assignment to a different position or location;
- F. Letters of decision for disciplinary actions;
- G. Letters of decision for adverse actions; and
- H. Letters to term employees indicating that for cause they will be terminated.

ARTICLE 15: POSITION CLASSIFICATION

Section 15.01

- A. The Agency has determined that the position description will accurately reflect the duties, responsibilities, and supervisory controls pertaining to the employee filling that position.
- B. The Agency has determined to prepare new position descriptions within sixty (60) calendar days but no longer than ninety (90) calendar days of assigning employees to do the work of the position in those instances where no classified position description exists which accurately describes the duties to be performed.
- C. In the case of new or revised position descriptions, copies shall be provided to NFFE Local 2 within thirty (30) calendar days of the modification being made, and no later than the date it is provided to the employee. Where modifications in position descriptions result in a change in conditions of employment, the Agency will provide NFFE with appropriate notice.

Section 15.03

- A. It is agreed that employees whose duties and responsibilities deviate substantially from those reflected in the position description may seek resolution by requesting a review of a position

description reflecting these duties or make a request for a desk audit as provided by the Office of Personnel Management and Department policies.

- B. Desk audits will be performed upon written request of either an employee or the employee's supervisor. Normally, when requesting a desk audit, an employee is required to submit a rationale in support of her/his request to the immediate Supervisor, if the Supervisor is unavailable then the employee may elevate to the next level Supervisor. Supervisory approval and a revised description of duties and responsibilities should also accompany the request. To the extent the supervisor does not approve the employee's request within thirty (30) days, the employee may forward their request directly to the MBDA servicing Classification Human Resources Office. To the maximum extent possible, desk audits will be conducted in a timely manner, generally no more than ninety (90) days from submission of the request to Human Resources and or the governing party responsible for performing the desk audit.
- C. In a classification appeal resulting from a desk audit within the Agency:
 - 1. The employee has the right to Union representation;
 - 2. The Agency will be notified in advance of Union representative attendance at a meeting under this section.
 - 3. A copy of the written evaluation resulting from the desk audit will be provided to the employee.
 - 4. The employee has the right to make written comments on his/her desk audit as part of the appeal.

Section 15.04

In accordance with 5 U.S.C. § 7121, an employee may grieve the classification of a position which results in a reduction in grade or pay of the employee.

ARTICLE 16: PERFORMANCE EVALUATION

Section 16.01

- A. This article is intended to be interpreted and applied in a manner consistent with 5 U.S.C. Chapter 43, 5 C.F.R. Part 430 & 432, and 5 U.S.C. § 9508. This article does not pertain to temporary employees on an appointment of less than one hundred eighty (180) days.

Section 16.02

MBDA management and bargaining unit employees must follow the Department of Commerce's Performance Management System, DAO-202-430 and all Departmental policies and procedures within these systems. An employee's request for a formal or informal reconsideration of a performance rating must be resolved under the administrative grievance procedure DAO 202-430.

The Bargaining Unit Employees Performance plan includes:

- A. Critical Elements: An employee will have three (3) to five (5) critical elements in the performance plan, as identified by the Agency which are consistent with the duties and responsibilities in the position description, the Department's and MBDA's strategic plans and priorities.
- B. Performance Standards: Qualitative and/or quantitative measures of success appropriate to the employee's critical elements. Standards will be clearly written and attainable.
- A. Progress Review:
 - B. The supervisor shall hold at a minimum of one progress review at the mid-point of the performance period. Additional progress reviews may be held at the supervisor's discretion. Progress reviews will be documented on the performance appraisal form, CD-430. Before each progress review, employees are encouraged to summarize their performance accomplishments and submit to their supervisor prior to each progress review meeting.
 - C. An objective of the performance management system is to improve communications between the Rating Official and the employee concerning performance expectations and results. The Rating Official shall hold a mid-year progress review. The midyear progress review will be documented on the performance appraisal form. After each progress review, employees are encouraged to summarize the discussion and transmit it to their supervisor. These reviews are in addition to the initial meeting to develop the performance plan and the annual rating discussion.
 - D. Summary Rating: At the end of the rating period, the Rating Official assigns a summary rating level of 1, 2, 3, 4, or 5. A summary rating of 3 or higher means that an employee has met the performance expectations of each critical element.
 - E. Certification: The performance plan must be signed and dated at the beginning of the rating period by the employee and the Rating Official to indicate that the performance plan has been received by the employee. The performance plan must be signed at the conclusion of the rating period when the summary rating is determined and discussed with the employee. The employee's signature serves as acknowledgement of receipt of the performance plan and final rating.

Section 16.03

- A. The Rating Official and the employee will meet at the beginning of the review period, normally within 60 after the end of each fiscal year, to discuss all performance criteria set forth in the employee's performance plan.
- B. The rating official shall inform the employee when there is a decrease in work performance that may result in a rating lower than a level 3. Such notification shall occur as soon as practicable and provide sufficient time to improve performance.
- A. The Rating Official and newly hired employee shall meet normally within thirty (30)

calendar days after entrance on duty (EOD) to discuss performance expectations and the performance plan.

- C. The year-end evaluation will be issued to the employee normally within thirty (30) calendar days after the end of the rating period (September 30). The only exceptions to this rule are as follows:
- D. New employees, who are un-ratable at the end of the appraisal period because they have not served in a position for at least the minimum appraisal period (120 days) of the operating unit, must be rated within 30 days after they have served for the minimum appraisal period
- E. When the employee is not available to receive the evaluation due to absence for sick leave or absence due to an on-the-job injury, the evaluation will be prepared by the Rating Official (provided the employee had one hundred and twenty (120) calendar days to perform under the performance plan prior to being absent) but will not be effective or used in any employment consideration until the evaluation has been provided to the employee either in person or by sending it to the employee's official mailing address. The employee shall be permitted an opportunity to submit written comments.
- F. When a rating official changes positions or leaves the Department:
More than 120 days remaining of the appraisal period, or less than 120 days remaining in the appraisal period he or she should complete interim ratings for his or her employees (who served in their current position 120 days) before leaving the position and/or the Department.
In many cases, these interim ratings may become the final rating of record for employees who serve in several positions (for less than 120 days) throughout the remainder of the appraisal period. In both situations, the departing supervisor must do the following:
Request written accomplishments from each employee. Prepare/sign the interim rating for each employee (check interim ratings on Summary Rating page of CD-430). Transmit the interim rating to the new supervisor. Discuss the employee's performance without divulging the interim rating. Notify the employee that the interim rating may be changed by the new supervisor before it becomes final on September 30.

Section 16.04

An employee's summary rating is used in the following personnel actions:

- A. Within-Grade Increases (WGI): An employee must have a current rating of record of "fully successful" or better in order to be granted a WGI.
- B. Awards: See *Article 32: Awards*.
- C. Promotion: In order to receive a career ladder promotion, an employee must have a current rating of record of "fully successful" or better.
- D. RIF: See *Article 17: Reduction-in-Force (RIF)*.

Section 16.05

This section involves unacceptable performance

A. Scope:

1. For purposes of this article, an action based on unacceptable performance under 5 U.S.C. § 4303 is a reduction in grade or removal of an employee who fails to demonstrate acceptable performance in one (1) or more critical elements of the performance plan.
2. Actions taken under this article for unacceptable performance shall be supported by substantial evidence.
3. The provisions of this article do not apply to the removal of probationary, temporary, or term employees under 5 U.S.C. § 7511.

B. Performance Improvement Period:

For each critical element in which the employee's performance is at the "unsatisfactory" level, the Agency will provide the employee a reasonable period of time (usually thirty (30) to ninety (90) calendar days, depending on the nature of the employee's duties) to demonstrate acceptable performance (defined as meeting at least the "minimally successful" criterion), commensurate with the duties and responsibilities of the employee's position. The Agency will inform the employee that, unless his/her performance improves to and is sustained at an acceptable level during such period of time, the Agency will reduce the employee's grade or remove him/her from his/her position or federal service.

1. The Agency will notify the employee in writing of the critical element(s) for which performance is unacceptable, inform the employee of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his/her position and advise the employee what he/she must do to bring his/her performance up to the "minimally successful" level. The notice will also explain what efforts will be made by the Agency to assist the employee in improving performance. Assistance may include, but is not limited to, formal training, closer supervision, counseling, or more frequent progress reviews. The Agency may give an employee such notice at any time during the performance appraisal cycle.

C. Proposal Notice: The Agency will follow these procedures when proposing to take an action under this article:

1. Provide the employee a thirty (30)-calendar day advance written notice of the proposed action. The notice will identify both the specific instances of unacceptable performance and the related critical elements and standards.
2. Provide the employee with a copy of any information relied upon to support the proposal. This provision in no way limits the Union's right to additional information under 5 U.S.C. § 7114 or any other applicable law, rule, or regulation.
3. Advise the employee in writing of his/her right to representation.

4. Grant the employee a reasonable amount of duty time, normally up to eight (8) hours, with supervisory approval, to prepare his/her response to the proposed action. The Agency will consider a written request from the employee for additional duty time to prepare his/her response.
5. Provide the employee the opportunity to reply to the notice orally and/or in writing within fifteen (15) days from the date the employee receives notice of the proposed action. The Agency will consider a written request to extend the reply period.
6. If the employee elects to make an oral reply, it will be made to the Deciding Official in person, unless agreed otherwise. The employee may submit a written outline of the points covered upon conclusion of the oral reply. At the option of the Agency, a verbatim transcript or summary of the oral reply shall be made. If a verbatim transcript is made, the Agency will pay the cost of the court reporter. However, if NFFE determines it wants a copy of the transcript, NFFE would share equally in the cost of the court reporter. Each party shall bear the cost of purchasing its own copy of the transcript. The Agency will pay the travel and per diem expenses of the employee to attend the oral reply, subject to applicable law and regulation.

D. Decision Notice:

1. The Agency will consider the employee's oral or written reply and give the employee a written decision letter concerning the proposed action normally within a reasonable time after expiration of the advance notice period. Normally, the written decision will be issued by a management official who is in a higher position than the person who proposed the action. The decision letter will be issued prior to or on the effective date of the action and will specify the instances of unacceptable performance by the employee on which the action is based.
2. The decision letter will inform the employee of his/her right either to appeal under 5 U.S.C. § 7701 [MSPB] or to file a grievance under *Article 10: Grievance Procedure* of this Agreement, but not both.

- E. Recordkeeping: If an action for unacceptable performance is canceled or overturned and the matter is not subject to further appeal or legal action, all documentation relative to that action (or proposed action) in the employee's eOPF will be removed with confirmation of removal sent to the employee. The Agency will not remove or destroy any documentation required to be preserved under laws, rules, or regulations.

ARTICLE 17: REDUCTION-IN-FORCE (RIF)

Section 17.01

Pursuant to 5 C.F.R. § 351.201, a RIF is the release of a competing employee from his/her competitive level by furlough for more than thirty (30) calendar days, separation, demotion, or reassignment requiring displacement, when the release is required because of a lack of work, shortage of funds, insufficient personnel ceiling, reorganization, the exercise of reemployment or restoration rights, or reclassification of an employee's position due to erosion of duties when the reclassification will take

effect after an agency has formally announced a RIF in the employee's competitive area and when the RIF will take effect within one hundred eighty (180) calendar days.

Section 17.02

- A. At least thirty (30) calendar days before the Agency provides formal notice of a RIF to the Union, the Agency shall inform the Union in writing that it has made a preliminary determination to conduct a RIF.
- B. At the same time as it informs the Union, the Agency will provide the Union with the reasons for the action. Nothing stated above compromises the Union's entitlement to obtain information from the Agency under 5 U.S.C. § 7114(b)(4).
- C. Within seven (7) calendar days of receiving the information from the Agency, and if requested, the Agency shall brief the Union on the Agency's preliminary RIF determination.
- D. Following the briefing, the Union shall have five (5) calendar days in which to submit its written comments regarding the Agency's preliminary determination.

Section 17.03

- A. In the event the Agency decides to proceed with a RIF, the parties agree to expedited impact and implementation bargaining, beginning no later than thirty (30) calendar days after the date the Agency provided the RIF notice provided in *Section 17.02(A)* above.
- B. The parties may negotiate over any RIF-related issues negotiable under law and this Agreement.

ARTICLE 18: PERSONNEL RECORDS AND ACCESS TO INFORMATION

Section 18.01

- A. Employees who have regular access to an Agency-owned computer will have access to their official personnel record through the eOPF system. Employees may access their eOPF using an Agency owned computer to review and make copies of forms or documents in the eOPF.
- B. Employees who have, other than routine access to an Agency-owned computer, may request a copy of any document(s), other than an extensive request, from the eOPF at any time via email to the Agency-designated point of contact at the MBDA Human Resources Office. The Agency shall provide the employee with a hard or electronic copy of the requested document(s) within seven (7) calendar days of receiving the employee's email request. Before disclosure of a record is made to employees, their identity must be verified.
- C. Employees may personally make or provide copies of documents from their eOPF, including to their personally designated representative. The only exception is a copy of records restricted by law or government-wide rule or regulation.

Section 18.02

The eOPF will be purged in accordance with applicable government-wide regulations. However, any employee documentation file maintained by a supervisor is not part of the eOPF. Employees may request from their supervisor to review any files maintained by their supervisor if they exist.

Section 18.03

The Agency will enter and maintain performance appraisals in the employee's eOPF. Access to the eOPF is limited to the employee management officials with a need to know and those others referenced in the current system of records description in accordance with the Privacy Act, 5 U.S.C. § 552(a).

ARTICLE 19: MERIT PROMOTION

Section 19.01

- (a) All bargaining unit positions will be filled based on merit, and except where otherwise provided by law, without regard to an employee's color, race, religion, national origin, politics, marital status, membership or non-membership in an employee organization, non-disqualifying physical handicap, age, sex, genetics, or based on personal favoritism.
- (b) The Employer shall make every effort to utilize to the maximum extent possible the skills and talents of its current employees. Careful consideration will be given to filling vacant positions through the utilization of present employees.
- (c) The competitive procedures of this Article will apply to those circumstances set forth and defined in the Employer's Merit Assignment Program, 5 Code of Federal Regulation (C.F.R) 335.103, and the procedures as set forth by the Office of Personnel Management (OPM).
- (d) Competitive procedures do not apply to the following actions.
 - (1) Career ladder promotions where competition has taken place earlier.
 - (2) Upgrading of a position due to application of a new classification standard without a significant change in duties, or from the correction of an initial classification error.
 - (3) A promotion resulting from an employee's position being classified at a higher grade (with no further promotion potential) because of additional duties and responsibilities, commonly known as accretion of duties. The noncompetitive upgrade requires the employee to continue to perform the same basic function in the new position that is a clear successor to and absorbs the duties of the old position. In addition, there are no other employees within the organizational unit to whom the additional duties and responsibilities could have been assigned. The Agency agrees that a position's grade will not be increased by an accretion of duties solely to avoid a competitive promotion action.
 - (4) Promotion of an employee who failed to receive proper consideration in a prior competitive promotion action.
 - (5) Actions taken under RIF.
 - (6) Conversion of a temporary promotion to a permanent promotion, provided that the temporary promotion was originally made under competitive procedures, and that the normal minimum area of consideration for the position was used to recruit candidates.
 - (7) Details to higher-graded positions or temporary promotions not to exceed one hundred twenty (120) days.

Section 19.02

- (a) Vacancy announcements will be made available through the Office of Personnel Management web site,) www.usajobs.opm.gov (USAJOBS. All Bargaining Unit employees will be provided access to such announcements at their regular work sites.
- (b) The minimum areas of consideration are –for GS-15, and equivalent, and below, status employees of the Employer, as well as Senior Level (SL) positions, and Scientific or Professional (ST) positions filled using competitive procedures.
- (c) The Employer shall attempt to find candidates within the minimum area of consideration but may expand the area of consideration if the minimum area of consideration does not produce enough high-quality candidates or the Employer finds it is necessary to conduct a broader search.
- (d) Announcements for Bargaining Unit positions shall be open for a minimum of seven calendar days, but no more than fourteen (14) calendar days under specifically identified circumstances. The Director, Human Resources, except where otherwise prohibited, may make exceptions to the length of the open period, prior to the time frame of the opening, for objective, mission-oriented purposes, documenting such reasons in the case file.
- (e) Vacancy announcements will, as a minimum, contain the following information:
 - (1) the title, series, and grade of the position, as well as the number of vacant positions expected to be filled and an announcement number.
 - (2) duty location and office.
 - (3) the area(s) of consideration.
 - (4) the duties of the position.
 - (5) the minimum qualifications required, all selective placement factors, if any, and all positive education requirements, if any.
 - (6) the pertinent knowledges, skills, and abilities to be evaluated.
 - (7) a statement of whether the position has promotion potential, and if so to
 - (8) what grade, and, if applicable, that the position is a trainee or understudy position.
 - (9) Department of Commerce (DOC) equal employment opportunity policy.
 - (10) the opening date of the announcement.
 - (11) the closing date of the announcement.
 - (12) instructions on how to apply.
 - (13) whom to contact for additional information.
 - (14) pay ranges.
 - (15) a statement of the amount of travel involved, if more than occasional.
 - (16) Reasonable Accommodation Policy; and
 - (17) any special notes or instructions, e.g., whether reapplication is necessary for positions being re-announced, the authority to extend temporary promotions, the changes effected by an amendment, and so forth.

(f) A career ladder position is one identified as developmental and is filled at a grade lower than the target (maximum) grade level for that position. The target level is identified on the Request for Personnel Action (RPA) (SF 52) and on the vacancy announcement. All employees in career ladder positions shall be promoted the first pay period after they can perform at the next higher level, and they become minimally eligible to be promoted (must meet time in grade requirements).

Section 19.03

- (a) Employees shall fully satisfy the time-in-grade and time-after-competitive appointment requirements as well as qualification requirements for the position at the time of any consideration for selection.
- (b) Candidates shall be rated basically qualified for a position if they meet the minimum qualification requirements for a General Schedule position described in OPM's Qualification Standards for General Schedule Positions as supplemented by valid job-related selective placement factors, if any.

Section 19.04

- (a) The best qualified candidates shall be identified through an impartial evaluation of eligible candidates based upon uniformly applied job-related evaluation criteria.
- (b) The supervisor and/or office head of the position to be filled has the responsibility for preparing the rating criteria, i.e., crediting plan. The Human Resources staff shall review the criteria for reasonableness and appropriateness.
- (c) Candidates shall be evaluated based upon their most recent performance appraisal; experience; education; pertinent job-related training; self-development and outside activities; and awards (achievements that earned an employee special recognition, both monetary and non-monetary) earned within the last five (5) years.

Section 19.05

- (a) Before beginning the ranking procedures, the application shall be reviewed by Human Resources to ensure the candidate is within the area of consideration, meets minimum qualifications (including selective placement factors, if identified), and meets time in grade requirements.
- (b) Rating and ranking shall be accomplished by an automated system and Human Resources staff.
- (c) Based upon the span of numerical scores, the HR specialist (or panel members) shall identify the logical or meaningful breakpoint that distinguishes the best qualified candidates from the other qualified candidates. The best qualified candidates shall be those individuals with the highest scores. There shall be a significant, or meaningful, break in numerical rankings separating the best qualified group from the remaining candidates.
- (d) A list of qualified candidates is received from HR and an interview panel, if determined necessary, is established to screen the applicants. The members of the panel shall meet to evaluate best candidates. If convened, panels will consist of at least three (3) persons

responsible for evaluating candidates. The panel members shall be at the grade being filled or higher and at least one (1) panel member should be a subject matter expert in the same field as the vacant position. The interview shall be sufficient to provide the applicant an opportunity to inform the panel members of any qualifications not apparent from the resume.

- (e) The best qualified candidates shall be referred in alphabetical order to the selecting official. Individual scores shall not be provided.

Section 19.06

- (a) The recommending and/or selecting official may offer an additional interview to the best qualified candidates.
- (b) The selecting official is not required to select a candidate from the referral list and may select from any other appropriate source. He or she may request an extension of the area of consideration or additional recruitment efforts or may fill the job by some other type of placement action. However, if selection is to be made from among those candidates who were rated and ranked under merit staffing procedures, the range of selection is limited to those candidates who have been identified as best qualified.
- (c) If the selecting official does not act within ninety (90) days after receiving the list of best qualified candidates, the merit promotion list shall be canceled. Exceptions may be granted by Human Resources in extenuating circumstances.
- (d) An employee selected for promotion will normally be released from his/her current position at the end of the pay period closest to fifteen (15) calendar days after the selection date. An extension of an employee's release date may be requested for extenuating circumstances with agreement from the Human Resources Director.

Section 19.07

Employees shall be notified in writing, or electronically, if they do not meet the requirements of the position, their application is incomplete, or they were referred to the selecting official but not selected. The Employer shall provide notification as soon as possible.

Section 19.08

A promotion folder shall be established in Human Resources for each specific promotion or other placement action filled under the competitive procedures of this Article. All documentation concerning merit selection actions shall be maintained in accordance with the recordkeeping provisions of OPM, this Agreement, DAO 205-1, and DAO 205-16, Managing Electronic Records and contain proper markings. It shall be kept for two (2) years or until a formal OPM evaluation of the program, whichever time is shorter and absent any grievance concerning such an action. The folder shall contain the following information:

- (1) a copy of the vacancy announcement.
- (2) a copy of the position description.
- (3) selective factors used (if any).

- (4) any quality ranking factors.
- (5) all rating and ranking factors used.
- (6) a list of all eligible candidates and their applications.
- (7) a list of and identification of breakpoints of best qualified candidates.
- (8) the name of the applicant selected and the selecting official.
- (9) copies of all written and electronic correspondence with applicants; and
- (10) copies of the interview questions, along with the composition of any interview panel, and name(s) of the recommending and/or selecting official.

Section 19.09

- (a) An employee who feels that he or she has been denied a promotion because of a violation of this Article may grieve through the negotiated grievance procedures of Article 10 (Grievance Procedures) as established by this Agreement or file a formal complaint through the procedures of Article 20 (EEO). However, a non-selection from a group of properly ranked and certified individuals is not by itself a basis for a grievance.
- (b) In the processing of complaints or grievances concerning actions taken under this Article the Union shall, upon request, be furnished with copies of all records, subject only to the Employer's authority to withhold such records under applicable laws and regulations that pertain to the subject action.

ARTICLE 20: DIVERSITY AND EQUAL EMPLOYMENT OPPORTUNITY

Section 20.01

In accordance with the Rules and Regulations of the Equal Employment Opportunity Commission (EEOC), and within the limits of authority delegated to the Agency, specifically, the Office of Civil Rights agree to work together to provide equal opportunity for employment and to prohibit discrimination in employment because of race, religion, color, sex, sexual harassment, sexual orientation/preference, national origin, age, genetic information, or disability.

Section 20.02

Nothing in this Agreement prohibits an employee from being represented by a Union steward at any stage of the EEO complaint process including the counseling stage unless the employee designates another representative.

ARTICLE 21: HEALTH AND SAFETY

Section 21.01

The general safety and health responsibilities of the Agency are as follows:

- A. To assure compliance with all applicable Occupational Safety and Health Administration standards and related rules and regulations.
- B. To provide adequate support in the administration of the safety and health program.
- C. To assure the prompt cessation of unsafe or unhealthy working conditions.
- D. To provide adequate safety training for all employees, specifically in such areas as evacuation of buildings during suspected fire or bomb threats.
- E. The Union will be notified at least one (1) workday in advance of any meetings held with bargaining unit employees to discuss health and safety issues, other than routine safety briefings. The Union will be allowed to send one (1) representative to these meetings on official time.

Section 21.02

- A. Pursuant to 29 C.F.R. Part 1960, an employee may decline to perform his/her assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm, and there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures. In the event an employee declines an assignment under these conditions, he/she shall be free from reprisal. The Agency shall notify all affected employees of the existence of a dangerous condition or any possible unsafe condition immediately.

Section 21.03

The Agency will take appropriate action to ensure that employees are familiar with the proper means of leaving the office during a suspected emergency threat. Where an emergency threat is reasonably suspected, the Agency will evacuate affected employees to safer areas or take other appropriate precautions.

Section 21.04

When it is necessary for an employee to leave work because of a serious illness or incapacitation, the Agency will offer assistance to ensure that the employee is transported to a medical treatment facility.

Section 21.05

- A. The Agency will provide the Union with access to all information related to health and safety in the workplace pursuant to the Occupational Health & Safety Act and applicable law and regulation. The Agency shall provide such information to the Union as requested.

Section 21.06

The Agency will provide the NFFE Local 2 with reasonable advance notice of any planned construction that will affect bargaining unit employees' conditions of employment.

Section 21.07

- A. The Agency shall maintain its current Employee Assistance Program (EAP) consistent with law, rule, and regulation. It is the policy of the Department of Commerce (DOC) to offer counseling to all employees. The Employee Assistance Program (EAP) is a confidential service that can help in a variety of situations.

ARTICLE 22: HOURS OF WORK

Section 22.01

- A. Basic Work Week: The present administrative workweek begins at 12:01 a.m. Sunday and ends at 12:00 midnight Saturday, and the current basic workweek and normal tour of duty within the administrative workweek is five (5), eight (8)-hour workdays. The Agency shall inform every new employee of the days and hours of his/her workweek. Except as provided below, prior to implementing a change in the basic workweek, the Agency will notify the Union as far in advance as possible, but not less than seven (7) calendar days.
- B. Rest Periods: Supervisors shall authorize rest/break periods during the workday, normally with a fifteen (15) minute break during the first and second half of the workday. It is recognized that some employees may not receive rest/break periods due to work requirements. Work assignments may be communicated during a break.
- C. Lunch Period: A thirty (30)-minute meal period per tour of duty is authorized.
- D. Breaks and/or lunch periods may not be used to shorten the workday or increase the lunch period.
- E. Administrative Workweek: The administrative workweek is the seven (7)-day calendar week, eighty (80)-hour biweekly pay period commencing at 12:01 a.m. Sunday and ending at 12:00 midnight on the following Saturday with normally two (2) consecutive lieu days (days off). The Agency shall inform every new employee of the days and hours of his/her workweek.
- F. Normal Workday: The normal administrative workday consists of eight (8) hours of work time except for those employees working an alternate work schedule. The normal meal break is thirty (30) minutes.
- G. Core Hours: Employees will be in a work status during core hours. Absence from work during these hours must be requested of and approved by the supervisor as indicated by an approved leave request in writing or on an electronic form, or an approved Alternative Work Schedule (AWS) or telework agreement. Core hours are Monday through Friday from 9:00 a.m. to 3:00 p.m. Employees should be logged on during the core hours between 9:00 a.m. to 3:00 p.m., Any hours that an employee voluntarily works after 6PM will not be entitled to night differential, unless the work hours are mandated by the Agency.

- H. Core Day: The designated day that employees are present at the designated worksite. The Agency's designated the core day is Monday. If a federal holiday is observed on a Monday, the core day will be cancelled for this week.
- I. Basic Eight (8)-Hour Schedule: This is a fixed five (5)-day schedule that does not vary from day to day. It is an eight (8)-hour day. An employee will be provided a thirty (30) minute unpaid lunch period at approximately mid-day. Any other schedule (tour of duty) is subject to approval by the employee's supervisor in accordance with this Agreement.

Section 22.02

- A. Available Schedules: Employees shall be eligible to work Alternative Work Schedules (AWS) as long as they have achieved a "fully successful" or higher summary rating and have not had any documented conduct issue(s) in the last twelve (12) months.
- B. Management will approve or deny each schedule request within one (1) pay period of the date of submission, when feasible.
- C. Upon request, a denial of request for a particular work schedule will be provided to the employee in writing, stating the reasons for such denial. Such denial would include one of the following reasons: a reduction of an agency's productivity, a diminished level of services furnished to the public, or an increase in the cost of agency operations.
- D. Alternate and Flexible Work Schedules:
 - 1. Alternative Eight (8)-Hour Schedule: This is a fixed schedule that does not vary from day to day, with established arrival and departure times. The schedule includes ten (10) workdays in each pay period, with each workday being eight (8) hours in length. This schedule differs from the normal eight (8)-hour schedule in that the established arrival and departure times need not coincide with the basic work hours for a particular shift.
 - 2. Ten (10)-Hour Compressed Work Schedule (CWS): This is a fixed, non-flexible schedule (meaning it does not vary from day to day). Arrival and departure times are set and approved in advance. Eight (8) workdays of ten (10) work hours each (four (4) days each week) constitute the pay period. A ten (10)-hour schedule may not include any combination of half-days or workdays of less than ten (10) work hours.
 - 3. Five-Four-Nine (5-4-9) (CWS): This is a fixed, non-flexible schedule (meaning it does not vary from day-to day). The schedule includes nine (9) workdays in each pay period, with eight (8) of those days consisting of nine (9) work hours each and one (1) day consisting of eight (8) work hours. An approved variation of this consists of eight (8) nine (9)-hour days and two (2) four (4)-hour days.
 - 4. Flexitime Flexible Eight (8)-Hour Schedule (Gliding Schedule): This is a flexible (non-fixed) schedule with a basic work requirement of an eight (8)-hour day and forty (40)-hour workweek. The employee will work an eight (8)-hour day, but arrival and departure times

are flexible as long as daily core hours are worked (see *Section 23.01(G)* above regarding core hours). Absence from work during core hours requires supervisory approval.

Section 22.03

- A. Consistent with 5 C.F.R. § 610.121, an employee will be informed of a cancellation or revision of their approved alternate work schedule in writing within one (1) pay period in advance of the change.
- B. Management will approve or deny each alternate work schedule or work schedule request within one (1) pay period of the date of submission.
- C. Management's denial of request for a particular work schedule will be provided to the employee in writing, stating the reasons for such denial, upon request.
- D. Hardship Schedule Requests:
 - 1. Agency employees may submit hardship schedule requests. The request should be submitted in writing to the immediate supervisor and must provide a brief explanation of the hardship.
 - 2. Hardship schedule requests will be approved or denied within one (1) pay period of the date of submission, if feasible.

Section 22.04

This section provides for procedures for establishing special temporary work schedules.

- A. Training: Employees scheduled for training will revert to a Monday-Friday eight (8)-hour schedule consistent with the hours of the training program unless a mutually agreeable arrangement is made with the supervisor or designee.
- B. Temporary Duty: When an employee covered by this agreement is assigned to a temporary duty station within the Region using another schedule, either traditional or AWS, the Agency may allow the employee to continue to use the schedule used at his or her permanent work site, if suitable, or require the employee to change the schedule to conform to operations at the temporary work site.
- C. Temporary Changes to Employee's Work Schedules: Except as provided for by 5 C.F.R. § 610.121(a), an employee's regularly scheduled workday or workweek shall not be changed solely to avoid payment of overtime or earning of compensatory time.

Section 22.06

- A. When the Agency seeks to change an employee's tour of duty, it will provide fourteen (14) calendar days' advance notice to the NFFE Chief Steward and all affected employees, except as provided for by 5 C.F.R. § 610.121. Such change shall be limited to the employee's tour of duty and shall not affect approved leave, AWS, or telework arrangements.

- B. Except as provided for by 5 C.F.R. § 610.121(a), the Agency shall not change employee tours of duty/schedules in order to avoid paying overtime. To the extent practicable, the Agency shall schedule overtime contiguous (i.e., next or together in sequence) to an employee's normal tour of duty.
- C. Emergency events will be addressed in accordance with *Article 24: Changes in Operational Status*.

ARTICLE 23: COMPENSATORY TIME

Section 23.01

The Agency will compensate employees for work performed outside normal duty hours if the supervisor approves the compensatory hours in advance and in writing.

Compensatory time will be allowed for any Management-mandated extra time worked, so long as allowed by law and government-wide regulations.

A compensatory time request will be submitted through the time keeping system, WebTA, for supervisory approval.

Section 23.02

In order to inform employees whether they are exempt or nonexempt for purposes of the FLSA, the Agency will indicate each employee's FLSA status on the Standard Form 50.

Section 23.03

- E. Generally, supervisors or their designees may approve or disapprove the earning of credit hours in advance. Supervisors may approve an employee's standing request to work credit hours on a particular day(s). Supervisors may also approve credit hours an employee has already worked on a retroactive basis. If two (2) or more similarly qualified employees request credit hours resulting in a conflict, the more senior employee shall be permitted to earn the credit hours. If such a conflict reoccurs, the supervisor will assign credit hours on a rotational basis.
- F. Once earned, an employee may use credit hours in fifteen (15)-minute increments in the same manner as leave. The use of credit hours is subject to prior supervisory approval.
- G. Full-time employees can carry over up to twenty-four (24) credit hours from pay period to pay period. Part time employees can carry over up to one-quarter of their bi-weekly work requirement. Credit hours typically will be used in the following pay period.
- H. Subject to applicable law and regulation, an employee shall have the option to elect credit hours or overtime for the time worked in excess of eight (8) hours in a day. In no event shall the Agency use credit hours in lieu of paying overtime.

ARTICLE 24: HOLIDAYS

Section 24.01

Employees are entitled to compensation for all federal holidays. Holiday means any day designated as a holiday by a federal statute or declared by an Executive Order. Federal holidays that fall on weekend days (Saturday and Sunday) will be observed either on Friday or on Monday, as determined by the OPM.

Section 24.02

- A. If an employee is required to work on the day observed as the holiday, he/she shall receive holiday premium pay for regularly scheduled, non-overtime tours of duty, not to exceed their normal tour of duty hours. Employees who are required to work on a holiday receive their rate of basic pay, plus holiday premium pay at a rate equal to the rate of their basic pay, for each hour of holiday work pursuant to 5 U.S.C. § 5546(b).
- B. An employee who is required to perform work on a designated holiday is entitled to holiday pay for the hours worked.

Section 24.03

The Agency shall apply early dismissal announced for holidays uniformly office-wide unless certain employees have coverage requirements.

ARTICLE 25: LEAVE

Section 25.01

- A. Employees shall earn and Management will grant annual and sick leave in accordance with applicable laws and regulations. Careful consideration shall be given the desires and needs of the employees in granting annual and sick leave, subject to operational requirements.
- B. When supervisor charges leave for tardiness, the employee(s) will be so notified and will not work during the charged leave period.
- C. Employees will normally use the electronic time and attendance system, currently WebTA or a manual Application for Leave (OPM-71) for requesting scheduled leave. A request for leave approval does not guarantee that leave will be granted. Personnel shortages, conflicting requests, overtime, etc., may necessitate a change in leave periods or cancellation of approval leave. If leave is denied, the supervisor must be given a reason for the denial.
- D. Except in emergency situations, leave used for personal purposes shall be requested and approved in advance to permit careful scheduling of leave for all employees concerned

and to meet the needs of the work unit.

- E. In the event of a death in the immediate family of any employee, Management will make every effort to grant annual leave, sick leave (or leave without pay if there is no accrued annual or sick leave) as requested.

Section 25.02

- A. The Agency has determined that annual leave will be granted consistent with workload and staffing needs in a manner which permits each employee to take consecutive days off up to two (2) consecutive weeks or more of annual leave each year. The Agency shall make every reasonable effort to grant employee requests for annual leave consistent with workload and staffing needs. Full consideration will be given to each employee's preferred vacation period.
- B. Supervisors will consider and respond to requests for annual leave according to the following process:
 - 1. Leave requests will be responded to normally within 24 hours after the request is received.
 - 2. Employees may submit leave requests no earlier than one (1) year in advance of the requested leave date(s). Employees will be granted leave on a first come, first served basis based on the date the request is submitted. An employee's annual leave request will be granted unless the request conflicts with a previously approved request and is inconsistent with workload and staffing needs. The supervisor will inform the affected employee of the status of their request within a reasonable amount of time.
 - 3. When annual leave requests are submitted on the same date the leave will be approved based on first come first serve basis.

Section 25.03

- A. When an employee may be reasonably expected to know in advance of their starting time that he/she will not be at work on time, he/she will immediately notify the supervisor or designee. If the supervisor or designee is unavailable, the employee shall send notification by voicemail, e-mail or text detailing their need for leave. In addition, the employee will provide his/her immediate valid contact information and his/her expected time to report to work. Where it is not possible for the employee to notify in advance, due to circumstances outside employee's control, he/she shall provide notification as soon as possible. The supervisor will not unreasonably deny the employee's request.
- B. In unusual or exceptional circumstances where an employee is temporarily incapacitated, the employee shall request sick leave at the earliest practicable time.

Section 25.04

Upon advance request, the Agency shall make every reasonable effort to grant, consistent with workload and staffing needs, an employee's request for annual leave that occurs on a religious holiday.

Section 25.05

- A. The Agency agrees annual leave requested by the employee shall be scheduled and approved in accordance with 5 C.F.R. § 630.308, so employees will not lose annual leave at the end of the leave year whenever possible, consistent with work requirements. Employees may carry over annual leave, not in excess of two hundred forty (240) hours, at the end of the leave year if the annual leave was approved and scheduled in advance and the employee was prevented from using the leave due to a business exigency and/or illness. In accordance with law, rule, and regulation, an employee may also carry over annual leave due to administrative error which results in annual leave being forfeited through no fault of the employee.
- B. To avoid leave forfeiture, 'use or lose' annual leave must be requested no later than three (3) pay periods prior to the end of the leave year. Annually the Agency will notify all employees advising and reminding them of the regulations concerning "use or lose" annual leave and the need to request annual leave to avoid unintended forfeiture of such annual leave.
- C. Annual leave may be restored if such leave was approved by the third pay period prior to the end of the leave year and was later denied and forfeited. An employee's leave may be restored if forfeited due to an administrative error that resulted in annual leave being forfeited through no fault of the employee.

Section 25.06

When leave has been requested and approved, the Agency will not rescind approval absent an emergency situation, as defined by 5 U.S.C. § 7106 (a)(2)(D) or unanticipated workload or staffing needs. When previously approved leave must be canceled, the employee will be notified and will be advised of the change in writing and be provided an explanation as to why the action was taken. Every reasonable effort shall be made to accommodate the employee to reschedule his/her leave. The Agency will make every reasonable effort not to cancel previously approved leave, particularly where an employee's expenses are non-refundable, consistent with this Agreement.

Section 25.07

- A. The granting of advanced annual leave by the Agency is discretionary. However, the Agency may grant advanced annual leave, when the employee requesting advanced annual leave:
 - 1. Is eligible to earn annual leave;
 - 2. Does not request more advanced annual leave than would be earned during the remainder of the leave year or for the remainder of the period during which the employee will be employed, such as a term limited appointment;

3. Is not on a leave restriction letter or has not been the subject of a performance or conduct based action within the last twelve (12) months; and
 4. Is expected to return to work after having used the leave.
- B. As annual leave is earned by the employee, the earned annual leave will be used to repay any outstanding advanced annual leave balance, or the employee may repay any outstanding balance.

Section 25.08 LWOP

The Agency will consider all employee applications for LWOP. The Agency will administer LWOP equitably and approval or disapproval of employee requests will be made with due consideration of personal hardship and the needs of both the Agency and the employee in accordance with applicable laws, regulations, and this Agreement.

ARTICLE 26: SICK LEAVE

Section 26.01

Employees will earn sick leave in accordance with applicable statutes and regulations. Employees may utilize sick leave in fifteen (15)-minute increments. Employees may not be charged sick leave without consent.

Section 26.02

- A. Approval of sick leave will be granted to employees when they are incapacitated for the performance of their duties by such reasons as sickness, injury, or pregnancy.
- B. Sick leave will be granted for contagious diseases as set forth in applicable statutes and regulations. Sick leave will generally be granted for medical, dental, or optical examination or treatment when required and requested prior to the beginning of the absence.
- C. The Federal Employees Family Friendly Leave Act authorizes covered full-time employees to use a total of up to 40 hours (5 workdays) of sick leave per year to (1) give care or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such a condition, would justify the use of sick leave by the employee; or (2) make arrangements for or attend the funeral of a family member. In addition, a covered full-time employee who maintains a balance of at least 80 hours of sick leave may use an additional 64 hours (8 workdays) of sick leave per year for these purposes, bringing the total amount of sick leave available for family care or bereavement purposes to a maximum of 104 hours (13 workdays) per year.
- D. When an employee may be reasonably expected to know, in advance of their starting time that he/she will not be at work on time, he/she will immediately notify the supervisor or designee. If the supervisor or designee is unavailable, the employee shall send notification by voicemail, e-mail or text detailing their need for leave. In addition, the employee will provide his/her immediate valid contact information and his/her expected time to report to work. Where it is

not possible for the employee to notify in advance due to circumstances outside the employee's control, he/she shall provide notification as soon as possible. The supervisor will not unreasonably deny the employee's request.

- E. In unusual or exceptional circumstances where an employee is temporarily incapacitated, the employee shall request sick leave at the earliest practicable time.

Section 26.03

- A. Employees may be required to furnish administratively acceptable evidence to the supervisor or designee to substantiate a request for approval of sick leave if sick leave exceeds three (3) consecutive workdays or a reasonable basis exists to believe sick leave abuse is occurring or in accordance with a leave restriction memorandum. Medical certificates must:
 - 1. Include a statement that the employee is under the care of physician;
 - 2. Include a statement that the employee was incapacitated for duty and the days the employee was incapacitated;
 - 3. Include information concerning the expected duration of when the employee was unable to work; and
 - 4. Must be signed by or contain the stamped signature of the medical provider.
- B. Where the Agency has a reasonable basis to question whether an employee is properly using sick leave (e.g., when sick leave is used frequently or in unusual patterns or circumstances), the Agency may request that the employee provide an explanation. Absent a reasonably acceptable explanation, the employee may be orally counseled that continued frequent use of sick leave, or use in unusual patterns or circumstances, may result in a written requirement to furnish acceptable documentation for each subsequent absence due to illness or incapacitation for duty, regardless of duration.
- C. If a reasonable basis continues to exist for questioning an employee's use of sick leave, the employee may be notified in writing that for a stated period (not to exceed six (6) months), the employee is on sick leave restriction. A sick leave restriction is a series of instructions establishing the specific requirements for the use of sick leave. This includes that no request for sick leave, or other leave in lieu of sick leave, will be approved unless supported by administratively acceptable medical evidence, which will be submitted to a representative designated by the Agency. Any such written notice will describe the frequency, patterns, or circumstances which led to its issuance. A sick leave restriction will be rescinded at the end of the period if the employee fully complies with the requirements of the restriction. A sick leave restriction may be extended an additional six (6) months if the employee fails to fully comply with the requirements of the restriction. Such sick leave restriction may be extended if the circumstances warrant it.
- D. The issuance of sick leave restriction shall be subject to the grievance and arbitration provisions of this Agreement.

- E. Employees who, because of illness, are released from duty, and are not subject to the restrictions of *Section 28.03(C)* above, will not be required to furnish administratively acceptable medical evidence to substantiate sick leave for the day released from duty. Subsequent days of absence will be subject to the provisions of the subsections above.
- F. Employees who are not subject to the restrictions of the subsections above will not be required to furnish administratively acceptable medical evidence on a continuing basis if the employee suffers from a chronic condition which does not necessarily require medical treatment although absence from work may be necessary and the employee has previously furnished medical certification of the chronic condition. The Agency may periodically require further administratively acceptable medical evidence to substantiate an employee's continued use of this provision. Such evidence will be submitted to a representative designated by the Agency.

Section 26.04

- A. An approved absence, which would otherwise be chargeable to sick leave, will be charged to annual leave if requested by the employee and there is no just cause for the Agency to deny such request.
- B. An employee who becomes ill while on annual leave may have the time of illness changed to sick leave provided that the employee notifies the supervisor on the first day of the illness and otherwise complies with the requirements of *Section 28.02* of this article.

Section 26.05

- A. The Agency may advance sick leave when all of the following conditions are met:
 - 1. The employee is eligible to earn sick leave;
 - 2. The employee's request does not exceed thirty (30) workdays; or whatever lesser amount complies with applicable regulations;
 - 3. There is no reason to believe the employee will not return to work after having used the leave;
 - 4. The employee has provided administratively acceptable medical documentation of the need for advanced sick leave;
 - 5. The employee is adopting a child, or the employee or family member has a serious health condition, or to make arrangements necessitated by the death of a family member or to attend the funeral of a family member (e.g., spouse, parent, or child); and
 - 6. The employee is not subject to the restrictions of *Section 28.03(C)* above.
- B. Even if all of the conditions above have been met, the Agency may deny advanced sick leave to probationary employees during the first year of their probationary period.

- C. Advanced sick leave is not available for routine medical visits or minor illnesses.
- D. As sick leave is earned by an employee, the earned sick leave will be used to repay any outstanding advanced sick leave balance or the employee can repay it.

Section 26.06

The Agency will treat as confidential any medical information given by an employee in support of a request for sick leave. The Agency may disclose such information subject to its Privacy Act obligations, for work-related reasons on a need-to-know basis only.

Section 26.07

The Agency will implement this article consistent with 5 C.F.R. § 630.

ARTICLE 27: BEREAVEMENT LEAVE

- A. In accordance with applicable law and regulation the Agency will grant sick leave to an employee to make arrangements necessitated by the death of a family member or attend the funeral/memorial service of a family member.
- B. An employee is entitled to use up to one hundred four (104) hours (13 days) of sick leave each leave year for such bereavement purposes. For part-time employees, the amount of sick leave is pro-rated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week. For example, an employee who works twenty (20) hours a week may not be granted more than fifty-two (52) hours of sick leave for bereavement purposes.
- C. Normally, absence due to bereavement is charged to sick leave. An employee may not be charged LWOP or have any leave charged against his or her Family and Medical Leave Act (FMLA) entitlement, unless specifically requested by the employee and approved by the Agency.
- D. An employee has the option of using annual leave or LWOP for bereavement purposes.
- E. Family member, for the purposes of bereavement, is defined by applicable law and regulation:
 - 1. Spouse, and parents thereof;
 - 2. Sons and daughters, and spouses thereof;
 - 3. Parents, and spouses thereof;
 - 4. Brothers and sisters, and spouses thereof;
 - 5. Grandparents and grandchildren, and spouses thereof;

6. Domestic partner and parents thereof, including domestic partners of any individual in *items (2) through (5)* of this definition; and
 7. Any individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.
- F. The associated definitions for the term son or daughter, parent, domestic partner, and committed relationship are provided by 5 C.F.R.

ARTICLE 28: FAMILY MEDICAL LEAVE ACT (FMLA) AND FEDERAL EMPLOYEE PAID LEAVE ACT (FEPLA)

Section 28.01

- A. Employees may be entitled to leave under the provisions of the Family and Medical Leave Act in accordance with 5 USC §6381-6387 to a total of 12 administrative workweeks of unpaid leave during any 12-month period for:
- a) the birth of a son or daughter of the employee and in order to care for such son or daughter.
 - b) the placement of a son or daughter with the employee for adoption or foster care.
 - c) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.
 - d) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
 - e) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.
- B. An employee seeking to request leave for Family Medical Leave in accordance with Public Law 116-92, should submit such request four weeks in advance of the proposed start date. Approval of leave for this reason will be consistent with entitlements under FMLA and will be considered on its own merits.
- C. When an employee reports a medical condition, which may impede his/her ability perform the essential functions of the position, the Agency's Reasonable Accommodation Coordinator will work with the employee to initiate the interactive reasonable accommodation process outlined in DAO 215-10. Efforts will be made to accommodate employees in need of position modification on a temporary basis to the extent management's rights are not impeded.

Section 28.02

- A. Beginning October 1, 2020, the Agency will comply with the Federal Employee Paid Leave Act (FEPLA) which provides 12 weeks of paid parental leave in connection with a qualifying birth or placement (for adoption or foster care).

- B. Paid parental leave granted in connection with a qualifying birth or placement under FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement. In order to be eligible for paid parental leave under FEPLA, a Federal employee must be eligible for FMLA leave under 5 U.S.C. 6382(a)(1)(A) or (B) and must meet FMLA eligibility requirements.
- C. Paid parental leave under FEPLA is limited to 12 work weeks and may be used only during the 12-month period beginning on the date of the birth or placement involved. Within these 12 work weeks, paid parental leave is available as long as an employee has a continuing parental role with the child whose birth or placement was the basis for the leave entitlement.
- D. Under FEPLA, an employee may not use any paid parental leave unless the employee agrees in writing, before commencement of the leave, to subsequently work for the applicable employing agency for at least 12 weeks. This 12-week work obligation begins on the employee's first scheduled workday after such paid parental leave concludes.

Section 28.03

An employee may substitute paid time off that is annual leave, sick leave (as appropriate), compensatory time off, or credit hours for LWOP.

ARTICLE 29: OTHER ABSENCES

Section 29.01

An excused absence is an approved absence from duty without loss of pay and without charge to leave.

Section 29.02

As a general rule, when the voting polls are not open at least three (3) hours either before or after an employee's regular hours of work, such employee shall be granted an excused absence to vote which will permit the employee to report to work up to three (3) hours after the polls open or leave work up to three (3) hours before the polls close, whichever requires the lesser amount of time. If a manager rejects an employee's request for administrative time off to vote, the matter will immediately be referred to the employee's second-line manager for a determination whether the granting of administrative time off is appropriate.

Section 29.03

Employees are expected to report for work on time and be ready, willing, and able to perform the duties of their position during their assigned tour of duty. Infrequent instances of tardiness of short duration may be excused by the supervisor or designee for good cause. Habitual instances of tardiness may be charged absence without leave (AWOL) as determined by the supervisor or designee.

Section 29.04

In accordance with OPM and DOC leave regulations, administrative leave may be granted up to four (4) hours of excused absence, for blood donation to an American Red Cross-sponsored event or in emergency situations to local hospitals or blood banks of nonprofit institutions approved by the Agency based upon advanced request and consistent with workload and staffing needs. The Agency shall make reasonable efforts to release employees to donate blood.

Section 29.05

- A. Bone marrow and organ donation is covered by applicable law and regulations.
- B. To request such leave, the employee will provide documentation to their supervisor consistent with the regulatory requirements and this Agreement.

Section 29.06

Employees shall be granted court leave when called to jury duty or when serving as a witness on behalf of the federal, state, or local government.

Section 29.07

Subject to workload considerations, the Agency may grant an employee up to a total of two (2) hours of administrative leave per calendar year for the purposes of attending an Agency-sponsored health benefits fair, reviewing health benefits information and materials, and seeking supplemental retirement counseling. The Agency shall make reasonable efforts to release employees for such purposes.

ARTICLE 30: AWARDS

Section 30.01

- A. Each fiscal year, the Agency will grant awards annually in a fair, equitable, and objective manner in accordance with this Agreement and applicable rules and regulations. Incentive awards will be administered in accordance with Department of Commerce policies and directives and are linked to performance. Performance awards are not guaranteed, but rather are based on individual employee performance and agency funding. As part of the Agency's efforts to recognize outstanding work performance by employees, it conducts an annual employee recognition program where it highlights & promotes major accomplishments within the organization. This program also reinforces commitment to the core values influencing the work within MBDA. Award categories include: The National Director's Award, Leadership (Core Value), Professionalism (Core Value), Integrity (Core Value), Teamwork (Core Value), and Work-Life Balance (Core Value). In each respective category, an employee is recognized whose contributions during the fiscal year exemplify agency standards. The recognition comes with either a monetary or non-monetary award for each recipient.

Section 30.02

- A. The Employer will, if requested, annually provide the Union with an electronic data file, within the second quarter of the fiscal year, containing the following information on awards made under this Article: grade and step; summary rating scale; type of award received (i.e., performance award, QSI, time off award, incentive award, etc.) amount of award received; race, national origin, gender, and age (RNOGA).

Section 30.03

- A. The Agency and the Union agree that the performance awards program applicable to all bargaining unit employees will be provided as follows:
 - 1. Employees who receive a "Level 3 or higher summary rating will be eligible to receive Performance Award.
 - 2. To be eligible for a QSI, an employee must demonstrate a continuous level 5 performance. QSIs shall be reviewed and approved by an official with authority to do so.
 - 3. Employees who receive a "minimally successful" or unsatisfactory" summary rating will not be eligible for a Performance Award.
- B. Annually the Agency will provide the Union with an updated copy of the implementation plan developed by the Agency, including the established award ranges and/or amounts.
- C. Performance awards will be issued to employees as timely as possible; however, the Agency will make every reasonable effort not to exceed ninety (90) days after receipt of their annual performance ratings.

ARTICLE 31: DETAILS AND SPECIAL ASSIGNMENTS

Section 31.01

- A. A detail is defined as a temporary assignment of an employee to a different position for a specified period with the employee returning to regular duties at the end of the assignment. This includes positions at higher or lower grades. An employee who is on a detail is considered to be permanently occupying his/her regular position and is not required to meet the qualifications of the temporary position.
- B. 5 C.F.R. § 335.103(c)(1) provides:
 - 1. *Competitive actions.* Except as provided in paragraphs (c)(2) and (3) of this section, competitive procedures in Agency promotion plans apply to all promotions under § 335.102 of this part and to the following actions:
 - a. Time-limited promotions under § 335.102(f) of this part for more than 120 days to higher graded positions (prior service during the preceding 12 months under noncompetitive time-

limited promotions and noncompetitive details to higher graded positions counts toward the 120-day total). A temporary promotion may be made permanent without further competition provided the temporary promotion was originally made under competitive procedures and the fact that might lead to a permanent promotion was made known to all potential candidates;

- b. Details for more than 120 days to a higher-grade position or to a position with higher promotion potential (prior service during the preceding 12 months under noncompetitive details to higher graded positions and noncompetitive time-limited promotions counts toward the 120-day total);
 - c. Selection for training, which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion as specified in §410.302 of this chapter;
 - d. Reassignment or demotion to a position with more promotion potential than a position previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations);
 - e. 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; and
 - f. 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.
- C. If an employee has been assigned higher level duties improperly, the Agency will take such action as necessary to compensate the employee, as permitted by applicable law and regulations.
- D. Details of more than thirty (30) consecutive calendar days will be formally documented by the placement of an SF-50 in the employee's eOPF.

Section 31.02

- A. The Agency may affect details or non-competitive temporary promotions of one hundred twenty (120) days or less from among appropriately qualified employees (to be eligible for a temporary promotion, employees must meet minimum OPM qualifications and time-in-grade requirements).
- B. For permanent employees, volunteers for details of more than sixty (60) consecutive days will be solicited from interested and qualified employees in the order set forth in *Section 33.01(E)* above. If there are too many volunteers, selection will be made in descending order using SCD, unless competitive procedures are used to identify the best qualified candidate. If there are insufficient volunteers, the Agency will select from among appropriately qualified employees in reverse order of SCD.

- C. Volunteers for non-competitive temporary promotions of more than sixty (60) days, but less than one hundred twenty (120) consecutive days will be solicited from interested and qualified employees who meet minimum OPM qualifications and time-in-grade requirements for the temporary promotion. If there are too many volunteers, selection will be made in descending order using SCD.
- D. If the most senior qualified applicant received the same or a similar opportunity within the last twelve (12) months, he/she will be passed over until all other qualified volunteers have been selected.
- E. In cases where the Agency announces, in advance of the solicitation, that it will not pay travel or per diem expenses, consideration will be given to all qualified employees, including those who are willing to take the detail without these costs.

Section 31.03

- A. In the event that the Agency opts to split a detail between two (2) or more employees, all participating employees shall, if applicable, receive the higher rate for the period of time they perform the higher-level duties even if it is less than one hundred twenty (120) days.

ARTICLE 32: PROBATIONARY EMPLOYEES

Section 32.01

- A. The termination of a probationary employee is not subject to the grievance or arbitration provisions of this Agreement.
- B. Employees in the competitive service serve a probationary period of twelve (12) months. However, a probationary employee may be terminated at any time during the period. During the probationary period, the employee's conduct and performance in fulfilling the duties of their position will be observed, and the employee may be separated from the Service in accordance with law and applicable regulations.

Section 32.02

All notices to separate a probationer will contain a statement concerning the employee's right to appeal, in accordance with law and regulation, to the MSPB, EEOC, or other federal agencies, if the claim is within its jurisdiction.

Section 32.03

Prior to receiving notice of termination, probationary employees may choose, up to the effective date of their termination, to submit a letter reflecting a voluntary resignation.

Section 32.04

If performance issues arise during the probationary period, the supervisor shall raise any such issues with the employee in order to improve the employee's performance.

ARTICLE 33: REASSIGNMENTS

Section 33.01

- A. A “reassignment” is defined as any change from one position to another without promotion or change to a lower grade. The Agency may direct a reassignment as an exception to *Section 39.02* below when required by law, regulation, budget, to settle an outstanding EEO or other case, or other legitimate reason.
- B. The parties shall work together to minimize the adverse impact in employees involuntarily reassigned/realigned under this article

ARTICLE 34: WORKERS COMPENSATION

Section 34.01

Employee(s) and/or witness(es) should report all on-the-job injuries immediately or as soon as possible to the Agency.

Section 34.02

The Agency will provide the employee or her/his representative (upon designation by the employee in writing to the supervisor) the proper form(s) in paper or electronic format and assistance required for medical treatment and/or claim for benefits to be filed with the Office of Workers’ Compensation.

Section 34.03

The Agency will provide employees or their representatives (upon designation by the employee in writing to the supervisor) access to documents concerning workers’ compensation benefits available, as well as procedures for filing for benefits.

Section 34.04

At the time an on-the-job injury or illness occurs, the Agency will assist an employee to get necessary emergency or appropriate medical treatment.

Section 34.05

The Department’s OWCP provides guidance when an employee has been on workers’ compensation benefits (OWCP) for over one (1) year with no anticipated return to full duty and have been removed from the agency rolls that they should apply for disability retirement to protect themselves if they lose FECA benefits. We will refer an injured worker to their Benefit/Retirement office for the process of disability retirement.

ARTICLE 35: TELEWORK

Section 35.01

An employee's official duty station is their official workplace. Use of a workplace other than the official workplace requires approval under Agency policy. The Agency encourages the use of alternative workplaces, including telework when consistent with the work to be performed, the mission of the Agency and the needs of the individual employee's organization. Employee participation in the telework program is voluntary, and the Agency shall not compel an employee's participation. The telework program is governed by the Telework Enhancement Act of 2010 and applicable laws, rules, regulations, and policies consistent with this Agreement.

Section 35.02

Employees may request to telework for up to two (2) days per workweek.

Section 35.03

- A. All employees whose position is eligible for telework may apply for telework unless they:
 - 1. Have been officially disciplined for being absent without permission for more than five (5) days for any calendar year; or
 - 2. Have been officially disciplined for violation of subpart (G) of the Standards of Ethical Conduct of Employees of the Executive branch for reviewing, downloading, or exchanging pornography, including child pornography on a federal computer or while performing Federal Government duties; or
 - 3. Have less than a fully successful (satisfactory) performance rating at any time during the rating period and have been formally notified.
- B. An employee who wishes to telework will initiate a request to telework through their immediate supervisor and may do so at any time. The employee will submit the appropriate forms and take the required annual training to participate in the telework program.
- C. Upon receipt of the request, the supervisor or designee will evaluate the employee's and position's suitability for participating in the program. The supervisor will review the application form with the employee and will approve or disapprove the telework request within seven (7) calendar days. In the case of the denial of a request to telework, the supervisor will provide a written explanation on the form of the reasons for the denial.
- D. If approved, the employee and supervisor or designee will enter into a telework agreement. The Agency will retain the completed and signed agreement. A copy will be provided to the employee.

Section 35.04

- A. Telework policies and procedures may have no impact on the current work schedule provisions governing covered employees. Employee teleworkers will work tours of duty that are consistent with their tour of duty at their Agency workplace. Supervisors or designees will approve telework schedules in advance to ensure that the employee's time and attendance can be properly certified and to preclude any liability for premium or overtime pay. An employee already on a flexible schedule may vary their start and/or stop time with supervisory approval. An employee working a compressed schedule (e.g., 5-4-9, 4-10) is not eligible to vary start and/or stop times.
- B. Time and attendance reporting procedures will remain the same for employees who telework. Employees will document days and hours spent teleworking by entering the appropriate codes on their electronic time sheet each pay period.
- C. During the regular duty hours, absences from the alternative work site (e.g., visits on official business to attend meetings or use of annual or sick leave) will be coordinated with and approved by the supervisor or designee at the earliest time practicable.
- D. All rules governing premium pay apply to teleworkers. Employees will receive overtime or compensatory time off, when ordered and approved in advance, by the supervisor or designee, in accordance with *Article 25: Overtime and Compensatory Time*.
- E. Employees are expected to attend training, mandatory meetings, meetings where in-person attendance is essential, and workshops at the office or other sites regardless of whether they are working within their approved telework location.

Section 35.05

- A. Intermittent (ad hoc) telework is a flexible workplace arrangement that may be approved on a short-term basis for a work situation of limited duration (one (1) to five (5) days) when an employee has a telework agreement in place. Intermittent telework must be approved in advance by the supervisor or designee. Examples of intermittent telework include telework as a result of inclement weather, special work assignments or emergency.

Section 35.06

- A. Employees who are approved to be teleworkers will use a government-issued laptop computer, configured in accordance with specifications established by the Agency, if available. Agency-provided equipment must not be altered or upgraded in any way except by Information Technology staff. The Agency will not be liable for damages to an employee's personal or real property while the employee is working at the telework site. Employees will comply with the applicable Agency Information Technology Policies when working at a telework site.
- B. If there is a problem with the hardware or software applications on the teleworking equipment, the employee is required to contact their immediate supervisor or designee to report the problem. Support may be provided via the telephone during normal business hours. Teleworkers should not expect after-hours and weekend support. If the problem cannot be

resolved over the telephone, the employee is required to bring the equipment on-site the next workday so that the problem can be resolved.

- C. Approved teleworkers will be required to obtain and maintain internet access through an internet service provider. Access and use of any Agency equipment, software, or internet connection is subject to applicable Agency policies.
- D. Employees need to ensure that they can receive telephone calls while working at the telework site, including during those times the employee is utilizing the internet access. While teleworking, an employee must be able to be reached at the phone number provided in the telework agreement during their hours of duty.
- E. Teleworkers will ensure that all Agency records and information (electronic and hard copy) are protected under the terms of the Privacy Act and Agency information security requirements.
- F. Teleworkers are responsible for taking reasonable precautions in preventing any loss or damage to equipment issued to them.

Section 35.07

If an employee is teleworking and the regular duty station closes due to an emergency situation on the telework day, the teleworker will continue to work until the end of the scheduled workday. If there is an emergency situation (e.g., inclement weather or power outage) at the telework site when the employee is teleworking and the employee's main office is closed due to the emergency situation, the employee may request Weather and Safety Leave in accordance with the Administrative Leave Act of 2016. If there is an emergency situation at the telework site when the employee is teleworking and the employee's main office remains open, the employee may return to the main office, request an alternative work location or request appropriate leave. Whether an emergency situation exists is the exclusive determination of the Agency.

Section 35.08

Telework may not be revoked arbitrarily (i.e., for reasons other than listed in 36.03 (A) 1-3). If an employee's telework agreement is revoked, they may appeal the decision to the MBDA Chief Operating Officer with a copy to the Labor Relations Specialist assigned to MBDA. If the revocation is sustained, the Chief Operating Officer will provide their rationale for the decision.

Section 35.09

Application of this telework agreement may vary by unit or location, but related policies must support efficiency of service. The number of telework days per week will not vary by unit or location unless renegotiated by mutual consent of both parties.

Section 35.10

Employees understand they are covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at the regular office or the telework site. The employee

agrees to notify the supervisor as soon as practicable usually within twenty-four (24) hours of any accident or injury that occurs at the telework site and to complete any required forms. The supervisor or designee will investigate such a report as required by the regulations of the Office of Worker's Compensation and Agency Policy. The government will not be liable for damages to an employee's personal or real property during the course of performance of official duties or while using government equipment in the employee's telework site, except to the extent the government is held liable by Federal Tort Claims Act claims or claims arising under the Military Personnel and Civilian Employees Claims Act. Matters arising under this section are not grievable nor are they arbitrable under this Agreement.

ARTICLE 36: OUTSIDE WORK OR ACTIVITY

Section 36.01

- A. Outside work or activities are permitted unless they are prohibited by statute or regulation or would require (to avoid a conflict of interest) the employee's disqualification from matters central or critical to the performance of his or her official duties.
- B. Employees shall obtain written approval from a DOC or MBDA ethics Counselor before engaging in outside paid or unpaid work with a prohibited source as defined by 5 C.F.R. § 2635.203.
- C. Employees will not engage in any outside work or activity in which they are identified as a DOC or MBDA employee without obtaining prior approval from MBDA. All outside work must take place outside official duty hours or while on authorized leave.
- D. Teaching, speaking, and writing as part of outside work or activity must be in compliance with 5 C.F.R. § 2635.807; § 3501.105; the current DOC Ethics guide and MBDA Ethics policies; and this Agreement. Employees are encouraged to consult with the MBDA ethics counselor prior to engaging in teaching, speaking, and writing work or activity.
- E. Should the Agency issue any supplemental standards, it will notify the Union and negotiate as appropriate prior to effectuating the proposed standards.
- F. Consistent with 5 C.F.R. § 2635, disciplinary action will not be taken against an employee who has engaged in outside work or activity in good faith reliance upon the advice of the ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.
- G. If it is later determined the previously approved outside work or activity is in violation of law or regulation or it is a conflict of interest, the employee will be given notice in writing to cease such employment immediately, but no later than fifteen (15) calendar days from receipt of the notice.
- H. Upon notification of a violation of a prohibition contained in law, or the determination that relevant facts were withheld by the employee at the time the employee sought ethics advice (and the non-disclosed facts would have resulted in different advice provided to the employee), the employee will immediately cease the outside work or activity.

- I. When an employee knows or believes a change in the assigned duties or other changes may have a material impact on the advice previously provided by the ethics counselor, the employee shall submit an updated request for approval to engage in the outside work or activity within seven (7) calendar days. And if the request is disapproved, the employee will cease such work or outside activity immediately, but not later than fifteen (15) calendar days.

Section 36.02

- A. The Agency will approve or disapprove an employee's request to engage in outside work or activity as soon as practicable, but not later than fourteen (14) calendar days from receipt of the employee's request or fourteen (14) calendar days from the receipt of additional information requested by the Agency. If a request is disapproved, the Agency will provide the employee with a written narrative explanation, setting forth the reason(s) for the disapproval. The written narrative explanation is in addition to the MBDA Ethics form. If a response is not received within the period prescribed, the request will be considered denied and be subject to the negotiated grievance procedure.
- B. A denial of a request to engage in outside work or activity may be grieved in accordance with this Agreement.

ARTICLE 37: TRAVEL AND PER DIEM

Section 37.01

- A. The Agency agrees to schedule travel during the regular work hours and workweek of the employee, to the maximum extent practicable. Employees may travel outside of their regular work schedule if they so choose and if authorized by the Agency. The time spent traveling outside the established workday results in the travel being considered hours of work for non-exempt employees, and is compensable, if it meets the appropriate provisions of Title 29 of the FLSA (e.g., travel results from an event which cannot be scheduled or controlled administratively).
- B. Employees traveling on their own time, at their option, are responsible for any additional costs resulting from travel deviations.

Section 37.02

If circumstances require an employee's attendance at a temporary duty station at a time too early to permit travel on that day during the employee's regularly scheduled working hours, the employee may, with supervisory approval, travel during regularly scheduled hours on the preceding day. With supervisory approval, if the preceding day is a non-workday, an employee may travel during the regularly scheduled hours on the last workday preceding the non-workday. If an employee chooses to do so, subsistence reimbursement and use of the government travel card will be limited to what the employee would have been entitled to if traveling on a non-workday.

Section 37.03

- A. Employees who are unable to return from temporary duty stations during normal duty hours may, with supervisory approval, return that evening or the following day during normal duty hours. An employee electing to travel the next day should return at the earliest practicable opportunity during the regularly scheduled hours of work.
- B. If the scheduling of a meeting is within the control of the Agency, and it is administratively feasible, the Agency will attempt to reschedule the meeting to avoid required travel on non-workdays. Emergency travel can be required on non-workdays.

Section 37.04

If employees are required to travel, the Agency will provide employees with as much advance notice as reasonably possible.

Section 37.05

In cases of emergency travel, an employee is expected to use the government-issued individual travel card to cover necessary official travel expenses. The Agency will accommodate a traveler who does not have a travel card through a cash advance or other government-provided means to avoid having an employee use personal funds to cover official travel expenses.

Section 37.06

- A. The Agency agrees to reimburse employees when in a travel status for authorized expenses incurred by them in the discharge of their official duties to the extent allowable by law and government-wide regulation.
- B. Official travel generally begins when the employee leaves home, the office, or other authorized point of departure and ends when the employee returns home, to the office, or the other authorized point of departure.
- C. A per diem allowance will not be allowed for travel within the employee's commuting area.

Section 37.07

When a privately owned vehicle is used for official business, the employee providing such automobile will be reimbursed in accordance with government travel regulations. In no case may an employee be required to use her/his privately owned vehicle in connection with official business.

Section 37.08

When an employee in a travel status becomes ill and is expected to remain so for any significant length of time, the Agency will cover all normal travel expenses in connection with returning that employee to her/his normal post-of-duty area as promptly as possible.

Section 37.09

- A. Time spent traveling will be considered hours of work and therefore compensable for employees non-exempt from the FLSA if:
 - 1. An employee is required to travel during regular working hours;
 - 2. An employee is required to drive a vehicle or perform other work while traveling;
 - 3. An employee is required to travel as a passenger on a one (1)-day assignment away from the official duty station; or
 - 4. An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.
- B. Time spent in a travel status away from the official duty station for employees exempt from the FLSA shall be deemed employment only when:
 - 1. It is within her/his regularly scheduled administrative workweek, including regular overtime work; or
 - 2. The travel:
 - a. Involves the performance of work while traveling;
 - b. Is incident to travel that involves the performance of work while traveling (e.g., deadhead travel in order to drive an empty truck back to the point of origin); or
 - 3. The travel results from an event that could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such an event to her/his official duty station (e.g., training scheduled solely by a private firm or job-related court appearance required by a court subpoena).

Section 37.10

- A. A copy of official MBDA travel regulations and/or guidelines and GSA travel regulations will be made accessible to employees on the Agency's Intranet site. These guidelines will include the appropriate use of government credit cards. All such regulations and guidelines will be explained to the employees upon request. The Agency agrees to provide the Union notice of changes to government travel regulations in accordance with *Article 9: Mid-term Negotiations*.

Section 37.11

- A. If an employee's position requires travel, the employee should consult their supervisor, sign up for associated training, and apply for a work travel credit card. The agency does not approve the employee's application for credit.

ARTICLE 38: CONTRACTING OUT AND WORK JURISDICTION

Section 38.01

The Agency's contracting-out practices will conform to applicable law, rule and government-wide regulations.

Section 38.02

If the Agency decides to contract out work that may result in the loss of work normally performed by bargaining unit employees, which is not otherwise covered by OMB Circular No. A-76, the Agency will notify National NFFE and bargain to the extent required by law and this Agreement.

- A. The Agency shall provide NFFE a copy of each Request for Proposal (RFP) within fifteen (15) days of issuance for any solicitation of services that may result in the loss of work normally performed by bargaining unit employees, which is not otherwise covered by A-76.

ARTICLE 39: TRAINING

Section 39.01

- A. The Agency agrees to provide employees with training necessary to assist employees in the performance of official duties, subject to budgetary and workload considerations.
- B. The Agency recognizes that training for staff consists of participation in conferences, workshops and other activities in which employees share their own work and are exposed to the current scholarship in their fields. Therefore, the Agency encourages employees to participate in professional activities of their occupation. The Agency will consider requests for duty time, use of earned credit hours or compensatory time, as appropriate, to participate in training, professional meetings, professional development, conferences, or continuing education courses.

Section 39.02

Supervisors encourage employees to develop a written Individual Development Plan (IDP) to enhance the employee's development in her/his current position. This plan will identify development needs and suggested activities to meet those needs. Such activities may include formal classroom training, on-the-job training, self-study, developmental job assignments, and other activities. When working with the employee in preparing the employee's IDP and at other times, the supervisor will counsel employees and provide feedback concerning their goals, objectives, knowledge and skills, and development activities. When an employee learns of a training opportunity in which they are interested, the employee should discuss the opportunity with the supervisor.

Section 39.03

This section addresses training courses/conferences requests not specifically related to an employee's position or IDP but furthering an Agency goal. When budgetary and workload considerations permit employee training, the Agency will consider such factors in selection of training and attendees, including but not limited to:

- A. Workload and mission requirements;
- B. Whether an employee has made a request or requests for particular training or to attend a training conference;
- C. The value of the conference/course offering to the employee and employing organization;
- D. The extent to which the employee has not had the opportunity to attend similar course/conferences in the past;
- E. Whether the employee is an officer or member of the organization presenting the conference/course;
- F. The extent to which the employee can share/disseminate materials and information from the conference/course upon returning to the duty station, through formal and informal channels.

Section 39.04

- A. Employees have an individual responsibility for researching training opportunities that can increase their potential or enhance their opportunity for advancement.
- B. When new technology or equipment is introduced that creates the need for different knowledge, skills, or abilities, the Agency agrees to offer training to those employees affected, within budgetary limitations. In the event the Agency introduces new technology and the Agency has determined training is necessary, if the Agency does not provide training, employees shall not be assessed on competencies related to the use of such technology, until training is received.

Section 39.05

- A. All training and all related expenses should be submitted by the employee, approved by the supervisor, and authorized within a reasonable amount of time, generally at least thirty (30) calendar days in advance of the starting date of the training. Requests for training should cite appropriate sections of the employee's annual performance appraisal and/or the employee's IDP.
- B. Once an employee is authorized/approved for a training program, the training course/program is a work assignment.
- C. Employees who fail to satisfactorily complete training for which the costs have been approved and authorized by the Agency will reimburse the Agency for all tuition and related expenses that it incurred for such training. If the reason for non-completion of the training is beyond the employee's control, the Agency will waive this requirement.
- D. An employee who is unable to attend training for which he/she has been authorized shall inform the Agency of her/his inability to complete the training as soon as possible after becoming

aware of the impediment to attendance. If the Agency is unable to obtain a refund of fees paid or substitute another employee, *Section 50.05(C)* above applies.

ARTICLE 40: DUES WITHHOLDING

Section 40.01

- A. This article is for the purpose of determining the process for the voluntary allotment of Union dues through biweekly payroll deduction(s).
- B. This article covers all eligible employees:
 - 1. Who are members in good standing of the Union;
 - 2. Who have voluntarily completed Standard Form 1187, Request for Payroll Deduction for Labor Organization Dues; and
 - 3. Who receive compensation sufficient to cover the total amount of the allotment.
- C. The Agency shall automatically withhold, on a biweekly basis, the appropriate amount of dues from any bargaining unit employee who has submitted an SF-1187.

Section 40.02

Certification and remittance procedures shall be as follows:

- A. Dues will be wire transferred to the bank account designated by the Union;
- B. The Union's National President or a chapter officer who has submitted proper notification to the servicing personnel office is authorized to make the necessary certification of SF-1187.

Section 40.03

The Union will:

- A. Inform and educate its members on the voluntary nature of the system for allotment of Union dues, including the conditions under which the allotment may be revoked;
- B. Purchase and distribute Form SF-1187;
- C. Inform the Agency of changes in the certification and remittance procedures;
- D. Forward properly executed and certified SF-1187s and SF-1188s to Agency on a timely basis;
- E. Forward an employee's revocation (SF-1188, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues) to the Agency on a timely basis when such revocation is submitted to the Union;

- F. Inform the Agency of the name of any participating employee who has been expelled or ceases to be a member in good standing in the Union within ten (10) calendar days of the date of such final determination; and
- G. Inform the Agency of any change in the formula for membership dues and provide updated electronic calculation tables to be used in processing dues withholding.

Section 40.04

The Agency is responsible for processing voluntary allotment of dues in accordance with this article. The Agency will:

- A. Upon receipt of a properly certified SF-1187 or SF-1188, verify receipt by email to the NFFE Chief Steward.
- B. Withhold dues on a biweekly basis;
- C. Provide to the Union or designee monthly, generally within six (6) calendar days of the close of a pay calculation, remittances and reports as follows:
 - 1. Transmit to the Union the total amount deducted for all and total amount remitted to the Union;
 - 2. The Agency also will provide the following information, via electronic file transfer:
 - a. Employees' names in alphabetical order by last name;
 - b. Last four digits of an employees' social security numbers, if available (the Union has the responsibility for ensuring the confidentiality of this information);
 - c. Grade & step;
 - d. Division/office;
 - e. Adjusted base pay (including locality pay);
 - f. Pay plan;
 - g. Total amount of dues withheld;
 - h. Pay period;
 - i. Pay period ending date;
 - j. Duty city (four digit # field);

- k. Duty state (two digit # field); and
 - l. Duty county (three digit # field).
- D. Discontinue allotments when required by OPM rules and regulations;
- E. Notify the employee and the Union when an employee is not eligible for an allotment, along with the reasons for the decision (e.g., a temporary promotion out of the unit);
- F. Withhold new amounts of dues upon certification from the Union's National President, provided that the formula for withholding has not been changed during the past twelve (12) months.

Section 40.05

The effective dates for actions under this Agreement are as follows:

- A. The SF-1187 will be submitted to Enterprise Services as soon as practical but no later than the pay period following receipt of the SF-1187 by the Agency.
- B. Changes in the formula for dues withholding will begin the first pay period designated by the Union's National Office (this formula shall be provided to the Agency a minimum of thirty (30) days prior to the effective date of the change).
- C. Revocation notices for employees who have had dues allotments in effect for more than one (1) year will be submitted to the MBDA Human Resources Office during pay period fifteen (15) each year. The revocation will be effective within two (2) pay periods following submission to the HR Office. Revocations may only be affected by submission of a completed SF-1188 that has been initialed by the chapter president or his or her designee. If the SF-1188 is not initialed, the Agency shall return the SF-1188 to the employee and direct the employee to the Chapter President for initialing. To revoke such dues withholding, employees will have had dues withheld for at least one (1) year.
- D. The Agency shall reactivate the dues allotments in effect for employees who return to their permanent positions from details or temporary appointments in non-bargaining unit positions within one (1) pay period after the employee returns. Any employee with a new appointment, must make a new election pursuant to *Section 52.04* above.
- E. Termination due to loss of membership in good standing will be effective on the beginning of the first pay period after the date of receipt of notification by the Agency.
- F. For termination due to separation or movement out of the bargaining unit, dues deduction will cease the day prior to the effective date of the action.

Section 40.06

The Agency will work with the HR servicing office to request the deduction of Union dues from an employee's back-pay award when the employee has an allotment for dues withholding in effect at the time of the action giving rise to the back pay.

Section 40.07

On a quarterly basis, the Agency will provide the Union with a report of any bargaining unit employees who have retired or separated from the Agency's employ.

ARTICLE 41: LABOR MANAGEMENT COOPERATION

Section 41.01

In order to promote effective labor-management relations, it is agreed that representatives of the parties to this Agreement will form a committee and confer on a regular basis as outlined herein to exchange information on matters of mutual concern and interest. The parties will attempt to resolve problems in the spirit of cooperation.

Section 41.02

The parties agree that to accomplish the goals of *Section 53.01* above, a labor management relations committee shall be established as follows:

- A. Scope: The Committee is not a forum for grievances or a forum for negotiations. Subjects may include but are not limited to workplace issues such as safety and health, training, and working conditions of employees.
- B. Scheduling: The parties shall exchange an agenda for a session in advance. The provision of an agenda by one (1) party to the other will prompt the scheduling of a committee session within usually no more than thirty (30) calendar days. Such meetings will be held on a quarterly basis and may occur more frequently as mutually agreed.
- C. Conduct of Meetings: Meetings pursuant to this article shall be held face-to-face unless mutually agreed otherwise.
- D. Membership: The Committee shall be composed of no more than eight (8) total members with an equal number of Agency designated and Union designated representatives. NFFE's Chief Steward within MBDA shall identify the Union's representatives upon submission of an agenda or within five (5) days of receiving an agenda from the Agency.

ARTICLE 42: TRANSIT SUBSIDY

Section 42.01

- A. The Agency will continue to subsidize a qualified employee's use of public transit by paying for transit passes up to the maximum extent allowed by applicable law and published policies of the Department of Transportation. <https://transitapp.ost.dot.gov/index.cfm>
- B. The subsidy must be in a form not readily convertible to cash or used for purposes other than intended (e.g., fare cards, passes, tokens, or other instruments issued by authorized local transit authorities).
- C. Direct cash subsidies to employees are prohibited.

ARTICLE 43 ANTI-BULLYING

Section 43.01

Prohibited workplace harassment, which includes bullying, offensive comments/conduct, or discrimination, based on race, color, religion, sex (including sexual harassment and pregnancy discrimination), sexual orientation, gender identity, national origin; age (40 years of age and over), genetic information, or disability (physical or mental) or retaliation for protected EEO activity will not be tolerated. In addition, harassing conduct, where unwelcome verbal or physical conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, will not be permitted. For guidance on addressing claims of harassment can be found in the Department Administrative Order 202-955.

ARTICLE 44 TERM OF AGREEMENT

SECTION 1. This Agreement shall be in full force and effect for a period of four (4) years from the date of approval.

SECTION 2. At least sixty (60) days, but no earlier than ninety (90) calendar days prior to the expiration date, either Party may notify the other Party, in writing, of the intent to terminate or modify this Agreement. The written notice shall have attached the requesting Party's proposals for negotiation.

Negotiations will commence within five (5) weeks of the date of the original notice requesting negotiations. If negotiations proceed past the expiration date of the Agreement, the Agreement will automatically be extended until negotiations are concluded

SECTION 3. If neither Party serves notice to renegotiate this Agreement prior to its expiration, it will be automatically extended for another year.

SECTION 4. If, over the life of the Agreement, either Party believes that the Agreement, either Party believes that the Agreement would be more effectively implemented with the

modification of certain provisions, that Party may propose that such provisions be opened up for bargaining. If the other Party concurs, the provisions will be bargained.

FOR MANAGEMENT

Larry Crenshaw Jr.
Chief Negotiator
Minority Business Development Agency

Jeremiah Jones
Chief Operating Office
Minority Business Development Agency

FOR THE UNION:

Carmen West
Chief Shop Steward, NFFE Local 2

Angela Washington

Angela Washington
Co-Shop Steward, NFFE Local 2

For Pam Cox

Pamela Cox
Secretary, NFFE Local 2



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

U.S. DEPARTMENT OF COMMERCE
MINORITY BUSINESS DEVELOPMENT AGENCY
(Agency)

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES
(Labor Organization/Petitioner)

CASE NO. WA-RP-20-0021

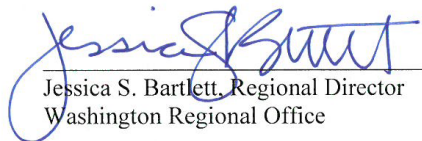
CERTIFICATION OF REPRESENTATIVE

An election was conducted in the above matter under the supervision of the undersigned Regional Director of the Federal Labor Relations Authority, in accordance with the provisions of Chapter 71 of Title 5 of the U.S. Code. A majority of the valid ballots has been cast for a representative for the purpose of exclusive recognition.

IT IS HEREBY CERTIFIED that the National Federation of Federal Employees has been designated and selected by a majority of the employees of the above-named Agency, in the unit described below, as their representative for purposes of collective bargaining, and that pursuant to Chapter 71 of Title 5 of the U. S. Code, the named labor organization is the exclusive representative of employees in the following appropriate unit:

Included: All nonprofessional employees of the U.S. Department of Commerce, Minority Business Development Agency headquarters.

Excluded: All professional employees, supervisors, management officials, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).


Jessica S. Bartlett, Regional Director
Washington Regional Office

Dated: May 29, 2020