Agreement

Between

UNITED STATES
PATENT & TRADEMARK OFFICE

AND

THE NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 243

EFFECTIVE DATE

January 15, 2025

APPROVAL AND IMPLEMENTATION OF COLLECTIVE BARGAINING AGREEMENT BETWEEN THE UNITED STATES PATENT AND TRADEMARK OFFICE AND THE NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 243

We are pleased to announce the implementation of the Collective Bargaining Agreement between the United States Patent and Trademark Office (USPTO) and the National Treasury Employees Union (NTEU), Chapter 243, effective on January 15, 2025.

We believe this agreement will jointly benefit the bargaining unit employees and the Agency. We would also like to thank the members of the negotiating teams who worked tirelessly to get this agreement completed. Hopefully, the cooperation exhibited in concluding this agreement will be a building block for a productive relationship for many years to come.

1/15/2025 — Date

Derrick Brent
Acting Under Secretary of Commerce for
Intellectual Property and
Acting Director of the
United States Patent and Trademark Office

Doreen P. Greenwald 1/15/2025 — Date

Doreen P. Greenwald
National President
National Treasury Employees Union

1/15/2025 — Date

Frederick Steckler
Chief Administrative Officer
United States Patent and Trademark Office

1-15-2025 — Date

Harold Ross
President
NTEU, Chapter 243

Agency Head Approval

In accordance with 5 U.S.C. Section 7114(c), I approve the Collective Bargaining Agreement between the United States Patent and Trademark Office and the National Treasury Employees Union, Local 243.

1/15/25 — Date

Derrick Brent
Acting Under Secretary of Commerce for
Intellectual Property and
Acting Director of the
United States Patent and Trademark Office

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PREAMBLE

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

A. safeguards the public interest,

B. contributes to the effective conduct of public business, and

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

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

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; and

WHEREAS the well being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and Office management; and

WHEREAS the Office and the Union also agree that the dignity of employees will be respected in the implementation and application of this Agreement, as well as in related personnel policies and practices; and

Now therefore this agreement and amendments thereto as may be executed hereunder from time to time together constitute a collective bargaining agreement, hereinafter called the "Agreement," by and between the United States Patent and Trademark Office, hereinafter called the "Office," and the National Treasury Employees Union, hereinafter called the "Union," as defined in 5 U.S.C. §7103(a)(4). This general agreement and any amendments thereto shall constitute an agreement in accordance with the Civil Service Reform Act of 1978, Public Law 95-454, herein referred to as the Act, and is subordinate to said Act.

RECOGNITION AND COVERAGE

ARTICLE 1 [Back to ToC]

SECTION 1:

In accordance with the exclusive recognition granted under the Act on April 10, 1985, the Commissioner hereby reaffirms the recognition of the Union as the exclusive representative of the employees in the following bargaining unit, hereafter called the "Unit":

All nonprofessional employees of the Office excluding:

A. All professional employees;

B. Management officials;

C. Supervisors; and

D. Employees described in 5 U.S.C. §7112 (b) (2), (3), (6) and (7).

SECTION 2:

The parties agree that the terms and conditions of the Agreement apply only to positions within the Unit.

PRECEDENCE OF LAW AND REGULATIONS

ARTICLE 2 [Back to ToC]

SECTION 1:

In the administration of all matters covered by this Agreement, the Union and the Office are governed by the following: existing and future laws, Government-wide and DOC rules and regulations in effect upon the effective date of this Agreement, and Government-wide and DOC rules and regulations issued after the effective date of this Agreement that do not conflict with this Agreement. Where the terms of this Agreement conflict with Government-wide and DOC rules and regulations issued after the effective date of this Agreement, the term of this Agreement shall be controlling.

SECTION 2:

To the extent that provisions of the Office's published regulations and policies are in conflict with this Agreement, the provisions of the Agreement will govern. Otherwise, published regulations and policies of the Office will govern.

(New Article based on 2024 Agreements)

DEFINITIONS

ARTICLE 3 [Back to ToC]

In the interpretation and application of the Agreement, the following words or terms, whenever used in the Agreement, shall have the following definitions:

A. "The Office" shall mean the Patent and Trademark Office or any of its management or supervisory officials.

B. "Department" shall mean the U.S. Department of Commerce.

C. "The Union" shall mean the National Treasury Employees Union National Office and Chapter 243.

D. "Negotiations" shall mean the process by which the Office and the Union present proposals and counterproposals in good faith and as equals, regarding matters deemed to be negotiable under the Act. The objective of such dealings shall be mutual agreement, and agreement reached via this process shall be reduced to writing.

E. "Consultations" shall mean the process whereby one party solicits and/or receives the views of the other party and gives these views fair and serious consideration prior to making a decision. This does not apply to national consultation rights set forth in 5 U.S.C. §7113.

F. "The Act" shall mean the "Civil Service Reform Act of 1978", or its successor statute.

G. "Computation of time" In computing any period of time prescribed or allowed in the Agreement, the day of the act, event, or occurrence from which the designated period of time begins to run shall not be included. When the day, or the last day fixed by any time period for taking action falls on a Saturday, Sunday or a holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or holiday.

H. "Days" shall mean work days, Monday thru Friday, excluding federal holidays, unless specified otherwise.

I. "Family member" for sick leave shall mean an employee's spouse or domestic partner and parents, thereof; grandparents, grandchildren, and spouses thereof; children (including adopted children) and their spouses; parents; brother(s) and sister(s), and their spouses and children, and any individual related by blood or affinity whose close association with the employee is equivalent of a family relationship, unless otherwise defined by law or regulation.

MANAGEMENT RIGHTS

ARTICLE 4 [Back to ToC]

SECTION 1:

In accordance with the Civil Service Reform Act of 1978, and subject to Section 2 of this Article, the Office retains the authority:

A. To determine the mission, budget, organization, number of employees, and internal security practices of the Office; and

B. In accordance with applicable laws:

1. To hire, assign, direct, layoff, and retain employees in the Office, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

2. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which Office operations shall be conducted;

3. 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; and

4. To take whatever actions may be necessary to carry out the mission of the Office during emergencies.

SECTION 2:

Nothing in this Article shall preclude the parties to this Agreement from negotiating:

A. At the election of the Office, 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;

B. Procedures which management officials of the Office will observe in exercising any authority under this Article; or

C. Appropriate arrangements for employees adversely affected by the exercise of any authority under this Article by such management officials.

MANAGEMENT OBLIGATIONS

ARTICLE 5 [Back to ToC]

SECTION 1:

The Office shall not:

A. Interfere with, restrain, or coerce an employee in the exercise of the rights assured by the Act or the Agreement;

B. Encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

C. Sponsor, control, or otherwise assist any labor organization, except that it may furnish customary and routine services and facilities under the Act when consistent with the best interests of the Office, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status, or as specifically provided for in the Agreement;

D. Discipline or otherwise discriminate against employees because they have filed a complaint or given testimony under the Act, statutory appeals and grievance procedures, or the negotiated grievance procedure;

E. Refuse to consult, confer, or negotiate as required by the Act or the Agreement;

F. Decide any matter which may present or appear to present a conflict of interest with respect to personnel policies, practices or conditions of employment. This determination will be made by the Office;

G. Fail or refuse to cooperate in impasse procedures and impasse decisions;

H. Enforce any subsequently issued rule or regulation (other than a rule or regulation implementing 5 U.S.C. 2302) which is in conflict with this Agreement;

I. Otherwise fail or refuse to comply with any provision of the Federal Service Labor-Management Relations Act.

SECTION 2:

The Office agrees to respond in a reasonable period of time to requests for pertinent information, meetings, consultations and negotiations, consistent with its obligations under the Act and this Agreement.

SECTION 3:

The Office reaffirms its policy of encouraging, whenever practicable, the maintenance of business-like behavior on the part of supervisors and the public toward employees.

UNION RIGHTS

ARTICLE 6 [Back to ToC]

SECTION 1:

As the exclusive representative of all employees in the unit, the Union shall be entitled to act for and to negotiate agreements covering all employees in the unit.

SECTION 2:

A. The Union shall be given the opportunity to be represented at any formal meeting or discussion between one or more representatives of the Office and one or more employees in the unit, or their representatives, concerning any grievance or any personnel policy or practices or other general condition of employment.

B. The Chapter President or his/her designee will be notified within a reasonable period following the scheduling of a formal meeting. Normally, such notice will not take place less than 48 hours prior to the scheduled meeting. The notice will include the date, time, location and topic to be discussed, as well as a written agenda if one has been prepared. This advance notice will be given unless the Office has been prevented from doing so due to an emergency. At those meetings where the Union has chosen to be represented, and so notifies management's representative, the attendance of the Union representative will be openly acknowledged by the Office at the beginning of the meeting. Furthermore, the Office will permit the Union representative to ask questions and to present a brief statement before the end of the meeting outlining the Union's position concerning the issue. Union representatives will conduct themselves in a professional and business-like manner. The Office reserves the right to summarize and close the meeting.

C. Performance evaluation and/or counseling sessions between a supervisor and/or management official and individual employees are not formal discussions within the meaning of this Section if the purpose of the counseling session is to give advice to the employee and/or the supervisor advises the employee that his/her actions violate the Agreement, laws, regulations or published policies and that if continued may result in disciplinary action being initiated. Upon request, the counseling official shall reduce the substance of the session to writing. If the employee disagrees with the written summary, he/she may submit his/her version of the session in writing, which shall become part of the record.

The Union shall have no right to be represented unless specifically invited by the supervisor or management official in response to an employee's request.

SECTION 3:

The Union shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the Office 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 representation.

SECTION 4:

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

SECTION 5:

A. The Office will provide written notice to the Union when a work function performed by bargaining unit employees has been identified for an A-76 review. The notice will identify the nature of the work function, the affected organizational component, and the number of employees in the organizational unit. This information will be updated on a regular and timely basis.

B. The Office agrees to provide the union a copy of the solicitation to bid for work at the same time it is published. The Union shall have the right to comment, and its comments will be given careful consideration by the Office prior to any decision regarding a proposal. The Union will have the right to negotiate the impact and implementation of any decision to contract out any bargaining unit work.

C. The Union will be given notice when a contract is awarded and informed of the impact on bargaining unit employees. The contract will not be implemented for 45 days from the date of the award.

UNION OBLIGATIONS

ARTICLE 7 [Back to ToC]

SECTION 1:

Pursuant to Section §7116(b) of the Civil Service Reform Act, the Union shall not:

A. Interfere with, restrain, or coerce any employee in the exercise by the employee of any right under the Act or this Agreement;

B. Cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this Agreement or the Act;

C. Coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

D. Discriminate against an employee with regard to the terms or; conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition;

E. Refuse to consult or negotiate in good faith with the Office as required by the Act;

F. Fail or refuse to cooperate in impasse procedures and impasse decisions as required by the Act and the Agreement;

G. Call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor management dispute if such picketing interferes with an agency's operations, or condone any such activity by failing to take action to prevent or stop such activity. Nothing in this Article shall prohibit informational picketing which does not interfere with the Office's operations.

SECTION 2:

The Union shall not deny membership to any employee in the unit except for failure to meet reasonable occupational standards uniformly required for admission or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership.

This paragraph does not preclude the Union from enforcing discipline in accordance with procedures under its constitution or by-laws, which conform to the requirements of the Act.

SECTION 3:

The Union shall be responsible for representing the interest of any employee or group of employees within the unit without discrimination and without regard to employee organization membership.

SECTION 4:

The Union supports the maintenance of a service oriented and businesslike attitude and behavior on the part of employees, particularly those dealing with members of the public, their supervisors, management officials, and their coworkers.

SECTION 5:

The Union agrees to give reasonable advance notice, normally no less than 5 days, to the Office of its intent to file an unfair labor practice complaint with the Federal Labor Relations Authority so as to allow an opportunity for informal disposition of the matter.

SECTION 6:

Personal information about an employee received by the Union in performance of its representational functions shall be safeguarded and treated as confidential by the Union in order to protect employee privacy.

EMPLOYEE RIGHTS

ARTICLE 8 [Back to ToC]

SECTION 1:

Each employee shall have the right to decide whether to join or assist the Union freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in the Civil Service Reform Act of 1978 or in this Agreement, such rights include the following:

A. The right to act for the Union in the capacity of a representative;

B. The right, in a representative capacity, to present the views of the Union to heads of Offices, departments and agencies or other officials of the Government, the Congress, or other appropriate authorities; and,

C. The right to engage in collective bargaining with respect to terms and conditions of employment through representatives of the Union.

SECTION 2:

Nothing in the 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.

SECTION 3:

The initiation of a grievance in good faith by an employee will not cause any reflection on his or her standing with his/her supervisor or on his/her loyalty or desirability to the Office. The Office will not impose any restraint, interference, coercion or discrimination, or reprisal against any employee in the exercise of his/her right to designate a Union steward for the purpose of representing the employee to any government agency or official other than the Office.

SECTION 4:

Each employee of the unit shall have the right to bring matters of personal concern, individually and privately, to the attention of appropriate officials of the Union, regardless of whether or not a grievance is ultimately filed in the matter.

SECTION 5:

An employee being interviewed by a representative of the Office in connection with either a criminal or non-criminal matter has certain rights when a representative of the Office, including any security guards or other contractor that is a representative of the Office, is conducting the interview. This section sets forth those rights and procedures.

A. Any discussion with employees by a representative of the Office which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. The employee, in such instance, has the right to have his/her Union representative at such meeting. If the employee requests representation, the Office will delay the meeting a reasonable period to permit the Union representative to attend.

B. If there is a disagreement between the employee and the Office representative as to the employee's right to Union representation, prior to the meeting, the parties will attempt an informal resolution of the representation question.

C. The Office will inform employees of their right to representation on an annual basis. This notice will be accomplished via a written memorandum distributed to each bargaining unit employee.

D. Upon request of either party, the Chief, Labor Relations or his/her designee and the NTEU Chapter President shall meet monthly, at the election of either party, at a mutually agreeable time. They will meet to discuss and try to resolve specific cases of violations of Article 8, Section 5 or instances of employee disruption and/or common resolution to the problem and make recommendations to the appropriate management or union official.

E. When an employee is interviewed by the Office, and the employee is the subject of the investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated and be informed whether or not the interview is related to possible criminal misconduct by the employee.

F. (Weingarten Rights). When the Office conducts an interview of an employee regarding a non-criminal matter and the employee is the potential recipient of any form of discipline or adverse action, the Office shall advise the employee of his/her right to union representation prior to the commencement of questioning.

G. (Third Party Witness Interviews). Prior to beginning interviews with employees who are being interviewed as third party witnesses, the Office shall inform the employee of the nature of the interview.

H. (Kalkines Rights). In an interview involving possible criminal matters, where prosecution has been declined by the appropriate authority, an employee will be required to answer questions only after the Office representative has provided the employee with the appropriate assurances that the employee will not be criminally prosecuted. Prior to

requiring the employee to answer questions under such circumstances, the Office shall inform the employee that his/her statements concerning the allegations during the interview cannot and will not be used against him in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview.

I. During investigatory interviews involving criminal conduct, an employee's refusal to respond to questions based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for disciplinary or adverse action unless the employee is given assurance that his or her answers may only be used for administrative purposes. If the employee receives such assurance, any refusal to answer to answer may be the basis for disciplinary action.

J. As part of the notification requiring an employee's attendance at an investigatory meeting, the Office will quote, in the body of the notification, the text of Section 12, as a reminder of the Employee's rights.

K. When a Union representative represents an employee during any investigation, the role of the representative includes, but is not limited to, the following rights:

1. to clarify the questions;

2. to clarify the responses;

3. to suggest other employees who may have knowledge of relevant facts;

4. to assist the employee in providing favorable or extenuating facts;

5. to request a caucus for a reasonable period of time; and

6. to advise the employee during an examination or a caucus.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

L. The Office recognizes that administrative interviews by representatives of the Office are strictly limited to matters of official interest to the Office, and, accordingly, will not address private matters outside the appropriate scope of the investigation.

M. If an employee gives an affidavit in the course of an investigation by the Office, the employee shall be entitled to receive a copy of the affidavit as soon as possible upon request.

SECTION 6:

The private life of an employee is the employee's own affair. Actions taken against an employee based on alleged off-duty misconduct will only be taken in accordance with applicable law, rule, or regulation.

SECTION 7:

In the event an employee does not receive the correct amount due on a regular payday, the Office will make diligent efforts to ensure that the employee receives a substitute or supplementary check as soon as possible and will provide any necessary letters to creditors documenting this situation if requested by the affected employee.

However, it is recognized that the Office has no control of the actual issuance of such checks. No less than annually, the Office will notify employees of the procedures to be followed to obtain a replacement or corrected check.

A. When notified by an employee that his/her paycheck was not issued due to administrative error or delay in processing, or is issued in an amount that is less than 90% of regular net pay due, the employee shall be authorized to receive an emergency payment via Electronic Funds Transfer (EFT) or Treasury issued check in an amount equal to the employee's balance due, normally within 72 hours following notification to the Office of the error. Any remaining balance due to the employee shall be issued to the employee by the next full pay period after discovery of the error.

B. Unless waived pursuant to law, employees will participate in the Direct Deposit Electronic Fund Transfer program. Salary payments will be deposited in a financial institution chosen by the employee in accordance with established procedures. The Agency shall waive the direct deposit requirement upon written certification from the employee that the employee does not have an account with a financial institution or an authorized payment agent. The Agency may also waive the direct deposit requirement for employees for whom the direct deposit imposes a hardship, or in other circumstances.

SECTION 8:

A. The Office affirms the right of employees to dress as they choose; however, the Office shall retain the right to take action concerning the dress of individual employees and employees shall have the right to grieve such action under the Negotiated Grievance Procedure.

B. If a complaint is made against an employee because of alleged improper attire, i.e., that which is reasonably determined to be improper under the circumstances for official Office duties, the employee shall be notified immediately by the complaining official. If the complaining official and the employee cannot resolve the issue, the matter shall immediately be referred to the appropriate Office Director, Group Director, or equivalent

management official. If the employee still disagrees, the matter may immediately be referred to the Director of the Office of Human Resources, or his/her designee, for a final judgment. Final judgments will be made promptly and communicated to the employee. Upon request of the employee or his or her representative, the reasons for any such decision will be provided in writing.

C. A determination adverse to the employee by the Director of the Office of Human Resources or his/her designee means that the employee shall be instructed not to wear that type of attire to work again and shall be instructed to take reasonable corrective action, if possible, for the remainder of the work day, but shall not be sent home. The Director of the Office of Human Resources or his/her designee shall counsel the employee that repeated wearing of such improper attire may result in the Office proposing disciplinary action.

D. If the final determination is that the employee's attire is proper, no action will be taken and no memo or other statement will be put in the employee's file as to the matter.

E. For the purpose of this Section, the terms "dress" and "attire" shall be deemed to include buttons, medallions, or other items of the same nature, which carry written or symbolic statements.

SECTION 9:

Working instructions will be conveyed to employees through established supervisory or management channels or by work leaders except in unusual circumstances. Employees shall be notified when individuals not otherwise designated as supervisors are authorized to give orders or working instructions.

SECTION 10:

Employees will be permitted to use audio devices, pagers and cell phones provided they do not cause unreasonable interference as determined fairly and equitably by the supervisor on a case by case basis, with the accomplishment of the employee's duties or mission of the work unit.

SECTION 11:

Employees will have adequate time to use a computer to access notices, vacancy announcements, and other official information on line.

SECTION 12:

A. When an employee is the subject of an investigation the Office will include the following notice in the email informing the employee of the date and time of the investigatory meeting: If you reasonably believe that your answers to questions posed at the investigatory meeting may incriminate you in regard to criminal misconduct, you may assert your Fifth Amendment right to remain silent at any time during the investigatory

interview and cease answering questions, unless you are given assurance that your answer may only be used for administrative purposes. If you receive such assurances, any refusal to answer may be the basis for disciplinary action. The assertion of this right is not applicable to non-Criminal matters.

B. The Office will provide all employees with an annual notice of their rights under subsection A.

EMPLOYEE OBLIGATIONS

ARTICLE 9 [Back to ToC]

SECTION 1:

All employees of the unit and their supervisors shall discuss what performance is expected of the employee. The employees shall to the best of their ability attempt to perform in such a manner to reach that expectation.

SECTION 2:

All unit employees are expected to observe Office hours and refrain from leave abuse.

SECTION 3:

It is recognized that all employees are expected to pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State or local taxes, and "in a proper and timely manner" means in a manner which the Agency determines does not, under the circumstances, reflect adversely on the Government as his/her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Agency to determine the validity or amount of the disputed debt.

SECTION 4:

All unit employees who want to leave the work area for other than scheduled breaks must request and obtain prior permission from their supervisor. Unit employees will inform their supervisors of the nature of the activity to be transacted, the location of the area they will visit, and the expected time of return.

Permission will be granted unless the absence of the employee from his/her work area would cause substantial adverse effect on the work of his/her area or unless the activity is prohibited under law, regulation or Office policy. The employee must return to the work area at the time specified, or call the supervisor to request additional time. In those instances where the supervisor declines permission to leave the work area or for additional time, an alternate time will be authorized or the employee will receive an explanation as to why the activity is unauthorized.

SECTION 5:

All unit employees shall provide current mailing addresses to the Office of Human Resources and to their immediate supervisors. Employees are encouraged to provide their immediate supervisor a phone number for use in emergency situations.

PROHIBITED PERSONNEL PRACTICES

ARTICLE 10 [Back to ToC]

SECTION 1:

The Office is bound by 5 U.S.C. §2302. In accordance with 5 U.S.C. §2302, the Office agrees that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

A. Discriminate for or against any employee or applicant for employment:

   1. On the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. §2000e-16);

   2. On the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §631, 633a);

   3. On the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938(29 U.S.C. §206 (d));

   4. On the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §791); or

   5. On the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

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

   1. An evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

   2. An evaluation of the character, loyalty, or suitability of such individual;

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

D. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;

E. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

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

G. Appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a) (2) of this title) or over which such employee exercises jurisdiction or control as such an official;

H. Take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for:

1. A disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences:

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

2. A disclosure to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences:

   a. a violation of any law, rule, or regulation, or
   b. mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety;

I. Take or fail to take any personnel action against any employee or; applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

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

K. Take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

SECTION 2:

Section 1 shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

TEMPORARY EMPLOYEES

ARTICLE 11 [Back to ToC]

SECTION 1:

To the extent permitted by government-wide regulations, temporary employees who are not serving in appointments limited to one year or less and who have a reasonable expectation of working more than 6 months have the right to enroll in government life insurance and health insurance programs.

PROBATIONARY EMPLOYEES

ARTICLE 12 [Back to ToC]

SECTION 1:

The Office will advise probationary employees of their performance prior to the midpoint and again at the end of the eleventh month.

SECTION 2:

Probationary employees may choose, up to their termination date, voluntary resignation. When a probationary employee voluntarily resigns, the Official Personnel Folder shall be changed to reflect this voluntary resignation.

SECTION 3:

Nothing in this Agreement shall limit the Office's right to terminate probationary employees prior to the end of the probationary period.

SECTION 4:

The Office will provide probationary employees with advice regarding statutory appeal rights through letters of termination.

PART-TIME EMPLOYMENT

Article 13 [Back to ToC]

SECTION 1:

For purposes of this Article, part-time employees are those who are employed in permanent positions with a prescheduled tour of duty of less than 80 hours per pay period.

SECTION 2:

Employee requests to work part-time to accommodate personal or family needs (i.e. childcare, eldercare, retention) will be honored when feasible in light of operational needs

SECTION 3:

No employee will be involuntarily reassigned from a full-time position to a part-time position unless reduction-in-force and adverse action procedures are followed. Before reduction-in-force procedures are taken, the Office will determine if any qualified employee would voluntarily take a part-time position.

SECTION 4:

A. The part-time employment program consists of two separate components. The first component, the "Childcare and Eldercare Component", which is specifically designed to meet the growing demand for part-time work for parents with childcare responsibilities, and for employees with eldercare responsibilities, i.e. parent and grandparent. There are two childcare categories, i.e. parents with a pre-school age child (one who has not yet begun first grade), and parents with a school aged child (one who has not yet begun seventh grade). The second component, the "Retention Component", is designed to enable the Office to retain experienced employees who wish to work a part-time schedule for other reasons. Within this second component, employees need not disclose their reason for working a part-time schedule.

B. Length of Participation

   Each participant will be eligible under this program to serve a minimum of 3 months and a maximum of 18 months in the program, subject to maintaining the condition of eligibility. When applying, each employee shall specify the desired length of participation and the component of the program under which he or she is applying. At the end of the agreed upon period of part-time status, the employee shall revert to full-time status or may request an extension for part-time status in 3-18 month increments prior to or at the end of the current program period. Requests for extensions shall be acted upon by the Office in a

timely manner to avoid any interruption in participation in the program. The Office shall allow earlier conversion to full-time status at an employee's request consistent with the needs of the Office.

C. Eligibility and Schedules

1. Within the Childcare and Eldercare Component, employees must have a rating of record of at least fully successful and have completed his or her first year of employment with the Office. The employee will work a regular set schedule of between 40 and 64 hours per bi-week ("scheduled working hours"). The regular schedule will include at least 2 days per week including at least one core day (Tuesday or Thursday). Each participant in this component will be scheduled to work a minimum of 4 hours and a maximum of 10 hours per day ("scheduled workday"). Employees may schedule work during available operational, flexible and/or core hours consistent with Article 31. However, at least 4 hours of every scheduled workday must fall between the hours of 8:30 a.m. and 6:00 p.m.

2. Within the Retention Component, employees must generally have at least three years PTO experience and a current rating of record at least fully successful, to be eligible to participate and to continue participation in this program. However, on a case by case basis, the Office may consider an employee with at least two years of experience for participation in the retention component of the program. Participants in this component will work a regular set schedule of between 40 and 64 hours per bi-week. The regular schedule will include at least three days per week, including both core days (Tuesday and Thursday). Employees may schedule work during available operational, flexible and/or core hours consistent with Article 31. However, the participant will work a minimum of 4 hours and a maximum of 10 hours per scheduled workday. At least 4 hours of every scheduled workday must fall between the hours of 8:30 a.m. and 6:00 p.m.

D. Procedures

1. The Office will approve requests for a part-time work schedule in the Childcare and Eldercare Component to eligible applicants based on the order of receipt of their requests by date to the appropriate Group Director's or equivalent's office. All employees currently working in the part-time program for childcare will be automatically continued in this program. In the event two or more requests from eligible employees are submitted on the same date and due to operational needs only one person can be approved for a part-time schedule, preference will be given to the employee with the earliest service computation date for leave.

2. The Office will approve requests to participate in the Retention Component to eligible applicants based on the order of receipt of their requests by date to the appropriate Group Director's or equivalent's office. In the event two or more requests from eligible employees are submitted on the same date and due to operational needs only one person

can be approved, preference will be given to the employee with the earliest service computation date for leave.

3. All new requests for part-time employment will be forwarded to the appropriate Group Director or equivalent's office. The Office shall, respond in writing to all requests within fourteen days. Copies of denials of requests for part-time employment shall be given to the employee and a Union representative.

4. The Office shall provide the Union representative with a list of bargaining unit's employees requesting part-time employment and the disposition of each request on a quarterly basis.

E. Conditions

1. Subject to supervisory approval, an employee may be permitted to amend his or her choice of non-work days to another day or days in the same biweek, provided that such amendment will not prevent the unit to which the employee is assigned from providing its normal service to the public and the Office. No amendment may be made which results in an amended schedule workday to fall on a holiday. Such amendments may not be used to habitually change an employee's regular work schedule.

2. Subject to prior supervisory approval and the availability of appropriate work, an employee will be eligible to schedule and work additional regular paid hours when necessary to meet the needs of the Office or the employee.

3. Subject to prior supervisory approval an employee may be permitted to change his/her work schedule during the program (i.e. a change from 2 ten hour days per week to 3 nine hour days per week). Approval of such requests will not be unreasonably withheld.

4. To the extent allowed by law, a part-time employee will be eligible, under the same criteria applied to full-time employees to earn and use compensatory time and paid overtime.

5. A part-time employee will be subject to the same performance requirements as a full-time employee.

6. All rules and regulations applicable to other part-time employees (i.e., leave calculations, within grade increases, promotions, etc.) will apply.

7. Matters within the discretion of the Office, including training and education programs, and other employee activities, shall be equally available to full-time and part-time employees. However, USPTO-subsidized training outside of the employee's scheduled working hours will not normally be available to program participants. Employees may

be required to temporarily convert to full-time status to attend Office-provided training, including details.

8. Part-time employees at the GS-13 and above level may be required to share an office when space needs dictate. The Office will take into account each employee's seniority and work schedule when assigning office space. Two employees within a group may request to share an office and said request will be honored, if reasonable.

9. Employees currently working permanent part-time schedules and rehired annuitants on part-time schedules will not be affected by this program. It is not the intention to affect the status of two permanent part-time employees and one rehired annuitant presently working a part-time schedule.

SECTION: 5

Employees are reminded that for the first year after the birth of a child, an employee may use the leave without pay available under the PTO's maternity/paternity leave policy and the Family and Medical Leave Act (FMLA) to meet their bi-weekly work requirement by working fewer than 80 hours in the bi-week. (See Article 29 for information on these leave programs.)

LABOR-MANAGEMENT COOPERATION

ARTICLE 14 [Back to ToC]

SECTION 1:

A. The parties recognize that the negotiation of a formal agreement is but one element of successful and effective labor-management relations. Therefore, it is agreed that a Labor-Management Relations Cooperation Program (LMRC) is established for the purpose of exchanging information and discussing appropriate matters of concern and interest involving the broad areas of equal employment opportunity, safety, training and other matters involving personnel practices procedures and/or working conditions.

B. The LMRC shall consist of up to 4 union representatives who shall receive official time while they are attending LMRC meetings. Additionally, non-committee members may attend LMRC meetings on behalf of the Union provided 5 days notice of such attendance is provided to the Office. The Office may provide as many representatives as needed.

SECTION 2:

A. The LMRC shall meet quarterly, and more frequently if mutually agreed upon. Such quarterly meetings may be canceled or rescheduled by mutual consent. To facilitate meaningful discussions, both parties should submit agenda items (generally with a brief description) at least 5 days in advance of the scheduled meeting. Such LMRC meetings shall generally be held during the first week of each quarter at a day and time to be mutually agreed upon.

B. Matters not on the agenda may be discussed by mutual consent. If no agenda items are submitted by either party, the meeting shall be canceled.

C. It is understood that the parties shall not consider specific grievances, complaints or appeals. However, this does not preclude the discussion of general personnel policies, practices and working conditions, which might give rise to grievances, complaints or appeals, so that these future problems might be identified for possible preventive action when appropriate.

SECTION 3:

At the conclusion of each meeting the Office will prepare a summary of the meeting, which shall include a statement of each agenda item with a brief review of the parties' discussion. The proposed summary will be forwarded to the Union for appropriate comments and changes.

EQUAL EMPLOYMENT OPPORTUNITY

ARTICLE 15 [Back to ToC]

SECTION 1:

The parties recognize that the mere declaration not to discriminate in equal employment opportunity is not enough to insure equality of opportunity. With this in mind, the parties agree that positive steps must continue to be taken to provide equality of opportunity for all employees and prohibit any discrimination because of race, color, religion, sex, national origin, sexual orientation, age, and physical/mental disability.

SECTION 2:

The Office and the Union reaffirm their commitment to the principles of diversity and equal employment opportunity and will provide and support a positive program, which has as its objective the realization of the commitment. To that end, the parties emphasize the critical role of managers, employees and the Union throughout the Office.

SECTION 3:

The Union agrees to advise the Office of problems associated with equal employment opportunity of which it is aware and the Office agrees to move promptly to deal with such problems. The Office agrees to seek solutions to EEO problems either through established procedures of the Agreement, the Office of Personnel Management, when applicable, Department Orders and/or Instructions where applicable, or by other means mutually agreed to by the parties.

SECTION 4:

The parties agree to annually review the Management Directive 715 (MD 715) to promote the full realization of equal employment opportunity for all employees. The Office agrees to provide the Union with a copy of the MD 715 annually, as soon as practicable once it is available**.** The EEO complaint procedure shall be posted on the Agency intranet. The EEO complaint procedure and the MD 715 shall be made available to employees in hard copy, upon request.

SECTION 5:

Upon request, consultations will be held between the Director, Office of Equal Employment Opportunity and Diversity**,** and designated Union representatives. Upon request, the Office agrees to meet annually with representatives of the Union to review and discuss the distribution of employees by sex, race, national origin*,* and age in a division(s) or equivalent unit(s), which the Union has identified in advance in writing. The parties, when they determine that inequities exist, shall jointly develop a plan to attempt to resolve any inequities found.

SECTION 6:

The Office agrees to obtain specific relief for individuals found to have been discriminated against and to take appropriate corrective action.

SECTION 7:

An employee who believes that he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or disability may either raise the matter under the appropriate statutory appeal procedure or the parties' negotiated grievance procedure, unless otherwise excluded by this Agreement, but not both. An employee shall be deemed to have exercised his/her option at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in accordance with the provisions of the parties' grievance procedure in this Agreement.

SECTION 8:

Upon request, The Office shall provide the Union the following information annually, in an electronic, sortable format such as Excel spreadsheet:

A. Workforce composition by race, gender, national origin, age, and grade level.

B. Composition of each major occupation (job series) by race, gender, national origin, age, and grade level.

Nothing in this section will affect the Union's right to request information pursuant to 5 U.S.C. Section 7114(b)(4).

EMPLOYEE ASSISTANCE PROGRAM

ARTICLE 16 [Back to ToC]

SECTION 1:

The parties recognize that alcoholism, mental disorders and drug abuse are treatable health problems. Accordingly, the Office will implement an employee assistance program (i.e., for those employees experiencing difficulty in the area of alcoholism, drug abuse or an emotional problem) as required and defined in applicable regulations and maintaining the privacy of participants therein. The Office will issue an annual notice to employees which explains in some detail the existence and benefits of this program.

SECTION 2:

A. The Union shall appoint a liaison to the Employee Assistance Program Coordinator. The function of the liaison shall be to:

    1. Consult with, as appropriate, and obtain information from individuals engaged in the implementation of the programs on alcoholism, mental disorders and drug abuse;

    2. Ascertain what additional measures, if any, may be necessary or desirable to assure the continued efficiency and effectiveness of the programs;

    3. Recommend adoption of such measures; and

    4. Inform the executive committee of the Union and appropriate Office officials, on the operation of the programs, subject to rules of confidentiality, on specific employees.

B. The Office agrees to permit the liaison as well as another Union representative to attend any training program it sponsors concerning the Employee Assistance Program. Union representatives will incur no costs for attending the training program and the Office will authorize necessary official time. Furthermore, in return, the Union will cooperate with the Office in attempting to rehabilitate employees who seek assistance from this program.

SECTION 3:

The parties agree to educate and inform members of the unit regarding the availability of these programs and shall take positive steps to promote and refer the programs to Unit members who would benefit by them.

SECTION 4:

This Article shall not be construed as a relinquishment by the Union of its responsibility to represent Unit employees, upon request, in connection with personnel actions arising from alleged alcoholism, mental disorders or drug abuse. However, it is understood that the Union liaison shall not reveal any confidential information related to any case.

SECTION 5:

The Office will take action to encourage the employee to enroll in this Program as soon as it is reasonably aware that the employee is experiencing a problem in this area. It is understood that employees undergoing a prescribed program of treatments may be granted sick leave or leave without pay for this purpose on the same basis as any other illness when absence from work is necessary.

SECTION 6:

The Office will determine whether disciplinary or adverse action is appropriate on a case-by-case basis. The Office will consider an employee's request for assistance in reaching such determinations.

TRAVEL AND PER DIEM

ARTICLE 17 [Back to ToC]

The Office agrees to pay travel and per diem expenses for designated Union representatives, as allowed by applicable laws and regulations, as follows:

A. For representational/bargaining activities at the Boyers, Pennsylvania, facility, the Union is authorized up to four (4) trips per fiscal year to the Boyers, Pennsylvania facility, not to exceed a total travel and per diem expenditure of $2000 per year. For any official time used, including official time used by Boyers employees, the Union must request and receive authorization from the Office prior to the commencement of the trip. All travel orders and vouchers must be authorized by the Office of Human Resources and Office of Finance.

B. The parties agree that every reasonable effort will be made whenever possible to avoid travel and per diem costs.

C. Officials conducting representational/bargaining activities in the local metropolitan area will be authorized use of fare cards for travel to and from the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, and the Federal Service Impasses Panel.

RETIREMENT AND RESIGNATION

ARTICLE 18 [Back to ToC]

SECTION 1:

The Office agrees that employees who are eligible to retire within five years shall be given an opportunity to voluntarily participate in a retirement planning seminar. This seminar will cover issues of interest to potential retirees, such as explanations of Federal employee retirement benefits, Federal health and life insurance benefits and financial planning for retirement.

SECTION 2:

Each employee who separates voluntarily or involuntarily (except by retirement) will be informed by the Office as to his/her right to file for disability retirement if he/she has at least five years of civilian service, the possibility of applying for a discontinued service annuity, and eligibility for deferred annuity at 62 provided he/she had at least 5 years of civilian service and leaves his/her money on deposit with the Office of Personnel Management.

SECTION 3:

An employee may withdraw a resignation or retirement application at any time prior to its effective date, in accordance with applicable regulations.

CHARITABLE AND CIVIC PROGRAMS

ARTICLE 19 [Back to ToC]

SECTION 1:

The parties agree that employees should be given the opportunity and encouraged to participate in the Combined Federal Campaign, United States Savings Bond Drives, Blood Donor Drives and other officially recognized worthy programs.

SECTION 2:

The Office and the Union agree that participation will be on a completely voluntary basis. This does not preclude general publicity of the programs by the Office and the Union.

SECTION 3:

It is further agreed that solicitors will not coerce employees to participate in these programs.

SECTION 4:

It is also agreed that immediate supervisors may not solicit or collect pledges or contributions from an individual employee under their supervision.

SECTION 5:

The Union agrees to actively support and assist in conducting programs, which it considers worthy.

CAREER DEVELOPMENT AND TRAINING

ARTICLE 20 [Back to ToC]

SECTION 1:

The Office recognizes its responsibility to provide the maximum opportunity, within budgetary limitations, to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities. The Office affirms its goal of providing a fair share of its budgeted resources for bargaining unit employees and the opportunity to advance through experience and training.

Upon request, at the beginning of each fiscal year, but no later than October 31 (unless the parties agree otherwise), the Office will provide the Union with a copy of the approved training budget, or proposed training budget if the government is under a continuing resolution, for each business unit. Upon request, within thirty-five (35) days of the end of each fiscal year (unless the parties agree otherwise), the Office will provide the Union with data for each business unit which identifies, at a minimum, the training data recorded by the Commerce Learning Center (CLC), the training amount by category budgeted for the business unit for the past fiscal year, the amount and percentage of the training budget used in each training program per business unit during the past fiscal year. Updated data will also be provided promptly to the Union if the budget is revised.

SECTION 2:

The Office will pay the necessary expenses in connection with officially approved training requests, within available budgetary allowances. In accordance with current Office regulations and practices, employees are required to provide copies of grades upon completion or reimburse costs if they fail to complete the course.

SECTION 3:

The Office and the Union understand and agree that applicable law and regulations require that all external training be related to the employee's current or future duties, and such training must be of use to the Office whenever it appropriates funds for training. This means that when employees are trained at the Office's expense, the training shall be necessary to meet demonstrated needs for trained manpower as determined by the Office. Moreover, training for possible vacancies in other agencies is not authorized.

SECTION 4:

The Office and the Union also recognize that each employee is responsible for applying reasonable effort, time and initiative in self-education, self-improvement and self-training. The Office and the Union agree to encourage employees to take advantage of training and educational opportunities,

which add to skills and qualifications needed to increase their efficiency in the performance of their official duties and those needed for advancement.

SECTION 5:

The Office will conduct periodic training assessments of organizational training needs based on program objectives.

SECTION 6:

The Office is on the mailing list of many educational and training institutions and receives catalogs and course announcements from these institutions. The Office will maintain current copies of PTO training catalogs and course announcements and will make these available to employees during normal business hours in the Office of Human Resources. Copies of these training catalogs and course announcements will also be made available for employees to review in central locations near the work area.

SECTION 7:

Employees selected to participate in formal Career Development Programs (i.e., programs for which there exists a target position or known promotion potential and for which competitive selection procedures are utilized) will, in conjunction with the Office prepare an individual development plan. This plan will identify the target position or developmental objective and identify the specific formal training needed to meet the minimum qualifications for the target position or developmental objective, as well as the desirable rotational or other job assignments to be provided.

SECTION 8:

The Office agrees to assist employees by providing easy access to information on training opportunities, publicizing current training programs, advising employees of requirements to enter training programs, assisting employees to apply for training opportunities, scheduling training and providing funds from available resources to cover allowable expenses of training.

SECTION 9:

Suitable recognition will be given by the Office and the Union to those employees who have achieved a career goal through a formal Career Development Program.

SECTION 10:

In these programs, where appropriate, the Office agrees to prepare a training agreement, which, if approved by the Office of Personnel Management, permits waiver of placement requirements and/or promotion requirements.

SECTION 11:

Participation in formal Career Development Programs will be completely voluntary.

SECTION 12:

It shall be a major goal of the Office to improve the status of women and minorities in order to fully utilize their potential and capabilities by providing appropriate training and career development opportunities.

SECTION 13:

Employees are free to discuss training needs and/or opportunities with their supervisors, appropriate personnel specialists, or other designated persons.

SECTION 14:

When an institution of higher learning provides for the crediting of on-the-job experience, the Office will assist the employee in documenting his/her request for academic credit and will assist the employee in obtaining this accreditation consistent with the needs of the Office.

SECTION 15:

The Office agrees to continue to take action and develop with local educational institutions or other training sources training opportunities for employees.

SECTION 16:

When an employee requests training, the Office shall consider at least the following factors: the needs of the Office; the needs of the employee; whether or not the employee is at an acceptable level of competence; and the demonstrated abilities, skills and background of the employee. Further, those employees who are performing below the acceptable level of competence may be directed to participate in training, which is designed to improve their performance.

SECTION 17:

Employees will be granted official time away from the job when necessary to participate in any approved current work related training program or course. The parties recognize the Office's right to modify an employee's schedule for the duration of the training in order to participate.

SECTION 18:

Applicable training opportunities brought to the attention of supervisors will be communicated to their employees. Normally, employees selected to participate in training shall be permitted to

attend such training; however, participation in such training is subject to the demonstrable needs of the Office.

SECTION 19:

The Office may train any employee to prepare the employee for placement in another agency if the Office determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under 5 U.S.C. §5595.

SECTION 20:

The Office recognizes the desirability of providing training in dealing with the public to employees whose primary job responsibility requires contact with the public. Such training is to emphasize conduct towards the public.

SECTION 21:

The Office agrees that selection for training shall be based on job-related criteria.

SECTION 22:

The Office reaffirms its policy that on-the-job training will be equitably distributed, consistent with the needs of the Office.

SECTION 23:

Employees shall be given timely notice, in writing, of their selection or non-selection for a training or educational opportunity for which they applied or were nominated.

SECTION 24:

Individual employees may request that an Individual Development Plan (IDP) be established. The IDP will initially be proposed by the employee. It will be reviewed by the employee and the Office, and it will be finalized to the mutual agreement of the employee and the Office. The Office will assist the employee in drafting the formal Individual Development Plan which outlines the skills an employee wishes to obtain and the method of obtaining those skills over the next two-year period.

OUTSIDE EMPLOYMENT

ARTICLE 21 [Back to ToC]

Employees shall not engage in any outside employment or similar type of outside activity, with or without compensation, which:

A. Interferes with the efficient performance of official duties;

B. Might bring discredit on, or cause, unfavorable and justifiable criticism of the Government; or

C. Violates any law, executive order, government-wide rule or regulation, or Department of Commerce or USPTO rule or regulation in compliance with Article 2.

(New Article based on 2024 Agreements)

WAIVER OF OVERPAYMENT

ARTICLE 22 [Back to ToC]

SECTION 1:

When an employee receives an over-payment of pay and allowances, other than travel and transportation expenses and allowance and relocation expenses, the Office will waive the obligation to repay such over-payment under the following conditions to the extent permitted by law:

A. The application for waiver is received by the approving official within 3 years of the discovery of the erroneous over-payment;

B. The collection of the erroneous payment would be against equity and good conscience and not in the best interest of the United States;

C. The erroneous payment occurred through administrative error;

D. There is no indication that the over-payment is the result of misrepresentation, fraud, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

SECTION 2:

If a requested waiver of over-payment is denied, the employee will be notified of the reasons for that denial in writing.

SECTION 3:

A. When an employee is not entitled to a waiver of overpayment and the employee received an overpayment, such an employee should be permitted to repay the excess under a repayment plan at the rate of up to 15 percent of the employee's disposable income each pay period, including interest charges. Indebted employees may voluntarily agree in writing to pay more than 15 percent of disposable pay (pay of any individual remaining after the deduction from those earning of any amounts required by law to be withheld) each pay period, and may revoke such agreement in writing at any time.

B. No over-payment of $50.00 or more will be collected without first providing at least 30 calendar days written notice of the over-payment to the employee. The time shall run from the date of the official notification of overpayment. Any such notice shall, at a minimum:

1. Inform the employee of the nature and amount of the indebtedness determined by the Office to be due;
2. The date by which the overpayment must be repaid in full to avoid collection through deductions from pay;

3. The intention of the Office to initiate proceedings to collect the debt through deductions from pay;

4. Any additional costs or interest that will be charged during the offset process;

5. An opportunity to inspect and copy Government records relating to the debt;

6. An opportunity to enter into a written agreement with the Office to establish a schedule for the repayment of the debt;

7. An opportunity for a hearing on the determination of the Office concerning the existence or the amount of the debt, or both;

8. Any and all other information required by law, rule or Office regulations.

C. If an employee files a request for a waiver of overpayment within 15 calendar days of the date of the written notice of the over-payment, the Office will attempt to render a decision on his/her request within 15 calendar days. If the Office does not render such a decision within 15 calendar days, no over-payment will be collected if the employee's request satisfied the Federal Claims Collection standards (1) there is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor; (2) the government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and (3) collection of the debt will cause undue hardship, until the employee's request for waiver of over-payment has been decided by the Office. However, the Office retains the right to satisfy any outstanding balance from any funds if the employee terminates his/her employment prior to the date that the request for over-payment is decided.

D. If an employee voluntarily or involuntarily terminates his/her employment with the Office prior to the liquidation of any over-payment described in all above, the Office retains the right to satisfy any outstanding balance from any funds due.

E. Bargaining unit employees have a right to representation in any debt collection action.

(New Article based on 2024 Agreements)

WORK ENVIRONMENT

ARTICLE 23 [Back to ToC]

SECTION 1:

The parties agree that they will work cooperatively to improve the work environment, work relationships and job satisfaction of employees. With these goals in mind, the Office agrees to consult with the Union in improving the work environment. The Office, whenever possible, within budgetary considerations and controlling regulations, will apply Office landscaping techniques or similar interior decoration innovations as a means to improve the work environment of employees.

SECTION 2:

The Office affirms the right of employees to decorate their working areas with paintings, posters, photographs and other artistic or symbolic representations provided the property is not defaced or made unusable for its intended purpose. These decorations shall be consistent with the policy of the Office to create and maintain a professional and business-like work environment. Decorations and the means of attaching decorations shall at all times comply with the requirements of the lessor, GSA, and other controlling regulations of a higher authority.

SECTION 3:

The Office agrees to notify the Union and affected employees of any physical relocation between buildings or between floors or a substantial relocation on a floor, which affects unit employees at least twenty (20) days in advance of the planned physical move.

That notice will include:

1. the Office's proposed date of the move as well as other significant project dates and milestones, if any, available at the time of the notice;
2. location moving to and from, including a description of the workspaces that are available for the impacted employees to select from; and
3. the names, email addresses, grades, and Service Computation Date (SCD) for leave of impacted employees (provided to the Union only).

The Union may request a briefing within ten (10) days of the notice and submit initial proposals within ten (10) days of the briefing or submit initial proposals within fifteen (15) days of the notice without a briefing in accordance with Article 56, section 1B, as to any additional adverse impacts of the move, unaddressed in this Agreement, on the employees involved.

Employees will have the opportunity to select their new workspaces according to earliest Service Computation Date (SCD) for leave if, within fifteen (15) days of receiving the notice, the Union provides the Office with the employees' selections.

HEALTH AND SAFETY

ARTICLE 24 [Back to ToC]

SECTION 1:

A. The Office will provide a safe and healthy work environment for employees. The Office and Union agree that a healthful environment is desirable and will cooperate to provide a safe and healthy work environment for employees. The Office will consider input from the Union in enforcing lease provisions and rectifying safety and health concerns.

B. Pursuant to E.O. 12196, the Office hereby adopts the General Standards of the Occupational Safety and Health Administration as the safety and health standards for its facilities, unless OSHA promulgates alternative standards.

SECTION 2:

No employee will be required to perform duties involving hazards, such as excessive noise levels and exposure to toxic materials, without first receiving sufficient instruction concerning the hazards, the proper work methods and the protective measures and equipment to be used. When an employee is assigned duty for which he/she feels a lack of sufficient instruction, capacity, assistance, tools, or equipment to perform the job safely, he/she shall bring those concerns to the supervisor's attention. If in the supervisor's judgment a danger exists, the supervisor shall delay the assignment until the problem can be remedied. If the employee still considers the work to be unsafe or hazardous, the matter shall be referred immediately by the supervisor to the appropriate Office official for resolution. If in the judgment of the appropriate Office official a danger exists, the assignment shall be delayed or discontinued until such resolution.

SECTION 3:

An employee who believes his/her personal safety may be in jeopardy because of an industrial or social dispute or civil disorder in the area of his/her assignment shall contact his/her supervisor for advice and guidelines as soon as possible after removing himself/herself from the area of danger. If the Office has prior knowledge of civil disorders within its area of responsibility, it shall advise the involved employees as to what action they should take.

SECTION 4:

Upon receiving new equipment, which may impact on the work environment, the Office will make available to the Union, upon request, any data received from the manufacturer that shows environmental effects on both employees and the work area.

SECTION 5:

Upon request, the Union will be furnished with copies of all reports prepared by the Office for the Department of Labor under the terms of the Occupational Safety and Health Act of 1970. Information pertaining to specific employees shall be subject to rules of confidentiality.

SECTION 6:

When an employee becomes ill or is injured in the performance of his/her duty, the employee will be referred to the OHR Compensation and Benefits Division for guidance as to his/her right to file for compensations benefits and benefits payable when it is known the absence will be for more than three calendar days.

SECTION 7:

An employee may elect to be placed on sick or annual leave instead of leave without pay to claim compensation. Leave without pay must be substituted for sick or annual leave upon approval of a claim before compensation is paid after 45 calendar days in cases of traumatic injury or from the beginning of pay loss in all other types of injury. The parties recognize that the Office of Workers' Compensation Programs approves or disapproves compensation claims and the amount to be paid. Employees making claims will be advised of the probable amount of the compensation payment and will be given an opportunity to elect a combination of sick leave, annual leave or leave without pay to minimize the amount to be repaid if the claim is approved.

SECTION 8:

An employee will be permitted to review documents relating to his/her claim for compensation, which the Office of Workers Compensation Programs has authorized the Personnel Office to make available. The employee may be accompanied by his/her designated representative if so desired.

SECTION 9:

The Office recognizes the extreme importance of a well-run compensation program and agrees to continue to provide adequate fully-trained personnel to provide answers to employee requests for assistance and to guarantee prompt processing of claims.

SECTION 10:

In accommodating employees with non-job induced injuries and medical conditions, the parties agree that the Office and employee will follow Agency Administrative Order 214-02, Procedures for Providing Reasonable Accommodation for Individuals with Disabilities, or its successor, along with all appropriate statutory and/or regulatory procedures, in requesting and providing reasonable accommodations to qualified individuals with disabilities.

The Office shall provide NTEU with advance notice of any changes to AAO 214-02, and bargain to the extent required by law.

SECTION 11:

The Office will, consistent with law, rule, regulation and applicable health and safety codes, take appropriate actions, including attempting to enforce lease provisions, in order to provide employees with adequate ventilation, heating, cooling, noise control, and lighting. If an employee complains of uncomfortable temperatures, the supervisor or other appropriate official will

promptly check into the complaint. The Office will, to the extent of its ability, initiate appropriate action to correct unsafe or unhealthy temperature extremes, which are reported. Should temperature extremes result from failure of the heating or air-conditioning systems, the Office may consider reassigning affected employees to a work area with operating systems, or may consider excusing affected employees from duty without loss of leave or salary.

SECTION 12:

The Office shall have an annual health and safety inspection in each building that is occupied with bargaining unit employees. Nothing herein shall preclude more frequent inspections or request for inspections. Such inspections shall be directed by the Safety Officer of the Office, or designee, who shall be accompanied by a designated representative of the Union. Where this designated Union representative is an employee, the representative shall be on official time.

SECTION 13:

The Office will notify all employees on an annual basis of the proper means for leaving the building during a suspected fire or bomb threat. Where a fire or bomb is reasonably suspected, the Office will evacuate the employees to safer areas. Under no circumstances will employees be required to remain at their workstations and search for a suspected bomb but they may be subsequently asked if they observed anything unusual in their immediate area. The Office shall devise plans for effectively evacuating employees with disabilities, and advise said employees of those plans. Notice of new evacuation plans or changes to existing evacuation plans shall be provided to the Union in advance of implementation, and shall be bargained to the extent required by law.

SECTION 14:

The Office will make every effort to obtain emergency health care services for all Office employees, regardless of building location. Security guards and Health Unit personnel will be trained in CPR and the use of defibrillators. The Office will ensure that there are an adequate number of trained security guards and/or health unit personnel available during office hours and during the times when the buildings are open for access by employees. The Office will provide at least one defibrillator per building, and Health Unit, and they will be maintained in proper working condition by the Office.

SECTION 15:

To the extent possible, and within budget limitations, the Office will provide free flu shots on an annual basis as well as periodic health screenings including, but not limited to, breast cancer, heart disease, high blood pressure, and sickle cell anemia.

SECTION 16:

When it is necessary for an employee to leave work and return home because of illness or incapacitation, the Office will attempt to assist the employee to arrange transportation.

The Office will not, however, be responsible for paying the cost of any such transportation, unless required by law or pursuant to an arbitration award or legal decision.

SECTION 17:

A. At a minimum, the Office agrees to furnish each employee on a timely basis a notice of the existence of open season and provide instructions on where employees can get further information, including available OPM publications. Upon request, during open season, Union officials will be allowed to distribute the NTEU Health Plan brochure to bargaining unit members during the lunch period. Any Union officials distributing the NTEU health plan brochures must be on their lunch period or other non-duty time.

B. The Office agrees to keep on file copies of each health plan offered to employees. Such copies will be made available to the Union for examination upon request.

SECTION 18:

After a snowfall, the Office will make every effort to assure that walkways, parking areas and driveways are cleared and, if needed, salted or sanded as soon as possible. Reasonably safe walking and driving conditions should be maintained at all times. It is understood that this is often subject to factors beyond the control of the Office. The Office will assure prompt abatement of unsafe or unhealthy working conditions or, where necessary, will develop an abatement plan including a timetable for abatement and a summary of interim steps to protect employees. The Office and the Union will discuss possible means to rectify unsafe or unhealthy situations. However, the Office remains responsible for the safety of the employees. The Office and the Union will work together to recommend suggested changes in the lease arrangements and methods of enforcement in an attempt to rectify these situations. The provisions of this section are in addition to any legal bargaining obligation.

SECTION 19:

The Union and the Office will work together to explore possible methods of accommodating non-smoking employees by any reasonable means.

SECTION 20:

Work-related health and safety matters will be made agenda items at the quarterly NTEU Chapter 243 - PTO Labor-Management Relations Committee meetings.

ANNUAL LEAVE AND LEAVE WITHOUT PAY

ARTICLE 25 [Back to ToC]

SECTION 1: Annual Leave

A. The earning of annual leave, as provided by applicable law, is a right; however the use of annual leave is granted subject to the demonstrable needs of the office.

B. All requests for annual leave will be considered in a fair and impartial manner consistent with law, rule and/or regulation.

C. Annual leave, including emergency annual leave, shall be granted or denied by the immediate supervisor or authorized designee. The office will have someone available to respond to leave requests. The supervisor will bear responsibility for notifying employees of available alternate supervisors or other procedures for employee to use when the supervisor is not available. The office shall make every reasonable effort to promptly grant/deny employees requests for annual leave consistent with workload and staffing needs.

D. If he/she is unable to contact the supervisor or designee telephonically, an employee may request leave by voice mail or e-mail to the supervisor. If the employee chooses to leave a message or send an e-mail, the employee must leave a telephone number where he/she can be reached and any information that can assist the supervisor in granting the leave. The supervisor will call or e-mail the employee if the leave is to be denied. The supervisor will leave a message on an answering device but will not be required to call back if the employee has no answering device. Messages left for the supervisor do not ensure that the leave has been approved. If an employee requests unscheduled leave verbally, the employee shall submit the request in writing (i.e., e-mail, WebTA etc.) upon his/her return to the office. Approvals and denials that are made verbally under this section shall be memorialized in writing and communicated to the requesting employee as soon as practicable (i.e., by email, WebTA, fax, etc.).

E. Scheduling Annual Leave

1. Annual leave should be scheduled in advance.

   An employee must submit a leave request in WebTA to his/her immediate supervisor or designee normally at least three (3) working days prior to the absence. The employee has a responsibility to comply with this requirement; however, an employee request made less than three (3) days will be considered and may be approved. Failure to request annual leave in advance shall not be the sole basis for a denial of such a request. However, frequent failure to follow proper annual leave procedures may be the basis for denial of annual leave requests or disciplinary action.

2. Emergency leave is annual leave not scheduled in advance.

Employees on a fixed 8-hour or compressed work schedule must attempt to directly contact their supervisor or their designee within the first hour of the employee's tour of duty, or as soon as possible thereafter, in order to request and obtain approval for their use of annual leave for that day.

Employees on an IFP or Flexible schedule must attempt to directly contact their supervisor or their designee by 12:00 noon, or as soon as possible thereafter, in order to request and obtain authorization for the use of annual leave for that day.

F. Extended Absence for Vacation

Subject to approval by the appropriate official based on workload and staffing needs, an employee who desires and has an adequate annual leave balance may take a vacation on any three consecutive weeks in a year. Every reasonable attempt, consistent with the needs of the Office and equity to other employees, will be made to satisfy the desires of employees with respect to requests for more than three consecutive weeks.

G. Leave during Holiday Seasons

Every effort, consistent with the demonstrable needs of the Office will be made to accommodate employees who desire to use accrued annual leave during holiday seasons.

H. Family Emergencies

Every effort, consistent with the demonstrable needs of the Office, will be made to accommodate employees who must attend family emergencies.

I. Conflicting Requests for Annual Leave

In order to fairly allocate leave periods in the event of a conflict in scheduling annual leave among employees, first consideration will be given to those who requested leave earliest in writing, provided however that a request may not be made earlier than one year before the requested leave date. In the event of identical leave request dates, preference will be given in the following order:

1. To the employee who was not afforded an opportunity to take leave during the period in question during the previous year, if applicable; then

2. To the employee with the longest consecutive length of office service.

Exceptions to this provision may be made by the supervisor in those cases where determinable personal hardship exists.

J. Cancellation of Approved Annual Leave

When the office determines it is necessary to change the scheduled approved leave of an employee due to workload and staffing needs, it will inform the employee as soon as possible in writing, if requested by the employee, as to the reasons for the change.

K. Forfeiture of Annual Leave

It is the responsibility of supervisors and employees to consult in order that leave may be scheduled fairly and equitably and so that annual leave will not be forfeited. No later than the 5th pay period before the end of the leave year, the office will remind employees of a need to request annual leave to avoid forfeiture of such annual leave.

L. Denials of Requests for Annual Leave

1. Denials of annual leave, including emergency annual leave, by the supervisor or designee are immediately appealable to the next higher-ranking supervisor and the reason for refusal will be provided to the employee in writing upon written request by the employee.

2. When an employee's request is denied by the next higher level of supervision, the employee is expected to report to work as soon as possible. If the employee reports as soon as possible, the period between the beginning of the work shift or the time the employee is due to report back and the actual reporting time will be charged to annual leave. Provided, however, that at the discretion of the supervisor, the time, to the extent of the supervisor's authority under applicable regulations, may be excused. If the employee does not report to work as soon as possible, the employee may be placed on Absence Without Leave (AWOL) for the time which the employee does not report to work in increments of 15 minutes, and may also receive a disciplinary action.

3. Upon returning to work, an employee must complete his/her Web T&A leave request documenting the unscheduled annual leave. All requests will be considered in a fair and impartial manner consistent with law, rule, and/or regulation.

M. Substituting Sick Leave for Annual Leave

Whenever circumstances within a period of annual leave would justify the granting of sick leave rather than annual leave, sick leave may be granted by the leave approving official, and the charge against annual leave reduced accordingly. Application for substitution must be made not later than two working days after the employee returns to duty and must be supported by such evidence as required by Article 26, Sick Leave.

N. Advance Annual Leave

1. In accordance with all applicable regulations and this Agreement, an employee may be granted an advance of annual leave when:

   a. the employee is eligible to earn annual leave;
   b. the employee has served more than 90 days in his/her current position; and
   c. the request does not exceed the amount of annual leave the employee would earn during the remainder of the leave year.

2. Valid requests for annual leave by other employees will take precedence over requests for advanced annual leave.

SECTION 2: Leave Without Pay

Leave without pay (LWOP) is a temporary non-pay status and absence from duty that, in most cases, is granted at the employee's request. In most instances, granting LWOP is a matter of supervisory discretion and may be limited by agency internal policy. However, employees have an entitlement to LWOP under The Family and Medical Leave Act of 1993, The Uniformed Service Employment and Reemployment Rights Act of 1994, Executive Order 5396, and while receiving worker's compensation payments from the Department of Labor. LWOP may affect entitlement or eligibility for certain Federal benefits. Leave without pay will only be implemented at an employee's request, or when imposed consistent with applicable law and regulation. Leave without pay will be administered in accordance with applicable laws and regulations.

A. Requesting Leave Without Pay

Consistent with applicable regulations and this Agreement, an employee who desires leave, but who does not have an adequate leave balance in the appropriate leave category, may request Leave Without Pay. To request Leave Without Pay, an employee must submit a request in WebTA to his/her immediate supervisor. The reason for the request must be included in the WebTA request. Leave without pay requested in lieu of sick leave is subject to the medical certificate requirements in Article 26, Section 3. Leave Without Pay will generally be granted only in extraordinary circumstances, and not merely for the personal convenience of the employee. The Office will consider requests for leave without pay fairly and equitably. If a request for leave without pay is denied, the leave approving official will provide the reason for the denial in writing to the employee, if requested.

B. Requests for Leave Without Pay for 30 Calendar Days or More

If the employee requests Leave Without Pay for 30 calendar days or more, in addition to the leave request in WebTA, the employee must submit a written statement fully explaining the reasons for the request, and, if the request is made for health reasons, a statement from the physician indicating the need for the absence and the prognosis of the employee's ability to return to work at the end of the period of Leave Without Pay.

SICK LEAVE

ARTICLE 26 [Back to ToC]

SECTION 1: Purpose

An employee shall earn sick leave in accordance with applicable laws and regulations. The use of sick leave is an employee benefit to be used by the employee in accordance with applicable laws and/or regulations and the specific procedures of this Article for absences required by physical or mental illness, medical appointments, (e.g., medical, dental, optical examinations), injury, pregnancy or childbirth or certain circumstances involving contagious diseases. Consistent with applicable regulations, sick leave may also be used for purposes relating to the adoption of a child (e.g., appointments with adoption agencies, social workers, and attorneys; court proceedings; travel), care of a family member as well as to care for a family member with a serious health condition, and for bereavement, including to arrange and attend funeral services for family members. "Family member" is defined in Article 3.

SECTION 2: Requesting Sick Leave

A. Scheduled Leave

1. Sick leave shall be requested in advance where possible, such as for routine dental, eye, or other medical examinations. An employee must complete their Web TA Leave Request prior to the anticipated sick leave, where possible. The Office shall make every reasonable effort to promptly grant or deny an employee's request in writing.

2. Managers and employees may discuss options for scheduling sick leave consistent with the needs of the Office.

B. Unscheduled Leave

1. Prior to the Start of the Workday

a. Sick leave shall be authorized or denied by the immediate supervisor or designee. If the immediate supervisor is not available to respond to leave requests, the supervisor will designate another individual with approval authority. An employee on a fixed 8-hour or compressed work schedule must attempt to contact his or her supervisor or designee by phone or email by the end of the first hour of the employee's tour of duty, or as soon as possible thereafter, in order to request and obtain authorization for use of sick leave. An employee on the IFP or flexible 8-hour work schedule must attempt to contact his or her supervisor or designee by phone or email by 12:00 p.m. or as soon as possible thereafter, in order to request and obtain authorization for use of sick leave for that day.

If an employee is unsuccessful after attempting to contact the supervisor or designee telephonically to request sick leave, the employee may request sick leave by voicemail or email to the supervisor or designee. If the employee requests leave by voicemail or email, the employee must leave a telephone number where he or she can be reached. Voicemail or email messages left for the supervisor or designee requesting leave do not ensure that the leave will be approved. The supervisor or designee will call or email the employee if the leave is denied. However, the unavailability of the supervisor or his/her designee to respond to the request shall not be the sole basis for a denial of the request after the fact.

b. Upon returning to work, an employee must complete a Web TA Leave Request documenting the unscheduled sick leave. All requests will be considered in a fair and impartial manner consistent with laws, rules, and/or regulations.

2. Sickness While on Duty

a. An employee who becomes ill while on duty must request leave from his or her supervisor or, in the supervisor's absence, the authorized designee prior to leaving the work site or ceasing to work if the employee is working off site.
b. An employee who becomes ill while on duty may be granted administrative leave for up to 59 minutes for consultation and treatment in the nearest medical facility, including a government health unit or emergency room.
c. An employee who is required under the advice of a physician to rest or receive periodic treatment may be allowed administrative leave, on a limited basis, for a period of up to 59 minutes in a day. This provision covers unusual circumstances of short duration; it is not intended to be used as a substitute for sick leave (i.e., when an employee is incapacitated to perform the duties of his or her position). An employee who is required under the advice of a physician to rest or receive periodic treatment during the workday must provide documentation from the physician specifying: that the employee is under the care of the physician and requires periodic rest or treatment, the duration of rest period(s), the frequency of the rest periods or treatment, and the expected duration of the condition requiring rest or treatment.
d. In the event that an employee is required under the advice of his or her doctor to go to the USPTO health unit on a recurring basis, the supervisor may require a medical certificate. In such situations, the employee may also be required to use his or her own leave.

C. Employee Unable to Request Leave

When for good and sufficient reasons, an employee is unable to notify his or her supervisor of his or her inability to report for duty or to telework as previously scheduled, another person may act in the employee's behalf to notify the supervisor or designee of the employee's absence. However, it is understood that only the employee may request leave and that any communication by another person on the employee's behalf is strictly as a

source of information to the supervisor concerning the employee's whereabouts and will not constitute a request for leave or substitute for the requirements of Section 2B, above.

D. Requesting Leave for Incapacitation Lasting More Than One Day or Tour of Duty

Employees are required to call in to report to the supervisor or designee continued sickness on each day they are absent unless sick leave for a continued period has been approved.

E. Approval and Denial of Sick Leave Request

1. Sick leave requests shall be granted for purposes approved by law and government-wide regulations, including 5 C.F.R. 630.401. This includes medical, dental, or optical examination or treatment; incapacity for the performance of an employee's duties by physical or mental illness or injury, pregnancy, or childbirth; providing care for a family member who is incapacitated by a medical or mental condition or attending to a family member receiving medical, dental, or optical examination or treatment; providing care for a family member with a serious health condition; making arrangements necessitated by the death of a family member or attending the funeral of a family member; where, as determined by health authorities or by a health care provider, an employee's exposure to a communicable disease would jeopardize the health of others; for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys, court proceedings, travel and other activities necessary to allow the adoption to proceed.

2. Requests for sick leave shall be approved or denied as far in advance as possible. Requests for sick leave will not be unreasonably denied. Subject to Section 3.C below, an employee's self-certification as to the reason for his or her absence shall be considered sufficient support for his or her sick leave request.

3. When an employee's request for sick leave is denied, the employee is expected to report to work as soon as possible. The supervisor will not make decisions concerning the necessity for medical treatment when the employee has provided an acceptable medical certificate; however, the supervisor has the authority to decide whether to grant the request. If the employee does not report to work as soon as possible, the employee may be placed on Absence Without Leave (AWOL). This will not preclude a later change in leave status for good and sufficient reasons.

4. Approvals and denials of sick leave that are made verbally shall be memorialized in writing and communicated to the requesting employee (e.g., Web TA, email, inter-office mail, or fax, etc.).

SECTION 3: Medical Certificates

A. An acceptable medical certificate is a written statement signed (or stamped) and dated by a registered practicing physician or other health care provider certifying to the incapacitation,

examination, treatment, or the period of disability of an employee while he or she is or was undergoing professional treatment.

B. In those situations in which the Office has good cause to question the validity of a medical certificate, the Office may inquire of the physician or other provider to the extent necessary to determine the validity of the medical certificate.

C. Employees shall not be required to furnish a medical certificate to substantiate requests for approval of sick leave unless:

1. The leave exceeds 5 consecutive work days; or

2. The employee has been placed on leave restriction.

However, the supervisor has the discretion to require medical certificates for sick leave of 4 or 5 consecutive days if he/she has good cause to believe the employee is abusing the use of sick leave. Upon request, the Office will promptly provide the affected employee with the reason for requiring a medical certificate.

SECTION 4: Leave Restriction

A. Where the Office has reasonable grounds to believe an employee has abused sick leave, a written warning may be issued informing the employee that if the described abuse continues, sick leave restriction may be imposed. If sick leave restriction is imposed, written notice will be provided explaining the reasons for the sick leave restriction and stating that, for a stated period, but not to exceed six (6) months, a medical certificate must accompany requests for approval for leave taken for sick purposes due to the illness of the employee or family member. At the end of the stated period, the Office shall review the employee's situation and shall give the employee notice of rescission or renewal of the restriction due to evidence of continued abuse.

B. Sick leave restriction will be based on an employee's absences due to alleged illnesses, if there is evidence of sick leave abuse. Sick leave restriction will not be based solely on the amount of prior approved leave. Prior approved leave for sick purposes may be considered to establish a pattern of sick leave abuse.

SECTION 5: Advanced Sick Leave

Requests for advanced sick leave will be considered in a fair and equitable manner. Full-time, non-probationary employees may be granted up to 240 hours of advanced sick leave in compliance with applicable regulations. The following criteria, if applicable, will be considered:

A. Whether the employee is expected to return to duty for a period sufficient to repay the leave and the employee has sufficient funds in his or her retirement account or any other source of

monies owed to the employee by the Government to reimburse the Employer for the advance should the employee not return to work;

B. Whether the employee has provided administratively acceptable medical documentation, or other appropriate evidence of the reasons for the sick leave; and

C. Whether the employee is subject to leave restriction in Section 4 above.

SECTION 6: Substituting Annual Leave for Sick Leave

Consistent with applicable regulation and this Agreement, an approved absence, which would otherwise be chargeable to sick leave, may be chargeable to annual leave at the option of the employee.

SECTION 7: Medical Information

A. The employee will not be required to reveal any details about the nature of his or her underlying medical condition to the Office, and the Office may not require the employee to sign a release for his/her medical information.

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

(New Article based on 2024 Agreements)

ADMINISTRATIVE LEAVE

ARTICLE 27 [Back to ToC]

SECTION 1:

When voting polls are not open at least 3 hours either before or after an employee's regular hours of work, or an employee's core hours if the employee is on flexitime, then he/she will, upon written request, be granted a sufficient amount of administrative time by his/her supervisor which will permit him/her to report for work 3 hours after the polls are open or leave work 3 hours before the polls close, whichever requires the lesser amount of time.

SECTION 2:

Administrative leave shall be granted in accordance with applicable rules and regulations to employees for jury duty or for appearing in court in a non-official capacity as a witness on behalf of the United States.

SECTION 3:

In the event of emergency or inclement weather conditions that may prevent an employee from commuting to work or performing their work, where the post of duty is not closed, the employee may be granted administrative leave under Weather and Safety related emergencies, in accordance with this Article, policy, and Office guidance.

The supervisor will endeavor to assign portable work for telework ready employees in the event of foreseeable events of inclement weather.

Guidance can be found in the provisions of Appendix A of the Leave Administration Policy on matters related to Weather and Safety Leave.

SECTION 4:

Upon advance request to his/her supervisor, an employee who makes a donation of blood without compensation will receive administrative leave totaling up to 4 hours from the time he/she leaves his/her work station for donation and recuperative purposes subject to statutory limitations.

SECTION 5:

The supervisor in charge of each worksite will be aware of uncomfortable temperatures and humidity conditions within the office, which may adversely affect working conditions. In the event such a condition arises, the appropriate official shall make a determination whether other arrangements can be made, not excluding the possibility of dismissal. Employees will be expected to report for duty on the following scheduled workday.

SECTION 6:

All employees will be granted one hour of administrative leave to attend a Union sponsored briefing, subject to statutory limitations.

TRANSIT SUBSIDY

ARTICLE 28 [Back to ToC]

SECTION 1: Authority and Purpose

The Employer understands the value of providing a public transportation subsidy benefit for employees, and will continue to provide such benefit consistent with applicable law, rule and regulation. The benefit will be administered under the Public Transportation Subsidy Program (PTS). This program is established pursuant to 5 U.S.C. §7905 which provides for "programs to encourage commuting by means other than single-occupancy motor vehicles."

SECTION 2: Benefit Amount

The Employer will provide a monthly transit subsidy to bargaining unit employees equal to their maximum qualifying monthly commuting costs, but not to exceed the actual amount authorized by applicable laws, Executive Orders, and regulations governing public transportation benefits for federal employees. If the maximum monthly transit subsidy amount increases or decreases in the future, the maximum amount paid under this program will also increase or decrease.

SECTION 3: Form of Subsidy

Benefits will be provided using Washington Metropolitan Area Transit Authority's (WMATA's) SmartBenefits system in the Washington, D.C. metropolitan area. WMATA farecards, SmartBenefits and any other Agency-approved fare media or transit passes will cover any and all forms of payment in the Washington, D.C. metropolitan area. In the metropolitan areas of other USPTO offices, the Agency will provide transit subsidy to eligible bargaining unit employees to the extent available and allowed by regulations. Agency-approved fare media or transit passes will cover any and all forms of payment in the metropolitan areas of other USPTO offices. Transit subsidy benefits provided under this Article must be in a form not readily convertible to cash or used for purposes other than intended (e.g., farecards, or other instruments issued by authorized local transit authorities). Direct cash subsidies to employees are prohibited. Use of this benefit is limited solely to the costs of commuting to and/or from work via public transportation systems which are participating in the SmartBenefits programs, or any successor or alternate program approved by the Agency.

SECTION 4: Eligibility and Procedures

A. All employees are eligible to participate in the PTS Program. Employees participating in this program must not use a parking permit for a currently assigned USPTO monthly parking space, or other monthly parking space at or near the workplace, during regular work hours, except for vehicles used in the WMATA SmartBenefits programs and vehicles used in a vanpool. This does not include weekend/evening parking. Employees will receive the transit subsidy upon completion of a transit subsidy request certifying the

employee's monthly public transit costs and that they are obtaining the transit subsidy for their commute to and/or from work. Employees who want to participate in the PTS program must submit an application via the USPTO's Transit Subsidy System (TSS) on or before the first business day of the month preceding the month in which the employee wishes to begin receiving the transit subsidy. All such requests will be processed within 10 business days**.** For example, if an employee wanted to start receiving transit subsidy benefits on October 1, he/she must submit their application no later than September 1, or the next business day if the 1st is a weekend or holiday. The Employer will provide an automated response to each application submitted.

B. An employee may request to modify his or her transit subsidy by submitting a new request. The request should be submitted on or before the first business day of the month preceding the applicable month in which the employee wishes to modify his or her transit subsidy**.** For example, if an employee wanted to modify, his or her transit subsidy on January 1, he/she must submit their request no later than December 1, or the next business day if the 1st is a weekend or holiday. Employees may terminate their participation in the subsidy program at any time by submitting a withdrawal in the TSS. All such requests will be processed promptly.

C. Subsidies are to be available for allocation to vanpools and other transit or fare media providers by the 16th day of the month prior to the month for which the subsidy is to be used. Information regarding the allocation of benefits to vanpools and other transit or fare media providers is available on the USPTO Intranet webpage entitled Transit Subsidy under the Employees heading on the OHR web page. Subsidies not so allocated are to be available for use directly by the designated SmarTrip card via WMATA's Autoload feature from the first day of the month through the last day of the month for which the subsidy has been provided.

D. If an employee is late in submitting the PTS Program Application Form, the employee will not receive the full transit subsidy for the current full calendar quarter. The employee will receive the portion of the subsidy for those months for which the PTS Program Application Form has been received by the 1st business day of the preceding month.

E. If an employee wishes to continue receiving transit subsidy benefits, he/she must complete and submit an application each calendar quarter, on or before the first business day of the month preceding the month of the applicable benefits period. At least fifteen (15) days prior to the start of each quarter, the Employer will send a reminder notice to all participating employees of the need to reapply by means of a notice in USPTO Weekly.

F. Social security numbers will not be used or required for the application process or for any other purpose related to the PTS program.

G. Employees will be required to specify on the application form the SmartBenefits account or other account for which subsidies are to be made available.

SECTION 5: Public Transportation Payment Programs

The Office has the discretion to utilize the most efficient method to administer the PTS program, including, but not limited to, the use of WMATA's SmartTrip Card or any other similar public transportation payment programs.

SECTION 6: Grievances

Employees may grieve disputes arising under this Article.

SECTION 7: Changes to the PTS Program

A. If the program authority is revoked, or if PTO's budget does not allow continuation of the program or results in a decrease below the maximum subsidy allowed by law, the Union will be given reasonable advance notice, generally at least thirty (30) days, and will be given an opportunity for impact and implementation bargaining to the extent required by law**.** When the program funding is reduced or terminated, it will be reinstated if and when such action is no longer necessary.

B. In no event shall the maximum authorized transit subsidy for Chapter 243 bargaining unit employees be less than that authorized for any other PTO bargaining unit or person at the USPTO, nor shall the individual maximum subsidy be reduced by a greater amount than any other person in the USPTO if a reduction is necessitated under section 7A above.

SECTION 8: PTS Program Information

PTS program information and forms will be maintained on the USPTO Intranet webpage entitled "Transit Subsidy" under the "Employees" heading on the OHR webpage.

SECTION 9: Non-Receipt of Benefits

A. If the employee does not receive the monthly benefits, the employee should file a claim of non-receipt no later than the 10th business day of the applicable benefit period. If benefits are to be provided electronically, the employee should file a claim of non-receipt in the TSS. If the application was submitted in paper form, the employee should file a claim

with TSS in paper form. Benefits that were not received as a result of an error on the part of the USPTO, through no fault of the employee (i.e., errors in the application), will be replaced upon the employee's request for the applicable benefit period. If benefits to be provided electronically are not received as a result of the employee providing an incorrect SmartBenefits or applicable account number, the remaining benefits will be reapplied to the correct account number upon the employee's request for the applicable benefit period. If benefits are not received as a result of an error on the part of the applicable transit authority, the USPTO will work with the employee to obtain replacement benefits from the transit authority.

B. When an employee is late in submitting a claim of non-receipt, the employee will not receive the full transit subsidy for the current full calendar quarter. The employee will receive the portion of the subsidy for those months for which the claim of non-receipt was received by the 10th business day of the month.

C. A meeting, during which the employee may be represented by a Union representative, may be requested by either party within 5 business days of filing the claim of non-receipt. This meeting shall be scheduled by mutual agreement for a time during the next 6 business days after the request is filed. A written decision will be rendered no later than 10 business days following the filing of the claim of non-receipt or 5 business days after the meeting, whichever is later. This decision will be considered the equivalent of a USPTO decision at the first or informal stage of the grievance procedure. The Union and/or the grievant may decide to continue with the grievance process if unsatisfied with the results. Only the Union may appeal the final Agency decision to arbitration.

SECTION 10: Misuse of Benefits

Transit Subsidy benefits are not transferable and are to be used only for the commute to and/or from work. Misuse of the subsidy, such as, giving, selling, trading, or transferring the transit pass or the subsidies provided via SmartBenefits to other individuals, or purchasing or receiving the same from another individual is prohibited, even if the other individual is eligible to receive the subsidy. Misuse of the subsidy may result in disciplinary action.

SECTION 11: Exceptions to Mandatory TSS Application Process

A. New Hires

1. For newly hired employees (employees hired during the 30-day period immediately before an application deadline), PTS Program Application Forms may be hand-delivered to the Transit Subsidy Coordinator or designee or, if that is not possible, email or fax (to 571-273-6400), to the Transit Subsidy Coordinator or designee.

2. Paper applications will be given to new employees during the morning of the first day of new employee orientation, and new employees will be given instructions and

the opportunity to fill out the paper applications during the morning of the first day of new employee orientation. Paper applications from new employees that are submitted to the Transit Subsidy Coordinator, or his or her Office of Finance designee, by noon on the first day of new employee orientation will be provided a prorated benefit for the remainder of the quarter, plus the following month for applications filed in the last month of the quarter.

3. Newly hired bargaining unit employees will be provided the application form during the new employee orientation process and will be directed to the NTEU 243 Collective Bargaining Agreement on the Intranet to read this Article.

4. The Transit Subsidy Coordinator, or their Office of Finance designee, will be present at new employee orientation to provide copies of the Transit Subsidy Program Guidelines for the PTS Program, paper copies of the PTS Program Application Form, and instructions/guidance on the PTS program. The Transit Subsidy Coordinator, or the Office of Finance designee, will continue to be available at new employee orientation, as needed, through noon on the first day of orientation to accept applications and provide one-on-one guidance on completing the PTS Program Application Form.

5. Subsidies for new employees submitting paper applications to the Transit Subsidy Coordinator, or his or her Office of Finance designee, by noon on the first day of new employee orientation will be distributed in person during the afternoon of the first day of orientation to all employees who are available at the orientation site at the time of the distribution, provided the orientation does not exceed 30 new hires. Subsidies that cannot be distributed in person will be mailed the next business day.

6. New employees who apply and are accepted into the PTS Program will be given paper far media sufficient to cover their benefits through at least the end of the current benefits quarter. If there is less than 45 days remaining in the current benefits quarter, the paper fare media will be provided through the end of the second benefits quarter.

B. Current Employees

For current employees (employees employed for more than 30 days before an applicable due date), employees must hand-deliver or fax this form to the Transit Subsidy Coordinator or designee on or before the applicable due date and provide an indication that it is being submitted as a result of the fact that the TSS is malfunctioning or otherwise not operational. The Transit Subsidy Coordinator or designee will provide an automated response to each application submitted. This exception applies only when:

1. The employee lacks access to the USPTO's PTONET system; or

2. The employee's workstation or the network is malfunctioning on the date the form is due, or on the last date the employee expects to be present in the office prior to that date.

SECTION 12: Miscellaneous

A. A copy of this agreement and all forms used in the PTS program shall be maintained on the USPTO Intranet webpage entitled Transit Subsidy under the "Employees" heading on the OHR web page.

B. Employees will be notified of PTS program application deadlines each calendar quarter by announcements in the "USPTO Weekly" or successor means (in all issues published during the three weeks before the PTS Program Application form is due). These messages will provide electronic access to the USPTO TSS and a copy of the Transit Subsidy Program Guidelines.

C. An Employee who wishes to discontinue his or her participation in the PTS program at any time other than at the end of a calendar quarter must notify the Transit Subsidy Coordinator or designee of the withdrawal by contact through the TSS internet page and must return all unused paper fare card subsidies. The employee should not complete another PTS Program Application Form until he or she wishes to resume participation in the subsidy program. At that point, the employee should submit a PTS Program Application Form on or before the first business day of the month proceeding the month in which the employee wishes to begin receiving the subsidy again.

D. Address corrections/changes may be made using the USPTO's TSS. If a new hire wishes to make address corrections/changes and he or she has not yet been established in the TSS, he or she may do so via email to the Transit Subsidy Coordinator or designee.

E. Where a timely filed application has been reviewed and not approved due to questions regarding information provided by the employee, the employee will be notified by the Transit Subsidy Coordinator or designee. The employee shall have 10 business days from the day he or she is notified that the application was reviewed and not approved to either resubmit the application or respond to the notification, as applicable, for the application to be considered for the applicable benefit period. If the notification is not responded to within 10 business days after notification, the application will be considered abandoned. However, if an employee was unable to meet the 10 business day time frame in this section because the employee was on leave, he or she may submit the required information beyond the 10 business day time frame upon proof that he or she was on leave for all or part of the

time. In such cases, employees must submit the required information within 5 business days of their return or by the original due date, whichever is later. If a SmartBenefits account number issue or notification issue is not resolved by the 2nd business day of the month preceding the benefit period, the election of distribution via allocable SmartBenefits authorization may no longer be available and, if applicable, distribution will be provided in the form of non-allocable SmartBenefits authorizations or paper fare media.

SECTION 13: Paper Fare Media

Paper Transit Subsidy vouchers will be mailed to applicable participants, at the address provided by the employee in his or her TSP application form, using the U.S. Postal Service, except as provided in Sections 9 and 11.

MISCELLANEOUS LEAVE PROVISIONS

ARTICLE 29 [Back to ToC]

SECTION 1:

Leave records are of a personal nature and will not be publicized by the Office in any way. However, supervisors and managers with an official need to know may review the contents of these records.

SECTION 2:

Annual or sick leave balances, or the mere amount of annual or sick leave or LWOP used will not, of themselves, be a factor for promotion, award, or discipline unless required by higher authority. However, habitual usage of leave, which indicates leave abuse, may be considered as a factor after discussion with the employee to determine the justification for such leave usage.

SECTION 3:

Infrequent tardiness of less than one hour will be excused by the supervisor, to the extent of his/her authority under applicable regulations, if the reasons given are acceptable. An employee will not be denied any promotion or award due to such excused tardiness. Supervisors shall apply these rules in a consistent manner to encourage good working conditions for both the Office and the employees.

SECTION 4:

In accordance with this Agreement and applicable regulations, and subject to workload considerations and staffing needs, an employee will be granted any combination of annual, sick, or leave without pay for up to five (5) workdays where there has been a death in the employee's immediate family, as defined in Article 3. The Office will exercise its right to approve leave in a fair and impartial manner.

SECTION 5: Family and Medical Leave

The parties recognize that the provisions of the Federal Family and Medical Leave Act (FMLA) and the regulations promulgated to implement it are applicable to all eligible employees. The regulations may be found on the **USPTO intranet Human Resources Policies page ,** or on the OPM Website **,** Family and Medical Leave Act (FMLA) 12-Week Entitlement . Either party may reopen negotiations concerning the specific FMLA regulation that was amended if there is a change to the FMLA regulations during the term of this Agreement.

A. Consistent with FMLA, employees who have completed at least twelve (12) months of service (not required to be 12 recent or consecutive months) and are not employed on an intermittent basis or a

temporary appointment with a time limitation of one (1) year or less, are entitled to a total of twelve (12) weeks of unpaid family and medical leave during any 12-month period for one or more of the following reasons:

1. The birth of a son or daughter of the employee and the care of such son or daughter;

2. The placement of a son or daughter with the employee for adoption or foster care;

3. The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

4. A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

B. FMLA leave is leave without pay, except that an employee may elect to substitute accrued or accumulated annual or sick leave for any part of the 12-week period of FMLA leave. Advanced annual or sick leave, or leave made available to an employee under a Leave Transfer Program may also be substituted for FMLA leave.

C. The Office may not deny an employee's right to substitute paid leave for any or all of the period of FMLA leave, nor may the Office require an employee to substitute paid leave for any part of the FMLA leave.

D. An Employee shall notify the Office of his or her intent to substitute paid leave for any part of the FMLA leave prior to the date such paid leave commences.

E. An employee may invoke entitlement to FMLA by providing notice to the Office by either written, oral or electronic means that he/she intends to take FMLA leave.

1. If FMLA leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee should provide notice to the Office of his or her intent to take leave not less than 30 calendar days before the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 calendar days, the employee shall provide such notice as is practicable.

F. If the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied. If the FMLA leave is for a purpose identified in subsections A(3) or A(4) above, the Office may require the employee to provide a medical certificate from a health care provider. The certificate must include the information required in 5 C.F.R. 630.1207.

G. At the time the Office notifies the employee that a medical certificate is required, it shall also notify the employee in writing of the specific information required to be provided on the medical certificate, as stated in 5 C.F.R. 630.1207. The Office may not require any personal or confidential information in the written medical certification other than that required by regulations, and such information shall relate only to the serious health condition for which the current need for FMLA leave exists. An employee must provide the written medical certification required by paragraph F above, signed by the health care provider, no later than 15 calendar days after the date the Office requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the Office despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the Office requests such medical certification.

H. If an employee submits administratively acceptable medical certification (i.e., completed in accordance with 5 C.F.R. §630.1207) signed by a health care provider, the Office may not request new information from the provider. However, a health care provider representing the Office may, with the employee's permission, contact the health care provider who completed the medical certification for the purpose of clarifying the medical certification.

I. If the Office doubts the validity of the original certification provided in H, above, the Office may require, at the Office's expense, that the employee obtain the opinion of a second health care provider designated or approved by the Office concerning the information certified in H, above. If the opinion of the second provider differs from the original certification, the Office may require that the employee obtain a third opinion, at the Office's expense, by a provider jointly approved by the Office and the employee, which opinion shall be binding. The Office may require subsequent medical recertification on a periodic basis or as provided by 5 C.F.R. 630.1207

J. If the employee presents the medical certification in a sealed envelope marked "MEDICAL CONFIDENTIAL", it will be reviewed only by the Office's appropriate servicing personnel in the Human Resources Office.

SECTION 6: Religious Compensatory Time

A. Subject to workload considerations and staffing needs, an employee will be granted annual leave or leave without pay for a workday which occurs on a religious holiday. An employee's request for such leave should be made three (3) workdays in advance, where possible.

B. Instead of requesting annual leave or leave without pay, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect

to engage in compensatory time work for time lost for meeting those religious requirements.

C. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the agency's mission, the Office shall in each instance afford the employee the opportunity to work compensatory time and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

D. For the purpose stated in (B) above, the employee may work such compensatory time normally 6 pay periods before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid by the appropriate amount of compensatory time work normally within 6 pay periods. Compensatory time shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory time earned and used.

SECTION 7: Military Leave

Any employee who is a member of the National Guard or other reserve unit of the Armed Forces may accrue up to a maximum of 15 days military leave for the fiscal year. The employee may carry over up to 15 days military leave into the next fiscal year.

SECTION 8: Maternity/Paternity Leave

A. Employees may be granted six (6) months of leave following delivery or adoption of a child. Employees may use a combination of accrued sick leave (in accordance with the USPTO Leave Administration Policy), annual leave, advanced leave, comp time, credit hours (if applicable), or leave without pay for maternity/paternity purposes.

B. Each parent is entitled to use a total of up to 12 weeks of leave without pay under the Family Medical Leave Act (FMLA) for the birth of a child and care of the newborn, or for adoption of a child, or as otherwise authorized by FMLA. FMLA leave may be used on an intermittent basis for absences in connection with childbirth, adoption, and care of the newborn or newly adopted child, or as otherwise authorized by FMLA.

C. The employee is responsible for notifying the supervisor of his or her intent to request leave under this section, including the type of leave, approximate dates, and anticipated duration.

D. The Employer will make a reasonable effort to accommodate a pregnant employee's request for a modification of duties or a temporary assignment when the request is

supported by acceptable medical evidence. The employee should request the reasonable accommodation through the Office of Equal Employment Opportunity and Diversity.

E. No arbitrary date requiring a pregnant employee to cease work or prevent her from returning to work after childbirth will be established. Normally, these decisions will be made by the employee upon consultation with her physician. The Office may request the affected employee to provide medical certification to support her decision.

LEAVE OF ABSENCE

ARTICLE 30 [Back to ToC]

SECTION 1:

A. Subject to workload considerations and staffing needs, the Office agrees to approve leaves of absence for any employee elected to a position of National Officer of the National Treasury Employees Union for the purpose of serving full time in the elected position. Such leaves of absence will be for a period concurrent with the term of Office of the elected official and will be automatically renewed, subject to workload considerations and staffing needs, by the Office upon notification in writing from the elected official that he/she has been reelected and wishes to continue in a leave of absence. The Office will grant requests for leave in a fair and impartial manner in accordance with appropriate law, rule, or regulation.

B. Subject to workload considerations and staffing needs, the Office agrees to consider requests for leaves of absence for employees for the purpose of serving in full-time appointive positions for the National Treasury Employees Union. All affected employees will have their leaves of absence renewed, subject to workload considerations and staffing needs, for one additional two-year period upon request.

SECTION 2:

Normally, any employee desiring to take a leave of absence as set forth in Section I above shall provide the Office with at least 90 days written notice of his/her desire to take a leave of absence. Normally, the employee shall also provide the Office with 90 days notice of his/her desire to return to the Office.

SECTION 3:

The Office will make reasonable efforts to place a returning employee in his/her former position or an equivalent position.

(New Article based on 2024 Agreements)

WORK SCHEDULES

ARTICLE 31 [Back to ToC]

SECTION 1: Definitions

A. Fixed 8-Hour Work Schedule - The Fixed 8-Hour Work Schedule consists of the same 5 consecutive days of 8 hours of work plus one-half hour unpaid break each day, Monday through Friday.

B. Alternate Work Schedules (AWS) - Schedules other than the standard fixed eight and one- half (8 ½) hour tour of duty (half hour unpaid break) Monday through Friday. AWS include flexible work schedules (FWS) and compressed work schedules (CWS).

C. Compressed Work Schedule (CWS) - Fixed schedules (4/10 or 5/4/9) that allow employees to complete the basic work requirement in fewer than ten (10) days in a pay period. Arrival and Departure times must be predetermined and constant each biweek, but they need not be the same each day. Employees on CWS are not permitted to earn credit hours.

D. Increased Flextime Schedule (IFS) - A flexible work schedule that allows employees to change the number of days they work and the number of hours worked on each day. Employees on an increased Flextime Schedule are not required to take a thirty (30) minute unpaid meal period.

E. Basic Work Requirement - The number of hours, excluding overtime hours, an employee is required to work or otherwise account for by leave, credit hours, holiday hours, excused absence, compensatory time off, LWOP, or time off earned as an award. The basic work requirement for full time employees is eighty (80) hours per biweekly pay period. The work requirement for part-time employees is the number of hours the employee must be in a duty status or leave status in a biweekly pay period.

F. Flexible Hours - The specific hours of the workday within the tour of duty during which employees covered by a FWS may choose to vary their arrival and departure times within the parameters established in this Article.

G. Core Hour – (Tuesday 1 p.m. – 2 p.m.) The time periods during the workday, workweek or pay period that are within the tour of duty during which an employee covered by a flexible work schedule (8 hour flexible schedule or IFS) is required by the agency to be present for work, on leave, or use credit hours (See 5 U.S.C. 6122(a)(1)).

H. Non IFS Credit Hours - Those hours within the flexible time bands of a FWS that, with advance supervisory approval, an employee elects to work in excess of his/her basic work requirement so as to vary the length of a workweek or workday. Employees on IFS may earn and carry over Non IFS Credit Hours in accordance with Section 5C.

I. IFS Credit Hours - Those hours during the biweek in which an employee working on the IFS may work to lengthen or shorten days to work other than an 8 hour day. These hours need not be approved in advance and their use is automatic, at the employee's election, whenever the employee works outside the traditional 8 hours. Other than for voluntary work on Sunday, the employee should record their activity under the normal WebTA codes and not as credit hours.

J. Tour of Duty - The limits within which an employee must complete his/her basic work requirement, as determined by the work schedule he or she has selected.

K. Official Starting Time - This is the pre-approved set starting time for employees on a fixed 8 hour work schedule and compressed work schedules.

L. Flexible 8 Hour Schedule - An alternate flexible work schedule consisting of 5 consecutive 8 hour days (Monday –Friday) plus one half hour unpaid break each day, with no set arrival and departure times. Employees on Flexible 8 hour schedule are not required to take a thirty (30) minute unpaid meal period.

M. Mid-Day Flex - Mid-Day Flex allows employees who participate in either the IFS or the 8 hour flexible schedule to leave work in the middle of the day to attend to personal matters without being charged leave, and to return to work to complete work hours within the time frames allowed for the employee's work schedule.

SECTION 2**:** Provisions Applicable to all Work Schedules

A. All employees must meet the basic work requirement. Employees not on a part-time work schedule will be on a full-time work schedule and must account for 80 hours per biweek through work or approved absence (annual leave, sick leave, compensatory time off, credit hours used, or leave without pay.)

B. Employees are considered to be "at work" if they are either at their desks, in their immediate work area, or at their assigned other location at the beginning of their scheduled starting time.

C. Employees will follow applicable USPTO policies on Time and Attendance.

D. The Office agrees that enforcement of arrival times, leaving times, break times and lunch

periods within a work unit will be done fairly, consistently, and discreetly. Employees who have repeated violations will ordinarily be notified that there is a problem prior to disciplinary action being taken. Such disciplinary action shall be based on just cause and be applied consistently and equitably.

E. The Office agrees to give full, fair, and compassionate consideration to requests by individual employees for temporary adjustments in their hours of duty. It is understood that the needs of the Office as well as equity to other employees must be considered paramount.

F. Each employee working on a Fixed 8-Hour Work Schedule or a CWS schedule must take an unpaid meal period. The meal period shall be of 30 minutes duration. The meal period may not be taken at the beginning or end of the day to delay the employee's arrival or hasten the employee's departure. The meal period should normally be taken at approximately the mid-point of the employee's day. This period can be assigned by the supervisor when necessary to meet the needs of the office. Employees on the IFS Schedule are not required to take an unpaid meal break.

G. An employee's lunch period is solely free time and an employee can do with it as he/she sees fit as long as there is no interference with the work of the Office. The Office agrees that there is no restriction against shopping or attending to personal business whatsoever during such a period and in no way restricts the use of such a period. There are no restrictions against an employee combining his/her lunch period with other forms of approved leave to attend to his/her business.

H. Where a separate lunch space and/or facility has been provided in the employees' work area, employees whose desks are located in public areas will not be permitted to eat meals at their desks, provided that exceptions may be made by supervisors where good and sufficient cause is shown.

I. Rest breaks not to exceed 15 minutes duration shall be provided in the morning and the afternoon for employees. Times of such breaks are to be determined by the supervisor for employees with fixed schedule only. Employees on breaks shall not interfere with the work of employees not on a break.

J. Daily shifts will begin and end on quarter-hour increments for employees working a Fixed 8-Hour or Compressed work schedule. (examples: 6:30 a.m. to 5:00 p.m.; 9:15 a.m. to 5:45 p.m.; 10:00 to 3:30; but not 6:50 a.m. to 5:20 p.m.).

K. No employee whose work schedule has been approved will be required to change his/her established tour of duty to accommodate the establishment of a new tour of duty for another

employee.

L. Employees may work approved Non IFS credit hours, compensatory time and overtime from 4:30 a.m. to 11:59 p.m., Monday through Sunday. Employees working overtime between the hours of 10:00 p.m. and 5:30 a.m. must be aware that automated information systems may be unavailable, and that the employee may be required to discontinue working if no other work is available.

M. Overtime and Compensatory time earned must be approved in advance.

N. Due to the broad range of hours available to bargaining unit employees, automated systems may not be available at the beginning or end of an employee's shift. Generally, service for all systems is available from 5:30 a.m. through 11:59 p.m. Eastern Time Monday through Thursday; from 5:30 a.m. to 10:00 p.m. Eastern Time Friday; and, from 9:00 a.m. to 10:00 p.m. Eastern Time Saturday, Sunday and holidays. Employees beginning their shifts at 5:30 a.m. must have alternate work available, if the automated systems are unavailable.

O. Planned system outages are generally scheduled Monday to Friday 12 a.m.- 5:30 a.m.; Friday 10 p.m. to Saturday 9:00 a.m.; Saturday 10 p.m. to Sunday 9:00 a.m.; and Sunday 10 p.m. to Monday 5:30 a.m. Occasionally, planned system outages may occur during evenings and weekends. These outages will be announced as far in advance as possible. Employees working flexible schedules may need to arrange their schedules to accommodate these outages if they do not have alternate work available.

P. All times in this Article refer to Eastern Time. Employees working outside of the Eastern time zone must adjust hours according to their respective time zones so that work is performed during the same hours regardless of where the employee is actually working.

Q. The Office will attempt to ensure that there is adequate ventilation, heating, and air conditioning throughout the entire work day (including flexible bands).

R. Employees must follow the provisions of Article 27 with further guidance in Leave Administration Appendix A Impact of Weather and Safety Events on the Alexandria Campus Building.

SECTION 3**:** Full Time Work Schedules

A. Full time employees may opt for any of the following work schedules unless schedule choices are restricted by management pursuant to other provisions of this article:

1. Fixed 8-Hour work schedule plus one-half hour unpaid break each day with set arrival and departure times;
2. Flexible 8 hour work schedule with hours completed between 5:30 a.m. and 8:00 p.m., Monday through Friday.
3. 5-4/9 or 4/10 compressed work schedule; or
4. Increased Flextime Schedule (IFS).

SECTION 4**:** Fixed 8 Hour Schedule

A. The Fixed 8 Hour Work schedule requires the employee to work 5 consecutive days of eight hours Monday through Friday (plus an unpaid meal break) with predetermined arrival and departure times.

B. An example of this shift is 8:30 a.m. to 5:00 p.m., Monday through Friday.

C. Employees are entitled to two 15-minute breaks as defined in Section 2.I.

D. Because the beginning and end times are fixed, the employee cannot earn and use credit hours or use mid-day flex.

E. Unless otherwise provided for in this agreement, management may only direct employees to work this schedule when the nature of the job is such that major responsibilities can only be performed during these hours (i.e. a receptionist responsible for greeting visitors and answering phones during customary business hours).

F. Holiday leave and holiday premium pay will be calculated in compliance with the terms of the Holiday Leave and Working on a Holiday guidance issued November 2019.

SECTION 5**:** Flexible 8 Hour Schedule

A. This work schedule consists of 5 consecutive 8 hour days with no set arrival and departure times. Employees on this schedule are required to work a total of eight hours on each day, Monday through Friday between the hours of 4:30 a.m. and 11:59 p.m.

B. Employees may use mid-day flex (take time off during the shift) and return to complete the eight hours later on that same work day so long as the shift is completed during the hours set out above. Employees who wish to adjust their schedules to participate in the “mid-day flex” must notify their supervisor in advance of their desire to "mid-day flex" on a particular day, to the extent practicable.

C. Compensatory Time and Credit Hours

1. As noted in the Article on Compensatory Time, employees may carry over 80 hours of compensatory time from one biweek to the next. Employees working a Flexible 8 Hour Schedule may earn and use credit hours as set forth in this article.

2. Some employees, based on their salaries, are prevented from earning overtime or compensatory time in lieu of overtime. This would generally apply only to employees who are GS-13 and above (See 5 C.F.R. 550 §105;106).

3. Any of the employees referenced in subparagraph 2, above, carrying fewer than 80 hours of compensatory time earned may earn credit hours up to the lower of:

a. The number of hours needed to make the combined amount of compensatory time and credit hours equal 80, or
b. 24 or prorated for part time. (See 5 U.S.C. § 6126).

D. This is the default schedule for employees, if an alternate schedule is not selected and approved under this article.

E. Holiday leave and holiday premium pay will be calculated in compliance with the terms of the Holiday Leave and Working on a Holiday guidance issued November 2019.

SECTION 6**:** Compressed Work Schedules (CWS)

A. There are two options under this work schedule. These are:

1. 4/10 Plan: A CWS in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly pay period in four 10-hour days (plus one-half hour lunch) each week with one scheduled day off per week. The employee must have a fixed tour of duty within the time bands established by this Article.

2. 5-4/9 Plan: A CWS in which an employee fulfills the basic work requirement of eighty (80) hours in a bi-weekly pay period over a span of nine (9) work days: five (5) days one week, four (4) days the other week, with a designated starting time within the established flexible time bands. Under this plan, employees work eight 9-hour days (plus one-half hour lunch) and one 8-hour day (plus one-half hour lunch) in a bi-weekly pay period, with one scheduled day off per bi-weekly pay period. The employee must have a fixed tour of duty within the time bands established by this Article.

B. Each employee will arrange his or her work schedule and obtain approval from the supervisor in advance, identifying the day of the week which will be the employee's non-work day in

the case of the 4/10 plan and the day of the bi-week which will be the non-work day in the case of the 5-4/9 plan. Subject to supervisory approval, the employee may select any day as a non- work day, except for Tuesday and Thursday, which, during all work weeks, will be considered "core" work days. However, when a holiday falls on an employee's scheduled non-work day, Tuesday or Thursday may be used as the "in lieu of" holidays as set out below.

C. Compressed work schedules (CWS) are fixed work schedules that permit an employee to complete the basic work requirement in fewer than ten (10) days in a pay period. The work hours need not be the same on each workday, but the work hours must be determined in advance and must be the same each bi-week. Work must be completed during the hours of 5:30 a.m. and 8:00 p.m., Monday through Friday.

D. Employees on a CWS are entitled to basic pay for the number of hours of the CWS that fall on a holiday.

E. Holiday Leave
Holiday leave and holiday premium pay will be calculated in compliance with the terms of the Holiday Leave and Working on a Holiday guidance issued November 2019.

F. Employees choosing a compressed work schedule may not earn or use credit hours, or mid- day flex.

G. With supervisory approval, an employee may switch his/her day(s) off to another day within the same pay period, including Tuesdays and Thursdays.

SECTION 7**:** Increased Flexitime Schedule (IFS)

A. The Increased Flexitime Schedule (IFS) is a type of flexible work schedule that allows a full-time employee to complete the basic work requirement of 80 hours for the biweekly pay period in less than 10 full workdays. An employee may vary the number of hours worked on a given workday or the number of hours worked each week within the limits established for the organization.

B. Employees on an IFS may vary the number of hours worked each day (can be less than 8 but no more than 12) and the days worked each week, as long as they meet the basic 80-hour requirement for the bi-week. In addition, employees may work as few as 4 days per week (Monday-Saturday). Further, employees may work regular hours until 11:59 p.m. Monday through Saturday.

C. A workweek consists of seven consecutive days, beginning Sunday and ending Saturday.

D. USPTO's business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. Employees must complete their regular work hours (80 hours for full time) between the hours of 4:30 a.m. and 11:59 p.m. Monday through Saturday. While employees may not work regular hours on a Sunday, they may opt to work IFS credit hours on a Sunday and use the hours within the bi-week. Overtime, compensatory time, and credit hours may be earned and used between the hours of 4:30 a.m. and 11:59 p.m. on Saturday and only earned on Sunday subject to this article.

E. During the work hours as set out in paragraph D above, an employee may only claim overtime or compensatory time, once the employee has worked 8 hours in a day or forty hours in a week. If, however, the employee does not meet the 80-hour requirement, overtime, compensatory time, or credit hours worked will be credited as regular time. Sick leave, annual leave, compensatory time used, and credit hours used count toward the 80-hour requirement.

F. An employee must work his or her regular 80-hour schedule over a minimum of eight days during the bi-week. An employee may work less than 8 hours in a day and still meet this requirement. The minimum number of days that must be worked per week is four (4) days. This flexibility means that employees must work four (4) days per week, but may work those days with the maximum of 12 hours per day. The hours may be any combination of regular hours or approved leave, including compensatory time and credit hours used. For example, an employee might work: 10 hours on Monday; 10 hours on Tuesday; 10 hours on Wednesday; 10 hours on Thursday; or 4 hours on Monday; 12 hours on Tuesday; 12 hours on Wednesday; 12 hours on Friday.

G. Employees may choose to work regular hours on Saturday. This flexibility means that employees can choose to work Saturday in lieu of a regular weekday, per week.

H. The maximum work time is 12 hours per day. The minimum number of hours that may be worked on any day is one quarter of an hour (15 minutes). Time will be reported in 15-minute increments. Employees are responsible for keeping track of their own time. This flexibility means that an employee could choose to vary the number of hours and minutes worked each workday as long as 80 hours is accrued by the end of the pay period. For example, an employee might work: 8 hours on Monday; 8 hours on Tuesday; 4 hours on Wednesday; 9 hours on Thursday; 11 hours on Friday; and 12 hours on Monday; 12 hours on Tuesday; 12 hours on Wednesday; 2 hours on Thursday; 2 hours on Friday, for a total of 80 hours.

I. An employee on flexible schedules may mid-day flex. This means that an employee may work more than one work period during the same day. For example an employee who wishes to work 8 hours on a day may work from 9:00 a.m. to 1:00 p.m. and again from 6:00 p.m. to 10:00 p.m. Employees who wish to adjust their schedules to participate in the “mid- day flex” must notify their supervisor in advance of their desire to "mid-day flex" on a particular day.

J. Holiday leave and holiday premium pay will be calculated in compliance with the terms of the Holiday Leave and Working on a Holiday guidance issued November 2019.

K. Participation in the Increased Flexitime Schedule is voluntary and employees may elect IFS regardless of their performance rating. Employees placed on performance improvement plans may temporarily be required to change work schedules. In addition to the work schedule requirements discussed in this article, employees in OCIO and OCFO will follow "IFP/S Work Schedule Operating Parameters for the USPTO Office of the Chief Financial Officer and the Office of the Chief Information Officer" dated March 3, 2022.

L. Employees are encouraged to extend professional courtesy to their supervisors and customers, and to keep them informed of their schedules and availability. Supervisors and employees must coordinate their work schedules to ensure that the necessary coverage for specific duties is maintained. Additionally, employees may be required to be present at work at specific times to attend to specific events such as meetings, projects, and training. Reasonable and adequate advance notice will be given for scheduling such events; and, as now, employees are expected to adjust their schedules accordingly unless leave has been approved or their attendance has otherwise been excused. Because emergencies arise, employees may also want to keep their supervisors apprised of their absence.

M. The provisions of 7L are not intended to limit employee flexibility, but the employee should make a good faith effort to work a schedule reasonably close to what is reported. Supervisors should expect some deviation from the schedule and should raise concerns about these deviations only when customer service or some other work function is hampered. If the employee plans to work different hours each biweek, the employee should inform his or her supervisor prior to the end of the preceding biweek of their expected schedule for the upcoming biweek. Employees must notify their supervisors as soon as they decide to change days of work under this schedule. Employees must notify their supervisor if they will be absent on a weekday. The employee is required to leave "out of office" notices on their e-mail and phone, as appropriate.

N. An employee must attempt to contact his or her supervisor or designee by phone or email as soon as possible thereafter, if they will be absent on a weekday when the employee had previously indicated that she or he would be at work.

SECTION 8**:** Selecting and Changing Work Schedules

A. Employees may choose to participate in AWS, subject to Section 9 below.

B. Denial of a work schedule as well as restrictions to the work schedule shall be based on

one of the reasons set out in Section 9 below.

C. Employees may change work schedules at the beginning of any quarter by notifying their supervisor of the employee's intended schedule, including fixed arrival and departure times and non-work days as appropriate (CWS). Notification should be given during the final pay period of the previous quarter. If needed, in accordance with the other provisions of this Article, supervisory approval must be gained before changing schedules.

D. Upon request of the employee, supervisors may allow an employee to change work schedules at other times, but changes may be delayed until the beginning of the next biweek.

SECTION 9**:** Restrictions on Work Schedules

In accordance with the provisions below, Management may disapprove or restrict participation in certain work schedules.

A. All disapprovals, modifications or restrictions shall be in writing, and they shall clearly describe the basis used to justify the decision to deny or restrict participation in the program and will include scheduling a follow-up meeting. Copies of the disapproval, modification or restriction, and justification therefore, shall be furnished to each employee affected at least two weeks prior to the time when the denial or restriction is to take effect, unless the denial or restriction is caused by an emergency situation, or when the nature of an office's work is such that the need for the presence, for short periods of time, of one or more employees cannot be anticipated, in which case the employee or employees will be given prior oral notice and justification. The two week provision will also apply to denials, modification or restrictions based on an employee's request to change work schedules. Justification for restriction or denial shall be reviewed at the request of the employee upon a change in conditions. The appropriate supervisory official shall review the request and issue a written decision thereon within three (3) working days. A favorable decision shall entitle the employee to begin participation in the requested work schedule the following work day, or, if it is a brand new type of work schedule, at the beginning of the next pay period.

Any restrictions to an employee's work schedule must be based on the following reason(s):

1. Operational considerations, related to the work situation only (not related to job performance);

2. Abuse of work schedule flexibilities, meaning misconduct of a serious nature that would be alleviated by the presence of a supervisor;

3. Participation during the hours required in a formal training program;

4. Requirement for close supervision for the initial training required to understand and perform the duties of the position; or

5. The requirement for close supervision for employees with serious deficiencies in the performance of their primary tasks in conjunction with placement on a performance improvement plan to the extent that the level of their performance would constitute grounds for an unsatisfactory performance rating. The intent is that employees operating at this level would have the attention, to the extent practical, of their regular or acting supervisors during times that would not be available if the employee were participating in the flextime program.

B. New employees will begin working 8:30 a.m. to 5:00 p.m. New employees may begin participation in the Alternate Work Schedule at the beginning of any pay period, subject to supervisory approval, pursuant to this Article.

C. Where operational needs do not permit an employee to work a flexible schedule identified above, the employee will be permitted to work an alternative flexible schedule approved by his or her supervisor.

D. Justifications for restricting or denying work schedules must not be punitive in nature and will be based on one of the legitimate reasons above.

(New Article based on 2024 Agreements)

OVERTIME

ARTICLE 32 [Back to ToC]

SECTION 1:

The Office may authorize overtime when it deems there is a specific need for overtime and that expending funds for it is proper. The Office will take into account both the amount of work to be done and the funds available to get the work done.

SECTION 2: Voluntary Overtime

After deciding that overtime is to be authorized, the Office shall and make known to the affected employees the overtime program. It shall include the authorized number of overtime hours per day, per week, and per pay period, the earliest daily starting time and latest daily finishing time. The final details of the program are within the discretion of management. The Office agrees to provide reasonable advance notice to the affected employees of the final details of the overtime requirements.

SECTION 3:

When determining whether or not an employee shall be authorized to work overtime, the Office will consider the following criteria:

A. The qualifications of the member of the unit to satisfy specific needs of the overtime situation including the amount of work to be completed within the time allotted;

B. The ability of the member of the unit to perform the work to be done in a reasonably independent manner absent of supervision, during the period of overtime; and

C. A demonstrated acceptable level of effectiveness in producing the required quality and quantity of the work product involved, or related work products.

Within these criteria every qualified employee within a section or other equivalent organizational unit will be given the opportunity to participate in overtime work assignments on an equitable basis insofar as the requirements of the Office will permit. The term "qualified employee" includes employees of the section or unit on details away from the section or unit in which overtime is offered. Overtime shall be offered outside the work unit to employees who: (1) have at least a fully successful rating schedule, and (2) maintain at least a fully successful level of performance in their work unit. Such qualified employees will be allowed to participate in overtime in other units with the permission of that unit's supervisor. Provided that the employee has worked all of the overtime available to him/her in that employee's own work unit.

SECTION 4: Mandatory Overtime

The Office has the right to require employees to work overtime, but insofar as practicable, overtime will be on a voluntary basis. The Office will notify employees at least 24 hours in advance of required overtime work except in emergency situations.

SECTION 5:

Employees who fail to work scheduled overtime, which they have agreed to work or which they are required to work, may be denied future opportunities to work overtime and/or may receive disciplinary action. An employee's use of sick or annual leave will have no effect on his/her eligibility to be assigned and work overtime unless the sick leave is for a full work day and occurs on the same day as the overtime.

SECTION 6:

Employees who work overtime shall be allowed a rest break of 15 minutes for each consecutive four-hour period of work. Employees working Compressed Work Schedule or Fixed 8 Hour Work Schedule over six consecutive hours are required to take a 30 minute unpaid meal period except when the Office and the employee have made other arrangements.

SECTION 7:

Assignment of overtime work shall be done in a fair and equitable manner and as expressly provided in the Agreement.

COMPENSATORY TIME

ARTICLE 33 [Back to ToC]

SECTION 1:

Compensatory time off is an alternative form of compensation to paid overtime and the terms of Article 32 Overtime in this collective bargaining agreement apply to compensatory time. Religious compensatory time is discussed in Article 29.

SECTION 2:

Consistent with applicable laws and regulations, an employee may be granted compensatory time in lieu of payment for overtime work, if requested by the employee, for irregularly or occasionally scheduled overtime work. Employees must request and gain supervisory approval in advance of working compensatory time.

SECTION 3:

Compensatory time hours must be earned before being used as time off. The use of compensatory hours off should be scheduled in advance, and follow the same guidelines provided in Article 25 Annual Leave and Leave Without Pay. An employee must submit a Web T&A compensatory time leave request or other USPTO-approved leave request form to his/her immediate supervisor at least three (3) working days prior to the absence. The employee has a responsibility to comply with this requirement; however, in unusual circumstances an employee request made less than three (3) days in advance will be considered and may be approved.

SECTION 4:

Consistent with the needs of the Office, applicable law and regulation, no request for using compensatory time hours shall be arbitrarily denied. Consistent with the needs of the office, applicable law and regulation, requests to earn compensatory time will be granted in a fair and equitable manner, and will not be unreasonably denied.

SECTION 5:

A. An employee may not carry forward from one pay period to the next more than a cumulative 80 hours of compensatory time, excluding religious compensatory hours and maternity/paternity compensatory hours. The combined total of compensatory hours earned, excluding those hours earned under maternity/paternity and religious compensatory time, may not exceed 400 hours in a fiscal year.

B. However, as an exception to the carry over limitation, with advance supervisory approval an employee may carry over up to an additional 80 hours (for a total of 160 hours) of comp

time from one pay period to the next to be used solely for maternity/paternity leave. An employee who wishes to carry over more than 80 hours of regular compensatory time for this purpose must coordinate the earning and use of the additional maternity/paternity compensatory time with his/her manager, and such leave must be used within 26 pay periods of being earned. Any amounts earned in excess of 80 hours for maternity/paternity purposes that the employee requests to carry over may not be earned prior to six months before the date on which the employee anticipates taking maternity/paternity leave. If the maternity/paternity leave does not occur within six months of when the additional compensatory time was earned, the employee may be required to schedule and use any compensatory time exceeding 80 hours prior to the expiration of 26 pay periods after it was earned.

SECTION 6:

Compensatory time off, excluding religious compensatory time, must be used no later than 26 pay periods after the pay period in which it was earned. It is the employee's responsibility to monitor~~y~~ his/her earned compensatory time, and to make arrangements to use that earned compensatory time before its expiration date.

A. **FLSA Exempt Employees:** An employee who is exempt under the Fair Labor Standards Act (FLSA) and who:

    1. fails to use accrued and accumulated compensatory time off within the required 26 pay periods; or
    2. transfers to another agency or separates from federal service before the expiration of the 26 pay periods, will forfeit the unused compensatory time off.

    An employee who is exempt under FLSA with unused compensatory time off, and who separates from the federal service or is placed in a leave without pay (LWOP) status under the following circumstances, will be paid for the unused compensatory time off:

    1. to perform service in the uniformed services (38 U.S.C. 4303 and CFR 353.102); or
    2. due to an on-the-job injury with entitlement to injury compensation (5 U.S.C. Chapter 81).

B. **FLSA Non-Exempt Employees:** An employee who is non-exempt under the FLSA and who:

    1. fails to use the compensatory time off within the required 26 pay periods;
    2. transfers to another agency or separates from the agency before using the compensatory time; or

3. separates from the federal service, or is placed in LWOP to perform service to in the uniformed services as defined under 38 U.S.C. 4303 and CFR 353.102, or due to an on-the-job injury with entitlement to injury compensation (under 5 U.S.C. Chapter 81) before the expiration of the 26 pay periods,

will receive payment for the unused compensatory time off.

Payment for the unused compensatory time off for irregular or occasional overtime work must be in an amount equal to the amount of overtime pay the employee would otherwise have received for hours of the pay period during which compensatory time off was earned by performing overtime work.

SECTION 7:

Employees using compensatory time hours are responsible for completing work when due.

SECTION 8:

An employee's use of sick or annual leave will have no effect on his/her eligibility to earn compensatory time unless the sick leave is for the entire day. If an employee uses sick leave for the entire day, he/she will not be eligible to earn compensatory time.

SECTION 9:

Compensatory time may not be scheduled or recorded in less than quarter-hour increments and may not be recorded in WebTA and/or other Agency time and attendance records as having been earned until the work is actually performed. Employees are responsible for accurately and timely recording and verifying compensatory hours earned and/or used each biweek in WebTA and/or other Agency time and attendance records.

SECTION 10:

Compensatory time off may not be used to liquidate or reduce a balance of advanced annual or sick leave.

SECTION 11:

Part-time employees may earn compensatory time in accordance with the regulations governing the earning of overtime. Part-time employees may earn compensatory time only for hours of work in excess of scheduled 8, 9, 10 hours a day or 40 hours in a week. Further, a part-time employee may not carry forward more than a pro-rata share of 80 hours of compensatory time, excluding religious compensatory time, from one pay period to the next, plus a pro-rata share of 80 hours of maternity/paternity compensatory time. The provisions of Section 5B apply to the earning and use

of maternity/paternity compensatory time by part-time employees. Part-time employees will be limited to earning a pro-rata share of total compensatory time per fiscal year, excluding those hours earned as maternity/paternity and religious compensatory time. The pro-rata share will be determined by dividing the number of the part-time employee's regularly scheduled hours of work per week by forty hours.

SECTION 12:

For employees on hourly production measures, compensatory time hours used will not count towards the employee's production time for the bi-weekly period in which the time was used. Compensatory time hours worked will count toward the employee's production time for the bi-weekly period in which the time was worked (earned).

SECTION 13:

A. FLSA Exempt employees with a rate of basic pay in excess of the maximum for GS-10 may be compensated for irregular or occasional overtime work by an equal amount of compensatory time off at the request of the employee with management approval.

B. FLSA Non-Exempt, and FLSA Exempt employees earning less than the maximum for GS-10, may elect compensatory time off for irregular or occasional overtime work, but may not be required to work compensatory time in lieu of overtime pay.

POSITION CLASSIFICATION

ARTICLE 34 [Back to ToC]

SECTION 1:

Each employee in the Unit will be provided with an accurate description of his/her duties and responsibilities in the form of a position description.

SECTION 2:

Any new position description will be prepared within a reasonable time and sent to the OHR Office for final classification. All position descriptions shall describe the principal duties, responsibilities and supervisory relationships in sufficient detail to meet the Office of Personnel Management's standard of adequacy.

SECTION 3:

A. Should any employee find inaccuracies in his/her position description or be dissatisfied with the classification; the employee should first discuss these matters with the supervisor. At the employee's request he/she may be accompanied by a Union representative during these discussions.

B. Any issues not resolved within five workdays may then be discussed with the appropriate Human Resources (HR) specialist. At the employee's request, he/she may be accompanied by a Union representative during these discussions.

C. The employee may request an internal PTO desk audit in writing.

    1. Within 15 days of receipt of an official desk audit request (SF-52), OHR will provide written notification to the employee to acknowledge receipt of the request and identify the next steps in the process.

    2. During any desk audit, the employee shall have the right to be accompanied by a Union representative.

    3. Where appropriate, the Office shall initially perform a more limited position review and shall make an initial classification determination within a reasonable time from the date of the employee's request. That initial determination will be communicated to the employee. If the employee is dissatisfied with the determination, the Office will perform the additional steps required of a desk audit. Upon request, the employee will receive the final decision in writing. Afterward, if the employee remains dissatisfied with the classification of the position, the employee will be advised of classification appeal rights in accordance with the applicable Agency policies and government-wide rules and will be provided a copy of the classification appeal procedure.

D. The Office shall review and consider all disputes concerning an employee's position description and/or classification, as well as all desk audit proceedings, in a fair, objective and equitable manner.

SECTION 4:

The Office will provide appropriate remedial relief within a reasonable period, to any employee found to be inappropriately or improperly classified by controlling authorities. Such relief will, pursuant to applicable laws and regulations, include full back pay and benefits.

SECTION 5:

The Office agrees to inform the Union as soon as possible, and prior to issuing to the employee, when significant changes will be made in the duties and responsibilities of a position held by an employee in the unit due to reorganization and/or when changes in position classification standards result in classification changes and/or when changes will be made in position classification standards which could result in classification changes and/or when changes are to be made to a position description. The Office further agrees to furnish the Union copies of proposed classification standards for bargaining unit jobs referred to the Office by the Office of Personnel Management (OPM) for comment.

SECTION 6:

Upon receipt of any notice pursuant to Section 5 above, the Union may make recommendations and present supporting evidence concerning the adequacy and equity of standardized position descriptions or position classification standards, and/or changes to them, prior to implementation. The Office agrees to review the presentation and advise the Union of the results of its review and the basis for its decision regarding the Union's recommendations.

SECTION 7:

In cases where the Office intends to begin a classification review of a unit, the Office will notify supervisors, the Union, and employees of the unit at least two weeks before the review begins. In each affected unit, the HR specialist and the manager involved will meet with the designated Union representative to discuss the concerns of the employees in the unit scheduled to be surveyed.

SECTION 8:

The Office and the Union agree that the principle of equal pay for substantially equal work will be applied to all position classification actions. Therefore, when during a classification review it is found that an employee is performing higher level duties and responsibilities, action will be taken to assure that the employee is compensated for the highest level work to the extent permitted by law, regulations, and decisions of the Comptroller General. The Office, however, has the

responsibility under its retained rights to consider whether the performance of such duties should continue or whether such duties should be assigned to other positions already classified at that higher grade level. Should the decision be made to assign the higher-level duties to established positions, the reasons must be explained to the employee.

Should the Office discover that any position has been erroneously classified at a higher level, it shall notify the Union of the misclassification. The Office will take the necessary action to assure that duties which are withdrawn from an employee's official position description are not then required of him/her in violation of the position classification regulations.

SECTION 9:

Existing position descriptions can be used as a means to identify training, qualification, and performance requirements of positions.

SECTION 10:

Under normal circumstances, all positions will be properly classified within 30 days of assigning employees to do the work of the position. Exceptions would include situations where large numbers of employees requiring desk audits are involved. This 30-day period does not include the time required for DOC or other higher-level review and approval.

(New Article based on 2024 Agreements)

REASSIGNMENTS AND REALIGNMENTS

ARTICLE 35 [Back to ToC]

SECTION 1:

A. A reassignment is a permanent change in an employee's position from one bargaining unit position to another without promotion, demotion, or break in service.

B. A realignment is the movement of an employee and employee's position when a transfer of function or an organization change occurs and there is no change in the employee's position, grade or pay.

C. Reassignments and realignments shall be accomplished in a fair and equitable manner.

SECTION 2:

A. In exercising its right pursuant to the Statute to direct the reassignment of bargaining unit employees, the Office will make reassignments to appropriately classified jobs at the appropriate grade levels. The Office's decision to reassign any bargaining unit employee will be based upon legitimate management considerations.

B. Decisions concerning reassignments may, among other things, take into account the goals of increasing career-related flexibility, mobility and minimizing the need for involuntary reassignment and efficient and effective administration of programs.

C. The Office will make involuntary reassignments only for legitimate organizational reasons.

D. Reassignments will not be used as punishment, in lieu of disciplinary action, or based on personal favoritism.

E. When an employee is reassigned to a different position, the employee will be given a reasonable period of time in which to demonstrate proficiency, including a reasonable training period, if appropriate.

SECTION 3:

Any employee who feels a hardship will be created by a reassignment or realignment shall request and be granted a prompt meeting with his/her supervisor who will give fair consideration to the employee's concerns. Whenever a reassignment is proposed, employees may, at the discretion of the Office, be given the opportunity to volunteer to accept such reassignment.

SECTION 4:

Nothing in this Article shall preclude reassignments in lieu of reductions in force (RIF). The Office will strive to reassign employees to appropriate positions if they are adversely affected by consolidations, reductions-in-force, downsizing, or other types of displacement.

SECTION 5:

Following a reassignment, the Office agrees to minimize the adverse impact on an individual employee of the introduction of new equipment, processes and workload changes including, when necessary, retraining of individual employees adversely affected or granting "learning curves" as appropriate (i.e., duty time for an employee to learn or familiarize themselves with the changes).

SECTION 6:

Normally, the Office will provide the Union with advance notice at least ten (10) days before any proposed reassignment other than those initiated by employee request pursuant to Section 10 below. Within ten (10) days of receipt of such notice, the Union may request to negotiate and include proposals to address any adverse impacts not covered by Section 5 above.

SECTION 7:

Normally, the Office will inform an employee of a reassignment and reasons therefore 10 days in advance of the effective date**.** Exigent circumstances may require less than 10 days' notice, but in no event shall notice be less than 5 days.

SECTION 8: Voluntary Reassignments

A. At any time, employees may submit a written request for reassignment to their supervisor which expresses their desire for voluntary reassignment. An employee making a request for reassignment due to an inability to handle his/her current position is entitled to prompt consideration of his/her request.

B. When the Office determines to affect a voluntary reassignment of an employee(s), the Office uses the following procedures:

1. The Office will identify the position and organization (if appropriate, as opposed to employees), from which the reassignment will come;

2. Qualified employee(s) will be given a choice of position if more than one position exists for which the employee is eligible; and

3. The Office shall give employees all available necessary information at the time of notification, e.g., position description(s) and performance appraisal plan(s).

C. The Office will designate the employees who are qualified for the reassignment. In determining who is qualified, the Office will consider factors such as, but not limited to:

1. The Office's need to develop a balance of experienced and trained employees and obtain the most effective distribution of needed skills and other necessary characteristics;

2. Qualifications and skills needed for an employee to perform in the position; and

3. Cost effectiveness, workload considerations, and staffing balance.

D. When management has determined that a group of employees are equally qualified for a reassignment, management will first ask for volunteers for the reassignment. If there are more volunteers than positions available, the employee(s) will be selected for the reassignment based on the earliest Service Computation Date (SCD) for leave. If not enough qualified employees volunteer, selection will be based on reverse Service Computation Date (SCD) for leave.

SECTION 9: Process for Involuntary Reassignments

A. When the Office determines that an involuntary reassignment of an employee(s) is necessary, the Office will use the following procedures:

1. The Office will identify the position and organization (if appropriate, as opposed to employees), from which the reassignment will come;

2. Qualified employee(s) will be given a choice of position if more than one position exists for which the employee is eligible; and

3. The Office shall give employees all available necessary information at the time of notification, e.g., position description(s) and performance appraisal plan(s).

B. The Office will identify the group of employees who will be involuntarily reassigned. In determining who is qualified, the Office will consider factors such as, but not limited to:

1. The Office's need to develop a balance of experienced and trained employees and obtain the most effective distribution of needed skills and other necessary characteristics;

2. Qualifications and skills needed for an employee to perform in the position;

3. Cost effectiveness, workload considerations, and staffing balance; and

4. Whether a candidate for involuntary reassignment has previously experienced other involuntary reassignments.

C. When less than an entire group of employees is being reassigned and management has determined that a group of employees are equally qualified for a reassignment, management will first ask for volunteers for the reassignment. If there are more volunteers than positions available, the employee(s) will be selected for the reassignment based on the earliest Service

Computation Date (SCD) for leave. If not enough qualified employees volunteer, selection will be based on reverse Service Computation Date (SCD) for leave.

SECTION 10:

Notwithstanding the requirements in Section 1 of this Article that reassignments be based on legitimate management considerations and legitimate organizational reasons:

A. Upon a showing of good cause an employee may request, and the Office will make every reasonable effort to approve, a reassignment necessary to relieve a hardship.

B. In addition, the employee may request a reassignment when (1) with the consent of the affected managers, two or more employees wish to exchange positions, or (2) an employee volunteers for reassignment to address a demonstrated personality conflict. The Office will evaluate the request, balancing the need(s) of the Office and the benefit(s) to the employee.

SECTION 11: Employee Requests for Reassignment

An employee may submit a request for reassignment to a position at an equal or lower grade and with no higher promotion potential. Employees may share the request with the Union. If an available position is identified for which the employee is eligible, the Office will give the request serious consideration. The Office will respond to the request as soon as possible. Request will be deemed active for 90 days unless withdrawn by the employee. The employee may renew his/her request thereafter.

SECTION 12:

The Office agrees that when an employee has been reassigned due to the abolishment of his or her position, he or she will be given priority consideration if that position is reestablished within one (1) year. To receive priority consideration, the employee must timely apply for the position, and clearly indicate that he or she held the position when it was abolished and state that he or she is entitled to priority consideration pursuant to this Article and Section. Priority consideration means that the employee alone must be given bona fide consideration by the selecting official, based on legitimate job-related criteria for the position to be filled, before any other candidates are referred for consideration.

SECTION 13: Process for Realignments

A. When the Office determines that it is necessary to realign employees, it will provide advance notification to the Union to begin a cooperative discussion.

B. Notice to the Union will generally be provided at least thirty (30) days in advance of the scheduled implementation date. The following initial information will be provided, to the extent available, with the Notice:

1. reason(s) for the realignment;
2. the names, position titles, and grades of realigning employees;

3. if applicable, the leave SCDs and positions of realigning employees that have been determined to be equally qualified by management pursuant to Section 13(D) below;
4. function statements for new organizational units, if applicable;
5. the existing organization and the proposed organization charts, to include the placements of the realigning positions; and
6. an implementation schedule.

C. The Office will offer a detailed briefing to the Union and thereafter will also meet with realigning employees to discuss the proposed change after providing the Union with notice of the formal meeting, pursuant to Article 6. The Union may raise any concerns regarding the realignment, including questions and requests for additional information regarding the equally qualified employees, to the Office no later than two (2) weeks after the formal employee meeting and the Office will work collaboratively with the Union to address concerns prior to implementation. If the parties fail to reach an agreement following at least two (2) weeks of informal discussions, the Office may implement or stay the organizational changes. If the Office elects to implement the organizational changes the parties shall continue informal discussions post-implementation in a good faith effort to resolve concerns raised by the Union. Alternatively, the Union may submit proposals within ten (10) days of the Office's implementation of the organizational changes and the parties shall engage in formal post-implementation bargaining.

D. The Office reserves the right to realign employees according to the needs of the Office and in consideration of the skills and abilities they have acquired and demonstrated within their position. When management has determined that a group of realigning employees with the same position title, grade, and series are equally qualified, the employees will be provided with the opportunity to select their new organizational unit based on the available slots and according to priority of the earliest Service Computation Date (SCD) for leave.

E. In determining who is equally qualified, the Office will consider factors such as, but not limited to:

1. Qualifications and skills needed for an employee to perform in the position;
2. Experience working with the subject, processes, tools, systems and information technology, etc. that will be utilized in the position;
3. Specialized knowledge and expertise directly applicable to the position; and
4. The impact to the continuity of operations, succession planning, and costs.

DETAIL

ARTICLE 36 [Back to ToC]

SECTION 1:

A detail is defined as the temporary assignment of an employee to a different position or duties for a specified period of time, with the employee returning to his/her duties at the end of the temporary assignment.

SECTION 2:

Details to positions or work assignments requiring a different skill will be based on a bona fide need and will be in accordance with Civil Service laws and regulations.

SECTION 3:

A. The Office agrees that an employee who is assigned to an established position of higher grade and is vested with the full authority and responsibility of that position for more than 30 consecutive days, will receive a temporary promotion not later than the beginning of the first pay period following the expiration of the 30 consecutive days in accordance with applicable regulations. This Section does not apply to Career Development details for those employees in a formal Career Development Program.

B. Selection for details will be accomplished in a fair and equitable manner. Volunteers will be solicited from within the work unit from which the detail will be made. If more employees volunteer than are necessary, first consideration will be given to selecting the most qualified senior employee. If fewer employees volunteer than are necessary, first consideration will be given to selecting the most qualified junior employee.

SECTION 4:

The Office may detail employees to lower graded positions when:

A. A temporary shortage of personnel exists;

B. Required by work volume and work schedule;

C. Necessary to temporarily fill the positions of employees on extended leave; or

D. For other work related reasons.

This will in no way adversely affect an employee's salary, classification or job standing.

SECTION 5:

Every member of the unit whose performance is at an acceptable level of competence shall be accorded equal opportunity to participate in any detail for which he/she is qualified and for which he/she has expressed an interest. It is understood that the needs of the organization to which such member is currently assigned must be considered before the detail is approved.

SECTION 6:

In order to ensure a smooth and efficient transition between positions, employees detailed for more than 30 days will be given a reasonable amount of work time to re-familiarize himself/herself with the position to which he/she is returning. During this time, the Office will ensure that the employee is made aware of any changes in operating procedures of this position that have occurred since the employee was on detail.

REDUCTIONS-IN-FORCE/FURLOUGHS

ARTICLE 37 [Back to ToC]

SECTION 1:

The Office has a reduction-in-force (RIF) when it releases a competing employee (tenure group I, II, III) from his/her competitive level by separation, demotion, furlough for more than 30 calendar days, or reassignment requiring displacement, when the release is required due to reasons specified in applicable regulations.

SECTION 2:

To minimize adverse effects upon employees in RIF situations, it is the policy of the Office to accomplish reductions-in-force when possible through attrition, and/or other means.

SECTION 3:

The Office agrees to notify NTEU of any RIF far in advance as possible. The information provided shall be the competitive levels initially affected, the number of employees involved, the proposed effective date and the reasons for the action. Prior to taking any RIF action, the Union will be given the opportunity to bargain the impact and implementation of the proposed RIF to the maximum extent permitted by law. The procedures set forth in Article 56 Mid-Contract Negotiations shall be followed.

SECTION 4: (Furlough Due to Lapse in Appropriations/Debt Ceiling Limitation)

The following procedures apply when a furlough is necessary due to lapse in appropriations/debt ceiling limitation, failure to extend the debt ceiling, or lack of continuing resolution:

A. The Office will engage NTEU in pre-decisional discussions concerning the impact on bargaining unit employees and actions the Office will take.

B. Prior to any such furlough, the Union will be given the opportunity to bargain the impact and implementation of the proposed furlough to the extent required by law.

C. The Office will promptly provide NTEU with the following information:

    1. OMB and/or OPM guidance provided to the Office pertaining to the government shutdown;

    2. A list of functions, positions and/or employees that have been designated as “excepted” and therefore expected to continue working during the furlough; and

3. The guidance and criteria used to determine which functions, positions and/or employees to designate as "excepted," unless protected by privilege or other recognized protection from disclosure.

D. The Office will notify all impacted employees of the conclusion of the furlough. The notification will include instructions on reporting to work. However, an unscheduled leave policy will be in effect on the day employees are to return to work.

(New Article based on 2024 Agreements)

PROMOTION AND OTHER COMPETITIVE ACTIONS

ARTICLE 38 [Back to ToC]

SECTION 1: Policy

A. This article establishes procedures which are designed to assure that all interested candidates and applicants are systematically considered for advancement according to merit and without regard to race, color, religion, national origin, personal favoritism, age, marital status, sex, physical or mental disability, sexual orientation, gender identity and/or expression, political or employee organization affiliation, or pregnancy, except as may be authorized or required by law, and shall not be based on criteria that are not job related, including favoritism based on personal relationship and patronage.

B. The office agrees to avoid practices that would result in or give the appearance of any preference not authorized by law, rule or regulation was granted to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment.

SECTION 2:

A. Employees are responsible for:

1. Informing the Office of Human Resources (OHR), in writing, of qualifications special training and educational achievements which they wish to make a matter of record in the Official Personnel Folder (OPF);

2. Following the application procedures and submitting a complete application package as outlined in the job opportunity announcement;

3. Seeking information on positions of interest and applying for such positions by the required application deadline, even while on extended absence (e.g. leave, official travel, detail, military service, long-term training);

4. Employees who are absent from their positions for legitimate reasons (e.g. detail, authorized leave, temporary duty, Intergovernmental Personnel Act assignment, training) are eligible to receive appropriate consideration for promotion under the provisions of this plan; and

5. For those applicants who are unable to apply via the automated system, the employee must contact OHR via email. OHR will provide the employment package to the applicant on a case-by-case basis.

B. In order to complete an application, each applicant will be provided access to his or her Official Personnel File (OPF) to obtain any applicable documents to include with their application package.

C. Employees may use USPTO-furnished computers to access, submit electronic job applications and/or establish or update their resumes on the automated application system. Authorized automated hiring systems will not be subject to office bandwidth limitations.

SECTION 3:

A. Actions Covered: This program covers the following actions:

1. Competitive promotions;

2. A temporary promotion over 120 days. All prior service at the higher-grade level during the preceding 12 months including details to higher graded positions or temporary promotions must be counted as part of the 120 days. A temporary promotion may only be made permanent without further competition if the fact that it might lead to a permanent promotion was originally made known to all potential candidates and the temporary promotion resulted from a competitive process;

3. Reinstatements to temporary or permanent positions of higher grades than last held or to ones having potential for advancing to higher grades;

4. Transfers to higher graded positions with known promotion potential;

5. Reassignments or demotions to positions with known promotion potential higher than the employee's current position;

6. Selection for training required for promotion;

7. Selection from among severely disabled employees for promotion or training of severely disabled employees under Title 5 Code of Federal Regulations (5 C.F.R. 213.3102(u) and 335.103); and

8. The extension of details of more than 120 calendar days to a higher graded position or to a position with known promotion potential.

B. Actions Excluded: This plan does not apply to the following actions:

1. Promotion to a target or full performance level position from an apprentice, trainee, or understudy position;

2. Noncompetitive conversion actions on employees in Student in Career Experience Program (formerly Cooperative Education), Program), Federal Junior Fellowship, Presidential Management Intern, and other authorized programs, and their subsequent promotions in career ladder positions;

3. Promotion to an intermediate or full performance level in a career ladder position when competition has previously taken place or the selection was made from a civil service register and the management intent to promote is a matter of record;

4. Promotion of an employee who satisfactorily completes training under a formal training agreement when competition was involved in the selection for training;

5. Promotion of an employee whose position is reclassified at a higher grade because of the assignment of additional duties and responsibilities;

6. Position change from a position having known promotion potential to a position having no higher potential;

7. A temporary promotion of 120 days or less; and

8. Re-promotion up to a grade or position from which an employee was demoted without personal cause and not at his or her request.

SECTION 4:

OHR will post vacancy announcements electronically for all vacancies that are to be filled in accordance with the procedures of this Article. Individuals may upon request receive complete announcements from OHR. Announcements will be posted for a minimum of 10 calendar days or a set number of applicants (not lower than 100) and will remain open and posted for this period unless cancelled.

At a minimum, the vacancy announcement will contain:

1. Announcement number;

2. Opening and closing dates;

3. Position title, series, grade;

4. Organizational location and duty station;

5. Full promotion potential and/or career ladder status where appropriate;

6. Principal duties, including the amount of travel;

7. Minimum qualifications required;

8. Selective placement factors, if any;

9. Evaluation methods to be used;

10. Statement of equal employment opportunity;

11. Telework eligibility;

12. Number of positions to be filled from the announcement; and

13. How to apply.

SECTION 5:

Only those candidates who meet the minimum qualification standards prescribed by the Office of Personnel Management, or other standards which the Office has the authority to prescribe, are eligible for promotion.

SECTION 6:

It is agreed that for vacancies covered by this Article the candidate's current most recent rating of record will be used.

SECTION 7: Rating and Ranking

A. The criteria for, and method of, rating and ranking applicants for vacancies will be documented in the vacancy announcement folder. The criteria for rating must:

    1. Be related to the job to be filled;

    2. Provide adequate measure of the qualifications needed for the job to be filled;

    3. Make meaningful distinctions among the candidates, i.e., indicate those who are the best qualified from the group of candidates; and

    4. Distinguish between the knowledge, skills, abilities, and competencies an employee must possess at the time of promotion and those which can be quickly and easily acquired after promotion thorough experience or training.

B. An employee has the right to review any record of his/her past performance or production which is used to evaluate him/her for advancement under this plan as well as supervisory appraisals.

SECTION 8:

A. Any selection process utilized by the selecting official will be uniformly applied to all best qualified candidates. The selecting official will make a selection without personal favoritism, illegal discrimination, or for any other reasons that are not based on merit. T he selecting official will provide the reasons in writing to the Union upon request when no one is selected. Upon request, the employee or the Union when designated as an employee representative will be provided a copy of the reasons.

B. The selecting official's decision to select a particular candidate is subject to final review by OHR and to such other approvals as may be required by law, regulation, or policy. OHR's review of the selecting official's decision is limited to compliance with all legal requirements.

C. OHR will arrange for the release of the selected candidate from the current employing organization. Employees will be released from the losing organization/business unit within one full pay period of receipt of the request for promotion release. Under unusual circumstances (e.g. to permit completion of essential assignments or for other acceptable reasons) the release date may be extended. If mutual agreement for release cannot be reached, OHR may negotiate the release date.

SECTION 9:

A. After a selection has been made from a group of best qualified candidates and properly documented by the selecting official, an employee, not selected may request a discussion with the selecting official or a knowledgeable supervisor to obtain information on what areas, if any, require improvement in order to increase his/her future prospects of advancement.

B. If an employee requests a discussion with OHR as a result of non-selection for a vacancy announcement for which he/she was best qualified, he/she shall be allowed to review sanitized rating sheets provided an explanation of the rating methods used and the results of the evaluation and ranking process, the reasons for the selection of the successful employee, and why he/she was not selected. If OHR is not able to provide the employee an explanation of reasons for non-selection as stated herein, the employee may contact the selecting official for further clarification. Those individuals who are referred on the promotion certificate may also request a discussion with the selecting official.

C. The employee may be accompanied by a union representative during the discussions. Union representatives shall be afforded the same rights enumerated in paragraph B of this Section.

SECTION 10: Documentation

Each advancement action taken under this plan will be documented and records will be maintained in accordance with the requirements contained in 5 CFR, Part 335, and this Article.

SECTION 11:

A. When there is a failure to adhere strictly to the provisions of 5 C.F.R. or this Agreement, corrective measures shall be applied promptly and in accordance with guidance set forth in 5 CFR, Part 550.

B. In the event OHR determines an employee was improperly excluded from the best qualified list, he/she will receive priority consideration for the next appropriate vacancy for which he/she is qualified. An appropriate vacancy is one at the same grade level, in the same area of consideration, and which has comparable promotion in the same area of consideration, and which has comparable promotion opportunities as the position for which the employee received improper consideration. Priority consideration means that the selecting official must give the employee bona fide consideration for the position to be filled. In the event two or more employees receive priority consideration for the same promotion action, they may be referred together. However, priority consideration for separate actions will be referred separately and in the order received based on the date the determination of improper consideration is made.

   However, if as a result of a grievance being filed under this Agreement, and either the deciding official, arbitrator, or any other decisionmaker determines that the employee was improperly excluded from the best qualified list and/or improperly not selected for the position, the Office will enforce the deciding official, arbitrator, or other decisionmaker's decision.

SECTION 12:

An employee will be entitled to retroactive pay in connection with an improper personnel action in accordance with applicable law, rules, regulations and/or this Agreement.

SECTION 13:

A. Upon request and completion of the selection process, a copy of the completed ranking and selection report shall be made available to the Union.

B. The ranking and selection report will contain, at a minimum the following:

1. Announcement number;

2. Date of report;

3. Number of vacancies;

4. Scores of the candidates referred;

5. The series, grade of the employees referred, if the candidates are within the bargaining unit;

6. If the candidates were not bargaining unit employees, this will be so designated;

7. Selection action (i.e., a clear indication of which candidates were selected);

8. Date of selection action; and,

9. Date eligible for promotion.

SECTION 14:

In the processing of grievances related to actions taken under the terms of this Article, the grieving employee or his/her steward will, upon request, be furnished all of the evaluation material used by the selecting official in accordance with the Statute.

(New Article based on 2024 Agreements)

PERFORMANCE APPRAISAL

ARTICLE 39 [Back to ToC]

SECTION 1: Applicability

The provisions of the Article are intended to be interpreted and applied in a manner consistent with 5 U.S.C. Chapter 43 and 5 C.F.R. Part 430. The provisions of the Article apply to all bargaining unit employees who have appointments over 120 calendar days.

SECTION 2:

A. Performance appraisals will be made in a fair and objective manner, measure actual work performance in relation to the performance requirements of the positions to which employees are assigned, and be based on a reasonable and representative sample of the employee's work.

B. In the application of standards to individual employees, the Office will consider mitigating factors such as the availability of resources, lack of training, collateral duties (e.g., special assignments that may impact the regular job duties) and/or frequent authorized interruptions of normal work duties.

   The process of monitoring performance is ongoing. Therefore, the Office will counsel employees in relation to their overall performance on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance or increase in errors, and include advice or recommendations for improvement. Particular emphasis will be given to those cases where an employee's overall performance has fallen below Fully Successful. Upon request, employees may receive a copy of any errors identified in their work and may rebut those errors in accordance with Section 15 of this article.

C. The employee should initial any document he or she receives in accordance with this section, acknowledging only that the supervisor has shown such documentation to the employee. Where the employee refuses to initial, the supervisor will so note that on the documentation. A copy of any such documentation will be provided to the employee at the time the document is initialed.

SECTION 3: Definitions

Appraisal is the act or process of evaluating the performance of an employee against the described performance standards.

Appraisal Period means the period of time established by the USPTO Employee Performance Appraisal System for which an employee's performance will be reviewed.

Approving Official is the supervisor who assigns, controls, and is responsible for the work of the rating official, normally the rating official's immediate supervisor. However, the Office or operating units may designate a higher level official in the management chain as the approving official provided this designation does not conflict with any

other provision of this document. The approving official is responsible for assigning the final performance rating.

Covered Position is a bargaining unit position.

Critical Element is a component of an employee's position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

Fully Successful is level three of the five level element rating scale and reflects good, sound performance, i.e., the expected level of performance.

Interim Rating is a rating that should be prepared when an employee has spent the minimum appraisal period (120 calendar days or more), in a covered position and then changes to another position or when an employee completes a detail or temporary promotion of 120 calendar days or more.

Major Activity is a task, duty or project, which needs to be accomplished in support of a critical element.

Non-critical Element is a component of an employee's job, which does not meet the definition of a critical element, but is sufficiently important to warrant written appraisal.

Performance is an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

Performance Award is a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

Performance Appraisal Plans are documents that define the critical (and non-critical) elements against which a covered employee's performance will be appraised and establish performance standards for those elements.

Performance Standards are statements of the expectations or requirements established by management for a critical (or non-critical) element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Pre-appraisal Meeting is a meeting with the rating official scheduled at the option of the employee prior to the formal appraisal meeting. At the pre-appraisal meeting the employee can: (1) present an assessment of his or her own performance during the appraisal period; (2) cover aspects of his or her work of which the rating official may not be aware; and (3) identify objectives he or she would like to include in the next cycle's performance plan.

Progress Review is a formal part of the performance appraisal process and consists of a scheduled meeting between the rating official and employee at which the employee's progress toward meeting the objectives in his or her performance plan is discussed. The need for any changes to the plan may also be discussed at this meeting as well as any performance deficiencies the supervisor has noted along with

recommendations for improving them.

Rating (also referred to as "summary rating") is the written record of the appraisal of each critical and noncritical element and the assignment of a summary rating level (as specified in 5 CFR 430.205.).

Rating Official is the person responsible for informing the covered employee of the critical elements of his/her performance appraisal plan, establishing performance standards for those elements, appraising performance and assigning the recommended performance rating.
Normally, this is the employee's immediate supervisor.

Rating of Record is the summary rating, under 5 U.S.C. §4302, required at the time specified in the USPTO's Employee Performance Appraisal System or at other times specified for special circumstances.

Supervisor is an individual employed by an agency having authority in the interest of the agency to hire, layoff, recall, suspend, discipline, or remove employees; to adjust their grievances; or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes fire fighters or nurse, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

Unacceptable is level one of the five-level element rating scale or two levels below Fully Successful. It reflects unacceptable performance in accordance with 5 U.S.C. 4301(3).

SECTION 4:

Employees should:

A. Work with their supervisors in developing their performance plans;

B. Submit data (work reports) as requested for the purpose of determining if performance standards are being met;

C. Compare accomplishments with appropriate performance standards;

D. Participate in the mid-cycle progress review and request additional reviews, as necessary;

E. Participate in the performance appraisal process with the rating official (including scheduling a pre-appraisal meeting if they wish);

F. Sign and date performance plans, performance appraisals, and ratings, to acknowledge receipt;

G. Prepare written comments when disputing a rating; and

H. Seek professional development opportunities to enhance performance.

I. Employees may prepare and submit a self-assessment within ten (10) days prior to their mid-year progress review or the end of annual appraisal period for consideration in connection with their mid-year progress review and annual appraisal.

SECTION 5:

The performance appraisal period will begin on October 1 and end on September 30 of each year.

SECTION 6:

Employees who have occupied one or more covered positions for 120 calendar days or more during the rating period will receive an appraisal within thirty calendar days following the end of the appraisal period.

SECTION 7:

A. 1. The employee will sign and date the Office's copy of the Performance Plan to show when it was received and discussed with the employee by the supervisor. Signing does not mean the employee agrees with the established performance appraisal plan. A copy of his/her signed and dated performance appraisal plan will be given to each employee annually. This copy will reflect the substance of every change as well as the effective and terminating date of the performance appraisal plan.

2. The performance appraisal plan will identify the quantity of cases that will be reviewed for employees who are reviewed based on production and for whom a random sample of work is used as a means (in whole or in part) of assessing quality.

3. If the current performance appraisal plan does not already identify this information, the employee will be given a separate written notice within thirty (30) days of the beginning of the performance appraisal cycle (or within 30 days of the effective date of this Agreement for the current appraisal cycle), identifying the number of cases that will be reviewed.

4. Critical elements and standards will be provided to employees annually. Employees will not be held accountable or responsible for their new or revised performance appraisal plans until they are received by the employees in writing. When the same performance appraisal plan is being used from one fiscal year to the next, the standards may be enforced during the first 30 calendar days so long as management provides the performance appraisal plan to the employee within the first 30 calendar days.

B. Upon receipt (or within a reasonable time after receipt) of the performance appraisal plan, a meeting between the Office and employee(s) shall be held to explain the performance appraisal plan and to answer questions. All aspects of all standards and elements, including numerical standards, procedures, or requirements, referenced in the performance appraisal plan will be communicated to the affected employees at the time of the meeting(s). Non-production time will be granted to employees to attend such meetings.

C. The Office agrees that questions left unanswered during the meeting will be answered within a reasonable time. Answers to an individual employee's questions will be communicated to that employee. Answers to questions raised by or of interest to the group will be communicated to the group.

D. Performance standards and critical elements must:

1. To the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question;

2. To the maximum extent feasible, be specific, observable and measurable; and

3. Be attainable, through the description of the goal in terms of quality, efficiency or timeliness, and provide a clear means of assessing whether objectives have been met.

E. The Office will not use critical elements or standards that impose absolute or unreasonable standards unless authorized by law.

F. All employees expected to be in covered positions for 120 calendar days or more will receive critical elements, in addition to performance standards, and will have their performance measured based on these critical elements.

G. Employees detailed to a new position within the USPTO which is expected to last for 120 days or more will be issued a performance appraisal plan within the first 30 days of the detail.

H. Employees detailed to a new position for less than 120 days will not be rated on the detail.

SECTION 8:

Management agrees to negotiate impact and implementation of changes to performance appraisal plans, critical job elements and standards to the extent required by law. To the extent the Office asserts there is no legal bargaining obligation on any such change, it will provide the Union with advance notice of the change.

SECTION 9**:** Critical Elements

A. Critical and non-critical elements will be uniform for standard positions to the extent practicable. Variations in elements for standard positions must be based on real differences in the job.

B. When statistical data is utilized in order to evaluate employee performance, the procedures that are used must ensure the accurate evaluation of performance. Such procedures shall be explained to the employee.

SECTION 10: Progress Reviews

A. At a minimum, rating officials must conduct a formal progress review with their employees at

approximately the midpoint of the appraisal period. Covered employees may also request (or supervisors may schedule) additional progress reviews. Employee requests will be honored within 15 days (unless unusual circumstances such as a prolonged absence of the employee or his/her manager warrant a reasonable delay). Normally, reviews shall not exceed one per quarter unless the employee's performance in a standard or element is declining (including performance of a specific project) or the employee requests a review.

B. The progress review must include discussion of:

1. The employee's progress toward meeting the objectives of the elements included in his or her performance plan;

2. The need for changes in the plan based on changes in responsibilities as reflected in changes in an employee's position description, if necessary;

3. The identification of any performance deficiencies, and recommendations on how to improve them by the rating official, including examples thereof; and

4. The employee's work and any errors found since the last progress review, counseling session or appraisal meeting, and any other relevant errors. Upon request, the employee shall be entitled to a copy of any sample of his or her work that has resulted in the finding of an error committed or identified since the last progress review, counseling session or appraisal meeting, and other relevant errors discussed in the meeting. The employee may rebut any errors as set out in paragraphs 2C and 15 of this Article.

C. There must be a record of the progress review. Both the supervisor and employee should date and initial the performance plan to indicate the review took place.

D. Progress reviews should also be scheduled and conducted for employees who enter covered positions after the start of the appraisal period. These progress reviews will be completed near the midpoint of the shortened appraisal period.

E. A progress review must also be initiated by the rating official if an employee's performance on one or more critical elements falls to the Marginal level. Situations when an employee's performance falls to Unacceptable are addressed in Article 46 of this Agreement.

F. During the progress review set out in paragraph E above, the employee will be advised of performance deficiencies and advised of possible consequences of unimproved performance. A plan will be discussed during the progress review outlining the steps required to eliminate deficiencies in order to bring performance up to the Fully Successful level. Following the discussion, the plan will be provided to the employee in a written document or email. The plan will be provided to the employee at the conclusion of the meeting or within 10 days thereof (unless unusual circumstances such as a prolonged absence of the employee or the manager warrant a reasonable delay) including any modifications as a result of the discussion.

SECTION 11**:** Appraisal

Every employee who occupies a covered position on the last day of the appraisal cycle and who has been in a covered position for at least 120 calendar days during the appraisal cycle must receive an annual performance appraisal rating of record, in accordance with the following. This requirement applies to employees who have not been in their current positions for 120 calendar days, but have been in another covered position for the minimum appraisal period and for whom an interim performance rating is available.

A. Rating officials must confer with the approving official about their organization's performance and gain approval of including the approving official's signature on the ratings they recommend for their employees before discussing those ratings with employees.

B. The rating official initiates the appraisal by providing advance notice to the employee of the date and time for the formal appraisal meeting.

C. The employee may schedule a pre-appraisal meeting with the rating official to:

1. present his or her assessment of results achieved against the standards set in the performance plan;

2. inform the rating official of aspects of his or her work of which the rating official may not be aware; and

3. identify objectives he or she would like to include in the performance plan for the next period.

During this pre-appraisal meeting, the rating official may ask questions to clarify his or her understanding of the employee's performance.

D. The employee must sign the rating to indicate that it has been discussed. A copy must be given to the employee. If the employee disagrees with the rating, he or she may comment in writing to the approving official within five days of receipt of the appraisal and rating. If the approving official changes a rating at this point, he or she must document the reasons for the change on the rating and provide a copy to the employee.

E. The summary rating given at the end of the annual appraisal cycle becomes the employee's rating of record. Employees who are serving in covered positions on the last day of the appraisal period, but who are unratable because they have not served in a covered position for at least 120 calendar days during the appraisal period must be given an annual rating of record in accordance with the provisions of this Section, as soon as they have served for the minimum period of 120 days. An employee may be unratable because of entry into a covered position within the last 119 days of the appraisal period; time in a non-pay status; long term training; service on a Federally sponsored program such as an Intergovernmental Personnel Act or President's Executive Exchange assignment for which appraisal information is not available; service on detail to another Federal agency for which performance appraisal information is not available; or approved absence creditable under 5 CFR §531.406.b.

SECTION 12: Interim and Summary Ratings

A. An employee who has served in his or her current position for more than 120 calendar days and who is reassigned to a different position within the Office will receive an interim rating.

B. Employees detailed to a different position within the Office for 120 calendar days or more will receive an interim rating based on the elements and standards of the detail position if such elements and standards were provided to the employee in accordance with this Article.

C. All interim ratings must be prepared and issued in accordance with Section 11, Appraisal, above.

D. Interim ratings are not ratings of record for reduction-in-force or other purposes, unless the interim rating becomes a summary rating under paragraph F5 below.

E. An employee without an annual performance rating of record must be given a rating (which becomes a rating of record) before taking a reduction-in-force action against the employee, if he or she has been in a covered position for more than 120 calendar days.

F. The following are summary ratings and no other ratings constitute ratings of record:

1. the annual performance appraisal rating provided for in Section 11 of this Article;

2. a rating given as required to conduct a reduction-in-force;

3. a rating given in connection with a within-grade increase determination as to acceptable level of competence that is inconsistent with the employee's current rating of record;

4. ratings given after the minimum appraisal period when an employee is unratable at the end of the appraisal cycle, as provided for in Section 11 of this Article; and

5. when the employee has served less than 120 calendar days in the position of record, an interim rating, or rating(s) for position(s) in which the employee served for 120 days or more properly given pursuant to this section.

SECTION 13:

The Office will not prescribe nor permit a predetermined distribution of ratings.

SECTION 14: Progress Reviews and End of Year Ratings (including documentation)

A. Any documentation (e.g., supervisory records notes, and diaries, and errors) used by the Office concerning an employee's performance appraisal, and/or which could have an adverse effect on the employee's next performance appraisal or other employment considerations, will be provided to the employee during the applicable progress review (e.g., semi-annual or annual appraisal), or receipt of the appraisal, whichever occurs first. Where possible, the documentation will be provided electronically and employee initials will

not be needed as otherwise required in this section.

B. The employee should initial any document he or she receives in accordance with this section, acknowledging only that the supervisor has shown such documentation to the employee. Where the employee refuses to initial, the supervisor will so note that on the documentation.

C. The employee may provide written comments concerning the documentation received, which shall be attached to the documentation and considered when determining the end of year rating (comments provided after the midyear progress review), or, for comments provided after the end of year rating, a part of a request for reconsideration. Employees will receive a reasonable amount of non-production time to prepare comments. This time must be granted no later than two days after it is requested. Where possible, the comments will be provided electronically.

D. To assist the employee in preparing any comments, he or she has the right to review and obtain a copy of relevant and necessary documentation as permitted by regulations.

SECTION 15: Errors

The parties agree that employees should be fully aware of the expectations regarding quality for their positions. To that end:

A. Unusual circumstances such as a prolonged absence may warrant an extension to the 10 day periods set out in paragraphs B – E below. In these instances, the employee or supervisor will be given a reasonable time to fulfill the required action following the absence.

B. Employees will be notified of any errors within ten (10) days from when the supervisor became aware of the error. Errors will not be held against the employee if the employee has not been informed of the error within the timeframes set forth in this article.

C. Employees may provide a written rebuttal of any error charged to their supervisor within ten days following receipt of documentation of the error by the employee during the performance period. Alternatively, the employee may rebut errors identified prior to or during the mid-year progress review within ten days after the review, or 10 days after receipt of the documentation in subsection 15E, whichever is later. Management will respond to the rebuttal in writing within 10 days. Additionally, all errors for which an employee is being held accountable may be challenged after the summary rating is given through the request for reconsideration process set out in the performance appraisal plan or through the negotiated grievance process.

D. An employee charged with an error who had no training nor was in receipt of oral or written guidance on that type of error and therefore could not be aware of the requirement, should discuss the error with his or her supervisor within 10 days of being made aware of the error. If the supervisor agrees that the employee was not aware of the requirement underlying the error, the employee will not be charged with that error and other similar errors made prior to the date on which the supervisor first notified the employee that

s/he had made the charged error.

E. For production based employees who are rated for quality in whole or in part based on a random sample of work pulled during (and immediately following the end of) the performance period, management will provide a list of the random sample of work within ten days following the completion of the review of that work. Reasonable and representative samples of work will be pulled from work performed throughout the relevant period under review.

WITHIN GRADE INCREASES

ARTICLE 40 [Back to ToC]

SECTION 1:

A. An employee will be granted a within grade increase when he/she has completed the required waiting period and the employee has performed at an acceptable level of competence during the waiting period.

B. The waiting periods for within grade increases will be done in compliance with the appropriate regulations.

C. The Office has determined that employees will be considered to have attained an acceptable level of competence when the employee's performance is "fully successful" as defined in Article 39 Performance Appraisal.

D. The Office will make decisions on the granting or denial of within grade increases in a timely manner when an employee becomes eligible. Any granting of a within grade increase shall be effective on the first full pay period following the date of eligibility. If a decision granting a within grade increase is not timely implemented on the first full pay period following the date of eligibility, employees will be entitled to retroactive pay to that date.

SECTION 2:

A. An employee who is not performing at an acceptable level of competence will be given an advance notice of 90 calendar days that his/her within grade increase may be denied. The notice will be in writing and contain the following:

1. Those critical elements of the employee's performance in which the employee is deficient;

2. The level of performance necessary to be granted a within grade increase;

3. Assistance which will be offered to enable the employee to improve his/her performance to meet the requirements specified for the within grade increase; and

4. That the employee's within grade increase may be denied unless sustained improvement to an acceptable level of competence is shown within the improvement period.

B. If the Office, through administrative oversight, fails to give this warning notice 90 calendar days in advance of the within grade increase due date, the within grade determination shall still occur on time and the Office shall still provide a 90-calendar day improvement period. If, after the improvement period, the employee improves to an acceptable level of competence, the within grade increase may be granted at the beginning of the next pay period.

SECTION 3:

A. A level of competence determination shall be communicated to an employee as soon as possible after completion of the waiting period or other period upon which it was based. When it has been determined that an employee's performance is not at an acceptable level of competence, the employee will be given a written notice which contains the following:

1. The reasons for the negative determination and the respects in which the employee must improve his or her performance in order to be granted a within grade increase;

2. His or her right to request reconsideration, not more than 15 calendar days after

receipt of the determination; and

3. The name of the official to whom the request for reconsideration is to be submitted.

B. When an employee receives a negative determination, he or she shall be granted a reasonable amount of official time to review the material relied upon to make the determination.

C. If a negative determination is reversed by the Office (either before or upon reconsideration), the effective date of the increase will be the original due date.

D. Where an employee is denied his/her within grade increase by the reconsideration official, the letter transmitting the official's decision shall include a statement which informs the employee that this decision is the final decision of the Office and that the employee has a right to appeal the decision through the parties' negotiated grievance procedure. The final decision letter shall also inform the employee of the number of days he/she has to file a grievance. If a grievance is filed after reconsideration, it can only be at the arbitration level pursuant to Article 47, Section 21, of this Agreement.

SECTION 4:

The Office shall not demote or remove an employee for unacceptable performance solely because he/she has been denied a within grade increase.

SECTION 5:

After a within grade increase has been withheld, the Office will grant the within grade increase at any time after the employee has demonstrated sustained performance at an acceptable level of competence. After withholding a within grade increase, the Office, at a minimum, shall determine whether performance is at an acceptable level of competence one year following the original within grade increase denial.

CAREER LADDER PROMOTION

ARTICLE 41 [Back to ToC]

SECTION 1:

Employees in career ladder positions will be promoted on the first pay period after:

A. The employee becomes minimally eligible to be promoted after one year or whatever lesser period may satisfy the basic eligibility requirements;

B. The employee is demonstrating the potential for satisfactory performance at the next higher level and sufficient work exists at the next higher grade level. In this respect the supervisor must communicate to the employee the criteria for the potential to achieve satisfactory performance at the next higher level at least one quarter prior to the eligibility date. The Office recognizes its responsibility to provide, within workload considerations, opportunities to employees to demonstrate their potential for satisfactory performance at the next higher level. The supervisor must make this determination prior to the date the employee is minimally eligible to be promoted.

C. The employee's current performance appraisal must have an overall summary rating of fully successful or better in all critical elements; and

D. All other requirements of law and regulations are met.

E. Bargaining unit employees are entitled to timely decisions concerning the granting or denial of a career ladder promotion.

SECTION 2:

A. The effective date will be the beginning of the first pay period after all applicable requirements are met. Employees who meet the applicable requirements, but are not timely promoted due to administrative error, in accordance with the Back Pay Act, 5 USC 5596, 5 C.F.R. § 550 subpart H, and relevant Comptroller General decisions, shall be entitled to back pay from the first pay period after meeting such regulations and approval requirements. An employee who successfully grieves a failure to promote under this article shall be entitled to back pay from the first pay period after the employee met the applicable requirements for a career ladder promotion as a remedy.

B. Bargaining unit employees who are not found eligible for promotion after completion of the minimum time in grade shall have the right to request and receive a written statement from their supervisor after discussion between them. The supervisor's statement shall list the reasons for withholding the promotion and explain how the employee's performance can be improved to qualify for promotion.

AWARDS

ARTICLE 42 [Back to ToC]

SECTION 1: General Provisions

A. All awards granted to employees are based on merit and subject to any fiscal year budget limitations.

B. Awards programs under this Agreement shall be administered in a fair and objective manner, and in accordance with applicable law and regulation.

C. All employees may receive awards provided that the employee independently meets the eligibility requirement under law and this Agreement for each award program.

D. The Office has a number of awards programs. Electronic copies of the Office's policies concerning awards programs are available through the Agency's Intranet website.

SECTION 2: Performance Awards and Quality Step Increases (QSIs)

A. Annual Performance Awards and Supplemental Incentive Awards

1. Annual performance awards are monetary awards earned as a result of an employee's annual performance rating and are based on an employee's overall final annual rating of record.

2. The parties will meet once the business units have had a chance to review performance achievements for the prior fiscal year (or during the fourth quarter of the prior fiscal year if possible) to discuss and negotiate both the individual targets and the group goals as set out in Sections 2(A)(3)(a) and 2(A)(3)(c) below. The objective is to announce the targets and goals as early in the fiscal year as possible. All business units, except OCIO, will meet and negotiate with the Union no later than January 31 of the fiscal year in which the awards are incentivized. OCIO will meet with the Union no later than March 30 of each fiscal year for this purpose

3. At the end of each fiscal year (except as noted below) the Office will pay performance awards based on the following categories:

a. Employees with measurable production standards (measured in minutes or hours)

- 1% for Fully Successful Performance rating (summary score of 350 or higher)
- 2% for Commendable performance rating
- 4% for Outstanding performance rating

- The parties will annually negotiate performance targets that can provide up to an additional six percent incentive awards, generally in 2% intervals. The Union reserves the right to initiate bargaining over the inclusion of employees in this Section 2A3(a) who have production goals.

b. Employees with less objective production criteria or with annual performance targets.

- 1% for Fully Successful performance rating (summary score of 350 or higher)
- 3% for Commendable performance rating
- 5% for Outstanding performance rating

c. Employees with less objective production criteria or annual performance targets, but in which the business unit or a part of a business unit establish and negotiate group goals in accordance with paragraph B. below.

- 1%, 3%, and 5% as under category 2(b) above
- The parties will annually negotiate organizational goals (some stretch goals) that can provide up to an additional 3% incentive awards.

B. Despite the categories set out above, any office with an insufficient amount of work to support either the individual targets or the organizational goals will be considered in Category 2A(3)(b) for award purposes. If the Office makes such a determination, it will promptly notify the Union, and provide the basis for the determination. The Union reserves the right to challenge the Office's determination that there is an insufficient amount of work to support either the individual targets or the organizational goals via the grievance process.

C. Should the Office determine that it cannot fund the awards program, it must notify the Union no less than 60 days before any proposed termination or modification to the program. The parties shall engage in expedited negotiations during the 45 days following formal notice. Any impasse that may occur in such negotiations shall be resolved consistent with the Statute through any Panel proceedings. The parties agree to jointly request expedited assistance from the FSIP if the negotiations move to the statutory impasse process.

D. Performance awards will generally be paid after the end of a full annual performance appraisal cycle. Supplemental award agreements made in conjunction with this Article may provide different award payout dates.

E. Criteria for eligibility if a determination is made to provide performance awards:

1. The employee must have occupied the same grade and type position for at least six (6) months.

2. The employee must have a current summary performance rating and must meet the threshold performance evaluation criteria determined by the Office as a prerequisite to receive a performance award.

3. The employee must be employed by the Office on the last day of the performance appraisal cycle.

4. For employees with production components to their PAP, the employee must have worked in their job functions including mandatory job- related training and job-related non-production hours for a minimum of 1250 hours to be eligible for a full performance award. If the employee has worked less than 1250 hours in his/her duties, he/she will be eligible for a prorated award. If the employee has worked less than 600 hours in his/her duties, no award will be granted for that performance period. The 600 hour minimum will not apply to Union stewards.

5. The full cash amount for an award may be granted to an employee only once in any 52-week period, except as provided in supplemental agreements entered in accordance with this Article.

6. For part-time employees, awards must be reduced in proportion to the employees' scheduled bi-weekly work hours compared to 80 hours and by the criteria set forth in Section 2E4.

7. For awards paid at the end of each fiscal year, the Office will endeavor to provide award payments by December 15 of each year.

F. Quality Step Increases

1. A QSI recognizes performance with an additional within-grade salary increase, and increases the employee's rate of basic pay permanently.

2. To be eligible, an employee must receive an Outstanding rating level.

3. "QSI's are awarded at management's discretion.

4. A QSI is offered in lieu of a lump sum cash award. Employees may not receive both a QSI and a cash performance award in the same appraisal period.

5. If the supervisor has determined that the employee is eligible, and will be granted, a QSI, the employee may elect to receive a QSI in lieu of the annual performance award.

SECTION 3: Incentive Awards

A. Incentive awards are monetary or honorary awards that are not based on an employee's performance rating, and are authorized under 5 C.F.R. Part 451. Incentive awards may be granted in recognition of:

   1. Suggestions, inventions, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of the operations of the USPTO or achieves a significant reduction in paperwork;

   2. A special act or service in the public interest in connection with or related to official employment; or

   3. Performance as reflected in the employee's most recent rating of record, provided that the rating of record is at the fully successful level or above.

   4. Goal awards are a type of incentive award given to a group of bargaining unit employees based on meeting established office or program goals.

B. Employees may be eligible for incentive awards more than once during the annual rating period.

C. Employees must have a current rating of record of at least "Fully Successful" or the equivalent to be eligible for incentive awards.

D. Bargaining unit employees may receive both incentive awards and annual performance awards during the same appraisal cycle.

E. "On the Spot" Awards

   1. "On the Spot" awards are monetary awards that may be given to bargaining unit employees to provide immediate recognition for short-term quality acts or service performed in an exceptional manner.

   2. These awards do not replace other traditional methods of recognition, but serves to increase a supervisor's option in rewarding and reinforcing employee excellence. These awards do not preclude an employee from receiving other awards.

F. "Time Off" Awards

   Time Off Awards may be granted to bargaining unit employees in the form of time off from work without loss of pay or charge to leave. Time Off Awards may be granted in recognition of an individual's or group's distinguished achievements, significant contributions, or other personal efforts that contribute to the quality, efficiency, or economy

of Federal Government operations. This award may be granted along with other forms of awards. All bargaining unit employees shall be eligible for Time Off Awards.

G. Special Act Awards

Special Act awards are monetary awards that may be granted to bargaining unit employees in recognition of a special act or service in the public interest in connection with or related to official employment.

H. Suggestion Awards

1. Suggestion awards are monetary awards that may be granted to bargaining unit employees for an idea that will improve working conditions, procedures, operating methods or equipment; increase productivity; conserve material or property; save human resources, money or energy; or produce tangible or intangible benefits.

2. This type of award includes, but is not limited to, the "Save Money and Reduce Taxes" (SMART) Bonus award program.

I. Non-monetary awards may be granted to bargaining unit employees to recognize distinguished achievements or significant contributions that benefit the Federal Government. This type of award may include certificates of achievement, medals, plaques, citations or other means of recognition that do not convey a sense of monetary value**.**

SECTION 4: Information

The Employer will, if requested, annually provide the Union with an electronic data file**,** on or before February 28 of each calendar 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).

PERSONNEL RECORDS

ARTICLE 43 [Back to ToC]

SECTION 1:

Employees may access their OPF electronically via eOPF. Employees may print documents from their OFPs via eOPF.

SECTION 2:

No record, file or document which is not available to the employee or his/her personal representative, designated in writing, for inspection will be made available to any unauthorized persons for inspection, review or copy. Such information will be made available to authorized persons only for official use as provided for in law and regulation.

SECTION 3:

Employees will be afforded the opportunity to put on record any statement or request an amendment to or correction of any information contained in their Official Personnel Folder or other records pertaining to them. It is further agreed that any record, which has not been disclosed to the employee, cannot be used as a basis for a disciplinary action or an action based on unacceptable performance. The official personnel records shall be only those permitted by law government-wide rule or regulation.

No derogatory material of any nature which might reflect adversely upon the employee's character or government career will be placed in his/her Official Personnel Folder or any file or record without the employee seeing and initialing the material, or receiving a copy, thereof, with the exception of material required by law and regulation to be kept confidential from the employee (e.g., forms containing medical information, test materials, investigative reports, loyalty and security reports and confidential questionnaires and employment inquiries), or notes by supervisors on an employee's day-to-day performance or job-related conduct.

SECTION 4:

Temporary records, as designated by Department Administrative Order 202-293, which are prepared as a result of an official admonishment or reprimand, will be kept in the employee's Official Personnel Folder for no longer than 18 months and shall not be used in any disciplinary action initiated after 24 months. Counseling letters, supervisory interview memoranda and performance deficiency memoranda shall not be placed in an employee's Official Personnel Folder.

SECTION 5:

Records of complaints and charges determined to be unfounded or overcome as a result of an appeal or grievance will not be used for any purpose whatsoever, except for those authorized by the Office of Personnel Management as a required record or necessary to document employee entitlement to back pay or other benefits.

SECTION 6:

An authorized person not employed by the Office of Human Resources may inspect an employee's Official Personnel Folder, provided he/she is required to sign a record indicating his/her name, organization, the date of inspection, and the nature and purpose for the inspection prior to the actual inspection of the folder. It is further agreed that government officials who have a need for information in the performance of their official duties shall have access to Official Personnel Folders in accordance with applicable laws.

(New Article based on 2024 Agreements)

DISCIPLINARY ACTIONS

ARTICLE 44 [Back to ToC]

SECTION 1: General

A. A disciplinary action for the purposes of this Article is defined as a written reprimand, or a suspension of fourteen calendar days or less**.**

   Oral or written counseling or warnings are not considered discipline or an adverse action, and are therefore not covered under this article. The counseling letter or other evidence of oral or written counseling is not maintained in the Official Personnel Folder. Although not covered by this article, such written counseling or warnings may be considered for notice purposes when taking action under this article.

B. No bargaining unit employee will be the subject of a disciplinary action except for such cause as will promote the efficiency of the service. The imposition of discipline shall be in accordance with this Agreement, law, rule and regulation. Any disciplinary action taken shall be related to the offense.

C. The parties recognize that disciplinary actions should normally be progressive in nature if they are to correct an offending employee. However, discipline need not follow any specific sequence. Major offenses may be cause for severe action, including removal, irrespective of whether previous discipline had been taken against the offending employee.

D. The burden of proof in disciplinary actions shall be by a preponderance of evidence.

E. When it is determined by the Office that a suspension action may be necessary, the employee will be given, in writing, 30 calendar days advance notice of the proposed action which includes the reasons the action is being proposed.

F. Employees will not be retaliated against for filing a grievance or taking other action challenging a proposed or imposed disciplinary action.

G. Notice of disciplinary action shall identify any specific laws, regulations, policies, and/or other rules the employee is alleged to have violated.

SECTION 2: Prevention

The Parties agree that primary emphasis should be placed on preventing situations which may result in disciplinary actions and that the employee may be more effectively helped through counseling than through disciplinary action. The Office agrees that disciplinary actions must be consistent with applicable laws and regulations governing such actions, and be fair and equitable.

SECTION 3: Documentary Evidence

A. At the time the employee is issued the proposal letter, the employee will be furnished a copy of that portion of all written documents and other materials which contain evidence relied upon by PTO which form the basis for the disciplinary action. Written documents are any legible evidence relied upon by management including but not limited to prior counseling/reprimands, prior discipline, reports of investigation, witness statements, emails, texts/instant messages, and witness interview notes. Other materials that may be furnished include but not limited to, screen shots, photographs, video/audio recordings, comparator charts, and other supportive documents relied upon by management that are not privileged or protected by statute or law.

B. If new or additional evidence is introduced to support an existing specification or charge, the employee and/or the elected representative will be provided copies of said evidence and the opportunity to respond orally, if requested, and/or in writing. After receipt of the new or additional evidence, the employee's written and/or oral response, if requested, to said materials shall be made within 10 days. If the new or additional evidence is identified after the oral reply, the employee will be given the opportunity to respond to said evidence orally, if requested, and/or in writing within 10 days of receipt. If new or additional evidence is introduced to support a new specification, the opportunity to respond to the new specification will be subjected to the same timeframes as if it were a new proposal.

C. Nothing in this section shall be construed as a waiver of the employee's or Union's right to request additional information under other authorities, such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 4: Employee Rights

A. An employee against whom a suspension of fourteen (14) calendar days or less is proposed is entitled to:

1. Thirty (30) calendar days advance written notice stating the specific reasons for the proposed action, a statement that the employee has the right to a representative, and a right to respond orally or in writing to the proposed action.

2. The employee shall have an opportunity to respond to a proposed disciplinary action either orally, if requested, in writing or both. The employee's response shall be made within 10 workdays of the proposed notice. The 10 workday period may be extended upon mutual agreement of the parties if the employee or his/her designated representative request the extension from the deciding official within the first 10 workday period. Reasonable extensions will be granted.

3. Be represented by an attorney or other representative during the reply period.

4. A written decision and the specific reasons for the decision.

5. The employee will be granted a reasonable amount of time to make his/her reply (replies).

B. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed disciplinary action. Any corrections must be provided within three (3) days of the date the Agency provided the summary. Reasonable extensions will be granted for good cause. One (1) set of combined corrections may be provided by the employee and/or Union. Corrections must be limited to information and arguments provided at the oral reply and may not include new information or arguments.

C. If NTEU is representing the employee, NTEU may have an equal number of representatives at the oral reply as does the Agency.

D. Oral replies will be heard by a higher or equivalent level management official than the management official that proposed the action. The management official who hears the oral reply and makes the decision on the proposed action will not, in most circumstances, be directly involved in the proposed action. The decision will be based solely on the evidence presented at the oral reply and in the disciplinary file.

E. Issuance of final decision

1. A final decision letter will be issued and delivered to the employee and his/her representative, if the employee is represented.

2. The final decision letter will be issued and delivered without undue delay, normally within sixty days from the due date of the employee's written and/or oral response, whichever is later.

3. The final decision letter shall include detailed findings with respect to each reason upon which the proposed action was based, or may refer to the findings in the proposal letter, if adopted by the deciding official, and any appeal rights of the employee.

F. When an employee has been advised that he or she is/was the subject of an investigation and a determination is made not to propose a disciplinary action, the designated proposing official will inform the employee that the matter has been closed by means of a written notice provided in a timely fashion, normally within thirty (30) days of when the case involving the employee is closed. The letter will not be placed in the employee's Official Personnel File (OPF) unless requested by the employee in writing.

SECTION 5: Retention in Official Personnel Folder

Letters of reprimand shall be placed in an employee's Official Personnel Folder for not more than 18 months from the date of issuance.

SECTION 6: Grievance/Appeal Rights

A. Disciplinary Actions may be grieved in accordance with Article 47.

B. The results of the grievance decision may be appealed to arbitration only. If an employee elects to appeal an action to arbitration, NTEU must invoke arbitration within twenty (20) workdays of the employee's receipt of PTO's final decision. The notice invoking arbitration must be given by certified mail, hand delivery, fax or other means to Chief, Labor Relations. If the invocation is transmitted by other means, it is the responsibility of the sender to verify timely receipt.

SECTION 7: Employee Vindication

A. If any disciplinary action against the employee is overturned (i.e., the employee is completely vindicated) all reference to such action will be eliminated from the official personnel file or any file in the possession or control of the Office and its supervisors except for:

1. Any information required by law to be maintained in the official personnel file.

2. The Employee Relations Office file, Office of General Law, and the Office of Equal Employment Opportunity and Diversity file, if any.

B. Any file maintained under 7A(2) above shall be sealed. Access to the sealed file shall be granted only to those officials who have an official need to know. Any information contained in a sealed file will not be used in a subsequent disciplinary action. Unless to do so would jeopardize an ongoing investigation, employees will be informed of the identity and specific reason any official opens his/her sealed file.

SECTION 8: Factors

In deciding what action may be appropriate, the Office will give due consideration to the relevance of any mitigating and/or aggravating circumstances. The following factors, included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically but rather to outline the tolerable limits of reasonableness**:** [1]

A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;

B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

C. The employee's past disciplinary record;

D. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

[1] *Douglas v Veterans Administration* 5 MSPR 280 (1981)

E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisor's confidence in the employee's ability to perform assigned duties;

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

G. The notoriety of the offense or its impact upon the reputation of the Office;

H. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in Question;

I. Potential for the employee's rehabilitation;

J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

SECTION 9:

Every six months, the Agency will provide the NTEU Chapter President with a sanitized list describing finalized disciplinary actions, including sustained charges, employees' business unit, and final disposition and the penalties imposed, if any, for employees during the previous six months.

Additionally, NTEU may submit information requests as prescribed by 7114(b)(4) for a list of proposed disciplinary actions that were issued to the employee, including but not limited to proposed disciplinary actions that were rescinded after issuance or mitigated.

SECTION 10:

Pursuant to Article 8 §5(A), and without waiving any rights granted under this agreement or the law, whenever an employee has designated the Union as his/her representative, the employee shall have the right to have the Union present at any discussion regarding a disciplinary action, and to receive advance notice of the discussion.

SECTION 11:

A. In cases where discipline is proposed for reasons of off-duty misconduct, the Office's written notification shall contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

B. If the Office elects to change or modify the stated nexus prior to issuing a final decision letter, the employee (and the employee's representative, if any) will be informed of such changes or modifications in writing as soon as possible, generally within three (3) days. The employee (or the

employee's representative, if any) will be given the opportunity, prior to the final decision, to supplement the record on this subject any time the nexus statement is changed or modified.

(New Article based on 2024 Agreements)

ADVERSE ACTIONS

ARTICLE 45 [Back to ToC]

SECTION 1: General

A. An adverse action, for the purpose of this Article, is defined as a removal taken under 5 U.S.C. Chapter 75, a suspension for more than 14 calendar days, a reduction in grade, reduction in pay, and a furlough of 30 calendar days or less of a full-time employee. This Article does not apply to a reduction in grade or a removal based on unacceptable performance as defined in 5 U.S.C. §4303. Furloughs are subject to the procedures of this article except Section 5.

B. This Article does not apply to discharges during a probationary/trial period, termination of temporary appointments or termination of reemployed annuitants.

C. No bargaining unit employee will be subject to an adverse action except for such cause as will promote the efficiency of the service. The imposition of an adverse action shall be in accordance with this Agreement, law, rule and regulation. Any adverse action taken shall be fairly related to the offense.

D. The notice period specified in this Article does not apply for any exception as stated in applicable laws and regulations.

E. The burden of proof in adverse actions shall be the preponderance of the evidence.

F. Employees will not be retaliated against for filing a grievance or taking other action challenging a proposed or imposed adverse action.

G. Notice of adverse action shall identify any specific laws, regulations, policies, and/or other rules the employee is alleged to have violated.

SECTION 2: Employee Rights

A. An employee against whom an adverse action is proposed is entitled to:

1. At least thirty (30) calendar days advance written notice, stating, at a minimum, the specific reasons for the proposed action, a statement that the employee has the right to a representative, and a right to respond orally and in writing to the proposed action.

2. The opportunity to respond to a proposed adverse action either orally, if requested, in writing or both. The employee's response shall be made within 10 workdays of the proposed notice. The 10 workday period may be extended upon mutual agreement of the parties if the employee or his/her designated representative request the extension from the deciding official within the first 10 workday period. Reasonable extensions will be granted.

3. Be represented by an attorney or other representative.

4. A written decision and the specific reasons for the decision.

5. The employee will be granted a reasonable amount of time to make his/her reply (replies).

B. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed adverse action. Any corrections must be provided within three (3) days of the date the Agency provided the summary. Reasonable extensions will be granted for good cause. One (1) set of combined corrections may be provided by the employee and/or Union. Corrections must be limited to information and arguments provided at the oral reply and may not include new information or arguments.

C. If NTEU is representing the employee, NTEU may have an equal number of representatives at the oral reply as does the Agency.

D. Oral replies will be heard by a higher or equivalent level management official than the management official that proposed the action. The management official who hears the oral reply and makes the decision on the proposed action will not, in most instances, be directly involved in the proposed action. The decision will be based solely on the evidence presented at the oral reply and in the disciplinary file.

E. Issuance of final decision

1. A final decision letter will be issued and delivered to the employee and his/her representative, if the employee is represented.

2. The final decision letter will be issued and delivered without undue delay, normally within sixty days from the due date of the employee's written and/or oral response, whichever is later.

3. The final decision letter shall include detailed findings with respect to each reason upon which the proposed action was based, or may refer to the findings in the proposal letter, if adopted by the deciding official, and any appeal rights of the employee.

F. The Office recognizes the importance of completing an investigation of an employee in a timely manner. When proposed by the Office, adverse actions will also be issued and administered as timely as possible; however, when an employee has been advised that he or she is/was the subject of an investigation, and a determination is made not to propose a disciplinary or adverse action, the Agency will inform the employee in writing in a timely fashion, normally within thirty (30) days of when the case involving the employee is closed.

SECTION 3: Documentary Evidence

At the time the employee is issued the proposal letter, the employee will be furnished a copy of

that portion of all written documents and other materials which contain evidence relied upon by PTO which form the basis for the adverse action. Written documents are any legible evidence considered by management including but not limited to prior counseling/reprimands, prior discipline, reports of investigation, witness statements, emails, texts/instant messages, and witness interview notes. Other materials that may be furnished include but are not limited to screen shots, photographs, video/audio recordings, comparator charts, and other supportive materials relied upon by management that are not privileged or protected by statute or law.

If new or additional evidence is introduced to support an existing specification or charge, the employee and/or the elected representative will be provided copies of said evidence and the opportunity to respond orally, if requested, and/or in writing. After receipt of the new or additional evidence, the employee's written and/or oral response, if requested, to said materials shall be made within 10 days. If the new or additional evidence is identified after the oral reply, the employee will be given the opportunity to respond to said evidence orally, if requested, and/or in writing within 10 days of receipt. If new or additional evidence is introduced to support a new specification, the opportunity to respond to the new specification will be subjected to the same timeframes as if it were a new proposal.

Nothing in this section is to be construed as a waiver of the employee's or Union's right to request additional information under other authorities, such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

SECTION 4: Appeal Rights

A. If PTO's final decision is to affect an adverse action against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board (MSPB) in accordance with applicable law, or with the consent of NTEU to binding arbitration. Under no conditions may an employee appeal an adverse action to both MSPB and arbitration.

B. If an employee elects to appeal an adverse action to arbitration, NTEU must invoke arbitration within twenty (20) workdays of the employee's receipt of PTO's final decision. The notice invoking arbitration must be given by certified mail, hand delivery, fax or other means to Chief, Labor Relations. If the invocation is transmitted by other means, it is the responsibility of the sender to verify timely receipt.

SECTION 5: Employee Vindication

A. If any adverse action against the employee is overturned (i.e., the employee is completely vindicated), all reference to such action will be eliminated from the official personnel file or any file in the possession or control of the Office and its supervisors except for:

1. Any information required by law to be maintained in the official personnel file.

2. The Employee Relations Office file, Office of General Law, and the Office of Equal Employment Opportunity and Diversity file, if any.

B. Any file maintained under 5.A. (ii) above shall be sealed. Access to the sealed file shall be granted only to those officials who have an official need to know. Any information contained in a sealed file will not be used in a subsequent adverse action. Unless to do so would jeopardize an ongoing investigation, employees will be informed of the identity and specific reason any official opens his/her sealed file.

SECTION 6: Factors

In deciding what action may be appropriate, the Office will give due consideration to the relevance of any mitigating and/or aggravating circumstances. The following factors, included herein for purposes of illustration, are neither meant to be exhaustive nor intended to be applied mechanically but rather to outline the tolerable limits of reasonableness:[2]

A. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;

B. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

C. The employee's past disciplinary record;

D. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

E. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;

F. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

G. The notoriety of the offense or its impact upon the reputation of the Office;

H. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

I. Potential for the employee's rehabilitation;

J. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

K. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by

[2] *Douglas v Veterans Administration*, 5 MSPR 280 (1981).

the employee or others.

SECTION 7:

Every six months, the Agency will provide the NTEU Chapter President with a sanitized list describing finalized adverse actions, including sustained charges, employees' business units, and the final disposition and the penalties imposed, if any, for employees during the previous six months.

Additionally, NTEU may submit information requests as prescribed by 7114(b)(4) for a list of proposed disciplinary actions that were issued to the employee, including but not limited to proposed disciplinary actions that were rescinded after issuance or mitigated.

SECTION 8:

Pursuant to Article 8 §5(A), and without waiving any rights granted under this agreement or the law, whenever an employee has designated the Union as his/her representative, the employee shall have the right to have the Union present at any discussion regarding an adverse action, and to receive advance notice of the discussion.

SECTION 9:

A. In cases where an adverse action is proposed for reasons of off-duty misconduct, the Office's written notification shall contain a statement of the nexus between the off-duty misconduct and the efficiency of the service.

B. If the Office elects to change or modify the stated nexus prior to issuing a final decision letter, the employee (and the employee's representative, if any) will be informed of such changes or modifications in writing as soon as possible, generally within three (3) days. The employee (or the employee's representative, if any) will be given the opportunity, prior to the final decision, to supplement the record on this subject any time the nexus statement is changed or modified.

ACTIONS FOR UNACCEPTABLE PERFORMANCE

ARTICLE 46 [Back to ToC]

SECTION 1:

A. An action based on unacceptable performance taken under Chapter 43, for the purpose of this Article, is defined as the reduction in grade or removal of any employee whose performance fails to meet established performance standards in one or more critical elements of his/her position. This Article is intended to be applied consistent with 5 U.S.C. § 4303, 5 C.F.R. §432, and applicable case law.

B. A meeting between an employee and his/her supervisor and/or other officials of the Office during which the principal topic of discussion is an action or potential action for unacceptable performance (i.e., a reduction-in-grade or removal for unacceptable performance) will entitle the employee involved to request to be accompanied by his/her Union Steward during such meeting. If such a request is made, the supervisor or other line management official will honor the request.

C. No bargaining unit employee will be the subject of an action based on unacceptable performance unless that employee's performance fails to meet established performance standards in one or more critical job elements of the employee's position after having been afforded a reasonable opportunity to demonstrate acceptable performance. This article does not apply to actions taken under 5 USC Chapter 75.

SECTION 2:

The Office, in taking any action based on unacceptable performance by an employee, will do so in a most fair and objective way, with attention given to avoiding disparate treatment of an employee. The Office will make every reasonable effort to assist employees in improving deficient performance and will provide reasonable opportunity for the employee to correct performance problems before initiating any unacceptable performance action proceeding.

SECTION 3:

The Office will use counseling techniques to help employees maintain their current level of performance and will counsel an employee when a performance problem developing in an employee is detected.

SECTION 4:

The Office agrees to consider retraining or lateral reassignment before it acts to reduce the grade or remove an employee for unacceptable performance.

SECTION 5:

Any action taken against an employee for unacceptable performance will be accomplished in accordance with the following procedures:

A. At least 90 calendar days prior to issuing a notice of proposed action based on unacceptable performance, the Office will issue a notice of unacceptable performance (also known as a Performance Improvement Plan or PIP) to the employee.

B. The notice of unacceptable performance will state:

1. Those critical elements and performance standards in which the employee's performance is considered to be unacceptable and in what way(s) it is unacceptable;

2. Instance(s), specifically described, which support the allegations of unacceptability;

3. What the employee must do to improve his/her performance so that it is acceptable;

4. That the employee is expected to show improvement and the failure to show such improvement or to reach an acceptable level of performance in the items cited may result in reduction in grade or removal; and

5. That the employee will be counseled during the 90 calendar day period concerning his/her performance.

A. Within the first biweek, the supervisor and the employee will meet to discuss assistance from the agency to help the employee improve performance, including the meetings that will be scheduled during the performance improvement period.

1. The assistance will be related to the area(s) and instance(s) of unacceptable performance identified in the notice of unacceptable performance. For example, if the employee is unacceptable in the area of production, the assistance should focus on improving production.

2. Assistance requires a good faith effort to help the employee improve his/her performance in the area(s) of unacceptable performance. Documents illustrating the deficiencies should be used. Assistance may include, but is not limited to: coaching, mentoring, on-the-job instruction, recommendations on how to improve performance, and other developmental activities and feedback designed to help improve employee performance.

3. The manager should review the employee's progress on a continuing basis throughout the improvement period, and provide timely feedback regarding the

employee's progress in improving performance in the identified areas outlined in the notice of unacceptable performance.

4. An appropriate amount of the employee's work must be reviewed during the improvement period.

5. A summary of all scheduled meetings should be reduced to writing, signed, and dated by the manager and the employee, or distributed via email. Summaries will be shared timely with the employee.

6. The employee's work performance will be reviewed and compared against performance standards at the end of the 90 day improvement period.

D. The employee may be accompanied by a Union representative when the notice is issued. The employee and/or representative may ask questions to clarify information in the notice of unacceptable performance. A reasonable effort will be made to notify the employee in advance of issuing the notice of unacceptable performance so the employee has an opportunity to bring a representative.

E. Upon receipt of the notice of unacceptable performance, an employee may request a meeting with his/her supervisor to discuss the contents of the notice. The employee has the right to be accompanied by a Union representative at the meeting.

F. The Union agrees not to grieve either the substance or procedural aspects of this notice until a final decision is issued which orders the employee removed or downgraded.

SECTION 6:

A. In all cases of proposed action based on unacceptable performance, the employee will be given written notice identifying specific performance elements and standards, and a specific explanation of the instance(s) of the employee's failure to meet those standards on which the proposed action is based, 30 calendar days in advance of the action. The Office shall not issue a notice of proposed action based on unacceptable performance until the conclusion of the 90 calendar day warning period described in Section 5 above.

B. In computing the 30 calendar day advance notice period, the Office shall not count days taken as military or other prior authorized leave. Leave requested after issuance of the notice of proposed action will count against the 30 calendar day period.

C. In all cases of proposed action based on unacceptable performance, the employee will be given the opportunity to respond orally and/or in writing to the proposal prior to a decision on the specific performance elements and standards, and an explanation of the employee's failure to meet those standards, provided the employee requests an oral/and or written reply within 7 calendar days of receipt by the employee of the proposed action, and provided that any such oral and/or written reply be received by the Office within a reasonable period of time after receipt by the employee of the proposed action.

D. The Office shall prepare a summary of any oral reply. Copies of the summary shall be provided to the employee and his/her designated representative for review and correction before any decision is made concerning the proposed action. Any corrections must be provided within three (3) work days of the date the Agency provided the summary. Reasonable extensions will be granted for good cause. One (1) set of combined corrections may be provided by the employee and/or Union. Corrections must be limited to information and arguments provided at the oral reply and may not include new information or arguments.

E. The advance written notice proposing either to remove or downgrade an employee for unacceptable performance will include:

1. Specific instance(s) of unacceptable performance of the employee on which the proposed action is based;

2. The critical elements(s) of the employee's position involved in each instance of unacceptable performance;

3. The performance standards involved in each instance of unacceptable performance of the employee's position;

4. A statement of the employee's right to be represented by an attorney or representative;

5. A statement of the employee's right to answer orally and/or in writing; and

6. A statement of the employee's right to review the material relied upon to support the reasons in the notice.

SECTION 7:

A. An employee will, upon request, be furnished a copy of that portion of all written documents which contain evidence relied on by the Office which form the basis for the proposed action, and reasons.

B. If the action is based on an investigative report, portions of all written documents from the investigative report which directly relate to the charges, will be furnished to the employee upon request.

SECTION 8:

A. Prior to proposing an action based on unacceptable performance, the supervisor shall consider performance only during the previous one-year period. However, actions based on unacceptable performance may be based on less than a full year's performance.

B. The final decision shall be in writing and shall be issued by an official in a higher position than the official who proposed the action. The decision shall not be effective before the end of the 30-calendar day advance notice period.

C. An official who sustains the proposed reasons against an employee in an action based on unacceptable performance will set forth his/her findings with respect to each instance of unacceptable performance in his/her decision letter.

D. In an action in which an employee has been removed or downgraded based upon unacceptable performance, such action must be supported by substantial evidence.

SECTION 9:

In accordance with 5 U.S.C. §4303(d), if, because of performance improvement by the employee during the improvement period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one (1) year from the beginning of the performance improvement period, any entry or other notation of unacceptable performance for which the action was proposed shall be removed from any Office record relating to the employee.

SECTION 10:

A. If the Office's final decision is to affect an action based on unacceptable performance against a bargaining unit employee, the employee may appeal the decision to the Merit Systems Protection Board in accordance with applicable law or, with the consent of the Union, to binding arbitration. Under no condition may an employee appeal an action based on unacceptable performance to both MSPB and arbitration.

B. If the Union elects to appeal an unacceptable performance action to arbitration, the Union must give the Office notice of its decision within 20 workdays of the employee's receipt of the Office's final decision.

C. The notice of invocation of arbitration must be served on the Chief, Workforce Relations Division.

D. The burden of proof in any arbitration over this matter will be substantial evidence. The Office will raise no issues against the employee other than those cited in the notice of proposed action except to the extent necessary to rebut defenses or arguments raised in the employee's behalf.

SECTION 11:

An employee who appeals the Office's decision to affect an action based on unacceptable performance, may raise, among others, the following defenses:

A. Lack of necessary training;

B. Lack of counseling and guidance;

C. No knowledge of the elements or standards;

D. The Performance Standards and Critical Elements are not as fair and objective as feasible;

E. Lack of reasonable opportunity to improve deficient performance;

F. The Performance Standards and Critical Elements are not applied in a fair and accurate manner;

G. The Performance Standards and Critical Elements are not measurable in as objective a manner as feasible;

H. The numerical standards are not valid and reliable measurements of the employee's level of performance;

I. The elements and/or standards are not consistent with the duties and responsibilities in the employee's written position description; and

J. The elements and/or standards require the employee to meet criteria which are not within the employee's position description.

The above list of defenses, which may be raised by an employee, are included for educational purposes and do not constitute the granting by the Office of any new rights to bargaining unit employees.

(New Article based on 2024 Agreements)

GRIEVANCE PROCEDURE

ARTICLE 47 [Back to ToC]

SECTION 1: Definition of a Grievance

Unless otherwise provided in Section 2, the following may be the subject of a grievance under this Article:

A. Any complaint by a unit employee concerning any matter relating to the employment of the employee;

B. Any complaint by the union concerning any matter relating to the employment of a unit employee;

C. Any complaint by a unit employee, the Union, or the Office concerning:

1. The effect or interpretation, or a claim of breach, of the collective bargaining agreement; or

2. Any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or Agency policy affecting conditions of employment.

SECTION 2: Matters Excluded from this Procedure

The following matters are not grievable under this Article:

A. Any claimed violation of subchapter III of Chapter 73 of 5 U.S.C. (relating to prohibited political activities);

B. Retirement, life insurance, or health insurance;

C. A suspension or removal under 5 U.S.C. §7532 (relating to national security);

D. Any examination, certification, or appointment;

E. The classification of any position which does not result in the reduction in grade or pay of an employee;

F. The content of published Government-wide regulations, and challenges by individual employees to USPTO policies (unless the challenge is that the policies violate the law or the parties' collective bargaining agreements). This shall not prevent the Union from challenging the content of USPTO policies.

G. Non-selection for promotion from a group of properly ranked and certified candidates consistent with 5 C.F.R. 335.103(d) unless the basis of the grievance involves a statutory violation, (e.g., EEO, Prohibited Personnel Practice, CSRA, etc.);

H. An action which, for legitimate business reasons (including, but not limited to, if there is no further need for the temporary promotion, the employee who previously held the position returns, or the expiration of the time limited promotion), terminates a temporary promotion within a maximum period of two years which returns the employee to the position from which the employee was temporarily promoted, or returns the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;

I. The termination of a probationary employee or an employee serving a trial period;

J. The termination of an employee serving a temporary appointment; and

K. A return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period.

SECTION 3:

It is understood that an employee processing a grievance under this Article shall be limited to Union representation or self-representation. If an employee presents a grievance without Union representation, the Union will be given the opportunity to be present at all "formal discussions" of the grievance (including both steps of the grievance procedure) and at the adjustment of the grievance. The Union shall be given reasonable advance notice of at least 2 days of such meetings. The parties agree that an adjustment must not be inconsistent with the terms and conditions of this Agreement. In addition, the Union will have the following rights in employee grievances where it is not acting in the capacity of the employee's representative:

A. To be notified of the time and place of the proceedings;

B. To be present during the formal grievance procedure. This right of the Union to be present, however, may not impair the right of an employee to self-representation if so desired;

C. To be furnished with a copy of the written decision at any step at which a written decision is involved which will become part of the record. This copy shall be furnished at the same time that it is furnished to the grievant or to any other concerned official by the official responsible for making the decision; and

D. To state its position on the grievance, in writing, if it is not the designated representative of the grievant.

SECTION 4:

The procedure described in these sections shall constitute the sole and exclusive procedure available to bargaining unit Members or the Union for resolving grievances under this or any other negotiated agreement between the parties. Matters covered under this procedure and under certain statutory procedures may, at the discretion of the aggrieved employee, be raised under either procedure, but not under both. The employee will be deemed to have exercised the option at such time as the employee timely initiates an action under the applicable statutory procedures or timely files a grievance in writing under this Article, whichever event occurs first.

SECTION 5:

Although a grievance under this negotiated system can be initiated by an employee, a group of employees, or by the Union on behalf of employees, neither an employee nor group of employees may invoke arbitration proceedings on their grievance on their own initiative. Only the Union may invoke arbitration.

SECTION 6:

The issue of the initial timeliness may be raised by the Office only at the first step. If the issue of timeliness is raised, a grievance may be denied on the grounds it was not presented within the time frame specified in Section 7A. Denial of the grievance on that ground, however, will not deprive the grievant of the right to present the merits of the grievance or deprive the Office of the right to rely on untimeliness as a ground for denial, at each successive step of the grievance procedure, including arbitration.

SECTION 7: Step One Procedure

A. A grievance must be filed within 20 days after the occurrence of the matter out of which the grievance arose or the date the employee first became aware of the occurrence of the matter out of which the grievance arose. The date of the occurrence, or date when the aggrieved first became aware of the occurrence, shall not be counted in computing timeliness.

B. If the Union files an information request, in accordance with 5 U.S.C. § 7114(b)(4), at least ten (10) days prior to the deadline for filing a grievance, the Union or Grievant may simultaneously request that the grievance filing deadline be tolled. The tolling request must identify the event or action prompting the anticipated grievance and specifically explain how the information requested would assist the Union in determining whether or not a contract violation has occurred. If the Office grants the tolling request, the grievance filing deadline shall be five (5) days after either the information is provided or the Office denies the information request in writing. The Union must timely and substantively respond to any questions submitted by the Office regarding the information request within three (3) days or the grievance filing extension may be revoked.

C. In an effort to resolve grievances at the lowest level possible, the parties will engage in discussions of the issues and attempt to resolve them during the initial grievance meeting. If the parties are able to reach a resolution, the grievance will be promptly withdrawn.

D. The subject matter of the grievance can be the subject matter of another grievance by the same grievant if it reoccurs.

E. The written grievance must contain the following information:

1. The date the grievance was submitted;

2. The employee's name, position, and organization (if filed on behalf of an individual or multiple employees, except mass or class action grievances need not identify the individual employees; however, the union will give a description of the class with sufficient specificity so that members of the class can be identified);

3. An indication of whether the grievant is representing him/herself or is represented by the Union;

4. The name, title, email address and telephone number of the grievant's representative, if any;

5. A specific account of the incident giving rise to the grievance;

6. Specific reference to the provisions of the Agreement, policy, procedure, or description of the employment condition, in dispute;

7. An explanation of how the provisions of the Agreement, policy, or procedure have been violated; and

8. A detailed statement of the specific remedy sought. Such relief may not include a request for disciplinary action for another employee, must be subject to the control of the Office and must be appropriate to the subject of the grievance.

F. The grievant and/or the grievant's representative shall present the written grievance to the Labor Relations Division via the established grievance inbox (LRGrievance@USPTO.GOV). The Labor Relations Division will route the Step One grievance to the second-line supervisor and/or the approving official of the aggrieved employee(s), or to another appropriate management official that has the authority to grant the recommended remedy. The Step One deciding official shall schedule a meeting with the employee and the employee's representative and the Chief Steward (or his/her designee) within 10 days of receipt of the written grievance. All communications from the Office to the Union concerning any grievances will be emailed to the Union at their established grievance inbox: NTEU243Grievance@uspto.gov. The parties shall make every reasonable

effort to attend meetings in a timely fashion and, if necessary, provide timely notice of inability to attend so that the meeting may be promptly rescheduled.

G. The Step One deciding official will conduct whatever investigation he/she feels is necessary and appropriate to develop the facts of the case and shall provide a written decision to the grievant and his/her representative within 15 days of the meeting. The decision will contain the reasons for his/her response as well as the name and email address of the Step Two official if the requested remedies have not been granted.

SECTION 8: Step Two Procedure

A. If the Step One grievance is denied in whole or in part, the grievance is automatically appealed to Step Two, unless the grievant indicates that they no longer wish to pursue the grievance or that they accept the partial remedy offered via the Step One Decision, within 10 days of the Step One decision.

B. At Step Two, The Labor Relations Division will route the Step Two grievance to the third-line supervisor in the business unit of the aggrieved employee(s) or to another appropriate management official, at a similar level of management, that has the authority to grant the recommended remedy. The deciding official shall conduct whatever investigation he/she feels necessary and appropriate to develop the facts of the case and conduct a conference with the grievant, the grievant's representative, and the Chief steward (or his/her designee). The deciding official shall render a written decision within 15 days of the close of the meeting.

SECTION 9:

A null and void grievance may be revived as a pending grievance if it is shown to the satisfaction of the management official having jurisdiction of the grievance that the delay in processing the grievance was unavoidable, in which case time for reply will be extended to an additional like period of time originally prescribed by that step of the procedure.

SECTION 10:

Absence of the grievant, his/her representative, LR representative, or the deciding official from the Office on approved leave or official absence for 8 consecutive hours or continuous 8-hour increments shall constitute an automatic extension of the time limits set forth herein for a period of time equal to the absence. Invocation of this section shall be clearly set forth in the grievance document or decision letter.

SECTION 11:

The parties agree that by mutual consent:

1. The time limits in this Article may be extended;

2. Any step of this grievance procedure may be waived;

3. The grievant will not be required to take a step or procedure that would be futile; and

4. Grievances may be combined and processed as one.

SECTION 12**:**

A. The Office agrees to provide to the Union a copy of all written step decisions rendered on grievances filed under this Article.

B. The Office will not interfere with and will provide official time for Agency employees who are available witnesses and have relevant information on the matter at issue, during the steps of the grievance procedure.

SECTION 13:

In accordance with 5 U.S.C. §7114(b)(4), the Union may request the Office to provide written information concerning the subject matter of the grievance.

If the Office declines such a request, it shall respond to the request by stating, in writing, the reason(s) why the information is denied.

SECTION 14:

A. If the Office alleges that a grievance is not grievable and/or is not arbitrable, then the Office shall notify the Union in writing, stating the reasons for such a determination.

B. If a question of grievability is raised, the grievance shall proceed through the grievance procedure with the question of grievability joined to the grievance.

C. If a question of timeliness is raised, the grievance shall proceed through the grievance procedure with the question of timeliness joined to the grievance.

SECTION 15: Institutional Grievances

A. In lieu of the step-by-step procedure outlined by Sections 7 and 8 of this Article, the Union, as an entity, may submit a written grievance to the Office when it alleges that the Office has violated terms and conditions specifically granted to the Union under this Agreement. Such a grievance must be submitted in writing to the Chief, Labor Relations Division within 15 days after the occurrence of the act or when the Union became aware of the act, which the grievance seeks to address.

B. Institutional grievances shall contain the following information:

1. The provision of the Agreement alleged to have been violated;

2. A description of the alleged violation with sufficient specificity to advise the Agency of the nature of the harm;

3. A statement of the remedy sought;

4. The time and date of the incident; and

5. The name, email, and phone number of the Union's representative in the matter.

C. Upon request, the Office and up to 2 employee representatives, shall meet within 15 days to discuss the grievance. A written decision will be rendered to the Union within 15 days after the meeting. If the Union is not satisfied with the decision, it may appeal the decision to arbitration within 30 days of receipt of the written decision (See Article 48, Arbitration, or Article 49, Expedited Arbitration).

SECTION 16:

In the event the employee/Union submits a grievance, which is not in compliance with the provisions of this Article, the grievance shall be returned to the employee/Union with an explanation of the deficiency. For the grievance to receive further consideration, the employee/Union will be required to correct the deficiency and resubmit the grievance within 10 days of receipt of the notification, or by the original grievance filing deadline, whichever is later.

SECTION 17:

It is understood that the Union's right to grieve pursuant to Section 15 of this article does not apply to Union grievances filed solely on behalf of individual employees or groups of employees. These grievances must be filed under Section 7 of this Article. If the Union grievance is on behalf of individual employees or groups of employees, but also includes allegations that are institutional in nature, it may be filed under Section 15, but the employees covered by that grievance may not also file individual grievances or a group grievance including the same issues. If an institutional grievance by the Union is filed incorrectly under Section 7, the Union shall have five days from the date of the challenge to remedy the error, should one exist.

SECTION 18: Office Grievance Procedure

In those instances when the Office alleges that the Union has violated the Agreement and informal discussions with the Union person or persons have failed to resolve the issue, the

Office shall file a written grievance with the local Union President within 10 days of the alleged violation or when it became aware of the alleged violation. The local Union President may conduct an informal investigation and shall render a written decision within 10 days. Any relief sought and any decision rendered shall be consistent with the Union's Constitution and Bylaws.

SECTION 19: Referral to Arbitration

In the event that Sections 8, 15, or 18 fail to produce a satisfactory resolution, either the Office or the Union may proceed to Arbitration as provided in Article 48, Arbitration or Article 49, Expedited Arbitration. Only the Union or the Office has the right to invoke arbitration. Employees may not invoke arbitration.

SECTION 20:

The following Expedited Grievance Procedure shall apply to appeals/grievances of final decisions in the following circumstances:

Final decisions which impose a suspension, reduction in pay for disciplinary or performance reasons, removal, reconsideration of within grade denial, or furlough of 30 calendar days or less shall be considered equivalent to a decision at Step Two of the grievance procedure and may be grieved directly to arbitration as provided in Section 19.

(New Article based on 2024 Agreements)

ARBITRATION

ARTICLE 48 [Back to ToC]

SECTION 1:

A. The Union and the Office shall each have the right to have a grievance submitted to binding Arbitration within thirty (30) days after a decision has been rendered or if no final decision is issued within thirty (30) days from the date such decision should have been issued under the applicable section of the Negotiated Grievance Procedure.

    1. The Union or the Office shall invoke Arbitration by filing notice with the Chief, Labor Relations Division or the local Union President, as applicable, of its desire to arbitrate. An employee does not have the right to invoke arbitration.

    2. Such appeals must either be sent via email.

SECTION 2:

The arbitration process shall be supported by a panel of arbitrators as determined by the parties. The parties will establish an arbitration panel consisting of four (4) arbitrators who live or work in the Washington, D.C. metropolitan area as follows:

A. Arbitrators will be eligible for the panel if they meet the following conditions:

    1. The arbitrator has a business address no more than 40 miles from the Office's Alexandria, Virginia headquarters or is willing to waive travel and per diem expenses;

    2. The arbitrator has prior federal sector experience; and

    3. Any other mutually agreed upon conditions (e.g., excluding arbitrators the parties have agreed to exclude).

B. Within thirty (30) days of the effective date of this agreement, the parties shall determine whether to maintain the existing panel of arbitrators. If the parties agree to terminate the existing panel or cannot reach agreement on whether to maintain the existing panel, each party will electronically submit the names of five (5) proposed arbitrators to the other, no later than forty-five (45) days after this agreement becomes effective. Within fifteen (15) work days of receipt of the list the parties will attempt to agree upon four (4) arbitrators to fill the panel. If the parties cannot reach agreement within this timeframe, each party will pick two (2) arbitrators for the panel from the list submitted to them by the other party. The four (4) arbitrators selected shall comprise the arbitration panel. If a chosen arbitrator declines the appointment, the party who selected that arbitrator may select another arbitrator from the same list or, at that party's discretion, may require the other party to

present a list of five (5) names from which one arbitrator will be selected by the party that selected the arbitrator who declined. The existing panel will remain in effect until a new panel has been selected and all arbitrators have accepted their appointments.

C. Cases will be assigned to the arbitrators from the panel on a rotating basis, in alphabetical order of the arbitrator's last name.

D. Each party may strike up to one (1) arbitrator from the panel in each calendar year by giving written notice to the other party and the arbitrator. The parties may also mutually agree to strike an arbitrator from the panel at any time. Thereafter, no other cases will be assigned to that arbitrator; however s/he will hear and decide any cases already assigned.

E. If an arbitrator is removed from the panel, or a vacancy on the panel otherwise exists, a replacement shall be selected as follows:

1. Within fifteen (15) days of the removal or other action creating a vacancy on the panel, the parties shall attempt to agree upon a replacement.

2. If no replacement is mutually agreed to, the parties shall jointly request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) that meet the criteria in Section 2A above. The cost of obtaining the list shall be paid by the party initiating the removal of the arbitrator, except that if the removal of the arbitrator is by mutual agreement, both parties shall bear an equal share of the cost. If the parties cannot agree on an arbitrator from the list provided by FMCS, the Office and the Union will each strike one arbitrator's name from the list and repeat this process until one name remains. The party to make the first strike shall be determined by the toss of a coin and shall be made by the party winning the toss.

SECTION 3:

A. Normally, post hearing briefs will be exchanged unless both Parties agree to eliminate them on a case-by-case basis.

B. The arbitrator's fees and expense, if any, shall be borne equally by the parties, unless otherwise stated in this Agreement. It is understood that any per diem cost of the arbitrator are governed by applicable rules and regulations.

C. Once the date has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, cancelled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.

D. Arbitration proceedings shall be held on premises provided by the Office, which shall be within the immediate area of the Office.

E. In any grievance where the parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the parties will equally share the cost of any fees being charged by the arbitrator.

F. In any grievance where the parties settle the matter prior to an arbitration hearing and there are fees being charged due to the cancellation of the hearing, both parties will equally share the cost of any fees being charged.

G. The expenses of any witness shall be borne by the party calling the witness except that the expenses of any jointly called witness requested by the arbitrator shall be borne equally.

SECTION 4:

The salary for a PTO employee, while participating in the presentation of testimony, shall be borne by the Office, if that employee would otherwise be in a duty status. However, the Office will not pay overtime, or provide other additional compensation, for participation, which does not occur during the employee's regular tour of duty.

SECTION 5:

A. An arbitrator will issue a decision within 30 calendar days of the close of the record.

B. For appeals processed pursuant to this Article, the arbitrator shall have no power to add to, subtract from or modify the terms of this Agreement. His/her award or recommendation shall be limited to the issue(s) presented at arbitration.

C. The arbitrator shall make all determinations on arbitrability/grievability and timeliness. The issue of timeliness or grievability shall be presented to the arbitrator as a threshold issue, and a decision on the grievability or timeliness of the grievance shall be made by the arbitrator prior to the presentation of evidence on the merits of the grievance. The arbitrator, in his discretion, may issue a bench decision on the grievability or timeliness of the grievance, may request the parties to submit briefs on the grievability or timeliness issue, and may order a bifurcated hearing by conducting a separate hearing on the merits after a decision on the timeliness or grievability issue has been made.

D. An arbitrator is vested with all the power and authority to conduct a hearing investigation and issue a decision. These include:

1. The right to make determinations regarding the relevancy of witnesses; and,
2. The right to examine witnesses and administer oaths.

SECTION 6:

In accordance with applicable laws and regulations, the arbitrator shall, when appropriate, award attorney fees to the prevailing party.

SECTION 7:

By mutual agreement, the parties may arrange for a pre-hearing conference, with or without the arbitrator, to consider possible settlement and means of expediting the hearing. For example, this can be done by reducing the issue(s) to writing, stipulating facts, outlining intended offers of proof, authenticating proposed exhibits, exchanging lists of proposed witnesses, or waiving the use of a transcript.

SECTION 8:

The Office will provide an authorized court reporter for the purposes of making a verbatim transcript, unless the parties mutually agree otherwise. The cost will be shared equally by the parties.

SECTION 9:

The arbitration hearing will be informal, and the strict rules of evidence will not apply. However, all testimony shall be made under oath or affirmation.

SECTION 10:

The arbitrator's decision shall be final, binding and precedential, and the arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay, reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a disciplinary, adverse, or unacceptable performance action, if appropriate.

SECTION 11:

Either party may file exceptions to the arbitrator's award with the Federal Labor Relations Authority, under regulations prescribed by the Authority. Any party appealing an arbitration award to a higher-level authority shall pay all costs of appealing that arbitration whether the appeal is successful or not.

SECTION 12:

A. Normally, the parties agree to exchange a complete list of prospective witnesses at least seven calendar days prior to the hearing.

B. Where a witness under the control of either Party is requested and approved by the arbitrator, neither Party will interfere with the appearance of the witness.

C. In any case where a witness does not appear and the arbitrator determines that the non-requesting party interfered with the witness' appearance, the arbitrator shall, in the absence

of a reasonable alternative/source/method of testimony/evidence, accept as testimony/evidence any representation by the Party calling the witness as to what that witness would have said or provided had he/she appeared. Any such representation must be in the form of an affidavit or sworn statement on the record.

SECTION 13:

A. In any arbitration, including expedited arbitration, wherein the grievant is contesting his/her performance appraisal or the performance appraisal system, the following will apply as to burden of proof. Where the employee challenges a rating of unacceptable or marginal, on the basis that he/she should have been rated a marginal or fully successful, the burden of proof shall be on the Office in any arbitration to establish that the rating was proper. Where the employee challenges a rating on the basis that he/she should have been rated more than fully successful, the burden of proof shall be on the employee in any arbitration to establish the validity of his/her challenge.

B. In all cases involving performance appraisals, the evidentiary standard shall be substantial evidence. Further, in such cases, neither party will have to prove that the other Party's action(s) were arbitrary or capricious in order to sustain its claim(s).

SECTION 14:

Bargaining history testimony and/or affidavits in connection with bargaining history may not be used in an arbitration hearing unless one of the parties has notified the other in writing at least 10 calendar days prior to the hearing of its intent to use such testimony and/or affidavits. The other party shall have the right to rebut such evidence without notice to the other side.

SECTION 15: SECRECY OF APPLICATIONS (35 U.S.C. 122)

A. The disclosure of pending or abandoned patent applications, other than those under a Secrecy Order or having National Security Markings, to an arbitrator, persons acting in a representative capacity who are not employees of the PTO, and court reporters may be considered a special circumstance within the meaning of 35 U.S.C. 122 provided that the following procedure is followed:

    1. For arbitrators, a joint letter of appointment shall include a request to execute the confidentiality agreement of Appendix B and shall further include the names and telephone numbers of the representatives for the parties with instructions that if any question of conflict of interest arises a conference will be arranged with all parties. The executed agreement will be transmitted to both parties prior to disclosure of any cases.

    2. For persons acting in a representative capacity who are not employees of the PTO, a request to execute the confidentiality agreement of Appendix B shall be made prior to disclosure of pending and abandoned applications. The executed agreement will be transmitted to the PTO prior to disclosure of any cases. In the event that the

representative has questions of a possible conflict of interest, a conference will be arranged to include all parties.

3. The PTO shall have the right to restrict the areas of technology that can be disclosed. The PTO shall submit a list of restricted areas and the reasons therefore to the parties.

4. If any restrictions prohibiting disclosure of any areas of technology are applied in accordance with 35 USC 122 to the arbitrator or representative because of possible conflict of interest, the union shall have the right to require the selection of a new arbitrator, or shall have the opportunity to procure new persons acting in a representative capacity.

5. If a new arbitrator is required, the parties shall first attempt to agree on the selection of a new person. If no agreement is reached, the parties shall request a new panel of arbitrators.

6. The persons acting in a representative capacity, or an arbitrator for whom waivers of confidentiality have been granted shall have access to all applications, other than those under Secrecy Order or having National Security Markings, the parties desire to present, provided that the applications fall outside the restriction list developed under item three.

7. National Security Markings shall mean markings made under the National Security Information Executive Order (E.O. 12356) or its successor or other national security information protected by statute or executive order.

B. Both parties will limit the presentation of pending or abandoned patent applications (other than those originally relied upon by the PTO) to a reasonable number as determined by the arbitrator.

C. All hearings and proceedings relative to the grievance will be closed to the public or others from whom a waiver of confidentiality has not been granted if the evidence includes pending or abandoned patent applications.

D. The "Agreement to Maintain Confidentiality of Pending and Abandoned Patent Applications" appears in Appendix B.

EXPEDITED ARBITRATION

ARTICLE 49 [Back to ToC]

SECTION 1:

This expedited arbitration procedure is intended to provide prompt and efficient resolution of certain matters. Accordingly, the Union may at its option, submit grievances concerning the following matters to arbitration in accordance with the terms of to this Article:

A. Suspensions of 14 calendar days or less**;**

B. Within-grade increase denials;

C. Sick leave restriction letters; and

D. Performance appraisals.

SECTION 2:

The parties, by mutual agreement, may submit grievances concerning any other matters to expedited arbitration in accordance with the terms of this Article.

SECTION 3:

The request for arbitration under this Article must be made within 10 days of the final decision or, if no final decision is issued, within 10 days from the date such decision should have been issued. If not appealed within this time limit, either party will have the option of appealing through the regular arbitration procedure.

SECTION 4:

A. Within 60 days after the effective date of this Agreement, the parties will create a panel of five mutually agreeable arbitrators in the Washington, D.C. area to be maintained exclusively for grievances processed under this Article. The mutual agreement by the parties on three arbitrators shall, for purposes of this Article, be considered as satisfying the requirements for creating a panel. Any arbitrator selected for inclusion may be removed on an annual basis from this list by either of the parties. Such removal may be affected by the removing party serving written notice of this action to the other party and the arbitrator.

B. Arbitrators will be selected to hear a grievance under this procedure on a rotational basis. The arbitrator will be selected immediately after the notice of appeal to arbitration is served upon the other party. Notice of selection will be forwarded to the arbitrator within two days after selection.

C. The arbitrator will conduct the hearing within 15 calendar days after being notified of his/her selection. If the arbitrator is unable to hear the case within this time frame, the next arbitrator on the list will be selected.

SECTION 5:

The following procedures will apply to the arbitration of any dispute under this procedure:

A. The arbitrator shall make timeliness determinations prior to addressing the merits of the grievances before him/her. Should the arbitrator find that a grievance is untimely, the merits of the grievance need not be reached. The parties may mutually agree to proceed with the merits of the case.

B. The parties have the right to issue opening and closing statements and to present and cross-examine witnesses.

C. Attendance at the hearing will be limited to those determined by the arbitrator to have direct knowledge of the circumstances and factors bearing on the case. The arbitrator may exclude any testimony or evidence which he/she determines irrelevant or unduly repetitious.

D. The hearing shall be informal and strict rules of evidence will not apply. However, all testimony shall be made under oath or affirmation.

E. Normally there will be no transcript unless there is a clearly demonstrated need for one. The need for verbatim transcripts shall be determined by the parties on an ad hoc basis. When either party elects a verbatim transcript it will be made by an authorized court reporter. The arbitrator and each of the parties will be provided with a copy. The costs of the transcript will be equally shared by the parties. The preparation of a verbatim transcript shall not serve to delay any of the time limits contained in this Article.

F. Either party has the right to submit copies of applicable case law, relevant administrative agency decisions, and relevant court decisions up to the close of the hearing.

G. Neither party may file written briefs.

H. If the Office determines it is not administratively practicable to comply with the Union's request to produce a witness and the arbitrator determines the employee's testimony is relevant, the hearing may be postponed. However, the Union and Office may agree to submit an affidavit in place of the direct testimony of the employee.

I. Witnesses will normally be present at the hearing only while testifying and should be permitted to testify only in the presence of the aggrieved employee or his/her representatives and the Office's representatives.

J. The grievant's representatives, and all employees of the Office who are called as witnesses, and who are on active duty status, shall be excused from duty, and the amount of time needed to testify will be charged to official time. The arbitrator shall have sole discretion to determine who may testify.

K. Bargaining history testimony may be introduced, as appropriate, if sufficient notice is given to the other party to permit preparation.

L. In accordance with applicable laws and regulations, the arbitrator shall, when appropriate, have the authority to award attorney fees to the prevailing party.

M. The arbitrator's decision shall be final and binding in accordance with applicable laws, and the arbitrator shall possess the authority to make an aggrieved employee whole to the extent such remedy is not limited by law, including the authority to award back pay, reinstatement, retroactive promotion where appropriate, and to issue an order to expunge the record of all references to a disciplinary action, if appropriate.

SECTION 6:

A. The arbitrator will issue a brief, written decision within 15 days of the close of the hearing. This decision will be final and binding on both parties. However, either party may file exceptions to an award with the Federal Labor Relations Authority under regulations prescribed by the FLRA.

B. The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement, agency policies or regulations. His/her award will be limited to the issues presented at arbitration.

C. The arbitrator shall have the authority to make all arbitrability and/or grievability determinations. The arbitrator shall make such determinations prior to addressing the merits of the original grievance.

D. If the parties mutually conclude that the issues of a case brought under this Article are of such complexity or significance as to warrant referral back to the regular arbitration procedure, the case shall be so referred. The arbitrator may call for post-hearing briefs only where he/she feels a certain need for them. This decision may be made only at the conclusion of the hearing. In this case, the arbitrator would set a date for filing of briefs. The decision should be issued no later than 15 calendar days from the filing of briefs.

SECTION 7:

The decision of the arbitrator will be non-precedential.

SECTION 8:

A. The fees and related expenses of the arbitrator shall be shared equally by the Union and the Office.

B. Once the date has been established, any party that unilaterally requests that an arbitration hearing be postponed, delayed, canceled, and/or withdrawn for whatever reason, which results in any fees being charged by the arbitrator, shall pay all such fees.

C. In any grievance where the parties mutually agree to postpone, delay, and/or cancel an arbitration proceeding, the parties will equally share the cost of any fees being charged by the arbitrator.

D. In any grievance where the parties settle the matter prior to an arbitration hearing and there are fees charged due to the cancellation of the hearing, both parties will equally share the cost of any fees charged.

SECTION 9:

The following provision from Article 48 Arbitration shall apply to expedited arbitration: Section 8.

UNION REPRESENTATIVES

ARTICLE 50 [Back to ToC]

SECTION 1:

The Office agrees to recognize up to 18 Stewards and one (1) Chief Steward. In order that each employee in the Unit shall have reasonable access to a Steward, Stewards shall be assigned to areas of the Office as designated by the Union. A Steward will provide services only for employees whose regular work area falls within the assigned area of the Steward.

SECTION 2:

The Union agrees to provide the Office of Human Resources with a complete list of Officers and Stewards and to identify the area each Steward is designated to represent by April 1 every year. The list will be updated quarterly or any other time changes in representation take place. This includes the appointment or removal of Officers or Stewards. The Union agrees to provide written notification two (2) days in advance of the effective date of the appointment or removal. The Union will simultaneously submit changes electronically to the Chief, Labor Relations, and the Officer or Steward's immediate supervisor. The Office will not recognize any changes prior to the effective date.

In emergency situations, the Union President may orally notify the Chief, Labor Relations, about the designation of a Steward. Failure of the Union to keep this list current relieves the Office of consultation responsibilities and recognition of the individual newly appointed as a Union Representative. Should the Office believe that an individual has not been listed or has been incorrectly listed, it will notify the Union in writing of its concern prior to the withdrawal of recognition of the individual. Upon receipt of the aforementioned notification, the Union will have three (3) days to clarify or remedy the situation prior to the Office's withdrawal of recognition.

SECTION 3:

Employees in the identified areas will, when seeking assistance and representation as provided for in the Agreement, receive such assistance and representation from the Steward designated to represent his/her area; provided, however, that at Step 1 or beyond of the Negotiated Grievance Procedure, the Chief Steward, or his/her designee, may replace the Steward in representing the employee. When, in the judgment of the Union, it is necessary for the Chief Steward, or his/her designee, to take over from an assigned Steward, the Union will notify the Office of the change in writing.

SECTION 4:

A. When desiring to conduct representational activities at or away from their work place during work hours, Union Stewards shall inform their supervisor or designee. The Union

Steward must complete the highlighted portions of **ABSENCE FROM WORK DUTIES TO PERFORM REPRESENTATIONAL DUTIES** form **(Appendix A)** and submit it in writing or via e-mail to the supervisor or designee prior to leaving the work place. Absences should be limited to the time necessary for the performance of representational duties, and should not generally be for the full day, or significant portions thereof.

B. If the Steward is unable to return to the work area at the time specified, the Steward will call the supervisor or designee to request additional time, identifying the activity for which additional time is needed. If the supervisor or designee is unavailable, the Steward will leave a voice-mail message. Upon return, the Steward must record the total amount of official time approved for each activity on the form **(Appendix A)**. This information must also be recorded on the Steward's bi-weekly time and attendance form.

C. Permission to conduct official Union business including representation and assistance activities will normally be granted unless the absence of the Steward from his/her work duties would cause substantial adverse effect on the workload of his/her area. In those instances, an alternate time will be authorized.

D. The Office agrees to provide a breakdown of the official time reported by each Union Steward and/or Chapter Official on a biweekly basis. The listing will include the date of the report, the Steward's or Official's name, the type of Union time reported, the amount of time reported, the cost code charged, the total times reported for the bi-week, year-to-date totals for each cost code, and the balance of bank time remaining.

SECTION 5:

When a Union Steward enters another area of the Office to conduct official Union business including representation and assistance activities, he/she shall first advise the supervisor, or designee, of that area of the nature of the activity to be conducted and the approximate duration of the visit. Permission will normally be granted unless the workload at that time does not permit. In these instances, an alternate time will be authorized.

SECTION 6:

Interviews between Union representatives and employees and/or supervisors will be held away from other employees and the public so as not to interfere with the work of the Office.

SECTION 7:

The Office shall in no way restrain, interfere with, coerce or discriminate against designated representatives of the Union in the responsible exercise of their right to serve as representatives for the purpose of collective bargaining, handling grievances and appeals, furthering effective labor-management relations or acting in accordance with applicable regulations and agreements on behalf of an employee or group of employees within the unit.

SECTION 8:

A. The parties agree Stewards will not service the immediate area in which they work.

B. The Office agrees to consult with the Union prior to placing Union Officers or Stewards on special assignments and/or details away from the area which they serve.

C. The Union agrees to consult with the Office prior to changing service areas for Union Officers or Stewards.

SECTION 9:

Where there is more than one (1) Union representative from the same work unit, the Union representatives shall make every reasonable effort to schedule use of official representational time so as to avoid simultaneous absence from their work duties on Union business. If simultaneous absence cannot be avoided, the workload requirements in Section 4.D. of this article will apply.

OFFICIAL TIME

ARTICLE 51 [Back to ToC]

SECTION 1:

Union Stewards and specified Union Officials shall be allowed official time to conduct activities during duty hours. These activities will normally be defined as consultations or discussions with employees of the unit and/or members of management concerning matters affecting working conditions of these employees, employee-management consultations and meetings, preparation of grievances, and other matters concerning the interpretation and application of the Agreement and the Act.

SECTION 2**:**

The amount of time used for these activities shall be noted on all appropriate records, including the Stewards' and Union Officials' time and attendance records and shall not exceed, during any calendar quarter, the following:

Stewards	640 hours per quarter
One (1) Chief Steward	160 hours per quarter
One (1) Executive Vice President	160 hours per quarter
One (1) President	225 hours per quarter

The above blocks of time shall be made available on January 1, April 1, July 1, and October 1. All other time allowed must be used in the designated quarter. However, actual time for meetings called by the Office or Office initiated grievances and time for presentation of employee grievances at various stages of the Negotiated Grievance Procedure shall not be charged against the official time allowance provided above.

SECTION 3:

Up to an aggregate of 450 hours of official time per calendar year will be permitted to NTEU Stewards and Officials, the total number of which shall not exceed 21, for attendance at Union sponsored training sessions. No individual Steward or Official may use more than 40 of these hours per calendar year. Any additional time needed for training will be comprised of bank time. The content of such training shall be related to matters within the scope of Labor-Management Relations policy and shall be of mutual benefit to the Office and to employees. Such training may include matters relating to pay, personnel policies, working conditions, grievance procedures, or the Agreement.

Absence for such training must be obtained in advance from the Chief, Labor Relations Division, at least 15 calendar days prior to the date of the requested training. The request shall contain a copy of the training agenda, dates of the training, and the names of the Union representatives requesting to attend. The granting of official/bank time for training is subject to approval based

upon workload considerations and staffing needs. The Office will grant or deny training time in a fair and impartial manner in accordance with law, rule, or regulation. For informational purposes only, a Union representative requesting to attend shall also concurrently submit an OPM-71 to their supervisor, notated "Union-sponsored training."

SECTION 4:

Time spent conducting the Union's internal affairs shall not be on official time. Internal Union business includes, but is not limited to:

A. Membership meetings,

B. Soliciting Union membership,

C. Collecting Union dues or assessments,

D. Campaigning for Union Office,

E. Distributing or posting Union literature, notices or authorization cards, and/or

F. Any activities pertaining to the internal management of the Union.

The above shall not be interpreted, however, to preclude official time for any activities permitted under 5 U.S.C. Section §7131, and applicable law, rule, and regulation.

SECTION 5:

Subject to workload considerations and staffing needs, Union representatives will be granted annual leave or leave without pay for attendance at any Union-sponsored conventions or meetings as long as the employee has requested the leave 5 days in advance. Additionally, the Office will grant the Union Officers and Stewards, subject to workload considerations and staffing needs, leave to perform Union duties or engage in other Union business not covered by the provisions of this Article and other appropriate laws, rules, or regulations granting official time to Union Officers and/or Stewards. The Office will approve or deny such requests in a fair and impartial manner in accordance with law, rule, or regulation. The employee may charge such leave at his/her option, to earned annual leave or leave without pay.

SECTION 6:

For any time required in excess of that provided in this Article, supervisors may authorize annual leave or leave without pay, consistent with the provisions of the applicable leave articles contained in this Agreement.

SECTION 7:

Upon reasonable advance notice, employees shall be entitled to take their lunch break at a time convenient to attend Union meetings.

FACILITIES AND SERVICES TO THE UNION

ARTICLE 52 [Back to ToC]

SECTION 1:

The Office agrees that it will assist the Union in obtaining permission to use lobbies for notifications and communications.

SECTION 2:

A. The Union shall be granted use of Office-designated bulletin boards, unless such use is prohibited by applicable laws, rules or regulations.

B. Upon reasonable advanced request by the Union, the Office will provide, if available, meeting space for Union-sponsored meetings. Such space is subject to rescheduling, relocation or cancellation if necessary to accommodate Office business. The Union will be given 3 workdays' notice of the need to select an alternate date or time for use of a meeting room and reasonable notice of necessary relocation.

SECTION 3:

Designated bulletin boards shall normally consist of one bulletin board (not to include glass enclosed boards) on each floor occupied by unit members.

SECTION 4:

Notices shall be reasonable in size and shall be identified as posted by the Union. All costs incident to reproduction, preparation and posting on bulletin boards of such material shall be borne by the Union.

SECTION 5:

The Office will permit the Union to distribute literature in work areas between 11:00 a.m. and 1:00 p.m. and between 7:00 p.m. and 8:00 p.m. as long as the distribution does not disrupt the flow of work. When the Union distributes literature in work areas on work time, the person distributing must do so on his/her own time or appropriate leave.

SECTION 6:

The Office will provide an office of approximately 240 sq. ft. to the Union in order to provide a confidential place to discuss complaints and other Union matters. The office will have two telephone lines to be used for representational matters. Use of the office is subject to the following conditions:

A. The Office will not be responsible for Union property located within the space provided;

B. The Union will exercise due safety and security precautions when using such space. The door will have a lock and key although the Office may be opened for cleaning, safety, and sanitary inspections;

C. The Office will provide the Union with 15 days' notice prior to reassignment or expulsion from the office space; and

D. Appropriate office furniture will be provided including a lockable file cabinet.

SECTION 7:

The Office agrees to furnish the Union within the first 10 days of each quarter an electronic listing of the names, position titles and organization units of all NTEU 243 bargaining unit employees appointed or separated and an annual electronic listing of all NTEU 243 bargaining unit employees, by name, position title, grade and organizational unit.

SECTION 8:

A national representative of the Union will be allowed access to the Office's premises, excluding designated security areas, as long as the Office is notified of the visit.

SECTION 9:

To the extent USPTO employees are listed in the U.S. Department of Commerce telephone directory, the Office agrees to submit to the Department for inclusion in the telephone directory the title, name, room number and telephone extensions of the local President and all Stewards. Those listings shall be listed under the Patent and Trademark Office section of the directory**.** In addition, NTEU will be listed in the electronic directory of USPTO as NTEU 243, with a listing of officers.

SECTION 10:

Upon advance notice and within available resources, the Office will provide the Union a reasonable amount of space on a periodic basis to conduct ballot box elections and referenda pursuant to its by-laws.

SECTION 11:

The Office will post electronically Office Administrative Instruction and Notices to Employees as well as all other Office issuances relating to personnel policies, practices and working conditions, issued after the effective date of this Agreement. If no electronic copy is available then 2 paper copies will be delivered to the Union Office.

SECTION 12:

The Office recognizes that the Union maintains a private Post Office box; however, any mail inadvertently addressed to the Union at the Office's address shall be forwarded to the Union President.

SECTION 13:

All Union Officials shall have access to a telephone (proximate to their worksites). The Union agrees to ensure that the use of these phones will be restricted to appropriate Labor-Management Relations matters and such use will not result in disruption in the work area. In addition, union officials, who have access to email, may use it for appropriate Labor-Management Relations communications.

SECTION 14:

The Office agrees to allow Union officials the use of a designated copy machine to make copies of material directly related to their representational duties when the equipment is not being used for normal business. Union officials will notify the Office secretary prior to copying more than 25 pages of material at any one time. The copied material will consist of grievances, appeals, responses to proposed disciplinary actions, including supporting documentation, and Union responses to Office correspondence. This does not extend to any material relating to the Union's internal affairs. If the copy machine designated for the Union's use is not available for an extended period of time, the Union will be permitted to use an alternate machine as designated by the Office.

SECTION 15:

Union representatives, in connection with matters covered by this agreement, may use a designated facsimile machine and/or interoffice mail transmittal for written materials. Use of the facsimile machine is limited and does not extend to any material relating to the Union's internal business. The Union representative using the facsimile machine will sign a log- book kept in the area indicating the time and the number of pages faxed or received. Inter-office mail cannot be used for time-sensitive material and is restricted to communications with the Office on representational matters.

SECTION 16:

Upon reasonable advance request by the Union, the Office will provide, if available, confidential meeting space at any remote office location for employees to meet with a Union Official and/or National Field Representative.

EMPLOYEE ORIENTATION

ARTICLE 53 [Back to ToC]

SECTION 1:

During the same time the Office holds an orientation meeting for new employee(s), the Union will be given reasonable time, generally not to exceed 30 minutes, to address the new employee(s). The Union will have the right to discuss the contract, current Labor-Management issues, its insurance programs, the current laws and regulations on Federal sector labor relations, that does not slander or libel a government official. The Union will have the right to show an orientation film to new employee(s). This will be done in the same area the Office uses for new employee orientation.

SECTION 2:

The Union may provide new employees a package of materials during orientation sessions.

NOTICES TO EMPLOYEES

ARTICLE 54 [Back to ToC]

SECTION 1:

When the Office presents an employee with a written notice specified in Section 2 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 NTEU Chapter 243."

SECTION 2:

Section 1 of this article applies to the following documents:

A. Letters of proposed disciplinary action;

B. Letters of final decision in any action; and

C. Letters proposing an unsatisfactory annual evaluation or letters transmitting the final decision of unacceptable performance.

DUES WITHHOLDING

ARTICLE 55 [Back to ToC]

SECTION 1:

This Article is for the purpose of permitting eligible employees who are members of the Union to pay dues through the authorization of voluntary allotments from their compensations. Any employee officially assigned to the Office may authorize an allotment of pay for the payment of his/her dues for such membership, provided:

A. The employee is included in the unit;

B. The employee is a member in good standing of the Union;

C. The employee has voluntarily completed Standard Form 1187, Request and Authorization for Voluntary Allotment of Compensation for Payment of Employee Organization Dues; and

D. The employee receives compensation sufficient to cover the total amount of the allotment.

SECTION 2:

The Union agrees to assume responsibilities for:

A. Informing and educating 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. Purchasing and distributing to its members Standard Form 1187.

C. Informing the Office of changes in the following:

1. Remittance check(s) will be made payable as follows: National Treasury Employees Union.

2. Remittance check(s) will be mailed as follows: Administrative Controller, National Treasury Employees Union, 1750 H Street, N.W., Washington, D.C. 20006.

3. The Union's National President or any Chapter 243 Officer who has submitted proper notification to the Office of Human Resources is authorized to make the necessary certification of Standard Form 1187.

D. Forwarding properly executed and certified Standard Form 1187 to the Office of Human Resources on a timely basis.

E. The Union will promptly send to the Labor Relations Division any written revocation of allotment received by the Union. Failure to comply with this Section shall render the Union liable for any dues withheld after a revocation.

F. Informing the Office of Human Resources of the name of any participating employee who has been expelled or ceases to be a member in good standing in the Union within 10 days of the date of such final determination.

G. Informing the Office of Human Resources of any change in the amount of membership dues. If the amount of regular dues is changed by the Union, the Chief, Labor Relations Division, will be notified in writing by the President of the Union. This notice will certify that the dues structure of the organization has been changed in accordance with the Constitution and By-Laws of the Union and will give the effective date of the change. The notice must be forwarded to the Chief, Labor Relations Division, no later than four pay periods before the effective date of the change. Only one such change may be made in any period of 12 consecutive months.

H. The Office will promptly send a copy of each written revocation received by the Office to the Union.

SECTION 3:

The Office agrees that it is responsible for processing voluntary allotments of dues in accordance with this Article. The Office will:

A. Upon receipt of a properly certified Standard Form 1187, the Office of Human Resources will stamp the date it was received on the back of the form. The deduction will be effective the beginning of the next full pay period after receipt of the SF-1187.

B. Allotted dues will be withheld each pay period. The amount to be withheld shall be the amount of the regular bi-weekly dues of the member, exclusive of initiation back dues, fines and similar charges and fees.

C. The Office will remit the amount due the Union to the treasurer of the Union or his/her designee on the payday following the end of the pay period. Each remittance will be accompanied by a statement giving the following information:

1. Identification of Local Union;

2. Names of members for whom deductions were made and the amount of each deduction;

3. Names of employees who did not earn enough salary to permit a deduction;

4. Total number of members for whom dues are withheld;

5. Total amount withheld from payroll and remitted; and

6. Names of employees removed from dues withholding during the relevant pay period.

D. Notify the employee and the organization when an employee is not eligible for an allotment, because the employee is not included under the recognition in the appropriate exclusively recognized unit on which the Agreement is based.

SECTION 4:

The Office of Human Resources will terminate an allotment:

A. When the Union loses the required recognition under any of the conditions specified in the CSRA or Office of Personnel Management regulations;

B. When the employee dies, retires, his/her whereabouts are unknown, is separated from the Office, is moved to a position not served by the same payroll Office, or is promoted or reassigned to a non-unit position;

C. Upon notice from the Union that the employee is no longer a member in good standing;

D. Effective at the end of the pay period covered by the payroll deduction in which loss of eligibility occurs; and

E. After an employee submits a written request for revocation of an allotment, Form SF-1188, "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues". However, as provided in 5 U.S.C. §7115(a), an initial allotment may not be revoked for a period of one year. A revocation received on or before the first anniversary of the date the employee authorized withholding was initiated will be effective the first pay period which begins on or after the anniversary date. Thereafter, a revocation will be effective the first pay period which begins on or after September 1st if the revocation is received on or before September 1st.

F. Revocation notices for employees who initiated dues withholdings on or before August 9, 2020 and who have had dues withholding in effect for more than one (1) year must be submitted to the Office of Human Resources during USDA pay period 15 each year. Revocations will become effective during USDA pay period 18.

G. Pursuant to 5 C.F.R. §2429.19, employees who initiated dues withholdings on or after August 10, 2020, may elect to revoke their dues withholdings any time after the one-year anniversary date of their dues allotment by submitting a completed Standard Form 118 that has been initialed or signed by the NTEU 243 President or designee. The revocation

will become effective as soon as administratively feasible. Any subsequent request to initiate dues withholdings will require a new Standard Form 1187 and will restart a new one-year anniversary under 5 U.S.C. §7115.

SECTION 5:

Upon submission of Form SF-1188, "Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues", the Office of Human Resources will provide a copy to the Union President.

SECTION 6:

The parties to this Agreement agree that:

A. The Union will pay no fee for these services.

B. The Office shall notify the Chapter 243 President, in writing, of overpayment in remittance checks. Within 15 calendar days of receipt of this notice, the Chapter President shall notify the Office of Human Resources of any dispute regarding the alleged overpayment. Absent any such dispute, the Union shall promptly refund the amount of overpayment.

C. Requests for Waiver of Overpayment shall be made and considered in accordance with Article 22, Waiver of Overpayment.

SECTION 7**:**

Denials of Union requests for waiver of overpayment in Section 6 above, will be subject to the institutional grievance procedures as outlined in Article 47 of this Agreement.

SECTION 8:

A. The Office agrees that the total error in the amount of dues withheld from individual employees shall be adjusted as soon as practicable after the Office has discovered or has received written notification from the Union or employee of an error.

B. The Office will provide the employee with a written explanation.

C. Requests for waivers of overpayment to employees will be considered and granted consistent with Article 22, Waiver of Overpayment.

SECTION 9:

When a bargaining unit employee is placed in a non-bargaining unit position, the employee will be supplied with the following form:

Termination of Dues Withholding

Regulations governing dues withholding to a labor organization require that dues withholding be automatically canceled whenever an employee is placed in a non-bargaining unit position.

You were recently subject to a reassignment or promotion, which will automatically terminate your dues withholding. The final dues withholding will be made for the pay period in which the action is effective.

If you have any questions regarding the termination of your dues withholding, you may wish to contact the Office of Human Resources or NTEU Chapter 243. The Civil Service Reform Act of 1978 permits you to continue your membership.

SECTION 10:

The Union will indemnify and hold the Office harmless against any and all claims, demands, suits and other forms of liability that shall arise out of or by reason of any action taken or not taken by the Office for the purpose of complying with any of the provisions of Union recognition and dues deduction.

MID-CONTRACT NEGOTIATIONS

ARTICLE 56 [Back to ToC]

SECTION 1:

A. The Office agrees not to establish or change any personnel policy, practice or condition of employment, which terminates or conflicts with specific terms or conditions of this Agreement. However, mandatory amendments may be required after the effective date of this Agreement because of new laws, or changes to existing laws. In such an event, the parties shall meet within 15 days after receipt of a written request from either party for the purposes of negotiating those amendments to the Agreement required to bring this Agreement into conformity with the changes in laws. The parties shall agree on mutually satisfactory arrangements for the conduct of these required negotiations. Where they cannot agree, these negotiations will be conducted in accordance with the ground rules described below for normal mid-contract negotiations. Amendments resulting from these negotiations shall be effective upon signing by the parties, unless subject to the approval of the head of the Agency.

B. Where the Office wishes to change a personnel policy, practice or condition of employment not controlled by the terms of this Agreement, and, in addition to those described in Subsection A above, it will notify the Union's Chapter President and appropriate NTEU Field Representative in writing. This notice will include the following:

   1. A description of the desired change;

   2. A statement of the general impact of this change on the bargaining unit; and

   3. An explanation of why the requested change is necessary.

C. The Office will provide fifteen days' notice of such changes in conditions of employment. Within fifteen days of receipt of such notice, the Union will request to negotiate and include proposals, or within ten days of receiving the notice, request a briefing. If the Union requests a briefing, proposals will be due within ten days following the conclusion of the briefing. If the Union timely submits proposals and/or requests for bargaining, or a briefing, the Office will delay implementation until the Office has fulfilled its bargaining obligations, except in a situation that would impair the Office's necessary functioning.

SECTION 2:

The following ground rules shall govern the conduct of mid-term negotiations:

A. Negotiations shall commence no later than 5 days following receipt of the Union's proposals unless modified by mutual agreement of the Office and Union.

B. The parties shall negotiate for no more than 9 days. The parties shall negotiate Tuesday through Thursday (excluding holidays) consecutively during the hours of 9:30 a.m. to 4:00 p.m., unless the parties agree otherwise.

C. The parties shall be deemed at constructive impasse if agreement has not been reached during the 9 days of negotiation set forth in Subsection (b) above unless the parties mutually agree otherwise. However, either party or both parties jointly may declare an impasse prior to conclusion of the nine (9) day period specified in Sub-Section B, above.

SECTION 3:

If impasse occurs, either constructively or in fact, either party may request the Federal Mediation and Conciliation Service (FMCS) to provide mediation services within 5 days after impasse. The Mediator will be the sole judge of the procedures to be followed in attempting to resolve impasses. Mediation shall not exceed 2 days.

SECTION 4:

Any impasse not resolved through the FMCS may be submitted within10 calendar days by either party to the Federal Service Impasses Panel to consider the matter under its regulations.

SECTION 5:

All mid-contract agreements will be set forth in a Memorandum of Understanding executed by the parties which will contain an effective date and a termination date which will not exceed the termination date of this Agreement, subject to the approval of the head of the Agency, when required.

REPRODUCTION AND DISTRIBUTION OF THE AGREEMENT

ARTICLE 57 [Back to ToC]

SECTION 1:

The Office will distribute copies of the Agreement to all unit supervisors, management officials, and bargaining unit employees.

SECTION 2:

The Office agrees to post this Agreement electronically on its Intranet or similar means. The electronic copy will enable users to search by article and section. The Office will notify all bargaining unit employees concerning the location of the Agreement on the Intranet or equivalent.

SECTION 3:

The Office will provide a written notification to all future bargaining unit employees during their orientation session setting out the electronic location of the Agreement.

SECTION 4:

The Office shall furnish NTEU with twenty-five (25) copies of the Agreement.

(New Article based on 2024 Agreements)

TELEWORK

ARTICLE 58 [Back to ToC]

SECTION 1:

Telework is a program that allows eligible employees to perform their work at an alternative work place including their home.

The parties recognize that telework programs are beneficial to the Office and employees, providing a continuity of operations, cost savings to both the Office and employees, maximizing Office space, lessened environmental impact, and flexible work hours that allow for the agency to better meet its goals and provide better nationwide customer service.

Telework includes "hoteling." Participation in telework is voluntary.

SECTION 2:

The parties support the use of telework as a means of efficiently and effectively meeting the needs of the government while allowing flexibility to employees to help balance work responsibilities with the needs of the employee away from the Office.

Definitions. The following definitions are used for the purposes of different telework programs. Below are general definitions and may vary based on each areas specific telework programs and MOUs.

1. USPTO Office - USPTO headquarters in Alexandria, VA, or any other USPTO designated facility.

2. Official duty station - the city/town and state in which an employee's official worksite is located. For participants who are in a routine or situational telework programs, their Official Duty Station and Official Worksite is the employee's USPTO Office where they regularly perform their duties. Situational and routine telework participants must report to their Official Duty Station (USPTO Office) at least twice per bi-week. For those participating in the remote telework options, their duty station will be the city/town and state of participant's approved primary alternate worksite.

3. Official worksite – An employee's official worksite is the location where an employee regularly performs their assigned duties. The official worksite of a routine telework participant and a situational telework participant is the participant's USPTO Office where they are assigned. The official worksite of a remote work participant is the participant's approved primary alternate worksite.

4. Alternative worksite - an approved telework location including an approved remote work location, for performing official USPTO duties that complies with all the terms of

participant's designated telework program and is approved in advance prior to teleworking from that location. Employees may have both a primary and a secondary alternate worksite.

SECTION 3:

A. The USPTO has a number of telework programs in place for bargaining unit employees. These programs vary depending on the needs of the business unit or portion of the business unit that has worked with NTEU Chapter 243 in establishing these programs, and are memorialized in separate Memoranda of Understanding (MOUs) signed by the parties. The parties commit to continue to work together to promote the use of telework to meet the needs of the Agency and support employees by creating new programs at the business unit level, portion of business unit level, or through changing existing programs.

B. The following telework program memorandums of understanding (MOU or Telework Agreement) previously entered into by the parties and currently in effect are expressly incorporated into this collective bargaining agreement (CBA), not withstanding any duration terms contained in such MOUs and/or Telework Agreements, are subject to the 5-year term provided for in Article 59 (Duration and Termination) of this CBA:
    - Office of Chief Administrative Officer (OCAO) NTEU 243 Telework Program MOU, dated May 24, 2022;
    - Office of Chief Financial Officer (OCFO) and Office of Chief Information Officer (OCIO) NTEU 243 Telework Program MOU, dated March 24, 2022;
    - Patents NTEU 243 Telework Program MOU, dated April 12, 2022;
    - Patents Trial and Appeal Board (PTAB) Telework Program 2.0 (NTEU 243) MOU, dated April 11, 2022;
    - Trademarks Telework Agreement (NTEU 243) MOU, dated April 19, 2022;
    - Trademark Trial and Appeal Board's (TTAB) Telework Agreement (NTEU 243) MOU, dated April 11, 2022;
    - Office of General Counsel (OGC) NTEU 243 and POPA Telework MOU, dated March 25, 2022; and
    - Telework Enhancement Act Program (TEAP) MOU and Operating Procedures, dated March 25, 2022.

SECTION 4: Review of Telework Eligible Positions

At least thirty (30) calendar days prior to the beginning of each fiscal year, the Office will notify NTEU Chapter 243 of all bargaining unit positions it has identified as eligible for telework in each business unit and the number of days per week each such position is eligible to telework. The Office will meet with NTEU Chapter 243 to discuss these determinations, including any positions the Office has identified as ineligible for telework and the reason(s) therefor, prior to the start of the new fiscal year and prior to implementing any removal of position eligibility for telework. If the parties are unable to agree on the determinations, either party may invoke bargaining under Article 56 (Mid-Contract Negotiations).

SECTION 5: General Eligibility

All bargaining unit employees in positions that are eligible for telework may request a telework arrangement. To be considered for a telework arrangement or to continue to work on a telework arrangement, an employee must meet the criteria set out in the Telework MOU covering the employee.

SECTION 6: Selection and Approval of Telework Requests

A. Decisions to grant or deny telework requests will be based on whether the position is eligible, whether the employee meets the eligibility requirements, and whether the employee's request is otherwise consistent with this Article, and the terms of any applicable telework MOU.

B. Decisions on requests to grant or deny a telework request will be made promptly, usually within two weeks of submission of the request.

C. Employees approved to telework will be authorized to begin telework in accordance with the Telework MOUs.

SECTION 7: Telework Site and Inspections

A. An employee's telework site may be any location approved by the Office, including the employee's home.

B. To ensure that equipment and safety procedures are in place at the telework site, the Office may inspect the employee's work site with reasonable advance notice to the employee of at least twenty-four (24) hours. The employee may arrange for a Union representative to accompany the inspector during the inspection. The advance notice will inform the employee of the date and approximate time of arrival, the number of management officials who will come to the telework site, the estimated duration of the inspection, the purpose of the inspection, and any other appropriate information.

SECTION 8: Work Schedules

The terms of Article 31 of the parties' collective bargaining agreement control the eligibility and rules for working a particular work schedule, over any telework MOUs. However, employees may be required to work restricted or modified work schedules, or work a particular work schedule, pursuant to Article 31, Section 9.

SECTION 9: Equipment, Tools, and Supplies

A. The Office will provide telework employees with the equipment necessary for the employee to perform his/her work duties remotely at the telework site, including: universal laptops (including docking station), telephone equipment sufficient to enable the employee to make necessary work-related calls, and printers and/or monitors as appropriate. Necessary equipment will be provided to the employee as soon as practicable after the approval of the

telework request.

B. Equipment provided by the Office will be serviced and maintained by the Office.

This list is not exclusive and additional equipment may be requested by any telework participants if required by the employee's work and/or separately as a reasonable accommodation.

SECTION 10: Individual Employee Telework Agreements

An employee must have an approved telework agreement and self-certified safety checklist, signed by the employee and supervisor, before the employee may begin to telework. The employee's individual telework agreement will document the terms and conditions of participation in the telework program, including the number of days the employee will telework (including episodic arrangements), specific days, number of hours to be worked on each given day along with approximate start and end times (if on a flexible schedule), the location of the employee's telework site, and an alternate contact number for the employee. This does not preclude the ability to change the telework days, hours or work schedule of the teleworking employee.

SECTION 11: Training

Telework training, including an information technology (IT) and non-IT components, is required before an employee may telework. The Office will ensure that such training is made available promptly to all employees whose requests to telework are approved.

SECTION 12: Participant Responsibilities

Participating employees will:

1. Complete all required training and safety certifications.
2. Provide their supervisor with specific information concerning their work schedule, the location of the alternative work site, and home or mobile phone number.
3. Comply with the provisions of this Article, applicable telework MOUs, and their individual telework agreement.
4. Comply with all required security measures and protect all government records against unauthorized disclosure, access, mutilation, obliteration or destruction.
5. Ensure government-owned equipment is used only for official purposes (subject to Office policies on personal use) and is used as instructed.
6. Have childcare, eldercare, and any other dependent care arrangements so that the participant's ability to work at the alternate worksite is not adversely affected.
7. Provide the property custodian with timely notice of equipment changes and reports.

SECTION 13: Management Responsibilities

The Office will:

1. Timely review and approve or deny telework applications under this Article.
2. Offer participants, their supervisors, and office staff timely training and/or orientation,

including training on security and confidentiality of information.
3. Promptly investigate all accidents and injury reports as deemed necessary by management.
4. Direct Office personnel not to divulge the addresses and private home or mobile telephone numbers of participating employees to the public or any other USPTO personnel who have no need to know such information.
5. Determine supply and equipment needs of participating employees.
6. Ensure the telework agreement is completed and signed before the employee may begin telework.

SECTION 14: Modification, Suspension and Termination of Telework

A. The Office will give participants a minimum of two (2) weeks advance notice in writing of the intent to terminate, suspend or modify the employee's participation in telework. Any such notice will include all the reasons for the action, and the duration of any suspension of telework. Upon request, the Office will meet with the employee to discuss the notice, and the employee is entitled to have a Union representative present at the meeting.

B. An employee who is involuntarily terminated or suspended from telework for cause may generally not reapply for a period of twelve (12) months, unless a shorter period is identified in the applicable telework MOU. Exceptions will be made on a case-by-case basis to permit earlier reapplication (e.g., if telework was suspended for performance reasons and the employee has successfully completed the 3-month improvement period). However, in the case of termination, suspension, or modification for legitimate business needs of the Office, an employee will be entitled to return to telework as soon as the need for their continuing presence at the official duty station has abated. An employee must meet all of the requirements of this Article before the employee is eligible to return to telework.

C. Return of Equipment: Any equipment provided to the employee for use at the telework site should be returned to the Office generally within five (5) business days from the end of the employee's participation in the telework program, unless exigent circumstances exist or if the equipment is going to be used by the employee at his or her official duty station.

SECTION 15: Union Activities

Stewards and union officials may perform Union representational activities on official or bank time while teleworking.

SECTION 16: Office Closures, Late Openings, and Early Dismissals

A. The employee is aware that full or partial Office closures due to weather, road conditions, or conditions at or around the Office do not normally affect the employee's ability to work from the alternate work site. The employee will continue to work during these closures and will not normally be granted administrative leave. However, if the condition at the Office does impact the ability to work at the alternate work station, (e.g., the Office network servers are shut down), employees at the alternate work site will be treated in the

same manner as those at the Office.

B. If an employee is prevented from working at the alternate work site for reasons not addressed in Section 16A above, the employee must: (1) take leave, (2) come into the office, or (3) flex around the issue if the employee is working an IFS.

SECTION 17: Temporary Medical Exception

A. The USPTO will consider requests from employees to work from home or another authorized remote location based on a serious temporary medical need of the employee or a family member which would:
    1) Significantly impair or preclude the employee from working at (or traveling to) the Alexandria Headquarters;
    2) Ordinarily require the employee to use leave to be away from the office without the ability to telework; and,
    3) Allow the employee to continue working (full or part time) from the alternate work site.

B. Requests under these circumstances (known as a Temporary Medical Exception) should be submitted to the employee's supervisor (or designee) as soon as the need for the temporary medical exception is known by the employee. Decisions to grant or deny requests will be communicated to the employee in writing promptly, generally within one or two weeks, and taking into consideration the date on which the employee requests to begin telework. The reason(s) for any denial will be included in the response.

C. The request may be from a person not eligible to telework (based on position eligibility or the eligibility requirements established in the Telework MOU) to telework full or part time, or from a current teleworker to expand or change the number of days of telework. If the request is from an employee whose position is not normally eligible to telework and is not covered by an existing telework MOU between the parties, the individual telework agreement will be based on the individual telework agreement used elsewhere in the business unit. Eligibility requirements may be waived because the eligibility for the temporary medical exception is based upon specific need.

D. Upon request, employees must submit a written statement (or other documentation) from a health care provider supporting the request for a temporary medical exception.
    1) The statement or documentation will:
        a) State the general nature of the medical need and why the employee should be excused from working at the Alexandria campus (treatment of the employee or a family member outside of the commuting area will satisfy this requirement).
        b) Confirm that the employee can perform work from an alternate location
            i. If the employee has the medical condition—that the employee is fit for duty at the alternate work site, including any limitations that may apply; or,
            ii. If a family member has the medical condition—

A. state that the family member will not require constant attention, or
B. the employee may indicate on the application that other people will provide care when the employee is working.

c) The expected duration of the need for an alternate work location based on the medical condition.

2) The employee will not be required to reveal any details about the medical condition other than the general nature of the condition as set out above, and the Office may not require the employee or family member to sign a release for his/her medical information.
3) The Office will treat as confidential any medical information given by an employee in support of the medical telework request, and may only disclose such information subject to its Privacy Act obligations for work-related reasons on a need-to-know basis.
4) The purpose of the health care provider's statement and/or documentation is to verify the existence of the medical reason asserted in the temporary medical request, that the employee could not reasonably be expected to work at the Alexandria Headquarters or that working from an alternate worksite would help alleviate the medical condition or assist with recuperation, and that the employee is fit for duty at the alternate location**.** The Office will not substitute its own judgment for the medical judgment of the health care provider with respect to the validity of the medical condition, its duration, or how medical telework will alleviate the condition or help the employee (or family member) to recuperate (so long as there are sufficient details in the statement for the office to understand the basis for the recommendations)**.**

E. In determining whether to approve a request under this section, the Office must consider:
1) The work available for the employee to perform from a remote location as well as the ability to successfully complete assigned tasks in accordance with the employee's performance appraisal plan;
2) Whether or not the employee will have appropriate remote access to USPTO IT systems and the likelihood that the employee can be successful in working remotely;
3) The employee's ability to work without the disruption of providing childcare, eldercare, or medical needs, but may mid-day flex (if on an appropriate work schedule) to accomplish these activities; and,
4) The impact of the employee's absence from the Office on other employees as well as the ability of the Office to meet its business needs.

F. Approval will be for the duration of the medical need, but may not exceed 4 months without renewed approval. However, the approval may be reviewed at any time and may be extended or revoked (based on the criteria set forth above in subsection E). Approval of these requests for a temporary medical exception is not a "reasonable accommodation" and will not be evidence of the Agency perceiving or regarding an employee as disabled under the Rehabilitation Act.

G. Because of the added flexibility in terms of eligibility, scheduling and/or number of telework days and hours, the participant and the supervisor will discuss the work to be done, the hours to be worked (including both the number of hours per day and the time of these hours), and any changes in circumstances effecting the arrangement. The terms of the medical telework will be reduced to writing and signed by the employee and supervisor

or exchanged via email.

H. Employees may grieve the denial of a request for a temporary medical exception. Such grievances may be filed on an expedited bases at Step 3 with the Chief, Labor Relations Division or designee. Upon request, the Step 3 meeting will be held within 10 days of receipt of the grievance. The written decision on the grievance will be issued within 10 days of the Step 3 meeting if one is held, or within 10 days of receipt of the written grievance if no meeting is held.

SECTION 18: Miscellaneous

A. Federal Employees Compensation Act – The telework participant is covered under the Federal Employee's Compensation Act if injured in the course of actually performing official duties at the alternative work site. If so injured, the participant will notify the supervisor or another designated USPTO official as soon as possible (in accordance with FECA).

B. The Government will not be liable for damages to a participant's personal or real property during the course of performance of official duties or while using Government equipment in the employee's residence, except to the extent the Government is held liable by the Federal Tort Claims Act, claims arising under the Military Personnel and Civilian Employees Claims Act, or other laws.

C. Participants will apply approved safeguards to protect Government/Agency records from unauthorized disclosure or damage and will comply with the Privacy Act requirements set forth in the Privacy Act of 1974, Public Law 93-579, codified at 5 U.S.C. Section 552a.

D. Bargaining unit employees may be approved for telework as part of a reasonable accommodation, and as an exception to contractual telework requirements.

(New Article based on 2024 Agreements)

DURATION AND TERMINATION

ARTICLE 59 [Back to ToC]

SECTION 1:

A. The USPTO and NTEU will sign this Agreement within ten (10) workdays after it has been ratified by NTEU. This Agreement shall be reviewed by the head of the Office within thirty (30) days after it is executed by the parties. It shall be effective on the date it is approved by the head of the Office or, absent approval or disapproval, on the 31st day after execution.

   All provisions of the Agreement will be effective except for those provisions disapproved by the Agency Head that are not appealed or are appealed and sustained. Without prejudice to NTEU's right to challenge a disapproval, the parties will return to bargaining in an attempt to resolve disapproved provisions. If disapproved provisions are found negotiable by a third party, the language of the provisions will be adopted, absent agreement otherwise.

B. The parties will continue for the term of this contract the past practices in force as of the effective date of this contract. To the extent that past practices conflict with this contract, the provisions of this contract will govern.

   SECTION 2:

A. This Agreement shall remain in full force and effect for a period of five (5) years from the effective date. It annually shall be automatically renewed on the anniversary of its effective date unless either party gives written notice to the other that it desires to terminate, amend or modify this agreement. Such written notice shall be provided not earlier than 120 calendar days, and not later than 90 calendar days, prior to the anniversary of the effective date. Following notification, the designated representatives for each party shall meet to arrange for ground rules negotiations.

B. Within thirty (30) calendar days of receipt of such notice, the parties will exchange proposals indicating the articles and sections that the party wishes to reopen and proposals to reflect the desired changes.

C. All proposals will be exchanged electronically.

SECTION 3:

This Agreement may be reopened at any time under the following circumstances:

A. By mutual agreement of the parties;

B. To amend articles or negotiate new articles as required by law. No changes shall be considered except those bearing directly on and within the scope of such law.

C. For a period of thirty (30) days, commencing on the three (3) year anniversary of the effective date of this Agreement, either party may reopen up to three (3) articles of this Agreement, except for Article 51 Official Time, Article 58 Telework, and Article 46 Actions for Unacceptable Performance. Negotiations will commence on all articles opened by either party at a mutually agreed time, not later than sixty days from the time of receipt of reopening notification.

SECTION 4:

In the event that any provision of this Agreement is rendered invalid by appropriate authority after the effective date of this agreement, this will not invalidate the entire Agreement and all provisions not invalid will continue in full force and effect for the duration of the Agreement.

APPENDIX A [Back to ToC]

ABSENCE FROM WORK DUTIES TO PERFORM REPRESENTATIONAL DUTIES

∗Date: _____ ∗Estimated Time of Return: _____

∗Actual Time of Departure: _____
∗Actual Time of Return: _____

Official Time Activity	Time From	To	∗Contact ∗Destination	Total MGT. Official	Hours
GRIEVE PRES. (090216)					
GRIEVE PREP. (090220)					
LABOR MGT.COMM (09020217)					
MGT-INIT.MTGS (090218)					
UNION SPON. TRAIN. (090219)					
CONSULT/DISC (090220)					
CONTRACT NEG. (090221)					
EMPLOYEE ORIENT (090220)					
OTHER-EXPLAIN					

FOR DESTINATION INCLUDE BLDG., ROOM NO., WORK UNIT

SIGNATURE OF REPRESENTTIVE: _____

SIGNATURE OF SUPERVISOR: _____

TOTAL OFFICIAL TIME APPROVED: _____

∗TO BE COMPLEED BEFORE ABSENCE FROM WORK DUTIES BEGINS

A supervisor or designee will contact the Union Representative only in urgent situations.

APPENDIX B [Back to ToC]

AGREEMENT TO MAINTAIN CONFIDENTIALITY OF PENDING AND ABANDONED PATENT APPLICATIONS

In consideration of access to be accorded to me to review certain pending and abandoned patent applications which are required to be kept in confidence, I hereby agree that access to these patent applications is accorded to me for the sole purpose of participating in the resolution of an employee grievance as an arbitrator, expert witness or counsel, or court reporter and for no other purpose.

Except as to my participation in the employee grievance, I agree to maintain all such pending and abandoned patent applications in confidence and will make no use whatsoever of the information disclosed therein.

My obligation to maintain confidentiality shall survive my participation in the grievance. My obligation, as to a particular application, shall cease only when, and if, that application lawfully enters the public domain.

I certify that I am neither an applicant nor assignee, in whole or in part, of any pending patent application, except as follow (if none, so state):

I further certify that I am not the attorney of record in any application, nor do I otherwise represent any client, nor am I employed by any person, such that my participation might conflict with my client's or employer's interest.

I agree that the United States Patent and Trademark Office shall have the right to enforce this agreement.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code.

Date: _____ Signature: _____

Print Name:_____

Address: _____